A/CONF.25/16

United Nations Conference on Consular Relations

Vienna, 4 March - 22 April 1963

Official Records

Volume I:

Summary records of plenary meetings and of the meetings of the First and Second Committees

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UNITED NATIONS — NEW YORK, 1963

INTRODUCTORY NOTE

The Official Records of the Conference consist of two volumes.

Volume I contains the summary records of the plenary meetings and of the meetings of the First and Second Committees. Volume II contains the documents which appear as annexes, the Final Act, the resolutions adopted by the Conference, the protocols and the Convention; it also contains a complete index of the documents relevant to the proceedings of the Conference.

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The symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

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The summary records of the plenary meetings were originally circulated in mimeographed form as documents A/CONF.25/SR.1 to SR.22; those of the First and Second Committees as documents A/CONF.25/C.1/SR.1 to SR.35 and A/CONF.25/C.2/SR.1 to SR.44 respectively. They include the corrections to the provisional summary records that were requested by the delegations and such drafting and editorial changes as were considered necessary.

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* These articles refer to honorary consular officers and consular posts headed by such officials.

RESOLUTION 1685 (XVI) OF THE GENERAL ASSEMBLY CONVENING THE CONFERENCE

INTERNATIONAL CONFERENCE OF PLENIPOTENTIARIES ON CONSULAR RELATIONS

The General Assembly,

Having considered chapter II of the report of the International Law Commission covering the work of its thirteenth session, which contains draft articles and commentaries on consular relations,

Recalling that, according to paragraph 27 of that report, the International Law Commission decided to recommend that the General Assembly should convene an international conference of plenipotentiaries to study the Commission's draft on consular relations and conclude one or more conventions on the subject,

Expressing its firm belief that the successful codification and progressive development of the rules governing consular relations would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Noting with satisfaction that the draft articles on consular relations prepared by the International Law Commission constitute a good basis for the preparation of a convention on that subject,

Desiring to provide an opportunity for completing the preparatory work by further expressions and exchanges of views concerning the draft articles at the seventeenth session of the General Assembly,

1. *Expresses its appreciation* to the International Law Commission for its work on consular relations;

2. *Requests* Member States to submit to the Secretary-General written comments concerning the draft articles by 1 July 1962, in order that they may be circulated to governments prior to the beginning of the seventeenth session of the General Assembly;

3. *Decides* that an international conference of plenipotentiaries be convened to consider the question of consular relations and to embody the results of its work in an international convention and such other instruments as it may deem appropriate;

4. *Requests* the Secretary-General to convoke the conference at Vienna at the beginning of March 1963;

5. *Invites* States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice to participate in the conference and to include among their representatives experts competent in the field to be considered;

6. *Invites* the specialized agencies and the interested intergovernmental organizations to send observers to the conference;

7. *Requests* the Secretary-General to present to the conference documentation and recommendations concerning its methods of work and procedures;

8. *Requests* the Secretary-General to arrange for the necessary staff and facilities which will be required for the conference;

9. *Refers* to the conference chapter II of the report of the International Law Commission covering the work of its thirteenth session, together with the records of the records of the relevant debates in the General Assembly, as the basis for its consideration of the question of consular relations;

10. *Expresses the hope* that the conference will be fully attended;

11. *Decides* to include the item entitled " Consular relations " in the provisional agenda of its seventeenth session to allow further expressions and exchanges of views concerning the draft articles on consular relations.

1081st plenary meeting,
18 December 1961.

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Mr. Aurel Cristescu, Deputy Head of Department, Ministry of Foreign Affairs, Professor of International Law (*Deputy Chairman of the Delegation*)

Mr. Ion Anghel, Chief Legal Adviser, Ministry of Foreign Affairs

Mr. Iancu Tiron, Second Secretary, Ministry of Foreign Affairs

Advisers

Mr. Ion Edu, Chief of Section, Ministry of Foreign Affairs

Mr. Ion Diaconu, Diplomatic Attaché, Ministry of Foreign Affairs

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H.E. Mr. Augustin Munyaneza, Ambassador of Rwanda to Belgium

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Representatives

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Mr. Wilhelm Muller Fembeck, Consul-General

Mr. Jean Charles Munger, Counsellor of Legation

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SIERRA LEONE

Representative

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Mr. Julian Ayesta Prendes, Counsellor of Embassy, Vienna

Mr. Federico Garayalde, Embassy Secretary, Ministry of Foreign Affairs

Mr. Juan Luis Pan de Soraluce, Counsellor of Embassy, Vienna

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Mr. N. E. Aquist, Director of Legal Affairs, Ministry of Finance

Mr. Claës König, Minister Plenipotentiary, Head of Protocol, Ministry of Foreign Affairs

Mr. Sture Johanson, Head of Consular Division, Ministry of Foreign Affairs

Mr. Bertil Arvidson, First Secretary, Ministry of Foreign Affairs

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Mr. Etienne-Humbert Serra, Minister Plenipotentiary; Head of Protocol, Political Department

Mr. Auguste Rebsamen, Political Department

Mr. Jean-Philippe Monnier, Political Department

Mr. Albert Roy, Vice-Consul, Service of Protocol, Political Department

Mr. Peter Dietschi, Third Secretary, Embassy of Switzerland at Vienna

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Mr. Abdelkrim Gana, Head of Consular Division, Ministry of Foreign Affairs

Mr. Hamed El Abed, Chief, Presidential State Secretariat

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Mr. Ilhan Unat, Legal Adviser, Ministry of Foreign Affairs

Adviser

Mr. Selçuk N. Toker, First Secretary, Ministry of Foreign Affairs

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Mr. Konstantin Zabigailo, Ministry of Foreign Affairs

Adviser

Mr. Vsevolod Gapon, Second Secretary, Ministry of Foreign Affairs

UNION OF SOVIET SOCIALIST REPUBLICS

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Mr. Oleg Khlestov, Deputy Head of the Legal and Treaty Department, Ministry of Foreign Affairs (*Deputy Chairman of the Delegation*)

Mr. Izmail Konzhukov, Deputy Head of the Consular Department, Ministry of Foreign Affairs

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Mr. Evgeny Leonidow, First Secretary, Ministry of Foreign Affairs

Mrs. Irina Gorodetskaia, Legal and Treaty Department, Ministry of Foreign Affairs

Mr. Alexandre Abramov, Consular Department, Ministry of Foreign Affairs

Mr. Michel Kurishchew, Consul

Mr. Nikolai Petrenko, Legal and Treaty Department, Ministry of Foreign Affairs

Mr. Nicolas Turov, Second Secretary

Mr. Yuri Schaposchnikov, Press Attaché

Mr. Wladimir Tscherkasov, Attaché

Mr. Valery Shigulenkov, Attaché, Ministry for Foreign Affairs

Interpreter

Mrs. Inna Stepanova, Ministry for Foreign Affairs

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Adviser

Mr. Ahmed Esmat Abdelmagid, Assistant Legal Adviser, Ministry of Foreign Affairs

Secretary

Mr. Saad El Fararghy, Secretary of Embassy, Vienna

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Representatives

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Mr. R. P. Heppel, C.M.G., Head of the Consular Department, Foreign Office (*Deputy Chairman of the Delegation*)

Mr. G. V. Hart, Assistant Legal Adviser, Home Office

Mr. A. A. Russell, First Secretary, Foreign Office

Mr. A. D. Watts, Assistant Legal Adviser, Foreign Office

Advisers

Mr. C. H. Imray, Commonwealth Relations Office

Mr. C. J. B. Larby, Commonwealth Relations Office

Mr. J. P. Strudwick, Board of Inland Revenue

Mr. C. T. Cross, Customs and Excise

Secretary

Miss J. A. Clarke, Foreign Office

UNITED STATES OF AMERICA

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Mr. Byron E. Blankinship, Consul-General at Amsterdam (*Deputy Chairman of the Delegation*)

Advisers

Mr. Francis E. Flaherty, Special Assistant, Office of Special Consular Services, Department of State

Miss Betty C. Gough, United States Mission to the International Atomic Energy Agency, Vienna

Mr. Ernest L. Kerley, Deputy Assistant Legal Adviser for United Nations Affairs, Department of State

Mr. Paul D. McCusker, Consul at Hamburg

Mrs. Eleanor C. McDowell, Office of the Legal Adviser, Department of State

Mr. Milton Mitchell, Office of Protocol, Department of State

Miss Sylvia E. Nilsen, Office of the Legal Adviser, Department of State

Mr. John N. Washburn, Office of the Legal Adviser, Department of State

UPPER VOLTA

Representatives

H.E. Mr. Christophe Kalenzaga, Ambassador to the Federal Republic of Germany

Mr. Clément Ouedraogo, First Counsellor, Embassy to the Federal Republic of Germany

URUGUAY

Representative

Mr. Arturo Muñoz Moratorio, Consul-General in France

VENEZUELA

Representative

Mr. Pedro Silveira-Barrios, Assistant to the Legal Adviser, Ministry of Foreign Affairs (*Chairman of the Delegation*)

Adviser

Mr. Marcial Perez-Chiriboga, Second Secretary, Permanent Mission to the European Office of the United Nations

YUGOSLAVIA

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Mr. Miša Levi, Minister Plenipotentiary, Secretariat of State for Foreign Affairs

Alternate

Mr. Milan Ribica, Chief, Consular Division, Yugoslav Embassy to Austria

Secretary

Mr. Miodrag Mitić, Attaché, Yugoslav Embassy to Austria

Specialized and related agencies

INTERNATIONAL LABOUR ORGANISATION

M. Paul Hempel, Correspondent of the International Labour Organisation at Vienna

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

Mr. G. Saint-Pol, Legal Counsel, Department of Public Relations and Legal Affairs

INTERNATIONAL ATOMIC ENERGY AGENCY

Mr. Finn Seyersted, Director, Legal Division

Mr. Remy Gorge, Senior Officer, Legal Division

Miss Mary Jeffreys, Senior Officer, Division of External Liaison

Mr. Boris Pissarev, Senior Officer, Legal Division

Mr. Karlfritz Wolff, Senior Officer, Consultant, Legal Division

Mr. Reinhard Rainer, Professional Officer, Legal Division

Intergovernmental organizations

COUNCIL OF EUROPE

Mr. P. J. de Kanter, Director of Legal Affairs

Observers

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

Dr. Paul Weis, Director, Legal Division, Office of the United Nations High Commissioner for Refugees

Mr. Arnold Rorholt, Representative of the High Commissioner in Austria

Mr. O. Nottidge, Legal Affairs Officer

Dr. W. Burgmann, Legal Adviser at Vienna

OFFICERS OF THE CONFERENCE AND ITS COMMITTEES

President of the Conference

Mr. Stephan Verosta (Austria)

Vice-Presidents of the Conference

The representatives of the following States: Algeria, Argentina, Canada, Ceylon, China, Colombia, Czechoslovakia, France, Indonesia, Italy, Mexico, Romania, Thailand, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Yugoslavia.

FIRST COMMITTEE

Chairman: Mr. N. Barnes (Liberia).

Vice-Chairmen: Mr. P. Silveira-Barrios (Venezuela); Mr. J. Osiecki (Poland).

Rapporteur: Mr. Z. P. Westrup (Sweden).

SECOND COMMITTEE

Chairman: Mr. M. Gibson Alves Barboza (Brazil).

Vice-Chairmen: Mr. Hassan Kamel (United Arab Republic); Mr. A. J. Vranken (Belgium).

Rapporteur: Mr. B. Konstantinov (Bulgaria).

CREDENTIALS COMMITTEE

Chairman: Mr. G. Sicotte (Canada).

Members: Canada, El Salvador, Greece, Guinea, Indonesia, Mexico, Nigeria, Union of Soviet Socialist Republics, United States of America.

DRAFTING COMMITTEE

Chairman: Mr. K. Krishna Rao (India).

Members: Argentina, Brazil, China, France, Ghana, Hungary, India, Spain, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America.

SECRETARIAT OF THE CONFERENCE

Mr. C. A. Stavropoulos (*Representative of the Secretary-General*), Legal Counsel of the United Nations

Mr. Yuen-li Liang (*Executive Secretary of the Conference*), Director, Codification Division, Office of Legal Affairs

Mr. G. W. Wattles, Office of Legal Affairs

Mr. S. Torres Bernardez, Office of Legal Affairs

Mr. P. Raton, Office of Legal Affairs

Mr. J. S. Scott, Office of Legal Affairs

Mr. S. Kiernik, Office of Legal Affairs

Expert

Professor Jaroslav Žourek, Special Rapporteur of the International Law Commission on Consular Intercourse and Immunities.

AGENDA [1]

1. Opening of the Conference by the Secretary-General
2. Election of the President
3. Adoption of the agenda
4. Adoption of the rules of procedure
5. Meeting of committees to elect their chairmen
6. Election of vice-presidents
7. Appointment of the credentials committee
8. Organization of work
9. Appointment of the drafting committee
10. Consideration of the question of consular relations in accordance with resolution 1685 (XVI) adopted by the General Assembly on 18 December 1961
11. Adoption of one or more conventions or other instruments and of the Final Act of the Conference
12. Signature of the Final Act and of the convention or conventions or other instruments

[1] Adopted by the Conference at its first plenary meeting.

RULES OF PROCEDURE[1]

CHAPTER I

Representation and credentials

Composition of Delegations

Rule 1

The delegation of each State participating in the Conference shall consist of accredited representatives and such alternate representatives and advisers as may be required.

Alternates or Advisers

Rule 2

An alternate representative or an adviser may act as a representative upon designation by the chairman of the delegation.

Submission of Credentials

Rule 3

The credentials of representatives and the names of alternate representatives and advisers shall be submitted to the Executive Secretary if possible not later than twenty-four hours after the opening of the Conference. The credentials shall be issued either by the Head of the State or government, or by the Minister for Foreign Affairs.

Credentials Committee

Rule 4

A Credentials Committee shall be appointed at the beginning of the Conference. It shall consist of nine members who shall be appointed by the Conference on the proposal of the President. It shall examine the credentials of representatives and report to the Conference without delay.

Provisional Participation in the Conference

Rule 5

Pending a decision of the Conference upon their credentials, representatives shall be entitled provisionally to participate in the Conference.

CHAPTER II

Officers

Elections

Rule 6

The Conference shall elect a President and eighteen Vice-Presidents, and such other officers as it may decide. The Vice-Presidents shall be elected after the election of the Chairmen of the two Main Committees provided for in rule 47. These officers shall be elected on the basis of ensuring the representative character of the General Committee. The Conference may also elect such other officers as it deems necessary for the performance of its functions.

President

Rule 7

The President shall preside at the plenary meetings of the Conference.

Rule 8

The President, in the exercise of his functions, remains under the authority of the Conference.

Acting President

Rule 9

If the President is absent from a meeting or any part thereof, he shall appoint a Vice-President to take his place.

Rule 10

A Vice-President acting as President shall have the same powers and duties as the President.

Replacement of the President

Rule 11

If the President is unable to perform his functions, a new President shall be elected.

The President shall not vote

Rule 12

The President, or Vice-President acting as President, shall not vote, but shall appoint another member of his delegation to vote in his place.

CHAPTER III

General Committee

Composition

Rule 13

There shall be a General Committee of twenty-one members which shall comprise the President and Vice-Presidents of the Conference and the Chairman of the two Main Committees. The President of the Conference or, in his absence, a Vice-President designated by him shall serve as Chairman of the General Committee.

[1] As adopted by the Conference at its second plenary meeting.

Substitute Members

Rule 14

If the President or a Vice-President of the Conference finds it necessary to be absent during a meeting of the General Committee, he may designate a member of his delegation to sit and vote in the Committee. The Chairman of a Main Committee shall, in case of absence, designate the Vice-Chairman of that Committee as his substitute. A Vice-Chairman shall not have the right to vote if he is of the same delegation as another member of the General Committee.

Functions

Rule 15

The General Committee shall assist the President in the general conduct of the business of the Conference and, subject to the decisions of the Conference, shall ensure the co-ordination of its work.

CHAPTER IV

Secretariat

Duties of the Secretary-General and the Secretariat

Rule 16

1. The Secretary-General of the Conference shall be the Secretary-General of the United Nations. He, or his representative, shall act in that capacity in all meetings of the Conference and its committees.

2. The Secretary-General shall appoint an Executive Secretary of the Conference and shall provide and direct the staff required by the Conference and its committees.

3. The Secretariat shall receive, translate, reproduce and distribute documents, reports and resolutions of the Conference; interpret speeches made at the meetings; prepare and circulate records of the public meetings; have the custody and preservation of the documents in the archives of the United Nations; publish the reports of the public meetings; distribute all documents of the Conference to the participating governments, and generally perform all other work which the Conference may require.

Statements by the Secretariat

Rule 17

The Secretary-General or any member of the staff designated for that purpose may make oral or written statements concerning any question under consideration.

CHAPTER V

Conduct of business

Quorum

Rule 18

A quorum shall be constituted by the representatives of a majority of the States participating in the Conference.

General Powers of the President

Rule 19

In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall declare the opening and closing of each plenary meeting of the Conference; direct the discussions at such meetings; accord the right to speak; put questions to the vote and announce decisions. He shall rule on points of order and, subject to these rules of procedure, have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the limitation of time to be allowed to speakers, the limitation of the number of times each representative may speak on any questions, the closure of the list of speakers or the closure of the debate. He may also propose the suspension or the adjournment of the debate on the question under discussion.

Speeches

Rule 20

No person may address the Conference without having previously obtained the permission of the President. Subject to rules 21 and 22, the President shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be in charge of drawing up a list of such speakers. The President may call a speaker to order if his remarks are not relevant to the subject under discussion.

Precedence

Rule 21

The chairman or rapporteur of a committee, or the representative of a sub-committee or working group, may be accorded precedence for the purpose of explaining the conclusion arrived at by his committee, sub-committee or working group.

Points of Order

Rule 22

During the discussion of any matter, a representative may rise to a point of order, and the point of order shall be immediately decided by the President in accordance with the rules of procedure. A representative may appeal against the ruling of the President. The appeal shall be immediately put to the vote and the president's ruling shall stand unless overruled by a majority of the representatives present and voting. A representative rising to a point of order may not speak on the substance of the matter under discussion.

Time-limit on Speeches

Rule 23

The Conference may limit the time to be allowed to each speaker and the number of times each representative may speak on any question. When the debate is limited and a representative has spoken his allotted time, the President shall call him to order without delay.

Closing of List of Speakers

Rule 24

During the course of a debate the President may announce the list of speakers and, with the consent of the Conference, declare the list closed. He may, however, accord the right of reply to any representative if a speech delivered after he has declared the list closed makes this desirable.

Adjournment of Debate

Rule 25

During the discussion of any matter, a representative may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, two representatives may speak in favour of, and two against, the motion, after which the motion shall be immediately put to the vote. The President may limit the time to be allowed to speakers under this rule.

Closure of Debate

Rule 26

A representative may at any time move the closure of the debate on the question under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote. If the Conference is in favour of the closure, the President shall declare the closure of the debate. The President may limit the time to be allowed to speakers under this rule.

Suspension or Adjournment of the Meeting

Rule 27

During the discussion of any matter, a representative may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall be immediately put to the vote. The President may limit the time to be allowed to the speaker moving the suspension or adjournment.

Order of Procedural Motions

Rule 28

Subject to rule 22, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

(*a*) To suspend the meeting;

(*b*) To adjourn the meeting;

(*c*) To adjourn the debate on the question under discussion;

(*d*) For the closure of the debate on the question under discussion.

Basic Proposal

Rule 29

The draft articles adopted by the International Law Commission shall constitute the basic proposal for discussion by the Conference.

Other Proposals and Amendments

Rule 30

Other proposals and amendments thereto shall normally be introduced in writing and handed to the Executive Secretary of the Conference, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the Conference unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The President may, however, permit the discussion and consideration of amendments, or motions as to procedure, even though these amendments and motions have not been circulated or have only been circulated the same day.

Decisions on Competence

Rule 31

Subject to rule 22, any motion calling for a decision on the competence of the Conference to discuss any matter or to adopt a proposal or an amendment submitted to it shall be put to the vote before the matter is discussed or a vote is taken on the proposal or amendment in question.

Withdrawal of Motions

Rule 32

A motion may be withdrawn by its proposer at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any representative.

Reconsideration of Proposals

Rule 33

When a proposal has been adopted or rejected it may not be reconsidered unless the Conference, by a two-thirds majority of the representatives present and voting, so decides. Permission to speak on the motion to reconsider shall be accorded only to two speakers opposing the motion, after which it shall be immediately put to the vote.

Invitations to Technical Advisers

Rule 34

The Conference may invite to one or more of its meetings any person whose technical advice it may consider useful for its work.

CHAPTER VI

Voting

Voting Rights

Rule 35

Each State represented at the Conference shall have one vote.

Required Majority

Rule 36

1. Decisions of the Conference on all matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

2. Decisions of the Conference on matters of procedure shall be taken by a majority of the representatives present and voting.

3. If the question arises whether a matter is one of procedure or of substance, the President of the Conference shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the President's ruling shall stand overruled by a majority of the representatives present and voting.

Meaning of the Expression "Representatives present and voting"

Rule 37

For the purpose of these rules, the phrase "representatives present and voting" means representatives present and casting an affirmative or negative vote. Representatives who abstain from voting shall be considered as not voting.

Method of Voting

Rule 38

The Conference shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the States participating in the Conference, beginning with the delegation whose name is drawn by lot by the President.

Conduct during Voting

Rule 39

After the President has announced the beginning of voting, no representatives shall interrupt the voting except on a point of order in connexion with the actual conduct of the voting. The President may permit representatives to explain their votes, either before or after the voting, except when the vote is taken by secret ballot. The President may limit the time to be allowed for such explanations.

Division of Proposals and Amendments

Rule 40

A representative may move that parts of a proposal or of an amendment shall be voted on separately. If objection is made to the request for division, the motion for division shall be voted upon. Permission to speak on the motion for division shall be given only to two speakers in favour and two speakers against. If the motion for division is carried, those parts of the proposal or of the amendment which are subsequently approved shall be put to the vote as a whole. If all operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected as a whole.

Voting of Amendments

Rule 41

When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Conference shall vote first on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the rejection of another amendment, the latter amendment shall not be put to the vote. If one or more amendments are adopted, the amended proposal shall then be voted upon. A motion is considered an amendment to a proposal if it merely adds to, deletes from or revises part of that proposal.

Voting on Proposals

Rule 42

If two or more proposals relate to the same question, the Conference shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Elections

Rule 43

All elections shall be held by secret ballot unless otherwise decided by the Conference.

Rule 44

1. If, when one person or one delegation is to be elected, no candidate obtains in the first ballot a majority of the representatives present and voting, a second ballot restricted to the two candidates obtaining the largest number of votes shall be taken. If in the second ballot the votes are equally divided, the President shall decide between the candidates by drawing lots.

2. In the case of a tie in the first ballot among three or more candidates obtaining the largest number of votes, a second ballot shall be held. If a tie results among more than two candidates, the number shall be reduced to two by lot and the ballotting, restricted to them, shall continue in accordance with the preceding paragraph.

Rule 45

When two or more elective places are to be filled at one time under the same conditions, those candidates obtaining in the first ballot a majority of the representatives present and voting shall be elected. If the number of candidates obtaining such majority is less than the number of persons or delegations to be elected, there shall be additional ballots to fill the remaining places, the voting being restricted to the candidates obtaining the greatest number of votes in the previous ballot, to a number not more than twice the places remaining to be filled; provided that, after the third inconclusive ballot, votes may be cast for any eligible person or delegation. If three such unrestricted ballots are inconclusive, the next three ballots shall be restricted to the candidates who obtained the greatest number of votes in the third of the unrestricted ballots, to a number not more than twice the places remaining to be filled and the following three ballots thereafter shall be unrestricted, and so on until all the places have been filled.

Equally divided votes

Rule 46

If a vote is equally divided on matters other than elections, the proposal shall be regarded as rejected.

CHAPTER VII

Committees

Creation of Committees

Rule 47

In addition to the General Committee and the Credentials Committee, the Conference shall establish two Main Committees and such other committees as it deems necessary for the performance of its functions. Each committee may set up sub-committees or working groups.

Representation on Main Committees

Rule 48

Each State participating in the Conference may be represented by one person on each Main Committee. It may assign to these committees such alternate representatives and advisers as may be required.

Drafting Committee

Rule 49

The Conference shall appoint, on the proposal of the General Committee, a drafting committee, which shall consist of twelve members. This committee shall give advice on drafting as requested by other committees and by the Conference, and shall co-ordinate and review the drafting of all texts adopted.

Co-ordination by the General Committee

Rule 50

1. The General Committee may meet from time to time to review the progress of the Conference and its committees and to make recommendations for furthering such progress. It shall also meet at such other times as the President deems necessary or upon the request of any other of its members.

2. Questions affecting the co-ordination of their work may be referred by other committees to the General Committee, which may make such arrangements as it thinks fit, including the holding of joint meetings of committees or sub-committees and the establishment of joint working groups. The General Committee shall appoint, or arrange for the appointment of, the Chairman of any such joint body.

Officers

Rule 51

Except in the case of the General Committee, each committee and sub-committee shall elect its own officers.

Quorum

Rule 52

A majority of the representatives on a committee or sub-committees shall constitute a quorum.

Officers, Conduct of Business and Voting in Committees

Rule 53

The rules contained in chapter II, V and VI above shall be applicable, *mutatis mutandis*, to the proceedings of committees and sub-committees, except that decisions of committees and sub-committees shall be taken by a majority of the representatives present and voting, but not in the case of a reconsideration of proposals or amendments in which the majority required shall be that established by rule 33.

CHAPTER VIII

Languages and records

Official and Working Languages

Rule 54

Chinese, English, French, Russian and Spanish shall be the official languages of the Conference. English, French and Spanish shall be working languages.

Interpretation from a Working Language

Rule 55

Speeches made in any of the working languages shall be interpreted into the other two working languages.

Interpretation from Official Languages

Rule 56

Speeches made in either of the other two official languages shall be interpreted into the three working languages.

Interpretation from Other Languages

Rule 57

Any representative may make a speech in a language other than the official languages. In this case he shall himself provide for interpretation into one of the working languages. Interpretation into the other working languages by the interpreters of the Secretariat may be based on the interpretation given in the first working language.

Summary Records

Rule 58

Summary records of the plenary meetings of the Conference and of the meetings of the Main Committees of the Conference shall be kept by the Secretariat. They shall be sent as soon as possible to all representatives, who shall inform the Secretariat within five working days after the circulation of the summary record of any changes they wish to have made.

Language of Documents and Summary Records

Rule 59

Documents and summary records shall be made available in the working languages.

CHAPTER IX

Public and private meetings

Plenary Meetings and Meetings of Committees

Rule 60

The plenary meetings of the Conference and the meetings of committees shall be held in public unless the body concerned decides otherwise.

Meetings of Sub-committees or Working Groups

Rule 61

As a general rule meetings of a sub-committee or working group shall be held in private.

Communiqué to the Press

Rule 62

At the close of any private meeting a communiqué may be issued to the press through the Executive Secretary.

CHAPTER X

Observers for specialized agencies and intergovernmental bodies

Rule 63

1. Observers for specialized agencies and intergovernmental bodies invited to the Conference may participate, without the right to vote, in the deliberations of the Conference and its Main Committees, upon the invitation of the President or Chairman, as the case may be, on questions within the scope of their activities.

2. Written statements of such specialized agencies and intergovernmental bodies shall be distributed by the secretariat to the delegations at the Conference.

NOTE

In the course of the debates of which the summary records are reproduced below, numerous references were made to the proceedings and documents of the United Nations Conference on Diplomatic Intercourse and Immunities held at Vienna in 1961. The proceedings of that conference are printed in document A/CONF.20/14, and the Final Act, the Vienna Convention on Diplomatic Relations, 1961, the optional protocols and resolutions in document A/CONF.20/14/Add.1 (United Nations publications, Sales Nos. 61.X.2 and 62.XI.1).

For the successive reports of the Special Rapporteur of the International Law Commission on Consular Intercourse and Immunities and for the Commission's reports and drafts, see

Yearbook of the International Law Commission, 1957, vol. II (United Nations publication, Sales No. 1957.V.5, vol. II)

Yearbook of the International Law Commission, 1959, vol.II (United Nations publication, Sales No. 59.V.1, vol. II)

Yearbook of the International Law Commission, 1960, vol. II (United Nations publication, Sales No. 60.V.1, vol. II)

Yearbook of the International Law Commission, 1961, vol. II (United Nations publication, Sales No. 61.V.1, vol. II). This contains the final draft, which is reprinted in vol. II of the *Official Records* of the present (1963) Conference.

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A collection of *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities* was prepared by the Secretariat and published in the *United Nations Legislative Series* (Sales No. 58.V.3).

SUMMARY RECORDS OF THE PLENARY MEETINGS

FIRST PLENARY MEETING

Monday, 4 March 1963, at 3 p.m.

Acting President: Mr. STAVROPOULOS
(Legal Counsel of the United Nations, representing the Secretary-General)

Later:

President: Mr. VEROSTA (Austria)

Opening of the Conference

[Agenda item 1]

1. The ACTING PRESIDENT welcomed the Federal President of the Republic of Austria. He recalled that in 1961 he had had the honour to welcome him at the opening of the Vienna Conference on Diplomatic Intercourse and Immunities, and to express to him the gratitude of the United Nations for the warm and generous hospitality extended by the Austrian Government. It was with an even deeper sense of gratitude that he greeted him on the present occasion. All those who had been present at the Vienna Conference of 1961 knew how much the Republic of Austria had contributed to its success by the provision of facilities and financial assistance. They were very glad to be in Vienna, whose long tradition as a favourable location for international conferences was carefully preserved and fostered by the federal and city authorities. The city which was the home of the famous Konsular-Akademie, founded in 1754 by the Empress Maria Theresa for the training of consuls, and had for centuries been one of the great centres for the study of international law, was a particularly appropriate place for a conference on consular law. The presence of the Federal President and the hospitality of Austria were an excellent augury for the success of the Conference.

2. On behalf of the Secretary-General, he then declared the United Nations Conference on Consular Relations open.

On the proposal of the Acting President, the Conference observed a minute of silent prayer or meditation.

3. The ACTING PRESIDENT welcomed the delegations on behalf of the Secretary-General of the United Nations; the Secretary-General had asked him to express his regret at being unable to be present and to convey to the Conference his best wishes for the success of an important new step in the codification and progressive development of international law.

4. The present conference was one of a series of conferences convened by the General Assembly of the United Nations for the purpose, in the words of the United Nations Charter, of " encouraging the progressive development of international law and its codification ". In pursuance of that aim, two conferences on the Law of the Sea had been held in Geneva in 1958 and 1960; a conference on the reduction of statelessness had been held, the first part in Geneva in 1959 and the second in New York in 1962; and the Conference on Diplomatic Intercourse and Immunities had been held in Vienna in 1961.

5. The present conference, like the Vienna Conference of 1961, would deal with the law regulating an important aspect of international relations. At a time when international relations had taken on an ever-increasing significance for the lives of all mankind, it had become increasingly desirable to place them on a secure basis of clear, generally recognized and generally observed rules of law. Consuls, like diplomatic agents, played an important part in international relations. The general development of foreign travel, international trade and shipping had increased the volume of consular activities all over the world, and for those increased activities larger consular staffs had become necessary. Clarification of consular law would thus contribute to the promotion of friendly relations between States.

6. The present conference, unlike the Conference on Diplomatic Intercourse and Immunities which had had the precedent of the Vienna Congress of 1815, was breaking new ground. For the first time an effort was being made to prepare a text on consular relations with the collaboration of States from all parts of the world. The States of the western hemisphere had approved the text of the Havana Convention on Consular Agents in 1928, and European States were considering the subject on a regional basis in the Council of Europe. Consular relations, however, had in the past been mainly regulated by bilateral agreements and national laws, and there had been a wide variety of differing practices. While regional and bilateral agreements were unquestionably valuable, and while considerable local variation was not necessarily disadvantageous, the task of the Conference would be to arrive at as broad a measure of agreement as possible on the basic principles of the subject, on a world-wide basis. Principles defined at the present conference would have the advantage of being established in accordance with the interests and views of both the new and the old States — of States with all kinds of political and economic systems — and would thus help to promote better relations in the world as a whole.

7. The draft before the Conference was the fruit of eight years' work and would no doubt prove as useful to it as previous drafts by the International Law Commission had proved to other conferences. The International Law Commission had begun work on the subject in 1955, and the draft had gone through the usual stages of provisional adoption, submission to governments for comments, and revision in the light of the comments received. The draft had been submitted to the General Assembly in 1961. The Assembly, by resolution 1685 (XVI) of 18 December 1961, had decided to convene the present conference, and had referred the International Law Commission's draft to it. At its seventeenth

session, in 1962, the Assembly had discussed the subject again, and adopted resolution 1813 (XVII) of 18 December 1962, by which it had requested that the records and documents of the seventeenth session relating to the consideration of that item be transmitted to the Conference, and had invited States to submit, by 10 February 1963, any amendments which they might wish to propose in advance. Thus, the Conference had before it a carefully prepared draft and much information about the views of governments, and should be able to achieve its aims effectively.

8. In conclusion, he expressed the hope and the belief that the Conference, in its work during the coming weeks, would succeed in preparing a convention which, while leaving due latitude for variations of practice, would clearly lay down the basic principles of consular relations, and be widely acceptable to States. The Conference would thus achieve its aims, and an important step forward would be made in the codification and progressive development of international law.

Address of the Federal President of the Republic of Austria

9. H.E. Dr. Adolf SCHAERF, Federal President of the Republic of Austria, said that it was with great pleasure that he had accepted the proposal of the Secretary-General of the United Nations to hold the Conference on Consular Relations in Vienna. Austria was glad to have been able to offer hospitality to the United Nations Conference on Diplomatic Intercourse and Immunities in 1961 and was now equally gratified that, in response to an invitation of the Austrian Federal Government, the United Nations was once again holding in its capital a conference of great importance for all States.

10. The deliberations on the reformulation of the rules governing diplomatic relations and immunities, which had originally been laid down at the Congress of Vienna in 1815, had achieved good results in 1961. Since then, the Vienna Convention on Diplomatic Relations had been ratified by a large number of States.

11. The United Nations now proposed, in conformity with Article 13 of the Charter, to regulate consular relations between States. In doing so, the Organization would, at the same time, be fulfilling the task it had set itself of promoting the progressive development of international law and its codification.

12. The draft of the new convention which was to be concluded had been prepared with great care by the International Law Commission of the United Nations. The high quality of the text, which was before the Conference on Consular Relations as the basis for its work, had been recognized by the General Assembly of the United Nations on 18 December 1961. It was to be hoped that now, in the city of Vienna, the convention would be put into final form in accordance with the interests of all States.

13. The significance of consular relations between States should not be under-estimated. The institution of consuls in international life had had a long and proud history. The late General Secretary of the Austrian Foreign Office, Mr. Heinrich Wildner, who had received his training in the diplomatic service of the Austro-Hungarian monarchy, had stressed in his manual of diplomatic method that the consular service demanded at least the same objective training as the diplomatic service proper, and possibly even a more intensive training. It was perhaps an even richer mine of experience, because the members of the consulate were more directly in touch with the administration and population of the receiving country, and with their life and culture.

14. The great importance of the consular service was indeed due to the fact that consulates were in much closer contact with the authorities of the receiving States than embassies, owing to the nature of the functions vested in consuls and their assistants — protecting the interests of their nationals in the receiving country, promoting trade, economic, cultural and scientific relations, issuing passports and travel documents, performing notarial functions and the functions of registrar of births, deaths and marriages in certain cases, safeguarding the interests of minors and representing their nationals in the courts and before other authorities of the receiving State. All those activities brought a consul into constant and close contact with the authorities of the country to which he had been sent. But consuls and consular officers were in contact not only with officials and diplomats of the country in which they served, but also with its people, who often applied to them for information, advice and support.

15. For those reasons, he considered that a generally valid text regulating consular relations between States was no less important than the Convention on Diplomatic Relations which had already been happily concluded. The consular convention which it was the object of the Conference to prepare would not only create new law, but, he hoped, would contribute materially to the furtherance and improvement of interstate relations. The future treaty would strengthen the foundations of world peace for the better, and the more certainly the relations of States were regulated by the provisions of treaties drafted and approved by common consent, the better prospects there were of avoiding friction and misunderstanding.

16. He hoped that the delegations which had come to Vienna from so many countries to attend the Conference would feel happy and comfortable in Austria. The Austrians would do their best to make their guests welcome.

17. He wished the United Nations Conference on Consular Relations complete success and hoped that the fruit of its labours would be a universally satisfactory convention.

The Federal President of the Republic of Austria withdrew.

Question of participation in the Conference

18. Mr. AVILOV (Union of Soviet Socialist Republics) said that since the task of the Conference was to prepare a convention governing consular relations

amongst all States, the Conference should obviously be as representative as possible. And yet, a nation of 650 million was not admitted to the Conference and was being deprived of its legal right of representation, in violation of the Charter and the fundamental principles of the United Nations — in particular that of the sovereign equality of States. Manifestly, the representatives of Chiang Kai-shek did not and could not represent the Chinese people. The only representatives of the Chinese people were those appointed by the Government of the People's Republic of China. Consequently, the presence of followers of Chiang Kai-shek at the Conference was illegal.

19. The absence of so great a country as China from the proceedings of the Conference would be detrimental to the cause of international co-operation and would undoubtedly be reflected in the work of the Conference.

20. Furthermore, no representatives of the German Democratic Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam had been invited. In view of the importance of the questions to be discussed at the Conference, all States, and not only States Members of the United Nations and the specialized agencies, should participate. The Soviet delegation therefore considered that the absence of representatives of the States concerned, which could have made an important contribution to the Conference, was contrary to the Charter, to international law, and to the interests of all States.

21. Mr. CAMERON (United States of America) said that the USSR representative's remarks were clearly out of order. The question he had raised had been decided by the General Assembly in its resolution 1685 (XVI), under which the Conference had been convened; by that resolution, all States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice had been invited to the Conference, and only representatives of those States could participate in its work. None of the regimes to which the USSR representative had referred satisfied those conditions, whereas the Republic of China was a Member of the United Nations and the specialized agencies. The government of that State alone was qualified to represent China at the Conference.

22. Mr. WU (China) regretted that, at the outset of the Conference, the friendly and harmonious atmosphere had been broken by a harsh and discordant statement merely repeating, for propaganda purposes, what the delegations of the State concerned had been saying for years in the United Nations. The United States representative had explained the situation clearly and succinctly. The reason why the Chinese communist regime had not been permitted to attend the Conference was that it had been created by Soviet imperialism as a tool of its policy of aggression in Asia and the Far East. That regime had violated every rule and principle the United Nations stood for; it was not qualified for membership of the United Nations or for representation at the Conference. Moreover, the question of participation had been settled at the sixteenth session of the General Assembly, so that any attempt to revive the dispute at the Conference was out of order. The Government of the Republic of China had more right to be represented in the Conference than the government of the country whose delegation had challenged that right: China was a staunch supporter of the ideals and concepts of the United Nations and fulfilled its duties under the Charter; it did not restrict the movement of foreign diplomats and consuls to a radius of fifty miles from its capital, it did not arrest diplomatic and consular agents on false charges of espionage, and it did not violate the premises of embassies and consulates to attach apparatus to their telephones and desks.

23. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said his delegation was convinced that most of the diplomats and jurists assembled at the Conference were aware of who really represented the Chinese people. The fact that the Conference was being attended by representatives of the Chiang Kai-shek group from the island of Taiwan would not enhance its prestige. The absence of the People's Republic of China was contrary to the United Nations Charter and to the principles of equal rights and State sovereignty. Only the government wielding *de facto* power, with the support of the people of the country, had the right to represent a State. The Central People's Government of the People's Republic of China was the only government which legally and effectively controlled the country with the support of the people, and accordingly, under international law, it was the only government that could represent China at the Conference.

24. The Charter accorded to all States the right to participate in the preparation of general international conventions, and it was a matter of concern to the United Nations that all States should act in accordance with its purposes and principles. Non-member States were therefore fully qualified to attend the Conference, and the Ukrainian delegation wished to protest against the discrimination practised against the German Democratic Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam.

25. Mr. von HAEFTEN (Federal Republic of Germany) said he deplored the statements made by the USSR and Ukrainian representatives to the effect that representation in the Conference had been wrongfully denied to what they referred to as the German Democratic Republic. The area in question was not a State in the legal sense, but merely the Soviet-occupied zone of Germany. It was governed by authorities forced upon the people, in violation of the right of self-determination, which was a principle embodied in the Charter of the United Nations.

26. As the United States representative had pointed out, the Conference was bound by General Assembly resolution 1685 (XVI), under which it had been convened. It followed that the question raised by the USSR and Ukrainian representatives was outside the terms of reference of the Conference, and was therefore irrelevant.

27. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) said that since the Republic of Viet-Nam was directly concerned by the statements of the USSR and

Ukrainian representatives, he felt obliged to object most strongly to them. As the United States representative had pointed out, the Conference had been convened by the General Assembly of the United Nations and must conform with the resolution convening it. There was no reason to allow the participation of groups which were not States Members of the United Nations and the specialized agencies. Moreover, the division imposed on Viet-Nam was provisional and the people of that country were adequately and legitimately represented by the delegation of the Republic of Viet-Nam.

28. Mr. PETRŽELKA (Czechoslovakia) said that his delegation deeply regretted two negative factors which were bound to have an adverse effect on the conclusion of a highly important multilateral treaty. In the first place, the seat of the People's Republic of China, the only legal government of that great country, was being unlawfully occupied by the Chiang Kai-shek group, who represented no one but themselves. Secondly, as a result of flagrant discrimination, such States as the German Democratic Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam had been excluded from participation in the Conference. The Czechoslovak delegation resented the remarks made by the representative of the Federal Republic of Germany about the first peace-loving State that had ever existed in German territory, particularly since many of the States represented at the Conference maintained diplomatic and consular relations with the German Democratic Republic. The existence of two States in German territory was unquestionable; for example, the German Democratic Republic and the Federal Republic of Germany had been accorded equal status at the Geneva Conference of Ministers of Foreign Affairs. The policy of discrimination was contrary to the principle of sovereign equality, to international law and to the United Nations Charter; moreover, it was against the interests of the world community and a danger to the codification and progressive development of international law, to peaceful co-existence and to co-operation among all States, irrespective of their political, economic and social systems.

29. Mr. D'ESTEFANO PISANI (Cuba) said it was essential to settle the question of the participation of the People's Republic of China, the German Democratic Republic, the Democratic Republic of Viet-Nam and the Democratic People's Republic of Korea in a conference at which progressive rules for consular relations were being laid down. The revolutionary government of Cuba had ratified the Vienna Convention of 1961 on Diplomatic Relations and had enacted a law to enforce that instrument. It intended to take similar action in respect of the instrument which would emerge from the present conference.

30. The absence of representatives of the People's Republic of China was anomalous for four main reasons. First, it was quite inadmissible for the views of one-quarter of the world's population not to be heard in the preparation of an international instrument of such great importance. Secondly, the exclusion of the countries concerned implied that they did not maintain consular relations with other countries, whereas that was by no means the case. Thirdly, all countries were expected to abide by the United Nations Charter and by the rules of international law, and the countries concerned would be asked to comply with the instrument adopted, even though they were not recognized as States. Finally, discrimination against the four States concerned was tantamount to an attempt to prevent them from having the type of government they wanted. Those States were being subjected to a campaign similar to the one conducted against Cuba, simply because their heroic peoples had fought for liberation in their determination to shake off the colonial yoke. The Cuban delegation appealed to the Conference to recognize the right of those peoples to participate in its work and to be recognized as free and sovereign States.

31. Mr. NESHO (Albania) stressed that a conference engaged in preparing an international instrument must include all the sovereign States in the world which supported its humanitarian purposes. It was therefore wrong to exclude such States as the People's Republic of China, the German Democratic Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam. To deny participation to the representatives of one-quarter of the world's population was a violation of the most elementary rules of international law. Moreover, China had made a valuable contribution to peaceful scientific and cultural development, despite the backwardness it had inherited from long years of domination; its contribution to the maintenance of peace was acknowledged not only in Asia, but throughout the world, and the fact that it maintained cultural, commercial and diplomatic relations with the overwhelming majority of States showed its will to strengthen peace and international security and to co-operate with all countries. Events had shown that no international problems could be solved rationally without the participation of the People's Republic of China, in view of its cultural and scientific achievements, its vast economic potential and the peaceful policy of its government.

32. Unfortunately, however, a group of countries, headed by the United States, which had occupied Taiwan and turned it into a real colony, were supporting the Chiang Kai-shek clique and were making vigorous efforts to prevent the People's Republic of China from taking its legitimate place at the Conference. Despite the wishes of the United States, however, the People's Republic of China was a great world power; that fact could not be obscured by the efforts of the western powers, and the Albanian delegation called for an immediate decision by the Conference to exclude the representatives of the Chiang Kai-shek group and admit the representatives of the People's Republic of China, who were alone qualified to represent the Chinese people.

33. Mr. DADZIE (Ghana) said he wished to restate his delegation's views that the claims to representation of 690 million mainland Chinese could not be ignored. It was impossible to maintain that a government which conducted the *de facto* and *de jure* administration of mainland China was not the government whose delegation should occupy China's seat at the Conference. The

narrowing of the gap in voting on Chinese representation in the General Assembly showed that it was no longer an academic question. It was high time to abandon the current United Nations formula and to allow the principle of universality to be practised and not merely preached. The absence of representatives of the German Democratic Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam was also regrettable, particularly in view of the importance of the Conference. The delegation of Ghana hoped that that unhappy situation would soon be remedied and that discrimination would be eliminated.

34. Mr. CHIN (Republic of Korea) said he felt compelled to answer some of the charges made by the delegations of communist countries. To question the legality of representation by the delegations of the Republic of Korea, the Republic of China, the Republic of Viet-Nam and the Federal Republic of Germany and to attempt to secure participation for other regimes was contrary to General Assembly resolution 1685 (XVI), which clearly enumerated the criteria for participation in the Conference. The Republic of Korea had been officially invited to attend the Conference under that resolution, whereas the North Korean group, which was illegally occupying a part of the country, was in no way qualified to participate. Statements to the contrary were out of order and were intended solely for political propaganda; they were not calculated to smooth the course of a purely technical conference.

35. Mr. CRISTESCU (Romania) said that his delegation attached great importance to the Conference and to the codification of rules of international law on consular relations. The purpose of the codification and progressive development of international law was to foster friendly relations among States, irrespective of their systems of government. Accordingly, a convention which was of interest to all States should be subject to the principle of universality and all States, not only States Members of the United Nations or the specialized agencies or parties to the Statute of the International Court of Justice, should participate in the Conference, since they all maintained consular relations and had experience in that sphere. It was regrettable that international conferences were still being used as vehicles for discrimination against a few socialist countries and for the violation of fundamental principles. The replacement of the legitimate representatives of China by those of a clique which represented no one and the absence of representatives of the German Democratic Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam represented a violation of the principle of universality and could not fail to undermine the authority of the Conference and of the instrument it was to adopt.

36. Mr. CHAVEZ (El Salvador) said he could not agree with the USSR representative's views, since his country recognized the Republic of China. The United States representative had rightly pointed out that the General Assembly resolution concerning the Conference must be respected. Moreover, there was nothing to prevent any State from applying the convention which would emerge from the Conference. His delegation was against the participation of governments which did not represent their peoples.

37. Mr. USTOR (Hungary) expressed deep regret that, once again, representatives of the People's Republic of China had not been invited to attend a United Nations conference. The absence of the rightful representative of a founder Member of the United Nations from a conference convened by the organization constituted an anomalous situation and a flagrant violation of the Charter. The exclusion of China was not only politically and legally undesirable, but also unreasonable, since there were many consulates in China and its many ports, and China had consulates in the territories of a number of States. The Hungarian delegation also objected to the discrimination exercised against the German Democratic Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam. The practice of denying participation in conferences of universal interest to certain States represented a violation of international law, and particularly of the principle of sovereign equality of States. It was highly regrettable that the principle of universality was being sacrificed to the political aims of certain powers. The Hungarian delegation would not cease to demand that that regrettable situation be terminated until the letter and the spirit of the Charter had been fully complied with.

38. Mr. KRISHNA RAO (India) recalled that, from the establishment of the People's Republic of China in October 1949, the Government of India had constantly maintained a friendly and co-operative attitude towards its government. India had been among the first countries officially to recognize the Government of the People's Republic of China, and had been sponsoring China's representation in the United Nations since 1950. On 29 October 1954, India had signed an agreement with China regarding trade and commercial relations between Tibet and India; by that agreement, India had voluntarily relinquished all the extra-territorial rights and privileges enjoyed in Tibet by the former British Government of India.

39. Unfortunately, in reply to that friendly attitude, China had surreptitiously occupied large areas of Indian territory and had then suddenly made undisclosed claims to vast areas of that territory. It was a striking fact that on several occasions when India had pointed out the correct frontier to the People's Republic of China, the Chinese Government had never disclosed its conception of a boundary line. He gave examples of Chinese statements and claims, to show that the Chinese position was, in effect, that the boundaries represented only shifting lines to be changed at will. Nor was that all: in the course of their recent large-scale invasion of India in October and November 1962, Chinese troops had crossed even the frontiers claimed by them in 1960.

40. The recent premeditated and carefully planned attacks against India at several points along the frontier constituted acts of aggression by any definition of that term ever put forward by any country. The Albanian representative had referred a number of times to China's contribution to " peace ". In the light of what he had

just stated, he (the speaker) wished to inform the representative of Albania that the Chinese had neither heard of nor believed in peace. The reasonable attitude of India was evident from the fact that it had accepted the Colombo proposals in their entirety, whereas China had not accepted them.

41. Nevertheless, the Indian Government remained of the opinion that the People's Republic of China should be represented in the United Nations, despite its blatant and unprovoked aggression against India in violation of international law and of all international canons of behaviour. The reason was that China, by such representation in the United Nations, could be brought within the discipline of that body and be made to accept its obligations under the Charter.

42. The appropriate forum for dealing with that question, however, was not the present conference, invitations to which were governed by resolution 1685 (XVI), adopted by 90 votes to none with 2 abstentions. The question of the participation of China had been discussed and voted on both in the Sixth Committee and in the General Assembly, and the adequacy of the invitations to the Conference could not be questioned. His delegation would support any proposal which was in line with resolution 1685 (XVI).

43. Mr. STOYANOV (Bulgaria) said that his delegation supported the statements made by those delegations which had rightly pointed out that the absence of the true representatives of China from the Conference was contrary to the basic principles of universality, of international relations and of the United Nations Charter. The rightful place of peace-loving China in the United Nations was wrongfully occupied by the representatives of the Chiang Kai-shek group.

44. Nor were there any grounds whatsoever for excluding the representatives of the German Democratic Republic, the Republic of Viet-Nam, and the Democratic People's Republic of Korea from participation in the work of the Conference. Contrary to the opinion of the representatives of the United States, the Federal Republic of Germany and others, all those States existed in fact, were developing successfully, and maintained broad diplomatic, consular, and trade relations with many countries.

45. The absence of such great independent States would inevitably undermine the authority of the Conference and lessen the significance and weight of its decisions on the problems before it.

Election of the President

[Agenda item 2]

46. The ACTING PRESIDENT invited nominations for the office of President of the Conference.

47. Mr. GUNEWARDENE (Ceylon) nominated Mr. Stephan Verosta (Austria), Professor of International Law, former Ambassador of his country to Poland and member of the Permanent Court of Arbitration at The Hague, whose outstanding qualities as a jurist and diplomat eminently fitted him for the office. At the 1961 Conference on Diplomatic Intercourse and Immunities he had had the pleasure of nominating Mr. Verdross, whose skill and tact as President had made an outstanding contribution to the success of the work; it was particularly fitting that another distinguished Austrian jurist should be elected President of the present conference.

48. Mr. de ERICE y O'SHEA (Spain) seconded that nomination and expressed the hope that Mr. Verosta would be elected unanimously.

49. Mr. EVANS (United Kingdom) supported the nomination of Mr. Verosta, whose experience as a diplomat and a lawyer of great learning particularly qualified him for the office of President. He took the opportunity of recalling the debt of gratitude owed to the Government of Austria for acting as host to both the 1961 Conference and the present conference.

50. Mr. AVILOV (Union of Soviet Socialist Republics) also supported the nomination of Mr. Verosta, a leading jurist and citizen of the country whose generous hospitality would, he felt sure, greatly contribute to the successful outcome of the work of the Conference.

51. Mr. CAMERON (United States of America) warmly supported the nomination of Mr. Verosta, whose outstanding qualifications had been so well described by the representative of Ceylon.

52. Mr. DAS GUPTA (India) also supported the nomination and expressed the hope that Mr. Verosta would be unanimously elected.

Mr. Stephan Verosta (Austria) was elected President by acclamation, and took the Chair.

53. The PRESIDENT expressed his deep appreciation of the great honour done to his country and to himself by his election.

54. The Conference had been convened to codify the law of consular relations. These relations were regulated by customary international law and by hundreds of international conventions, especially bilateral consular conventions. As diplomatic relations were governed primarily by customary international law and only questions of diplomatic rank had been codified by the Vienna Regulation of 1815, the Vienna Conference of 1961 had been mainly concerned to codify the firmly established rules of customary international law. The present conference would have to take into account not only the rules of customary international law on consular relations, but also the rules laid down in numerous bilateral consular conventions.

55. An analysis of those bilateral consular conventions showed a great number of identical or similar provisions. Through the operation of the most-favoured-nation clause, a series of those provisions had become even more generalized. Together with the generally accepted rules of customary international law, those provisions formed a body of rules on consular relations which were already widely applied by States. Formal acceptance by many States could therefore be expected of that body of

rules, which would be drafted by the present conference and incorporated into a general convention on consular relations.

56. That reasoning and that expectation had induced the International Law Commission to extract the main identical provisions from the various consular conventions and to submit the result of its work to the Conference as the 71 draft articles on consular relations. Governments had commented on the draft articles and submitted amendments to some of them, but they had accepted the principle of a general convention codifying the law of consular relations and the bulk of the provisions formulated and drafted by the Commission. The convening of the present conference to study the draft on consular relations and eventually to conclude one or more conventions on the subject was proof of the success of the Commission's work of which he expressed warm appreciation.

57. If it were asked how the Commission had been able, in such a comparatively short time, to collect and formulate so many provisions concerning consular relations, three main reasons could be given. Firstly, consular or quasi-consular relations between sovereign communities had existed since the most ancient times; secondly, consular or quasi-consular relations were known between human communities all over the world and were really universal; thirdly, consular relations had been greatly intensified, since the industrial revolution, between all States. As a result of the increasing cultural and economic interdependence of States, the " One World " of today was covered by a whole network of consular posts and consulates.

58. Wherever relations between two or more sovereign communities developed, consular functions were exercised. Consular or quasi-consular relations and institutions had developed in many parts of the world long before permanent diplomatic missions had been established. The ancient Egyptian king Amosis II had authorized the Greek city-states to appoint Greek nationals as officials of the port-authority of Naukratis, giving them a kind of exequatur. Between the Greek city-states themselves various types of intercourse had developed; the protection of citizens of one state residing in another had been assured, with its consent, by a leading citizen of the " receiving " state, who was the predecessor of the honorary consul of today. The same institution was reported in the international law of ancient India.

59. In ancient Rome a special magistrate, the *praetor peregrinus*, had exercised jurisdiction in disputes between Romans and citizens of foreign States; in his administration of justice, that Roman magistrate had developed a new body of rules of civil law, the *jus gentium* — a civil law of all peoples into which legal ideas from Greece, Egypt and Syria were introduced. Some rules of *jus gentium* had been applied in the Middle Ages to international relations between sovereign States.

60. After the conquest of the eastern and southern shores of the Mediterranean by the Arabs, trade had again become the link between the Christian and the Islamic States. Very soon colonies of Arab merchants in Roman territory had been granted self-administration and the right of worship, for instance in Byzantine Constantinople. Similarly, west European and Byzantine merchants had had their settlements and compounds in the ports and cities of the Islamic States. By A.D. 1100 a special magistrate was settling disputes between the merchants in the great trading republics of western Europe, especially Italy — *consul mercatorium* or *consul artis maris*. The growing trade in the Mediterranean had made it appropriate to dispatch such officials to settlements overseas — the *consules in partibus ultramarinis*. Such consuls had been exchanged between European States — e.g., Venice and the Byzantine Empire — and between European and Islamic States. The international treaties establishing consulates — the Capitulations — had often authorized a consul to administer justice over his nationals. That was then not considered to be discrimination; even the powerful Ottoman Empire had adopted the system. Only later, because of abuses, had it been considered prejudicial to national sovereignty, and it has completely disappeared in the twentieth century.

61. Those few examples showed the importance of trade and of the exchange of goods and ideas all over the world, and the importance of consuls, as the protectors of trade and the promoters of economic, cultural and scientific relations between all States.

62. The task of the Conference was to draft and sign a multilateral consular convention, the first general convention on consular relations in the history of international law and of mankind. The universality of the codification thus undertaken was guaranteed by the presence of hundreds of learned and competent representatives of the governments of over ninety States. The consensus of opinion reached would be really universal. Mankind would be given a safe legal platform for the strengthening of consular relations. The work of the Conference would thus promote the progressive development of international law and better understanding between the different peoples of the world and would contribute to the maintenance of world peace.

Tribute to the memory of Mr. Marcelo Deobaldia, Representative of Panama

63. The PRESIDENT announced with regret the death in a traffic accident of Dr. Marcelo Deobaldia, the representative of Panama.

On the proposal of the President, the Conference observed a minute of silence in tribute to the memory of Mr. Deobaldia.

Adoption of the agenda

[Agenda item 3]

The provisional agenda (A/CONF.25/1) was adopted.

The meeting rose at 5.55 p.m.

SECOND PLENARY MEETING

Tuesday, 5 March 1963, at 3.55 p.m.

President: Mr. VEROSTA (Austria)

Adoption of the rules of procedure

[Agenda item 4]

1. The PRESIDENT drew attention to the provisional rules of procedure prepared by the secretariat.

The provisional rules of procedure were adopted.

Meeting of Committees to elect their Chairmen

[Agenda item 5]

2. The PRESIDENT said that the meeting would be suspended to enable the committees to meet and elect their chairmen.

The plenary meeting was suspended at 4 p.m. and resumed at 4.15 p.m.

Election of Vice-Presidents

[Agenda item 6]

3. The PRESIDENT pointed out that eighteen vice-presidents were to be elected under rule 6 of the rules of procedure. Subject to the approval of the Conference, he proposed that the representatives of the following States should be appointed vice-presidents: Algeria, Argentina, Canada, Ceylon, China, Colombia, Czechoslovakia, France, Indonesia, Italy, Mexico, Romania, Thailand, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Upper Volta, Yugoslavia.

It was so agreed.

Appointment of the credentials committee

[Agenda item 7]

4. The PRESIDENT announced that nine members were to be appointed to the credentials committee under rule 4 of the rules of procedure. Subject to the approval of the Conference, he proposed that the committee should consist of the representatives of the countries which had served on the credentials committee of the General Assembly at its seventeenth session. Those countries were: Canada, El Salvador, Greece, Guinea, Indonesia, Mexico, Nigeria, the Union of Soviet Socialist Republics and the United States of America.

It was so agreed.

Organization of work (A/CONF.25/3 and Add.1)

[Agenda item 8]

5. The PRESIDENT suggested that the Conference should approve the Secretary-General's suggestions concerning the organization of work (A/CONF.25/3 and Add.1).

It was so agreed.[1]

Appointment of the drafting committee

[Agenda item 9]

6. The PRESIDENT observed that, although the question of the appointment of the drafting committee was not on the agenda of the Conference, agreement had been reached on the composition of the committee. Under rule 49 of the rules of procedure, the drafting committee was to consist of twelve members. He suggested that the provision in rule 49 that the drafting committee should be appointed by the general committee be waived, and that the drafting committee should consist of representatives of Argentina, Brazil, China, France, Ghana, Hungary, India, Spain, Switzerland, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

It was so agreed.

The meeting rose at 4.20 p.m.

THIRD PLENARY MEETING

Thursday, 28 March 1963, at 10 a.m.

President: Mr. VEROSTA (Austria)

Reallocation of articles to committees: first report of the general committee

1. The PRESIDENT drew attention to the first report of the general committee (A/CONF.25/9), which recommended that articles 52, 53, 54 and 55 should be transferred from the Second Committee to the First Committee. The reasons for that recommendation were stated in paragraph 2 of the report.

2. Both the committees had made good progress in their work: the First Committee had almost completed consideration of the articles originally allocated to it and the Second Committee had examined twenty-two highly technical articles. The allocation plan approved by the Conference at its second plenary meeting had given the Second Committee much the heavier workload, however, and it still had twenty articles, also of a technical character, to deal with. The general committee therefore considered it advisable to transfer some of those articles to the First Committee; it would make further recommendations at a later stage if necessary.

3. If there were no objections, he would consider that the Conference approved the general committee's recommendation.

The general committee's recommendation was approved.

[1] Under the Secretary-General's scheme, the First Committee was to consider the preamble, articles 2-27, 68, 70 and 71, final clauses, the Final Act of the Conference, and any protocols which the Conference might consider necessary. The Second Committee was to consider articles 28-67 and 69. Article 1 (Definitions) was to be considered by the drafting committee, after the examination of the other articles.

This arrangement was slightly altered later in the Conference; see the summary records of the third and fourth plenary meetings.

4. The PRESIDENT thanked delegations for their co-operation and expressed his appreciation of the work they had done under the able guidance of the two committee chairmen.

The meeting rose at 10.15 a.m.

FOURTH PLENARY MEETING

Tuesday, 2 April 1963, at 10 a.m.

President: Mr. VEROSTA (Austria)

Reallocation of articles to committees: second report of the general committee (A/CONF.25/10)

1. The PRESIDENT drew attention to the second report of the general committee (A/CONF.25/10), which recommended that the text of article 1 prepared by the drafting committee be referred to the First Committee. It had originally been intended that the drafting committee should report direct to the Conference on that article, but the general committee had taken the view that the procedure proposed in document A/CONF. 25/10 would save time. There could be a broad exchange of views in the First Committee, which would be sure to expedite subsequent conideration of the article in plenary.

2. The First Committee had finished examining the articles allocated to it and could therefore take up article 1 immediately, while the Second Committee went on with its own programme of work, which should be completed by the end of the week or the beginning of the following week.

3. In the absence of any objection, he would take it that the Conference approved the general committee's recommendation.

The recommendation of the general committee was approved.

The meeting rose at 10.10 a.m.

FIFTH PLENARY MEETING

Monday, 8 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

[Agenda item 10]

REPORT OF THE FIRST COMMITTEE

1. The PRESIDENT invited the Conference to consider the draft convention on consular relations, as prepared by the drafting committee in accordance with the decisions of the two committees (A/CONF.25/L.11). The Conference also had before it the report of the First Committee (A/CONF.25/L.10), which he would invite the rapporteur of that committee to introduce.

2. Mr. WESTRUP (Sweden), rapporteur of the First Committee, said that the Committee's report comprised a brief record of the work of the Committee carried out in accordance with the terms of reference as set out by the Conference and an outline of the decisions taken by the Committee on each of the articles that it had been called upon to consider. The text of the articles adopted by the Committee was annexed to the report.

DRAFT CONVENTION

3. The PRESIDENT invited the chairman of the drafting committee to introduce the text prepared by the committee for the title, the preamble and articles 1-27 of the draft convention (A/CONF.25/L.11).

4. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that, departing from the precedent of the 1961 Vienna Convention on Diplomatic Relations, the drafting committee had kept the titles and sub-titles of the International Law Commission's draft articles, considering that they would make for easier reference to the articles and, consequently, facilitate consultation of the convention. The text submitted to the Conference had been adopted unanimously by the drafting committee with the exception of one or two points of slight importance. A small change had been made in the third paragraph of the preamble in order to indicate that the date mentioned was that on which the 1961 Convention had been opened for signature. The drafting committee had had before it also an amendment to article 1 referred to it by the First Committee.

Title

The title of the convention was adopted unanimously.

5. Mr. KIRCHSCHLAEGER (Austria) thanked the Conference for the honour done to his country by associating the name of Vienna with the title of the Convention.

Preamble

The text of the preamble was adopted unanimously.

Article 1 (Definitions)

6. The PRESIDENT drew attention to the amendments to article 1 submitted by Ghana and Spain (E/CONF.25/L.12).

7. Mr. de ERICE y O'SHEA (Spain) recalled that after a long discussion, which had resulted in 29 votes in favour, 29 against and 6 abstentions, the First Committee had failed to adopt the proposal of the Federal Republic of Germany, Japan and Nigeria to include the residence of a head of consular post in the definition of consular premises. In view of that equal vote, the Spanish delegation, which had voted in favour of the proposal, thought that an attempt should be made to reconcile the opposing points of view and had therefore submitted, jointly with the Ghanaian delegation, an amendment to sub-paragraph (*i*) of paragraph 1 of

article 1. The amendment, which constituted a concession to the supporters of the principle of the inviolability of a head of post's residence, specified that the residence should only be regarded as forming part of the consular premises when it was established in the same building. That was in accordance with the practice of nearly all States. The Second Committee had granted the head of consular post the right to place the national flag and coat-of-arms of the sending State on his residence, thus according to the residence the same privilege as was enjoyed by consular premises. The adoption of the joint amendment would have the advantage of avoiding any dispute as to the demarcation in a consulate of that part of the premises to be regarded as being used for the purposes of the consular post and that part used as a residence by the head of post. He hoped that the concession made by his delegation would enable the Conference to reach a unanimous decision.

8. Mr. MAMELI (Italy) supported the amendment by Ghana and Spain.

9. Mr. DADZIE (Ghana) recalled that, in the First Committee, his delegation had supported the proposal of Germany, Japan and Nigeria, which had been rejected by the Committee after an equal vote. Since then, many delegations had reconsidered that proposal and had realized that, to protect the head of a consular post, it was necessary to include his residence in the definition of " consular premises ", thus rendering it inviolable. The Spanish and Ghanaian delegations had thought that the time had come to correct the anomalous situation resulting from the First Committee's decision and had therefore submitted their amendment as a compromise to enable the delegations that had been opposed to the three-power amendment to accept the principle at issue more easily.

10. Mr. KRISHNA RAO (India) thought that the text of the joint amendment, as drafted, was illogical, since it set out an acceptable principle, but made its application depend on the geographical situation of the head of post's residence, on the local housing conditions and on the head of post's tastes and preferences. His delegation could have accepted the more logical version that had originally been proposed whereby the expression " consular premises " covered the head of post's residence wherever it might be. It would have to abstain in the vote on the joint amendment.

11. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he approved of the convincing arguments advanced by the representatives of Ghana and Spain. Admittedly his delegation, like that of India, would have preferred the other formula proposed, which was better; but, failing that, it would vote for the joint amendment.

12. Mr. HENAO-HENAO (Colombia) and Mr. ALVARADO GARAICOA (Ecuador) said that they would vote for the amendment.

13. Mr. EVANS (United Kingdom) said that, in the First Committee, he had voted against the extension of inviolability to the residences of consular officials. He recognized, however, that where the residence of the head of post was integrated with the consular premises, and only then, there were practical reasons why inviolability should be extended to the residence. The United Kingdom delegation, therefore, would vote for the amendment.

14. Mr. BOUZIRI (Tunisia) considered that the joint amendment would raise difficulties if it were adopted. Either the part of the premises which was used for private purposes would be indistinguishable from the head of the post's office, and it would then be covered by the definition of " consular premises " in article 1 and would enjoy the same inviolability; or else the private apartment would be separate, in which case it would not form part of the consular premises, and hence could not qualify for the benefit of inviolability; besides, article 55, paragraph 3, laid down that offices not used for the exercise of consular functions were not deemed to form part of the consular premises. Thirdly, it would not be logical to make the rules applicable to the head of post's residence depend on where that residence was situated.

15. Mr. ABDELMAGID (United Arab Republic) pointed out that the joint amendment raised a matter of principle. Inviolability was recognized as applicable to premises used exclusively for the exercise of consular functions. If a new principle were introduced, it would constitute a serious derogation from the rules of international law. His delegation would vote against the amendment.

16. Mr. CAMERON (United States of America) said that, in the First Committee, he had opposed the extension of the privilege of inviolability to the residence of consular officials. The amendment could be interpreted in various ways and he was not at all certain that it could be interpreted as narrowly as had been indicated. For that reason the United States delegation would vote against its adoption.

17. Mr. KEVIN (Australia) was also of the opinion that the amendment would give rise to complications. Moreover, only a very limited category of consular officials was concerned. The Australian delegation would therefore vote against the proposal.

18. Mr. NYONG (Nigeria) considered that the amendment constituted an acceptable compromise. Its sponsors had paid considerable attention to the views of the various delegations, and the Conference should adopt the text. For a number of countries consular officials were at least as important as diplomatic agents and their residences should be granted complete inviolability.

19. Mr. CHIN (Republic of Korea) said that, if the residence of the head of post and the offices were situated in the same building, they formed a whole and should be subject to the same treatment. His delegation would support the amendment.

20. Mr. TSHIMBALANGA (Congo, Leopoldville) asked for a separate vote on the words " when established in the same building ".

21. Mr. LEVI (Yugoslavia) supported that motion.

22. Mr. MAMELI (Italy) pointed out that the joint amendment conformed to international practice. The amendment could not be divided into two parts, and the Italian delegation would therefore oppose the motion.

23. Mr. de ERICE y O'SHEA (Spain) said that the whole meaning of the amendment depended on the last phrase. He therefore opposed the motion.

24. Mr. KEVIN (Australia) pointed out that if the Conference agreed to vote separately on each phrase, it would in fact have a new amendment before it, since, if it adopted the phrase " including the residence of the career head of a consular post ", it would be reverting to a proposal which had already been made in the First Committee.

The motion for a separate vote was defeated by 45 votes to 12, with 11 abstentions.

25. The PRESIDENT put to the vote the amendment submitted by the delegations of Ghana and Spain (A/CONF.25/L.12).

The result of the vote was 41 in favour and 21 against, with 14 abstentions.

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

Article 1 was adopted by 72 votes to none, with 1 abstention.[1]

26. Mr. DADZIE (Ghana) said that, though he had refrained from voting against the article, in order not to prejudice the work of the Conference, he had abstained in the belief that the total absence of protection for the residence of the head of consular post was a serious omission, especially as article 28 allowed the use of the national flag and the state coat of arms at the consul's residence.

Article 2
(Establishment of consular relations)

Article 2 was adopted unanimously.

27. Mr. MARESCA (Italy) proposed that article 2 should be reconsidered as his delegation wished to comment on paragraph 2 of that article.

28. The PRESIDENT put the Italian representative's proposal to the vote.

The result of the vote was 34 in favour and 21 against, with 18 abstentions.

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

Article 3
(Exercise of consular functions)

29. Mr. KHLESTOV (Union of Soviet Socialist Republics) asked for a separate vote on the words " in accordance with the provisions of the present convention ". Those superfluous words introduced an element of confusion, since a similar clause already appeared in article 68, paragraph 1. Moreover, the position of diplomatic missions was fully regulated by the 1961 Convention, and there was no need to refer to it again in the convention under discussion.

30. Mr. KEVIN (Australia) thought that, on the contrary, the words in question were important, since they ensured some control over the exercise of consular functions by diplomatic missions; if they were deleted, there would be no such control.

31. Mr. DADZIE (Ghana) fully agreed with the USSR representative. Since diplomatic missions were already covered by the 1961 Convention, it was unnecessary to complicate matters by including provisions concerning them in the convention on consular relations.

32. Mr. EVANS (United Kingdom) opposed the division of article 3. The second sentence of the article expressed a complete idea, reflecting article 68, paragraph 1, and it would be a mistake to vote separately on part of that sentence. Moreover, he thought it undesirable, generally speaking, to take separate votes on parts of a text, since that might impair the coherence of the work of the two committees and of the drafting committee. He warned the Conference against abuse of the rule permitting requests for separate votes.

33. Mr. BARTOŠ (Yugoslavia) said that he had been in favour of including the phrase in question before the new version of article 68, paragraph 1, had been adopted. Since then, however, the phrase had not only become superfluous, but was in contradiction with article 68, paragraph 1, in which the provision concerned was qualified by the phrase " so far as the context permits ".

34. Mr. KRISHNA RAO (India) said that, in his opinion, there was no contradiction between the two articles; he fully shared the views of the United Kingdom representative. In so far as a diplomatic mission exercised consular functions, it undoubtedly came within the scope of the convention under discussion.

The motion for a separate vote was rejected by 50 votes to 14, with 12 abstentions.

Article 3 was adopted by 71 votes to 1, with 1 abstention.

35. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted against article 3, as he had already done in committee, because the exercise of consular functions by diplomatic missions was contrary to the principles of Venezuelan public law. His delegation would enter appropriate reservations in due course.

Article 4
(Establishment of a consular post)

Article 4 was adopted unanimously.

Article 5
(Consular functions)

36. Mr. KIRCHSCHLAEGER (Austria), introducing his delegation's amendment (A/CONF.25/L.19), ex-

[1] The drafting committee subsequently decided to reintroduce in part in article 1, with some drafting changes, the text of paragraphs 2 and 3 of article 1 of the International Law Commission's draft (see the summary record of the twenty-second plenary meeting).

plained that it was the same in substance as that already submitted by his delegation in committee (A/CONF.25/C.1/L.26); the only difference was that it took into account the views expressed during the discussion by various delegations which seemed to prefer a negative to a positive statement. His delegation accordingly suggested adding the words " and save in criminal matters " after the words " in the absence of such conventions " in sub-paragraph (*j*) of article 5. The clause was in accordance with practice, and its inclusion would not rule out the possibility of judicial assistance when it was called for by the international instruments in force.

37. Mr. de ERICE Y O'SHEA (Spain) supported the amendment, which brought sub-paragraph (*j*) into line with other provisions of the convention, in particular the provision withdrawing consular immunity in the case of a grave crime.

38. Mr. PAPAS (Greece) also supported the amendment.

39. The PRESIDENT put the Austrian amendment to the vote.

The result of the vote was 28 in favour and 15 against, with 29 abstentions.

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

Article 5 was adopted by 73 votes to none, with one abstention.

40. Mr. de ERICE y O'SHEA (Spain) explained that in his delegation's view the " conditions and developments in the commercial, economic, cultural and scientific life of the receiving State ", referred to in article 5, sub-paragraph (*c*), included labour conditions; similarly, the help and assistance referred to in sub-paragraph (*e*) included social security and protection of labour.

Article 5 A
(Exercise of consular functions outside the consular district)

Article 5 A was adopted unanimously.

Article 6
(Exercise of consular functions in a third State)

Article 6 was adopted unanimously.

Article 7
(Exercise of consular functions on behalf of a third State)

Article 7 was adopted unanimously.

Article 8
(Classes of heads of consular posts)

41. Mr. TORROBA (Spain) pointed out that a number of Spanish-speaking delegations in the drafting committee had considered that the word " clase " in Spanish referred to the status of honorary or career consul, whereas the word " categoría " applied to the different ranks set out in article 8, paragraph 1. He asked that the secretariat should take that distinction into account in drawing up the final text.

Article 8 was adopted unanimously.

Article 9
(Appointment and admission of heads of consular posts)

Article 9 was adopted unanimously.

Article 10
(The consular commission or notification of appointment)

Article 10 was adopted unanimously.

Article 11 (The exequatur)

Article 11 was adopted unanimously.

Article 13
(Provisional admission of heads of consular posts) [2]

Article 13 was adopted unanimously.

Article 14
(Notification to the authorities of the consular district)

Article 14 was adopted unanimously.

42. Mr. VRANKEN (Belgium) said he wished to explain certain affirmative votes cast by his delegation. The Belgian delegation understood that under the terms of article 5, sub-paragraph (*m*), consular officers could exercise any function incumbent upon them under customary international law, in accordance with the sixth paragraph of the preamble. Furthermore, the Belgian delegation understood that article 8, paragraph 2, required the consent of both the States concerned to the designation of consular officers other than heads of consular post.

43. The drafting committee should be asked to revise the text of article 7 so as to specify that it was the consulate of the sending State, not the sending State itself, which could exercise consular functions in the receiving State on behalf of a third State.[3]

The meeting rose at 6 p.m.

SIXTH PLENARY MEETING

Tuesday, 9 April 1963, at 3.15 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]

Article 15 (Temporary exercise of the functions of head of a consular post)

1. The PRESIDENT invited the Conference to continue its debate on the draft convention (A/CONF.25/L.11). Amendments to article 15 had been submitted

[2] The former article 12 had become paragraph 2 of article 9.

[3] This suggestion was adopted by the drafting committee (see the summary record of the ninth plenary meeting).

by the Byelorussian Soviet Socialist Republic and Czechoslovakia (A/CONF.25/L.20 and Italy (A/CONF. 25/L.25).

2. Mr. MARESCA (Italy) explained that his delegation's amendment met a requirement of diplomatic method and practice. It was not customary for heads of post to communicate direct with the Ministry for Foreign Affairs of the receiving State. That was a prerogative of the diplomatic mission of the sending State, which should not normally be infringed, except in the absence of such a mission.

3. Mr. EVANS (United Kingdom) supported the Italian amendment because it introduced a most useful clarification of the drafting committee's text, which followed article 19 of the 1961 Convention too closely. It should be clearly stated that, if a diplomatic mission existed, all communications from a consulate should reach the Ministry for Foreign Affairs through the mission.

4. Mr. RUEGGER (Switzerland) also supported the Italian amendment, which corresponded to international practice. The convention under discussion should not introduce any unnecessary innovations. It was important that all communications between a consulate and the Ministry for Foreign Affairs of the receiving State should pass through the diplomatic mission.

5. Miss LAGERS (Netherlands) said she would vote for the Italian amendment because it was in accordance with international usage.

6. Mr. de ERICE y O'SHEA (Spain) supported the Italian amendment, which preserved the uniformity and hierarchy of diplomatic relations. The joint amendment by the Byelorussian SSR and Czechoslovakia was unquestionably logical: if the Conference did not adopt it, the acting head of post might enjoy a more favourable status than the titular consular official. He would therefore also vote in favour of that amendment.

7. Mr. DONATO (Lebanon) said he would vote for the Italian amendment, which was perfectly clear and pertinent.

8. Mr. PAPAS (Greece) said he would support the Italian amendment for the reasons given by other representatives and also because it accorded with the Greek delegation's view on the question of heads of consular posts. He would also vote for the joint amendment.

9. Mr. de MENTHON (France) said that he fully approved of the Italian amendment, which faithfully reflected international practice in the matter. He also supported the joint amendment, which specified that the member of the diplomatic staff must belong to the diplomatic mission of the sending State in the receiving State, and would continue to enjoy his privileges and immunities if the receiving State did not object.

10. Mr. OSIECKI (Poland) requested that article 15 be put to the vote paragraph by paragraph. Since his delegation was opposed to the last sentence of paragraph 3, he would also like that sentence to be voted on separately. The object of article 15 was to ensure continuity of the normal activity of a consular post in difficult circumstances, and it was clear that for that purpose the receiving State should grant the same facilities to acting heads of a post as to titular heads of post. Furthermore, the difficulties of certain States in staffing their foreign missions should be taken into account. Finally, it was inadmissible, generally speaking, that the exercise of identical functions should be protected by the customary privileges and immunities in some cases and not in others.

11. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said he would vote for the Italian amendment, as it was fully in accordance with international law and practice.

The Italian amendment (A/CONF.25/L.25) was adopted by 64 votes to none, with 11 abstentions.

12. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) explained that the purpose of the amendment which his delegation had submitted jointly with the Czechoslovak delegation was to specify that the member of the diplomatic staff designated as acting head of a consular post while the titular head of post was ill, on leave or on mission must belong to the diplomatic mission of the sending State already in the receiving State. The situation created by the absence of a head of consular post was dealt with in paragraph 8 of the International Law Commission's commentary, but the text proposed for paragraph 4 of article 15 was too vague.

13. He requested that a separate vote be taken on the words " if the receiving State does not object thereto " in paragraph 4; for if the member of the diplomatic staff belonged to the diplomatic mission of the sending State in the receiving State, he would naturally enjoy the privileges and immunities appertaining to his position, and there was no reason for him to be deprived of them. Moreover, the words in question were not compatible with the provisions of article 68: privileges and immunities were not mere advantages, but were rights essential to the exercise of diplomatic and consular functions.

14. Mr. PETRŽELKA (Czechoslovakia) said that the Czechoslovak and Byelorussian delegations had submitted the joint amendment because paragraph 4 of article 15 was not satisfactory as it stood, since it contained an ambiguity. Members of the diplomatic staff temporarily exercising consular functions might, indeed, be deprived of their privileges and immunities, which would be contrary to customary international law, to the 1961 Vienna Convention and to the future convention on consular relations, in particular article 68, paragraph 4. That paragraph merely codified current usage, according to which diplomatic status could not be impaired on the pretext that the person enjoying it had temporarily assumed consular functions. The Czechoslovak delegation accordingly supported the Byelorussian motion that a separate vote be taken on the words " if the receiving State does not object thereto " in paragraph 4.

15. Mr. DADZIE (Ghana) said that he could not support the joint amendment since, if it were adopted, States which found it necessary to fill a consular post by appointing a member of one of their diplomatic missions

accredited to a third State would be prevented from doing so, without any justification for such a restriction. On the other hand, his delegation supported the motion for a separate vote on paragraph 4.

16. Mr. DONATO (Lebanon) thought that the joint amendment introduced a valuable clarification; he would vote in favour of it for the reasons given by the Czechoslovak representative. He was also in favour of a separate vote on the words " if the receiving State does not object thereto " in paragraph 4; he would vote against them as he thought it unjust that a diplomatic official could be deprived of his privileges and immunities on assuming temporary consular functions.

17. Mr. BARTOŠ (Yugoslavia) thought that the proposal to specify that the acting head of post must be a member of the diplomatic mission already in the receiving State was reasonable. Since the acting head of post must be approved, he might as well be chosen from among persons who already had been approved. His delegation was also in favour of a separate vote.

18. Mr. ALVARADO GARAICOA (Ecuador) pointed out that the privileges and immunities referred to in paragraph 4 were those of the diplomatic staff and were inherent in their diplomatic status; hence he could not vote for the joint amendment.

19. Mr. BOUZIRI (Tunisia) opposed the joint amendment, because he shared the misgivings of the representative of Ghana. The amendment would prove most embarrassing, particularly for small countries. He was not convinced by the arguments advanced in support of the proposal and he saw no major objection to calling in a member of the diplomatic staff of a mission other than that established in the receiving State.

20. Mr. MUÑOZ MORATORIO (Uruguay) said he would vote for the joint amendment, which introduced a necessary condition concerning the diplomatic staff who might be appointed acting head of a consular post.

21. Mr. TSHIMBALANGA (Congo, Leopoldville) said he could not support the joint amendment. He thought it would be harmful to countries which had recently gained their independence and to small countries which might not have the necessary financial resources or qualified staff to keep their diplomatic missions and consular posts up to the desired strength. Those countries should even be able to call on the diplomatic or consular missions of friendly countries to protect their interests.

22. Mr. BANGOURA (Guinea) thought the joint amendment was useful, because it was important that the receiving State should have its say concerning diplomatic agents of the sending State who were designated as acting heads of consular posts. It was therefore preferable that the sending State should first call upon those who were on the spot, before requesting privileges and immunities for members of its diplomatic staff who were in third States.

The joint amendment submitted by the Byelorussian Soviet Socialist Republic and Czechoslovakia (A/CONF.25/L.20) was adopted by 50 votes to 13, with 16 abstentions.

23. Mr. EVANS (United Kingdom) said his delegation believed that, at that stage of the work, the Conference should be very chary of voting on separate parts of the articles proposed by the main committees and the drafting committee, except, of course, in the case of new amendments to those articles. All the provisions of article 15 concerned the case in which it was necessary to appoint an acting head of post because the permanent head of post was unable to carry out his functions; consequently, all those provisions were closely interrelated, and the United Kingdom delegation thought that they should be voted on as a whole. It was therefore opposed to the Polish motion that the last sentence of paragraph 3 should be voted on separately. That sentence added a necessary clarification of the provision contained in the preceding sentence and ensured that the provisions of articles 56 and 69, laying down the conditions under which titular heads of post enjoyed consular privileges and immunities, would apply to the acting head of post.

24. With regard to the motion by the representative of the Byelorussian SSR relating to paragraph 4, he did not think that the words in question conflicted with the provisions of article 68, as had been claimed, for they dealt with different cases. Paragraph 4 as drafted was consistent with the principle that a diplomatic agent should have diplomatic status and a consular officer consular status. There were cases in which the receiving State would have good reasons for not allowing a member of the diplomatic staff to continue to enjoy diplomatic privileges and immunities while temporarily acting in a consular capacity, particularly as article 15 imposed no limit on the duration of the temporary appointment. He would therefore vote against the motion for division of paragraph 4.

25. Mr. de ERICE y O'SHEA (Spain) observed that since the joint amendment had been adopted, the representative of the Byelorussian Soviet Socialist Republic might withdraw his motion for a separate vote on the words " if the receiving State does not object thereto "

26. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) replied that he maintained his motion.

27. Mr. TSYBA (Ukrainian Soviet Socialist Republic) supported the Polish motion for separate votes. He would vote against the retention of the words " if the receiving State does not object thereto " in paragraph 4 because the acting head of post performed the same functions as the titular head of post and should enjoy the same privileges and immunities. The acting head of post had to assume heavy responsibilities, and there could therefore be no limitation of his privileges. The privileges and immunities must be accorded to him as long as he was acting as the head of post, which might be for a considerable time.

28. Mr. KHLESTOV (Union of Soviet Socialist Republics) observed that the United Kingdom representative had opposed the very principle of divided votes. Under rule 40 of the rules of procedure, however, any proposal might be divided, and the articles submitted

to the Conference were proposals by the drafting committee. The United Kingdom position was therefore contrary to the rules of procedure and to United Nations practice. If the United Kingdom delegation considered that the Conference should consider all the proposals as a whole it could propose an amendment to the rules of procedure. He would support the motion for division of article 15, and the motions concerning the votes on paragraphs 3 and 4.

29. Mr. CAMERON (United States of America) said that he was opposed to extreme solutions in either direction. It would not be appropriate to vote on separate phrases, which would mean destroying the work done by the two committees and the drafting committee; but it would be dangerous to come to the conclusion that separate votes were wrong. The Conference should be able to vote on each paragraph of an article if it wished. With regard to the requests for separate votes, his delegation was opposed to separate votes on parts of paragraphs 3 and 4. If the Conference should decide otherwise, he thought that, in the case of paragraph 4, a vote should first be taken on the words " if the receiving State does not object thereto ". He would vote against the deletion of any sentence or part of a sentence in paragraph 3 or paragraph 4.

30. Mr. DEJANY (Saudi Arabia) considered that as a matter of principle and according to established United Nations practice delegations were entitled to request separate votes on different paragraphs of the same article without being subject to rule 40 of the rules of procedure. Rule 40 applied to requests for division of a paragraph, a sentence or an amendment, but certainly not to an article containing several independent ideas in separate paragraphs. It was desirable that delegations should indicate their positions on those different ideas when they thought it necessary. The Polish delegation was entitled to ask for a vote paragraph by paragraph and that request, unlike the second one for a separate vote on the last sentence in paragraph 3, was not subject to discussion under rule 40 of the rules of procedure.

31. Mr. STAVROPOULOS (Representative of the Secretary-General) pointed out that according to rule 40, " A representative may move that parts of a proposal or of an amendment shall be voted on separately." Article 15 might be considered as a proposal by the drafting committee and any delegation might request that there should be a separate vote on parts of that proposal.

32. Mr. BOUZIRI (Tunisia) said that he would not support the motions for division which he did not consider advisable. There was no doubt that the motions were admissible in accordance with the rules of procedure, but article 15 was a well-presented, balanced text and the various elements should not be separated. The article dealt with a question of an exceptional character and the deletions proposed by the representative of Poland and the Byelorussian Soviet Socialist Republic would nullify its effect.

33. The PRESIDENT put to the vote the first motion by the Polish representative, that the article should be voted on paragraph by paragraph.

The motion was rejected by 41 votes to 24, with 10 abstentions.

34. Mr. DADZIE (Ghana) considered that a diplomatic agent who was instructed to fill the position of acting chief of a consular post should enjoy the same privileges and immunities as his colleagues. If the Conference deleted the words " if the receiving State does not object thereto " from paragraph 4 it would make it more difficult for a diplomatic agent to carry out the functions of a head of consular post. The delegation of Ghana would therefore vote against the second motion by Poland.

35. The PRESIDENT put to the vote the second motion for division by the Polish representative, for a separate vote on the last sentence of paragraph 3 of article 15.

The motion was rejected by 53 votes to 15, with 10 abstentions.

36. The PRESIDENT put to the vote the motion by the representative of the Byelorussin Soviet Socialist Republic for a separate vote on the words " if the receiving State does not object thereto " in paragraph 4 of article 15.

The motion was rejected by 41 votes to 27, with 11 abstentions.

37. The PRESIDENT put to the vote article 15, as amended by the joint amendment submitted by the Byelorussian Soviet Socialist Republic and Czechoslovakia (A/CONF.25/L.20) and by the Italian amendment (A/CONF.25/L.25).

Article 15, as amended, was adopted by 64 votes to none, with 12 abstentions.

Article 16

(Precedence as between heads of consular posts)

Article 16 was adopted unanimously.

Article 17

(Performance of diplomatic acts by consular officers)

38. Mr. SILVEIRA-BARRIOS (Venezuela) said that his country remained faithful to the principle of international law according to which diplomatic functions could not be performed by consular officers. The Venezuelan delegation would consequently vote against article 17, which derogated from that principle.

39. Mr. MEYER-LINDENBERG (Federal Republic of Germany) recalled that his delegation had submitted an amendment (A/CONF.25/C.1/L.78) to the First Committee to delete paragraph 1 of article 17. The Federal Republic of Germany was opposed to the performance of diplomatic acts by consular officers and he thought that the diplomatic and consular functions should remain completely separate. In any case, paragraph 1 of article 17 fell within the scope of *ad hoc* diplomacy, a subject under study by the International

Law Commission, and the Conference should not encroach upon the decisions of another United Nations body engaged upon the codification of international law. He therefore requested that paragraphs 1 and 2 of article 17 should be voted on separately.

40. Mr. CHIN (Republic of Korea) and Mr. MONACO (Italy) supported the motion for separate votes for the reasons given by the representative of the Federal Republic of Germany.

41. Mr. KHLESTOV (Union of Soviet Socialist Republics), supported by Mr. PETRŽELKA (Czechoslovakia), opposed the motion for division; there was no reason to split article 17, to which the International Law Commission had given the most careful consideration.

The motion for division was adopted by 26 votes to 25, with 24 abstentions.

42. Mr. MONACO (Italy) observed that article 17, paragraph 2, raised a legal question. It was laid down in that paragraph that a consular officer acting as representative of the sending State to an intergovernmental organization was entitled to enjoy all the privileges and immunities accorded by customary international law; but any reference to customary international law was out of order as there was no custom in the matter. Though he did not call for a new discussion of article 17, he thought that a statement to that effect should be made. He further suggested that the Conference should invite the drafting committee to examine the possibility of deleting the word " customary " in the text of article 17, paragraph 2.

43. Mr. BARTOŠ (Yugoslavia) said he could not agree with the Italian representative, whose opinion should not be regarded as that of the Conference. In his (Mr. Bartoš's) view there existed in international practice a customary international law relating to the legal status of the representatives of States to international organizations. Custom — generally the analogy with the customary rules of diplomatic law — had undoubtedly provided the basis for the functioning of the United Nations and the specialized agencies, in particular so far as the legal status of the representatives of States was concerned. Custom relating to international organizations had gradually grown up during the past fifteen years, and the International Law Commission had instructed a special rapporteur on relations between States and intergovernmental organizations to consider also the custom applicable to the legal status of the representatives of States to such bodies, inasmuch as their status was only partly governed by rules of conventional origin.

Article 17, paragraph 1, was adopted by 50 votes to 15, with 10 abstentions.

Article 17, paragraph 2, was adopted by 68 votes to 1, with 3 abstentions.

Article 17 as a whole was adopted by 66 votes to 7, with 1 abstention.

The meeting rose at 6 p.m.

SEVENTH PLENARY MEETING

Wednesday, 10 April 1963, at 3.15 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

1. The PRESIDENT invited the Conference to continue its consideration of the draft convention (A/CONF. 25/L.11).

Article 18

(Appointment of the same person by two or more States as a consular officer)

Article 18 was adopted unanimously.

Article 19

(Appointment of members of consular staff)

2. The PRESIDENT drew the attention of the Conference to the amendment to article 19 submitted by Italy (A/CONF.25/L.26).

3. Mr. MARESCA (Italy) explained his delegation's amendment and said that in general article 19 was based on the procedures prescribed in article 24. Article 24 should therefore be added to the articles mentioned in paragraph 1 of article 19. The Italian proposal was not properly speaking an amendment, but rather a recommendation to the drafting committee; his delegation would therefore not insist that its proposal should be put to the vote. It would be enough if the Conference invited the drafting committee to take it into account.

4. Mr. BARTOŠ (Yugoslavia) said that he was opposed to the Italian proposal, which was based on a wrong interpretation of the articles in question. The articles mentioned in article 19, paragraph 1, laid down the conditions which should govern the appointment of members of consular staff, whereas article 24 dealt with the notification of appointments — in other words, with a subsequent procedure for obtaining approval of the appointment. It would be irrelevant to mention article 24 in article 19, paragraph 1. In any case, if the Italian proposal were sent to the drafting committee, it would require very careful examination.

5. Mr. KRISHNA RAO (India) said that, as chairman of the drafting committee, he found himself somewhat embarrassed by the Italian amendment. Some delegations might think that the proposal affected the substance of the question and in that case it would be for the Conference to discuss it.

6. Mr. MARESCA (Italy) said that he did not wish to waste the Conference's time; he merely hoped that the drafting committee would take note of his delegation's proposal, which was only a suggestion. If it did not wish to do so, he would not insist on the amendment.

Article 19 was adopted by 17 votes to none, with 1 abstention.

Article 20 (Size of the staff)

7. The PRESIDENT noted that the Turkish amendment to article 20 (A/CONF.25/L.28) did not affect the English text.

8. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that, as he had already stated in the First Committee (21st meeting), the text of article 20 had been drafted by the International Law Commission in such a manner as to take into account the interests both of the sending and of the receiving States. In the course of the discussion in the First Committee, the delegations of Argentina, India and Nigeria had submitted a joint oral amendment to article 20, proposing the replacement of the International Law Commission's text of the article by a wording corresponding to that used in article 11, paragraph 1, of the Convention on Diplomatic Relations. That proposal had been supported by many delegations, particularly those of countries which had recently acquired their independence. The USSR delegation had carefully considered the arguments advanced by the Indian, Argentine and Nigerian representatives in support of their amendment. After taking due account of the views of other delegations, especially those of the newly independent countries of Africa and Asia, his delegation would vote in favour of the text as submitted for the consideration of the plenary conference.

9. Mr. TÜREL (Turkey) said that he had understood that the drafting committee had agreed to take note of the change — which was merely one of form — proposed by his delegation.

10. Mr. RABASA (Mexico) said that he found the Spanish text of article 20 as prepared by the drafting committee completely satisfactory, and he would vote for it.

Article 20, the French version of which had been amended in accordance with the Turkish suggestion, was adopted unanimously.

Article 21 (Precedence as between consular officers of a consular post)

11. The PRESIDENT drew the attention of the Conference to an amendment to article 21 submitted by Italy (A/CONF.25/L.27).

12. Mr. MARESCA (Italy) said that the Italian amendment to article 21 was to the same effect as the amendment submitted by his delegation at the previous meeting to paragraph 2 of article 15 — namely, to bring the notification procedure into line with the requirements of protocol. As in the case of the full name of the acting head of post, only the diplomatic mission of the sending State could notify directly the Ministry for Foreign Affairs of the receiving State of the order of precedence as between consular officers; the head of the consular post was entitled to do so only when the sending State had no diplomatic mission in the receiving State.

13. Mr. EVANS (United Kingdom) asked whether the Italian representative would agree to give his amendment the same wording as that of the Italian amendment to article 15, paragraph 2, which had been adopted by the Conference at the previous meeting, and add the words " in the receiving State " after the words " no such mission ".

14. Mr. MARESCA (Italy) accepted the United Kingdom representative's suggestion.

15. Mr. SILVEIRA-BARRIOS (Venezuela) said that he would vote in favour of the Italian amendment which provided for the same notification procedure as that followed by Venezuela.

The Italian amendment (A/CONF.25/L.27) was adopted by 66 votes to none, with 10 abstentions.

Article 21, as amended, was adopted by 76 votes to none, with 1 abstention.

Article 22 (Appointment of nationals of the receiving State as consular officers)

16. Mr. AMLIE (Norway) said that article 8 of the Vienna Convention on Diplomatic Relations contained a paragraph to the effect that members of the diplomatic staff of a mission should in principle be of the nationality of the sending State. The Norwegian delegation had supported that paragraph at the 1961 Conference because it had considered it natural that a diplomatic agent, who represented a country in the receiving State, should have the nationality of the State which he represented. His delegation had, however, been surprised to find a similar provision in the draft convention on consular relations, where it was quite inappropriate. A consular official did not represent the sending State in the receiving State. Moreover, the entire traditional institution of honorary consuls was based on the appointment of consuls having the nationality of the receiving State. The introduction into the convention of a provision such as that contained in article 22, paragraph 1, would cast suspicion on honorary consuls. Norway had therefore submitted an amendment to article 22 (A/CONF.25/L.15) proposing the deletion of paragraph 1, which was inappropriate in the draft convention; the removal of that paragraph would not prejudice the rights of the receiving State, for the convention contained a series of safeguards for the receiving State in respect of honorary consuls. The Norwegian delegation would not, however, insist that its amendment should be put to the vote. It would be satisfied if a separate vote was taken on paragraph 1 of article 22.

17. Mr. WESTRUP (Sweden) said that it was of great utility for some countries, in particular those countries that had recently acceded to independence, to be able to staff their consulates with nationals of the receiving State. Some delegations considered that the tradition should be continued for practical reasons and that consular officials should be allowed to have the nationality of the receiving State. Other delegations held that the principle had no valid foundation and that consular officials should have the nationality of the sending State. Other delegations again, which had no direct interest in the matter, were inclined to favour para-

graph 1 of article 22. Many States, like Sweden, 90 per cent of whose total consular strength consisted of honorary consuls, could not but oppose the adoption of article 22, paragraph 1. If that paragraph were adopted, the Swedish Government would have to consider whether it would not be necessary for it to make a reservation. That provision had possibly been interpreted too strictly, but there was still a danger of a refusal to accept the nationals of the receiving State as consular officials of the sending State. If the term "consular officers" were held to include honorary consuls, paragraph 1 would be entirely unacceptable to the Swedish delegation. Some delegations might maintain that the principle laid down in paragraph 1 represented the conclusion of an evolution in international law, but, in his opinion, that evolution was regrettable. The convention on consular relations should represent something durable that could not be subjected to periodic revision. Sweden, like many countries, did not believe that international law was evolving in the direction indicated in article 22, paragraph 1. Countries that had recently acceded to independence, in particular, would find difficulty in recruiting from among their own nationals a consular staff capable of carrying out its functions under acceptable conditions. If the convention was intended to codify customary international law and contribute to the progressive development of law, paragraph 1 of article 22 did not constitute a positive contribution, and the Swedish delegation would oppose its retention.

18. Mr. COLOT (Belgium) agreed with the representatives of Norway and Sweden. His country had some 600 consular agents, 400 of whom were nationals of the receiving State. Belgium could not possibly, either in fact or in law, accept paragraph 1 of article 22, and the Belgian delegation requested that the article should be put to the vote paragraph by paragraph.

19. Mr. KRISHNA RAO (India) considered that paragraph 1 constituted a useful complement to the other provisions of article 22 and that it was in accordance with international practice. It had been drafted with due regard to the interests both of the sending and of the receiving States. The deletion of paragraph 1 would encourage States to staff their consular services mainly with nationals of the receiving State. Paragraph 1 did not state an absolute rule, but merely a principle, and States would be able to continue to entrust the exercise of consular functions to nationals of the receiving State. The Indian delegation was not in favour of the existence in a State of a category of privileged citizens, and it would vote for the adoption of paragraph 1.

20. Mr. RUEGGER (Switzerland) said that he was unable to share the Indian representative's views. Switzerland appointed only persons of Swiss nationality as consular officials; but, for financial or other reasons, some countries might prefer to entrust such functions to nationals of the receiving State. The arguments put forward by the Swedish representative seemed to him to be extremely convincing, and the Swiss delegation would support the motion for the article to be put to the vote paragraph by paragraph and would itself vote for the deletion of paragraph 1.

21. Mr. DONATO (Lebanon) said that his delegation would also vote for the deletion of paragraph 1.

22. Mr. MARAMBIO (Chile) said that even if a consular official did not represent the sending State, he nevertheless performed official functions and, in principle, he should be a national of the sending State. Paragraph 1 of article 22 did not imply any distrust of nationals of the receiving State, and paragraphs 2 and 3 explicitly recognized that nationals of the receiving State or a third State enjoyed the right to exercise consular functions. His delegation thought that the Conference should adopt the text of article 22 as submitted by the drafting committee.

23. In reply to a question by the PRESIDENT, Mr. AMLIE (Norway) stated that he would not maintain his amendment and would be satisfied by a vote on each paragraph.

24. Mr. BOUZIRI (Tunisia) thought that the Conference should examine the matter thoroughly before making a decision on any motion for a separate vote, for the arguments advanced would help delegations to form an opinion.

25. Mr. COLOT (Belgium), Mr. KRISHNA RAO (India) and Mr. PETRŽELKA (Czechoslovakia) agreed with the representative of Tunisia.

26. Mr. BARTOŠ (Yugoslavia) considered that delegations that had expressed apprehensions should find themselves faced by a real danger before experiencing any genuine anxiety. Paragraph 1 in no way prohibited the exercise of consular functions by a national of the receiving State or of a third State. Nevertheless, account had to be taken of the evolution of international law which tended, as was indicated in the preamble to the draft convention, to extend the competence of consular officials.

27. In addition to their traditional commercial work, consuls should make a contribution not only to the development of economic relations, but also to that of friendly relations and cultural relations between States, and in those circumstances it was normal that, in principle, they should be nationals of the sending State. In an organized society in which nations continued to exercise sovereignty, each State had the right to expect from the consular officials representing it a standard of complete loyalty.

28. The Swedish representative had asked the newly independent countries practically to waive part of their sovereignty by appointing consular officials who were nationals of the receiving State or a third State. Although that solution might be justified financially, it was particularly important for those countries to safeguard their interests as effectively as possible by entrusting them to their own nationals, when practicable.

29. The International Law Commission text was a compromise, and his delegation considered that the Conference should adopt it.

30. Mr. TSHIMBALANGA (Congo, Leopoldville) asked whether, instead of proposing the deletion of

paragraph 1, the Norwegian delegation would agree to the addition before the words " consular officers " of the word " career ". The text would thus shed its ambiguity and the formula might be acceptable to the opposing points of view in the Conference.

31. Mr. AMLIE (Norway) said that his amendment had been withdrawn; he would, however, welcome an amendment of the kind indicated by the representative of the Congo (Leopoldville).

32. Mr. QUINTANA (Argentina) said that he shared the objection of the Chilean representative to any proposal to amend the article.

33. Mr. DADZIE (Ghana) said that his delegation could not have accepted the Norwegian proposal. Paragraphs 2 and 3 of the article specified the conditions in which persons who were not nationals of the sending State could perform consular functions. By the deletion of paragraph 1, article 2 would lose all coherence. His delegation, like several others, would oppose any motion for division of the text and any amendment to article 22.

34. Mr. WOODBERRY (Australia) said that he well understood the position of countries like Norway, since Australia had often encountered similar difficulties. The convention should apply generally, however, and include all consuls whose functions had been extended to such a degree that they bordered on those of members of diplomatic missions. The time would come when consuls ceased to be merely the commercial agents of the sending State but would represent the interests of the sending State, including friendly and cultural relations. It was therefore desirable to stipulate forthwith that consular officials should, in principle, have the nationality of the sending State. The Australian delegation was accordingly opposed to the deletion of paragraph 1.

35. Mr. BOUZIRI (Tunisia) said that it would be preferable to supplement the title of the article by mentioning nationals of a third State, so as to take paragraph 3 of the article into account. He was opposed to the deletion of paragraph 1 since the article as drafted was a uniform whole and met the wishes of most delegations. If it were desired to make changes, it would be better to delete it entirely or to adopt a quite different approach. With regard to paragraph 3, he observed that, at a time when countries which had just acquired their independence were not yet masters of their destiny, their consuls were almost never their own nationals. For those reasons, his delegation would vote against the deletion of paragraph 1.

36. Mr. SILVEIRA-BARRIOS (Venezuela) agreed with the statements of the Chilean, Argentine and Ghanaian representatives and opposed the deletion of paragraph 1.

37. Mr. de MENTHON (France) said that he appreciated the misunderstandings to which paragraph 1 might give rise, all the more since article 22 applied both to career consuls and to honorary consuls. That situation should be borne in mind, as also the possible restrictive interpretations of the paragraph that would run counter to the practice of a large number of countries. Moreover, the deletion of paragraph 1 would in no way affect the sovereignty of States; he would therefore vote against the paragraph.

38. Mr. RAHMAN (Malaya) said that article 22 was perfectly clear and not restrictive; he therefore found it difficult to understand why certain delegations wished to change it.

39. Mr. ALVARADO GARAICOA (Ecuador) said that he would vote in favour of article 22 as the words " in principle " left the sending State free to appoint as consul a national of the receiving State.

40. Mr. BARUNI (Libya) supported the retention of paragraph 1. Its deletion would be to the advantage only of those States with large maritime interests.

41. Mr. MOUSSAVI (Iran) said that he would vote for the retention of paragraph 1 for the reasons given by the Tunisian representative.

42. Mr. TSHIMBALANGA (Congo, Leopoldville) formally proposed, as a compromise, not to delete paragraph 1 but to add the word " career " before the words " consular officers ".

43. Mr. KRISHNA RAO (India) said that he was opposed to the proposal of the representative of Congo (Leopoldville). He was also against article 22 being put to the vote paragraph by paragraph.

44. Mr. MARESCA (Italy) said that the Congolese amendment was not acceptable.

45. Mr. EVANS (United Kingdom) said that his delegation had no great interest in the deletion or retention of paragraph 1. But in view of the fact that the paragraph caused difficulties in connexion with honorary consuls, he thought that the Congolese proposal was a very reasonable compromise. The position of receiving States with regard to honorary consuls was sufficiently protected by the provisions of chapter III of the convention and by article 69.

46. Mr. KEVIN (Australia) considered that articles 5 and 22 should be balanced against each other by including a general principle in article 22.

47. Mr. KRISHNA RAO (India) pointed out that, if paragraph 1 specified that the provision concerned career consular officers, the two following paragraphs would have to be modified accordingly. The express consent of the receiving State was required for career consuls as well as honorary consuls.

48. Mr. RABASA (Mexico) said that he could not support the views of the United Kingdom representative and that he would vote against the proposal made by the representative of the Congo (Leopoldville).

49. Mr. ABDELMAGID (United Arab Republic) moved the closure of the debate.

50. Mr. SILVEIRA-BARRIOS (Venezuela) and Mr. LEVI (Yugoslavia) supported the motion.

The motion for the closure of the debate was carried by 77 votes to none, with 1 abstention.

The oral amendment by the Congo (Leopoldville) was rejected by 49 votes to 19, with 11 abstentions.

The Belgian motion for a separate vote on each paragraph was rejected by 44 votes to 26, with 10 abstentions.

Article 22 was adopted by 69 votes to 4, with 6 abstentions.[1]

Article 23 (Persons declared *non grata*)

Article 23 was adopted unanimously.

Article 24 (Notification to the receiving State of appointments, arrivals and departures)

51. Mr. PEREZ-CHIRIBOGA (Venezuela) said that he could accept the grant of privileges and immunities only to those members of the consulate who had consular status. His delegation had therefore voted in committee against sub-paragraphs (*b*), (*c*) and (*d*) of article 24, paragraph 1. In view, however, of the fact that paragraph 1 (*a*) and paragraph 2 were acceptable, he would confine himself to abstaining from the vote on the article as a whole.

Article 24 was adopted, with 1 abstention.

Article 25 (Termination of the functions of a member of a consular post)

52. Mr. MARAMBIO (Chile) expressed doubts concerning the drafting of article 25, paragraph 1, because, if read in the light of articles 1 and 11, the provision might be confusing. It might be taken to mean that the alternative of the withdrawal of the exequatur was applicable to members of the consular staff; yet, under article 11, only the head of consular post — who according to the definitions in article 1 was not a member of the consular staff — needed the exequatur. He suggested that article 25 should be reconsidered by the drafting committee.

53. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that the point would be considered by that committee.

54. The PRESIDENT said that the vote on article 25 would be postponed until the drafting committee had reported further to the Conference.[2]

Article 26 (Departure from the territory of the receiving State)

Article 26 was adopted unanimously.

Article 27 (Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances)

Article 27 was adopted unanimously.

The meeting rose at 6.5 p.m.

[1] The title of article 22 was referred to the drafting committee, which altered it to "Nationality of consular officers" (see the summary record of the ninth plenary meeting).

[2] See the summary record of the ninth plenary meeting.

EIGHTH PLENARY MEETING

Thursday, 11 April 1963, at 10.50 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 27 (Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances) (*concluded*)

1. Mr. VRANKEN (Belgium) said that, although he had voted in favour of article 27, he wished to draw the drafting committee's attention to two inconsistencies. First, the text of paragraph 1 (*a*) referred to "consular premises together with the property of the consular post" whereas paragraph 1 (*b*) referred to "the consular premises together with the property contained therein"; the wording should be made the same. Secondly, he thought that the arrangement of paragraph 2 should be brought into line with that of paragraph 1. It might be more satisfactory to place a colon after the words "In the event of the temporary or permanent closure of a consular post" and arrange the remaining matter as sub-paragraphs (*a*), (*b*) and (*c*).

2. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that the drafting committee would consider the Belgian representative's suggestions.[1]

REPORT OF THE SECOND COMMITTEE

3. The PRESIDENT called upon the rapporteur of the Second Committee to introduce his report (A/CONF.25/L.16).

4. Mr. KONSTANTINOV (Bulgaria), rapporteur of the Second Committee, said that the report was a brief record of the proceedings of the Committee, which had held 44 meetings during the period from 5 March to 4 April 1963, and had considered 230 written amendments. The articles it had adopted were annexed to the report. The Committee had originally been allocated articles 28 to 67 and article 69, but owing to a number of difficult legal and technical problems, the Conference had decided to transfer articles 52 to 55 to the First Committee.

5. A high degree of mutual understanding and respect had been shown by delegations, which had devoted the most careful attention both to individual problems and to the coherence of the convention as a whole. Throughout the proceedings there had been a spirit of co-

[1] These suggestions were not adopted by the drafting committee.

operation and willingness to take the requirements of different legal systems into account. That favourable atmosphere had been largely due to the industry and skill of the Chairman, the other officers of the Committee and the secretariat.

DRAFT CONVENTION (*continued*)

6. The PRESIDENT invited the Conference to continue its consideration of the draft convention (A/CONF. 25/L.11).

Article 27 A (formerly article 33)
(Facilities for the work of the consular post)

Article 27 A was adopted unanimously.

Article 28 (Use of national flag and coat-of-arms)

7. Mr. de ERICE y O'SHEA (Spain) observed that the amendment (A/CONF.25/L.12) which his delegation, jointly with that of Ghana, had submitted to article 1 (*j*) had not been adopted because twenty-one delegations had voted against it (fifth plenary meeting). Since the purpose of that amendment had been to include the residence of a career head of a consular post in the definition of " consular premises ", his delegation was glad to see that article 28 authorized the use of the national flag and coat-of-arms on such a residence. It hoped that even those who had opposed the joint amendment to article 1 would agree that the protection proposed was essential for the residence of the head of a consular post.

8. Mr. PAPAS (Greece) said he could not entirely agree with the Spanish representative. While it was obvious that the national flag could be flown on the residence of the head of consular post, it was hard to justify displaying the national coat-of-arms there; the residence might be confused with the consulate, and that would create difficulties for the local authorities.

9. Mr. BOUZIRI (Tunisia) said that his delegation, which had been among those opposing the amendment by Ghana and Spain to article 1, still considered that proposal illogical. Article 28 applied to quite a different case, and he would vote in favour of it.

Article 28 was adopted by 72 votes to none, with 3 abstentions.

Article 29 (Accommodation)

Article 29 was adopted by 74 votes to none, with 1 abstention.

Article 30 (Inviolability of the consular premises)

10. The PRESIDENT said he would call upon the representatives of France and India to make statements on paragraph 2 of article 30 before inviting the Ukrainian representative to introduce his delegation's amendment to paragraph 4.

11. Mr. de MENTHON (France) said that his delegation had made some reservations in the Second Committee concerning the exceptions to the principle of inviolability of consular premises provided for in paragraph 2. His delegation had particular doubts about the advisability of giving the authorities of the receiving State explicit permission to assume the consent of the head of the consular post and enter the consular premises if they had " 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 those premises. Further perusal of the paragraph had led his delegation to the conclusion that it could not approve of the last part of the second sentence; for that exception to the rule of the inviolability of consular premises and, hence, of consular archives, could lead to serious abuses, particularly if relations between the sending State and the receiving State were already strained.

12. Three questions that arose were what was to be regarded as " reasonable cause ", which authorities of the receiving State were meant, and who was to decide whether or not they could enter the premises. According to the existing wording, those authorities might be the local police, or even an individual policeman acting on his own initiative or at the instigation of an imaginative or malicious neighbour. In connexion with the original draft article 23 (Withdrawal of exequatur), the First Committee had decided that the criterion of conduct which " gives serious grounds for complaint " was too vague; the French delegation thought that that judgement applied equally to the criterion of " reasonable cause " in article 30, paragraph 2. The majority of the International Law Commission had considered that any restriction on the inviolability of consular premises would lead to friction and difficulties between the States concerned and open the way for abuses. Its conclusion, as stated in paragraph 8 of the commentary on article 30, had been that as the inviolability of consular premises had the same importance for the exercise of consular functions as the inviolability of the premises of a diplomatic mission for that of diplomatic functions, the text adopted at the Vienna Conference should be followed.

13. Moreover, the French delegation fully concurred with the opinion expressed by Mr. Ago at the 595th meeting of the International Law Commission that of the two dangers of abuse of inviolability by the consul and of the breach of inviolability by the receiving State, the latter was the more serious, for the receiving State had many more possibilities of pressure at its disposal.[2] He therefore moved that paragraph 2 be divided into two parts, to be voted on separately: first up to and including the words " prompt protective action ", and secondly the remainder of the paragraph. He hoped the Conference would agree that the issue was important enough to justify division of the text.

14. Mr. KRISHNA RAO (India) fully agreed with the reasons for the deletion of the last phrase just given by the French representative. It might be argued that the

[2] See *Yearbook of the International Commission, 1961*, vol. I (United Nations publication, Sales No. 61.V.1, vol. I), p. 84.

principle of the inviolability of consular premises was not quite as generally recognized as that of the inviolability of the consular archives. The existence of two schools of thought, that of absolute immunity and that of conditional immunity, could not be denied and it might be said that the case for absolute immunity was *de lege ferenda*, but in his delegation's opinion that case was a strong one. In the first place, inviolability of consular premises was a condition for inviolability of consular archives. Secondly, there was not much difference between the premises of a consulate and those of a diplomatic mission, since both were premises in which certain acts were performed in the receiving State on behalf of the sending State. Thirdly, a multilateral convention on consular relations could not confine itself to mentioning only conditional inviolability, in view of the trend towards recognition of absolute inviolability. As early as 1898, the Institute of International Law had recognized premises occupied by consuls as inviolable, and the principle had been restated in a number of consular conventions concluded since the Second World War — for instance, in article VI of the 1948 Consular Convention between the United States of America and Costa Rica.[3] Fourthly, fears of abuse of inviolability by the consulate were unfounded, and permission to enter the premises in case of fire or other disaster was implicit in the International Law Commission's draft on consular relations, as it was in the 1961 Convention. If a consul committed a very serious crime, the receiving State could undoubtedly exercise means of pressure without resorting to entrance into the consular premises; the competent authorities might make representations to the diplomatic mission of the sending State or to its Ministry for Foreign Affairs, or the consul's exequatur might be withdrawn. On the other hand, exceptions to the principle of inviolability would open the way for a number of abuses by the authorities of the receiving State, which would be more serious than abuses by the sending State. The term " crime of violence " was far too vague, for its interpretation depended upon the penal code of the country concerned.

15. In view of those considerations the Indian delegation supported the French motion for a separate vote on the last phrase of paragraph 2; it would go even further, and propose a separate vote on the whole of the second sentence.

16. Mr. USTOR (Hungary) fully endorsed the views expressed by the French and Indian representatives and, in particular, supported the Indian proposal for a separate vote on the whole of the second sentence of paragraph 2.

17. The problem of action in case of fire or other disaster had been discussed at length in the International Law Commission, at the 1961 Vienna Conference, and in the Second Committee; these discussions had shown that the problem did not really arise. Throughout the long history of diplomatic and consular relations, such cases had always been settled in practice by reasonable agreement between the head of post and the authorities of the receiving State. Of course, the head of post might take action inconsistent with reason and goodwill, but it did not seem advisable to provide for such hypothetical cases; moreover, if provision were to be made for unreasonable action by a head of post in cases of fire or other disaster, the possibility of a false fire alarm raised by the authorities of the receiving State in order to enter the premises of the consulate must also be considered. The International Law Commission had rightly decided to omit any such provision from both the 1961 Convention and from the draft under discussion; although his delegation recognized the difference in status between diplomatic agents and consular officers, it believed that in the matter of inviolability of premises, both were in duty bound to exercise their functions in good faith. His delegation would vote against the second sentence of paragraph 2; in fact, it considered that the whole article could be limited to the first five words of paragraph 1.

18. Mr. WASZCZUK (Poland) said that article 30 was extremely important and should be very carefully studied both as to the substance and as to the procedural matter of how it should be voted on. He fully supported the statement made by the representative of France and urged that all representatives should bear it in mind. The last phrase should certainly be deleted from paragraph 2: it was unacceptable to most representatives because it conflicted with a principle accepted by the Conference and would impair relations between receiving State and sending State.

19. Consular and diplomatic functions, despite the differences between them, were closely related. Consular and diplomatic agents were both representatives of the sending State in the receiving State and should therefore enjoy the same privileges and immunities. In particular they should not be exposed to the abuses which might occur if the police authorities of the receiving State were free to enter consular or diplomatic premises on the pretext provided by the words in question — for the decision to enter would depend on the goodwill and good judgement of those authorities. There was no point in including such a provision in an international convention; in case of violation of the consular premises, the sending State could always adopt retaliatory measures. The principle of inviolability of consular premises was recognized in many consular conventions and the principle of inviolability of diplomatic premises was recognized in the Vienna Convention on Diplomatic Relations; the same principle should be recognized in the international convention on consular relations. He was therefore in favour of a separate vote on the last phrase of paragraph 2 and would vote for its deletion. He also fully supported the statement made by the Indian representative and his motion for a separate vote on the whole of the second sentence of paragraph 2. An international convention should not provide for abnormal circumstances.

20. He would vote for the Ukrainian amendment which would replace paragraph 4 by the International Law Commission's draft of paragraph 3. That text gave an unqualified guarantee of freedom for the performance

[3] United Nations, *Treaty Series*, vol. 70, No. 896.

of consular functions, but the paragraph approved by the Second Committee would permit measures that would hinder consular activity.

21. Mr. PETRŽELKA (Czechoslovakia) said that his delegation had strongly opposed the changes in article 30 approved by the Second Committee. The present text did not conform with contemporary practice in most countries and was not conducive to the progressive development of international law or even consistent with the title of the article. It provided no guarantee or safeguard for the inviolability of consular premises which, according to paragraph 8 of the International Law Commission's commentary, had " the same importance for the exercise of consular functions as the inviolability of the premises of a diplomatic mission for that of diplomatic functions ". For that reason most of the members of the International Law Commission had thought it desirable to follow the text of the Convention on Diplomatic Relations.

22. The Conference was, of course, free to amend the International Law Commission's draft, but it would be failing in its task if it weakened the text. Paragraph 2 as approved by the Second Committee made it possible for the authorities of the receiving State to enter consular premises in certain circumstances, but the decision whether the circumstances warranted entry would be an arbitrary one. Paragraph 4 permitted the expropriation of consular premises and property in certain cases. He would vote for the motions by France and India and for the amendment submitted by the Ukrainian Soviet Socialist Republic.

23. Mr. NWOGU (Nigeria) said he would vote for article 30 as adopted by the Second Committee. He did not agree with the representative of France and India; the second sentence of paragraph 2 was an essential provision to help the receiving State to carry out its duty, under paragraph 3, to protect consular premises. Nor did he consider that there were any grounds to fear that the provision might be abused by the receiving State's authorities. It had been pointed out in the Second Committee that many consulates were housed in large buildings and in case of fire could be a danger to neighbouring premises.

24. With regard to the Ukrainian amendment, the receiving State had the right to acquire the property of its citizens in an emergency and he saw no reason why it should not also have the right to acquire the property of a consular post or to demolish it for development purposes. The provision for " prompt, adequate and effective compensation " was sufficient protection. The consular archives were in any case inviolable under article 32. He opposed the proposal for separate votes.

25. Mr. AMLIE (Norway) said that article 30, as approved by the Second Committee, covered abnormal circumstances which could not be legislated for in an international convention. Such circumstances might also arise in the case of diplomatic missions, but they were not mentioned in the diplomatic convention; they could only be dealt with by common sense and goodwill. He therefore supported the proposal for separate votes and would vote for deletion of the last phrase of paragraph 2.

26. Mr. RABASA (Mexico) strongly supported the proposals of the representatives of France and India. He was in favour of dividing the text and would vote against the phrase in question. As explained by the Mexican representative in the Second Committee, that attitude was consistent with his government's traditional policy, which had been followed in matters of municipal and international law and in bilateral and multilateral conventions on consular relations, such as the convention between Mexico and the United Kingdom of 20 March 1954. The principle of the inviolability of consular premises stated in the International Law Commission's draft of article 30 was formulated in the same terms as in article 18 of the Convention regarding consular agents adopted by the Sixth International American Conference and signed at Havana on 20 February 1928.[4] That principle was violated by article 30, paragraph 2, as approved by the Second Committee; he would vote against the adoption of that text.

27. Paragraph 4 contained certain provisions which infringed the sovereignty of the receiving State, and his government could not be party to a convention which conflicted with its constitution. He would therefore vote for the Ukrainian amendment reintroducing the International Law Commission's text.

28. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that his amendment (A/CONF.25/L.13) replacing paragraph 4 by the International Law Commission's text of paragraph 3 had been submitted because the immunity of consular premises and property from search, requisition, attachment or execution was a universally accepted principle. The arguments for maintaining that principle without limitation or exception had been fully stated in the Second Committee, and the Mexican representative had just pointed out that it was recognized in conventions between the Latin American countries.

29. Attention had also been drawn to article 22 of the Convention on Diplomatic Relations, and although the Conference was not bound by that convention, it was important to remember that it carried great authority; it would be wise to adopt the same principles wherever they were applicable to consular relations. The provisions of article 22 of the diplomatic convention could indeed be applied to consular premises and property for, as the International Law Commission had pointed out in paragraph 2 of its commentary on article 30, the inviolability of consular premises was " a prerogative granted to the sending State by reason of the fact that the premises in question are used as the seat of its consulate ". In practice, any exception to, or limitation of, immunity was an infringement of the principle of inviolability, and paragraph 4 permitted such infringement. Theoretically, paragraph 4 was a violation of universally accepted standards and principles of international law, which did not permit execu-

[4] League of Nations, *Treaty Series*, vol. CLV, p. 299.

tion on the property of foreign States without their agreement. Absolute immunity from execution was a basic principle of national sovereignty as had been ably explained by the representative of India. Paragraph 4 ignored the principle of sovereignty and would allow the receiving State's authorities to take action that would impair the dignity of the sending State. The qualifying words " for purposes of national defence or public utility " were too vague to be of any value, and it was unlikely that consular premises would ever be needed for national defence.

30. A more important point was that a convention which was intended to serve for many generations and to reduce the risk of war should not contain references to war. The Ukrainian amendment would safeguard the inviolability of consular premises. As the International Law Commission had pointed out in its commentary, inviolability was as important for consular officers as for diplomatic agents.

31. Mr. BARTOŠ (Yugoslavia) said that he was in agreement with the previous speakers, but in disagreement with the text which had emerged from the discussions of the Second Committee. He commended the Indian representative for his excellent analysis of the problems raised by article 30.

32. The International Law Commission, in its formulation of article 30, had paid due regard to the functional necessity theory, which was the foundation of the inviolability of consular premises. The Commission had carefully weighed the position and had reached the conclusion that the danger involved in introducing limitations on the principle of inviolability greatly outweighed any advantages they might have. The Second Committee of the Conference had proceeded from a different standpoint and had taken the view that it was not necessary to give the sending State safeguards for the inviolability of consular premises.

33. He drew attention to paragraph 8 of the International Law Commission's commentary on article 30, which showed that the Commission had considered the danger of abuses by the head of a consular post and by the local authorities. The Commission had been given many examples of local authorities using the danger of fire, for example, as a pretext for entering consular premises and taking away confidential documents. The Commission had been swayed in its decision by the fact that if a consul abused the privilege of inviolability of consular premises, the receiving State had the remedy of withdrawing his exequatur. If, on the other hand, an abuse were committed by a local authority, there would be no effective remedy; an apology might be offered, but the matter would probably go no further. It was therefore clear that the International Law Commission had had not only theoretical, but also practical, considerations in mind in drafting its text of article 30.

34. As to the question of procedure, which was closely connected with the substance of the matter, he supported the French and Indian motions for separate votes, because he wished to restore the International Law Commission's text. As a matter of principle, he thought that the United Nations tradition should be observed, and that every facility should be given for separate votes. His delegation supported the Ukrainian amendment to paragraph 4.

35. Mr. DADZIE (Ghana) said that paragraph 2 would open the way to arbitrary action by the authorities of the receiving State. The clear and concise rule drawn up by the International Law Commission was that: " The consular premises shall be inviolable. The agents of the receiving State may not enter them, save with the consent of the head of post." The efforts made to amend that rule had almost destroyed the very inviolability which it was the purpose of the article to protect. He agreed with the Indian representative that fire and similar disasters should not be dealt with in an international convention of the type under discussion. He did not believe that any sending State would refuse permission to enter its consular premises in the event of a fire or other disaster involving danger to neighbouring property.

36. The passage in paragraph 2 which dealt with the possibility of crimes was even more open to criticism. Expressions such as " reasonable cause to believe " and " a crime of violence to person or property " would not be construed in the same way by every receiving State. He therefore supported the French motion for a separate vote on the last phrase of the second sentence of paragraph 2, and also the Indian motion for a separate vote on the whole of the second sentence. He suggested that the French proposal should be voted on first and that a vote should be taken on the Indian proposal if the French proposal were rejected. His delegation supported the Ukrainian amendment restoring the International Law Commission's text for the last paragraph of the article. As it had emerged from the discussions in the Second Committee, article 30 would not protect the consular premises from search, requisition, attachment or execution.

37. Mr. WESTRUP (Sweden) noted that there was a trend of opinion in favour of giving consulates the same degree of inviolability as diplomatic missions. His delegation did not consider that the administrative fusion of the diplomatic and consular services justified that view. With regard to diplomatic missions, article 22 of the 1961 Convention provided a degree of inviolability which was the extreme limit of what a receiving State could be expected to concede in its own territory. Sweden had agreed to make that concession for diplomatic missions, but it could not accept such absolute inviolability for consular premises, which would be at variance with the existing rules of international law.

38. With regard to paragraph 2, his delegation was in favour of retaining the first sentence and the first part of the second sentence, so as to permit the authorities of the receiving State to take the necessary steps in the event of fire and other emergencies. The text would thus stress the fundamental difference between diplomatic and consular premises. The privileges that were necessary for diplomatic missions on the principle *ne impediatur legatio* were not needed for the good conduct of consular

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

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

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

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

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

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

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

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

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

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

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

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

The meeting rose at 1.10 p.m.

NINTH PLENARY MEETING

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

President: Mr. VEROSTA (Austria)

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

[Agenda item 10]

DRAFT CONVENTION

Article 30

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Mr. PAPAS (Greece) said that his delegation had been one of the sponsors of the amendment to article 30 submitted in the Second Committee from which the text under consideration had emerged. To reassure delegations who were apprehensive of the provisions of paragraph 2, he would point out that the guarantees provided in paragraph 3 were sufficient to compensate for the restrictions in paragraph 2. Consequently the Greek delegation remained in favour of the text submitted by the drafting committee and it would therefore oppose the motions for division and the Ukrainian amendment to paragraph 4.

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

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

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

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

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

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

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

It was so decided.

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

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

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

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

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

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

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

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

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

" (*b*) On withdrawal of the exequatur;

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

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

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

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

Article 31
(Exemption from taxation of consular premises)

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

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

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

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

Article 32
(Inviolability of the consular archives and documents)

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

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

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

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

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

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

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

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

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

The meeting rose at 1.15 p.m.

TENTH PLENARY MEETING

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

President: Mr. VEROSTA (Austria)

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

[Agenda item 10]

DRAFT CONVENTION

Article 34 (Freedom of movement)

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

Article 34 was adopted unanimously.

Article 35 (Freedom of communication)

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

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

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

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

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

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

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

regard to the courier himself, neither the provisions of article 35 nor any other provision of the draft convention prevented him from carrying on his person any object the importation of which was prohibited or restricted in the State he was about to enter. Paragraph 5 gave him absolute personal inviolability: he could not be searched, detained or arrested. The courier in fact enjoyed greater immunity than the consular bag which justified his status; for whereas the authorities could request that the bag be opened under the provisions of paragraph 3, the courier could not be obliged to show what he had in his pockets.

9. As defined in the last sentence of paragraph 5, the courier's inviolability was more complete than that of the consul, his principal. Under article 41, a consul enjoyed only a limited degree of inviolability: he could be arrested for the commission of a grave crime such as smuggling. A consular courier, on the other hand, could never be arrested. The deletion of the last sentence of paragraph 5 would in no way impair the freedom of communication of consuls. The third sentence explicitly stated that, in the performance of his functions, the consular courier " shall be protected by the receiving State ": that was a fully sufficient safeguard.

10. Lastly, he drew attention to the provisions of paragraph 7. The captain of a ship or aircraft entrusted with a consular bag was not regarded as a consular courier: if inviolability was not considered indispensable for such a captain, there was no reason why it should be indispensable for consular couriers.

11. Mr. KEVIN (Australia) said that his delegation could not support the Danish amendment because it would confer inviolability upon persons who were permanent residents of a receiving State. The fact that many consular couriers were couriers *ad hoc* made the amendment doubly undesirable. Consular officials could be used as consular couriers and article 69 would provide them with all the protection they needed. The provisions of article 35 would also apply to consulates headed by honorary consuls, which made the amendment even less advisable.

12. Mr. RUEGGER (Switzerland) said that he was strongly in favour of deleting the last sentence of paragraph 5, for the excellent reasons given by the representative of the Philippines.

13. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) supported the Danish amendment, which would introduce only a slight change in paragraph 5, and one that was not at variance with the basic principle involved. He had not been convinced by the arguments of the representative of the Philippines and still thought it essential to retain the last sentence of paragraph 5. The inviolability of consular couriers, like all consular privileges and immunities, derived from their functions rather than their persons. His delegation would therefore oppose the motion for a separate vote on the last sentence of paragraph 5.

14. Mr. PETRŽELKA (Czechoslovakia) was also in favour of retaining the last sentence of paragraph 5, which was necessary for the safe and satisfactory functioning of consular communications. It should be read in conjunction with the previous sentence, which stated that, in the performance of his functions, the consular courier must be protected by the receiving State. The provisions in question applied to the courier as an instrument of communications: the main concern was the protection of the consular bag itself. His delegation would oppose the motion for a separate vote on the last sentence of paragraph 5.

15. Mr. MOUSSAVI (Iran) supported the deletion of the last sentence of paragraph 5, for the cogent reasons given by the representative of the Philippines.

16. Mr. JESTAEDT (Federal Republic of Germany) supported the Danish amendment, which would fill a gap in the article. On the other hand, he could not support the deletion of the last sentence of paragraph 5, which would undermine the whole institution of consular communications. His delegation regarded the personal inviolability of consular couriers as a fundamental principle of consular law.

17. Mr. de MENTHON (France) supported the Danish amendment, which confirmed an already existing practice. It was quite common for the head of a consular post far from any diplomatic mission of the sending State to entrust the consular bag to a citizen of that State. He regretted that, for the reasons already given by several speakers, he could not support the Philippines proposal to delete the last sentence of paragraph 5.

18. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation would support the Danish amendment.

19. The Philippines amendment raised an important question of principle; that of freedom of communication between consulates and diplomatic missions. Paragraph 1 of article 35 stated the principle of freedom of communication on the part of the consular post for all official purposes. The acceptance of that principle implied that consular officials must be provided with all the necessary guarantees; they must have the means to ensure freedom of communication for the consular post. He had not been convinced by the arguments of the Philippines representative. The inviolability of consular couriers derived, like that of consuls themselves, from the functions they performed. It was essential, on both legal and practical grounds, to retain the last sentence of paragraph 5 which, by providing the consular courier with the necessary safeguards, would facilitate friendly relations between States.

20. Mr. WU (China) considered that the last sentence of paragraph 5 should be deleted, for the reasons given by the Philippines representative. The penultimate sentence of that paragraph provided a sufficient safeguard for the consular courier by specifying that he must be protected in the performance of his functions by the receiving State. In other articles of the draft convention, the Conference had shown less generosity to the head of post than was now proposed for a mere consular courier.

21. Mr. AMLIE (Norway) strongly opposed the deletion of the last sentence of paragraph 5, which would

undermine the whole institution of consular couriers. With regard to the Danish amendment, he said that the provisions of the second sentence of paragraph 5 might be acceptable for professional consular couriers. But those provisions would also apply to *ad hoc* couriers, who were very often nationals of the sending State residing in the receiving State. Unless the Danish amendment was adopted, sending States would be deprived of the services of a great many of the consular couriers they had hitherto. The provisions of paragraph 5, as they stood, would have the absurd effect of debarring an honorary consul who was a permanent resident of the receiving State from carrying the consular bag to and from his own consulate.

22. Mr. ANGHEL (Romania) opposed the proposal to delete the last sentence of paragraph 5. It was not possible to draw a distinction between the inviolability of the consular courier himself and that of the consular bag, since it was the courier who carried the bag. If it were possible to arrest the consular courier, would the consular bag accompany him to prison ? In that case the consular bag could be stopped. The consular courier was frequently a consular employee who would not otherwise enjoy personal inviolability, and the freedom of communication by means of the bag would be impaired. The provisions of the last sentence would give the courier that inviolability, which was necessary to enable him to perform his functions satisfactorily.

23. Mr. DEGEFU (Ethiopia) supported the Philippine motion for a separate vote on the last sentence of paragraph 5. His delegation would vote against the retention of that sentence, because it was necessary to provide safeguards against possible abuses.

24. Mr. BOUZIRI (Tunisia) also favoured the deletion of the last sentence of paragraph 5, for the reasons given by the representative of the Philippines.

25. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that his delegation could not accept the text of paragraph 3 as adopted by the Second Committee and was opposed to the inclusion of the last two sentences of that paragraph. It preferred the text proposed by the International Law Commission and wished to draw attention to paragraph 1 of the commentary on article 35, which stated that the article predicated a freedom essential for the discharge of consular functions and, together with the inviolability of consular premises and that of the consulate's official archives, documents and correspondence, it formed the foundation of all consular law. Furthermore, paragraph 3 as submitted to the Conference was contrary to a number of articles already adopted, namely, article 27 A (Facilities for the work of the consular post), article 30 (Inviolability of the consular premises) and article 32 (Inviolability of the consular archives and documents). In connexion with the latter article, in particular, it seemed anomalous to provide that documents were inviolable when they were on the consular premises, but that they could be inspected on the slightest suspicion while they were in transit.

26. The argument that weapons or narcotics might be carried in the consular bag was tantamount to placing the government of the sending State under suspicion in advance. Article 27, paragraph 3, of the Convention on Diplomatic Relations provided that the diplomatic bag should not be opened or detained; yet unauthorized articles might conceivably be carried in that bag also. There were practically no cases in consular practice of unauthorized articles being carried in the consular bag; narcotics and weapons were, of course, sometimes smuggled by private persons, but an *a priori* presumption that the sending State would be guilty of such smuggling was contrary to the principles of international law and peaceful co-existence on which relations among States must be based.

27. In the Second Committee, Mr. Žourek had stated that the consular bag could take the form of a bag, box, or package of any kind, but that the basic definition of such a bag was that it contained official correspondence, documents or articles for official use. Mr. Žourek had also drawn attention to the opinion of the International Law Commission that the consular bag should enjoy the same inviolability as the diplomatic bag, irrespective of whether it was carried by a courier or conveyed by any other means. Accordingly, the difference between a diplomatic bag and a consular bag lay only in its origin, and not in its nature. Furthermore, the principle of the absolute inviolability of the consular bag was confirmed by article 18 of the Havana Convention on Consular Relations, article 16 of the Harvard draft, a number of international agreements and national laws and the works of many eminent publicists.

28. The expression " serious reason " gave the authorities of the receiving State very wide latitude and would seriously limit the freedom of communication of the sending State. The authorities of the receiving State would have the right to examine all the documents in the consular bag, in order to ascertain whether they were of an official nature; moreover, the receiving State would be absolutely free to decide when it should open the bag, while the sending State could have no guarantee of inviolability. That situation would be very dangerous if relations between the two States were already strained. The Norwegian representative in the Second Committee had rightly pointed out that, since one of the consular functions was to ascertain conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, considerable friction might arise if the documents of the consular post were investigated by the authorities of that State. Furthermore, the last sentence of paragraph 3 was liable to give rise to suspicion and misunderstanding, since the sending State might prefer to return the bag to its place of origin even if it did not contain any unauthorized articles.

29. The adoption of paragraph 3 as drafted would imply that diplomatic agents were not suspected of abusing their privileges, but that consular officers were suspected of doing so. He wished to remind the representative of the Federal Republic of Germany, who had argued in the Second Committee against the principle of absolute inviolability of the consular bag, that his country had concluded a consular convention with the

Soviet Union in 1958 [1] which provided in article 14, paragraph 1, that the archives and official correspondence of consulates, including telegraphic communication, were inviolable and immune from search. It should also be borne in mind that the majority of the International Law Commission had voted against a proposal to limit the inviolability of the consular bag and that similar proposals concerning the diplomatic bag had been rejected by an overwhelming majority at the Conference on Diplomatic Relations.

30. Paragraph 3 was thus unlikely to promote the principle of peaceful co-existence in relations between States but, on the contrary, would hinder the normal operation of consulates by restricting the freedom of communication of the sending State. He therefore proposed that the last two sentences should be deleted; if that proposal were rejected, he moved that separate votes be taken on the first sentence and on the last two sentences.

31. Mr. BOUZIRI (Tunisia) said he could not support the Byelorussian motion for division of paragraph 3 for a number of very serious reasons. The representative of the Byelorussian SSR had largely based his arguments on the precedent of the 1961 Convention; the Tunisian delegation believed, however, that if the Convention on Diplomatic Relations in its entirety were to be taken as a model, the Consular Conference would have been unnecessary. Assimilation of the two conventions must be approached with great caution. The difference between the diplomatic bag and the consular bag should be stressed; the diplomatic bag was sent and received by diplomatic missions, whereas the consular bag proceeded to and from consulates, of which there were large numbers throughout the world. The question of the inviolability of the diplomatic bag had been debated at length during the 1961 Conference and the principle of that inviolability had finally been accepted; but the case of the consular bag was quite different.

32. There was no question of automatically placing consular officers under suspicion, as the Byelorussian representative had suggested, but in view of the large number of consulates, the dangers, which also existed in the case of the diplomatic bag, should not be multiplied. Furthermore, the text of paragraph 3 did not imply that consular bags would automatically be opened. The inviolability of the consular archives was recognized and it was laid down that the bag could be opened only if there were serious reasons for doing so. Moreover, it could only be opened in the presence of an authorized representative of the sending State, and not secretly and arbitrarily by the authorities of the receiving State. The presence of a representative of the sending State would serve as a guarantee that the documents contained in the bag would not be read and that it would be opened only to enable the authorities to ascertain that the contents were as specified in paragraph 4.

33. His delegation also could not agree that paragraph 3 placed the sending State under suspicion, for any abuse of the consular bag would be perpetrated by an individual, and not by the sending State itself. Freedom of communication would not be violated, since the authorities of the sending State were entitled to refuse the request that the bag be opened. The receiving State would not take its responsibilities under the paragraph lightly; besides, it was in the interests of the sending State to discover any abuse of the consular bag by the transport of unauthorized articles.

34. Finally, his delegation could not agree that paragraph 3 in any way derogated from the principle of peaceful co-existence. That principle would be vitiated by the existence of any doubts as to the legitimacy of the contents of the consular bag and in any case it should be founded on reality and mutual confidence. He therefore formally opposed the motion for division submitted by the Byelorussian delegation and, if that motion were carried, would vote against the deletion of the last two sentences of paragraph 3.

35. Mr. KONSTANTINOV (Bulgaria) fully supported the Byelorussian representative's motion. The principle of inviolability of the consular bag would be infringed by the adoption of paragraph 3 as it stood; moreover, that paragraph was contrary to article 32 as adopted by the Conference and to other paragraphs of article 35. It would be anomalous to refer to freedom of communication in the title, to state in paragraph 1 that the receiving State should permit and protect such freedom on the part of the consular post for all official purposes, to provide in paragraph 2 that the official correspondence of the consular post should be inviolable, and then to provide for such a serious exception in paragraph 3. Moreover, the last two sentences of that paragraph completely nullified the first sentence.

36. It had been said that the unauthorized articles mainly concerned were arms and narcotics; but the bag to be opened in case of suspicion was not that of a potential smuggler, it was an official bag of the consulate of the sending State. It had also been argued that the possibility of opening the bag would act as a deterrent to consular officers, but it should be borne in mind that the convention already contained strict guarantees against abuse of inviolability. In practice such a possibility provided no additional guarantees, but would be a constant source of dispute and an obstacle to peaceful co-existence. He therefore supported the Byelorussian motion for division and, if it were carried, would vote for the deletion of the two sentences in question.

37. Mr. EVANS (United Kingdom) opposed the motion by the representative of the Byelorussian SSR and fully agreed with the Tunisian representative that the precedent of the 1961 Convention should not be followed in article 35, in view of the difference in status between consulates and diplomatic missions.

38. In considering the provisions of paragraph 3, the Second Committee had made an important distinction between official correspondence and the consular bag itself. Paragraph 2 related specifically to the official correspondence carried in the consular bag and provided for its inviolability; nothing in paragraph 3 derogated from that inviolability, since the opening of the consular bag by the authorities of the receiving State gave them

[1] United Nations, *Treaty Series*, vol. 338, p. 74.

no right whatsoever to violate official correspondence by opening it or reading it. The first sentence of paragraph 3 conferred a special privilege on the sending State, but the interest of the receiving State in ensuring that the privilege would not be abused must also be taken into account. Regrettably, abuses did in fact occur and consular bags sometimes contained unauthorized articles. The procedure set out in paragraph 3 was designed to protect the interests of both the sending State and the receiving State, by enabling the latter to request that the bag be opened for serious reasons and allowing the former to retain the right to return the bag unopened to its place of origin. His delegation believed that the inclusion of that paragraph would help to discourage abuse and to eliminate causes of friction between the two States concerned.

39. The United Kingdom delegation could not support the proposal by the representative of the Philippines since, if the last sentence of paragraph 5 were deleted, the only protection accorded to a consular courier would be that provided by the penultimate sentence; it was essential for a courier to have complete personal inviolability in order that the consular bag might not be placed in jeopardy.

40. Mr. TSHIMBALANGA (Congo, Leopoldville) opposed the Byelorussian motion. The last two sentences of paragraph 3 provided a valuable guarantee for newly independent States, which needed protection by all appropriate means against the introduction of unauthorized articles in the consular bag. His delegation would support the Danish amendment, which clarified the text of paragraph 5.

41. Mr. MOUSSAVI (Iran) opposed the Byelorussian motion for the reasons given by the Tunisian representative.

42. Mr. MARAMBIO (Chile) said he would vote against the Byelorussian motion. If the last two sentences of paragraph 3 were deleted, the difference between the diplomatic bag and the consular bag would not be properly brought out, and the Chilean delegation was opposed to the assimilation of diplomatic and consular functions. The diplomatic bag contained the official correspondence of the political representative of the sending State, whereas the consular bag contained quite different matter. Paragraph 3 adequately protected the official correspondence of the consulate; it would not infringe freedom of communication, but would help to prevent abuse. In his delegation's opinion, the wording of the paragraph equitably safeguarded the rights of both the sending State and the receiving State.

43. Mr. OCHIRBAL (Mongolia) agreed with the representative of the Byelorussian SSR that the consular courier and the consular bag should enjoy the same inviolability as their diplomatic counterparts. If that inviolability were violated, it would be difficult for consulates to function normally; moreover, it was absurd to imply that a consular bag could contain only what the authorities of the receiving State considered to be admissible. The principle that the consular bag should not be opened or detained was recognized in many bilateral conventions, and the Mongolian delegation could not understand the objections to granting it absolute inviolability. It was generally acknowledged that even the private correspondence of consular officers was not subject to opening or detention, and that principle must apply *a fortiori* to official correspondence. He therefore supported the Byelorussian motion. He would vote against the Philippine motion for a separate vote on the last sentence of paragraph 5.

The Danish amendment (A.CONF.25/L.31) to paragraph 5 was adopted by 46 votes to 18, with 10 abstentions.

The motion by the representative of the Philippines for a separate vote on the last sentence of paragraph 5 was rejected by 34 votes to 25, with 16 abstentions.

The motion by the representative of the Byelorussian Soviet Socialist Republic for a separate vote on the second and third sentences of paragraph 3 was rejected by 49 votes to 13, with 11 abstentions.

Paragraph 5, as amended, was adopted by 52 votes to 10, with 13 abstentions.

Article 35, as a whole, as amended, was adopted by 57 votes to none, with 22 abstentions.

44. The PRESIDENT said that the wording of paragraph 5 as a result of the adoption of the Danish amendment would be referred to the drafting committee.[2]

45. Mr. DE CASTRO (Philippines) said he had abstained from voting on article 35 because of the last sentence of paragraph 5, which he had proposed should be deleted. His government's interpretation of that sentence would be that the courier did not enjoy personal inviolability when he committed unlawful acts or acts not essential to the performance of his specific and limited function of safely conveying the consular bag to its destination. That interpretation was based on article 55, paragraph 1 of which enjoined all persons enjoying privileges and immunities to respect the laws and regulations of the receiving State. It was also based on the principle that anyone committing unlawful acts forfeited the privileges and immunities granted by the Convention.

46. Mr. PAPAS (Greece) said that his delegation had reserved its position when the Second Committee had approved article 35 (and the related article 57) because it considered that the degree of inviolability provided for means of communication, and particularly for the consular courier and bag, was too great and would encourage abuses. His delegation had abstained from voting on article 35 as a whole and maintained its reservation on the provisions concerning the consular courier.

47. Mr. KRISHNA RAO (India) suggested that the drafting committee should review the second sentence of paragraph 5 when the Danish amendment was incorporated.

48. Mr. EVANS (United Kingdom) endorsed the suggestion and pointed out that the word " citizen " was used in the amendment, whereas the word " national " appeared elsewhere in the convention.

[2] For the changes made by the drafting committee, see the summary record of the twenty-second plenary meeting, para. 32.

49. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) reserved his delegation's position on article 35 as a whole because, as he had already explained, he did not agree with the second part of paragraph 3.

50. Mr. MORGAN (Liberia) said he had voted in favour of the motion by the representative of the Philippines, but against article 35 as a whole because he believed that the consular courier should enjoy complete inviolability only when carrying the consular bag.

51. Mr. KEVIN (Australia) reserved his delegation's position on paragraph 5 as amended. It was open to a number of objections, particularly in regard to honorary consuls.

52. Mr. PETRŽELKA (Czechoslovakia) said he had voted for the Danish amendment, for paragraph 5 as amended, and for the Byelorussian motion for division. He had abstained from voting on article 35 as a whole because he believed that there should be no differentiation between diplomatic and consular freedom of communications. The restrictive provisions of paragraph 3 concerning the consular bag were not consistent with the equality implied in paragraph 1.

53. Mr. LEE (Canada) said he had abstained from voting on paragraph 5 for the same reasons as the Australian representative.

54. Mr. RUEGGER (Switzerland) said he had voted for the motion by the representative of the Philippines, but had abstained from voting on paragraph 5. He had voted in favour of article 35 as a whole, but he supported those representatives who thought that paragraph 5 should not be interpreted as having too wide a scope. In particular, he agreed with the representatives of the Philippines and Tunisia that consular couriers should not have the same privileges and immunities as diplomatic couriers. In general, the Conference had gone far towards placing the two services on an equal footing, despite the fundamental differences between them. The consular courier should have no inviolability other than that conferred on him for the performance of his official functions. The guiding principle was the purpose of the consular post and the mission entrusted to it; the facilities given should be interpreted restrictively, in accordance with the rule that it was only the purpose for which consular functions were performed that required to be protected.

55. Mr. SHARP (New Zealand) said he had abstained from voting on article 35 as a whole and had voted against paragraph 5 because he was opposed to the Danish amendment. He could not accept the idea that an alien permanent resident should be treated more favourably than a national. He shared the views of the Australian and Canadian representatives.

56. Mr. ENDEMANN (South Africa) said he had supported the Philippine motion because a consular courier's personal inviolability should not extend to periods when he was not acting as such and allow him to contravene the laws of the receiving State with impunity. The adoption of the Danish amendment had worsened matters by extending personal inviolability to a permanent resident of the receiving State. His government would find it difficult to accept paragraph 5, and he had therefore abstained from voting on article 35 as a whole.

57. Mr. JAYANAMA (Thailand) said that, although he had opposed the Danish amendment, he had voted for the article as a whole; he had also voted for the Philippine motion. His reasons were those stated by the representatives of Australia and the Philippines.

58. Mr. HABIBUR RAHMAN (Pakistan) said he had voted against the Danish amendment and in favour of the Philippine motion. He endorsed the comments of the representatives of Australia, Canada and New Zealand.

59. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted against paragraph 5, because its last sentence conflicted with the laws of his country.

60. Mr. USTOR (Hungary) considered that the Conference had done well to safeguard the personal inviolability of the consular courier which, as stated in paragraph 5 of the International Law Commission's commentary, was " the logical corollary of the rule providing for the inviolability of the consulate's official correspondence, archives and documents ". The second and third sentences of paragraph 3, however, impaired that inviolability and he had therefore abstained from voting on article 35 as a whole.

Article 37 (Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents)

61. The PRESIDENT suggested that article 36 be discussed at the following meeting. He invited the meeting to consider article 37, to which no amendments had been submitted.

62. Mr. BLANKINSHIP (United States of America) considered the requirement of a death certificate in paragraph (*a*) a needless burden on the receiving State. Many countries, like his own, had thousands, even millions, of permanent or long-term foreign residents and the administrative problems and expense involved would make it almost impossible to implement the provisions of the article, especially as many immigrants, coming from regions where national frontiers had been changed by two world wars, no longer knew their own nationality. In his opinion the Conference had not examined the question fully enough; it concerned very complicated technical and specialized matters connected with vital statistics, which the International Law Commission had wisely decided were not the concern of an international convention. The Second Committee had agreed by a very narrow majority to amend the International Law Commission's draft of sub-paragraph (*a*) by adding the words " and, as soon as possible, to transmit to it a certificate of death ". He moved that a separate vote be taken on those words and hoped that they would be rejected.

63. Mr. LEE (Canada) supported the views of the United States representative and his motion for a separate vote. He had opposed the amendment of the Second Committee because he thought the addition of the words in question would impose an impossible duty on the receiving State.

64. Mr. SALLEH bin ABAS (Federation of Malaya) said that he too had opposed the amendment because it would impose too heavy a burden on the receiving State. If it was difficult for the more developed countries like Canada and the United States of America to implement such a provision, it would be even more difficult for the less-developed countries like his own. He supported the motion for a separate vote on sub-paragraph (*a*).

65. Mr. JAYANAMA (Thailand) said he would have preferred article 36 to be discussed before article 37 as the two were related and he wished to speak on the amendment to article 36 of which his delegation was one of the sponsors. With regard to article 37, he supported the United States motion for a separate vote and the reasons given for it. For the same reasons he also requested a separate vote on sub-paragraph (*b*).

66. Mr. SILVEIRA-BARRIOS (Venezuela) supported the motion for a separate vote on sub-paragraph (*a*), and endorsed the comments made by the representatives of Canada, Thailand and the United States of America. He had opposed the International Law Commission's draft of sub-paragraph (*a*) in the Second Committee; the amendment adopted there had only increased the burden on the receiving State.

67. Mrs. VILLGRATTNER (Austria) said that the addition to sub-paragraph (*a*) had been based on an amendment submitted by her delegation. The reason for the amendment, as she had explained in the Second Committee, was that where information was available on the nationality of a deceased person, the furnishing of a death certificate to the consulate would be helpful to the sending State for administrative purposes, to the relatives in completing formalities, and to the consulate in protecting any property of the deceased in the receiving State. The difficulties mentioned by certain representatives should be met by the opening sentence of the article, which made the obligation conditional on the information being available.

68. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) appreciated the difficulties referred to by the United States representative but could not support his motion for division of the text. A death certificate was often of great importance to the relatives of a deceased person, particularly if they were living in another country. He would therefore prefer the provision to be retained.

69. Mr. KRISHNA RAO (India) agreed with the representatives of Thailand and the Federation of Malaya. The words in question implied an inflexible duty which his country was not equipped to fulfil; it would be better to delete them.

69. Mr. BARTOŠ (Yugoslavia) said he could not support the United States motion for division of the text. A well-organized State should know its inhabitants and should show equal concern for nationals and aliens. He saw no reason why the receiving State should not provide a death certificate, particularly as the obligation was mitigated by the opening words of the article.

71. Mr. JAYANAMA (Thailand) moved the adjournment of the debate and proposed that article 36 should be considered first at the following meeting.

72. Mr. BLANKINSHIP (United States of America), exercising his right of reply, said that the wide support for his motion was evidence of the difficulty that would be caused by the words in question, even to the best organized States. His own country had the added difficulties of a federal State. The real objection, however, was that it was unwise to impose an obligation which many States could not fully implement; he urged that the provision be deleted from sub-paragraph (*a*).

73. The CHAIRMAN invited the Conference to vote on the motion for adjournment of the debate.

The motion was carried by 38 votes to 2, with 25 abstentions.

The meeting rose at 6.25 p.m.

ELEVENTH PLENARY MEETING

Wednesday, 17 April 1963, at 11.5 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 36 (Communication and contact with nationals of the sending State)

1. The PRESIDENT stated that two amendments to article 36 were before the Conference: one submitted jointly by the Federation of Malaya, Japan, the Philippines, Thailand, the United Arab Republic and Venezuela (A/CONF.25/L.30) and the other by the Union of Soviet Socialist Republics (A/CONF.25/L.34).

2. Mr. TORROBA (Spain) pointed out that there was a mistake in the Spanish text of article 36. In the opening sentence of sub-paragraph (*b*) of paragraph 1 the words " Estado que envia " should read " Estado receptor ".

3. Mr. JAYANAMA (Thailand), introducing the joint amendment in the name of all the sponsor countries, which had found difficulty in accepting some of the provisions of article 36, said that his country had often stressed the necessity of establishing uniform rules governing consular relations in order to facilitate the performance of consular functions. His delegation considered that consular privileges and immunities should not be the same as diplomatic privileges and immunities, although it recognized that consuls should be allowed some privileges to enable them to carry out their duties

smoothly. The formulation of uniform standards in a convention on consular relations involved the codification of existing rules. That was the task of the Conference, but it was complicated because the rules were derived from different sources: from usage, practice, and bilateral agreements. The success of the Conference's work therefore depended on the co-operation, understanding and conciliatory spirit of the representatives of States attending the Conference. It required that all States should be placed strictly on a level of sovereign equality and that the highly developed States should take account of the realities of international life and of the fact that States in course of development were reluctant to accept obligations which they could not fulfil and which, if imposed on them, would lead them to refuse to sign or ratify the Convention. That was precisely the case of the obligations to which articles 36 and 37 gave rise. In presenting their amendment to article 36, the sponsors did not intend to propose any sort of compromise, but simply to fix a limit to the obligations beyond which they could not go.

4. Mr. MARESCA (Italy) appreciated the sentiments expressed by the representative of Thailand. With regard to the technical matters raised by sub-paragraph (*b*) of paragraph 1 of article 36, the Italian delegation thought that the changes made by the Second Committee to that sub-paragraph had improved the International Law Commission's text. A consular post must know the reasons why a national of the sending State was deprived of his liberty. The joint amendment, which made collaboration between the authorities of the receiving State and the consular post depend on the will of a single individual, was not acceptable to the Italian delegation, which would vote for the text drawn up by the drafting committee.

5. Mr. LEVI (Yugoslavia) said that the Second Committee had rejected a joint amendment similar to the six-power amendment, and also a French amendment, though it had been drafted in even more conciliatory terms. It was indispensable that the consular post should in every case be notified without delay when a national of the sending State was arrested or imprisoned, and not only when that national requested it. The Yugoslav delegation would vote against the joint amendment.

6. Mr. DE CASTRO (Philippines) said that he had little to add to the arguments presented by the representative of Thailand. Paragraph 1 (*b*) of article 36 as prepared by the drafting committee imposed excessive obligations on the receiving State. Moreover, it favoured nationals of the sending State as compared to nationals of the receiving State. In the Second Committee it had been argued that nationals of the sending State who were arrested or imprisoned should be protected because they were often ignorant of the laws and regulations of the receiving State. That argument was not valid as no one was supposed to be ignorant of the law. For those reasons the delegation of the Philippines had joined the sponsor of the joint amendment which stated that, in the event of a national of the sending State being arrested or imprisoned, the receiving State was bound to notify the consular post of the sending State only in one specific case.

7. Mr. DADZIE (Ghana) questioned the utility of paragraph 2, which seemed to contradict paragraph 1, and might cause serious difficulties if applied. His delegation preferred the wording of paragraph 2 proposed by the Soviet Union, which was taken word for word from the original text of the International Law Commission, and it would vote in favour of that text.

8. His delegation thought that the joint amendment involved a risk: a national of the sending State who had been arrested or imprisoned might not know that his consulate should be notified, and might therefore fail to request notification. In such a case he might stay in prison a long time. His delegation would therefore vote against the joint amendment.

9. Mr. SHARP (New Zealand) said that the convention should not proclaim an ideal to be attained, but should lay down a body of practical rules which could be applied in all cases. It was therefore necessary to make sure that the laws and practice of the various countries were compatible with the standards laid down. He doubted whether there were many countries in a position to apply the provisions of sub-paragraph (*b*) of paragraph 1 of article 36 in every case. He could not give that assurance for his own country. The text went too far and did not take account of realities. The population of New Zealand included thousands of immigrants and it would be impossible to apply those provisions. The difficulty was probably even more serious for larger countries. The joint amendment, on the other hand, laid down an obligation which all States could assume, and he would therefore vote in favour of it. In order to remedy the defects mentioned, his delegation had proposed the inclusion of a clause requiring that the detention of a national of the sending State should be notified to the consul if the term exceeded one month. The sponsors of the amendment had not accepted that suggestion. On the other hand paragraph 1 (*c*) provided that a consul could request the competent authorities of the receiving State to furnish it periodically with a list of the nationals of the sending State who were detained within the district of his consular post.

10. Mr. KAMEL (United Arab Republic) agreed that article 36 as prepared by the drafting committee would place too heavy a burden on the authorities of the receiving State. The principle was understandable, but in practice it laid an impossible task on the receiving State, and particularly on those which received large numbers of immigrants and foreign tourists. The practical and reasonable solution would be to notify the consular post of the sending State of the imprisonment of a national of that State if he requested. If the person under detention was not in a position to make that request, it was certain that the authorities of the receiving State would automatically notify the consulate. In the case of imprisonment for a short term, the notification was useless and not even desirable. Consideration should also be given to cases in which the person concerned wished to break off all relations with the sending State. In his view, sub-paragraph (*b*) of paragraph 1 would merely give rise to misunderstandings and friction between States.

11. Mr. ISMAIL bin AMBIA (Federation of Malaya) hoped that sub-paragraph (*b*) of paragraph 1, which had

been debated at great length in the Second Committee, would be discussed again in plenary meeting. The sub-paragraph seemed to him to be inapplicable in a country with a high level of immigration, such as his own, where foreign nationals formed almost half the population. If the sub-paragraph was adopted, the Federation of Malaya would be compelled to make reservations, and it would certainly not be alone in doing so. Further, it had only been by a very small majority that the Second Committee had rejected an amendment similar to that now submitted by six countries including his own. He recognized that the amendment was not entirely satisfactory; yet it represented the widest possible degree of compromise, and he hoped, therefore, that delegations would find it more acceptable.

12. Mr. KONZHUKOV (Union of Soviet Socialist Republics) considered that, far from improving the original International Law Commission text of article 36, the amendments to it had only destroyed its balance. It was therefore understandable that some delegations should wish to improve the text of paragraph 1 (*b*). Unfortunately the authors of the joint amendment had not achieved their purpose.

13. In the First Committee some delegations had refused to recognize the consul's right to intervene on behalf of nationals of the sending State. Article 36 further restricted the consul's right to concern himself with nationals of his country. The proposal that the consul should be informed of the arrest of a national of the sending State only at the request of the person concerned could not withstand criticism. What guarantee was there that the person concerned had been informed of his right, that he had refused to request that his consulate should be informed, or that he had not been the victim of undue influence ? How could a person who was deprived of liberty make use of his freedom ? There were no doubt certain cases in which a person might request that his consul should not be informed, but a general rule could not be based on a particular case.

14. The proposed amendment conflicted with a very old rule of international law: the right of every State to protect its nationals. The delegation of the USSR would therefore vote against the joint amendment. Moreover, it felt bound to point out that the text adopted by the Second Committee was not an improvement on the original International Law Commission text. The word " undue " had been deleted from the text of sub-paragraph (*b*). The new wording seemed to imply an obligation to supply the information immediately, but when a national of the sending State was committed to prison because he had committed an offence the authorities of the receiving State must have time to collect the necessary documents with a view to informing the consul. The provision would be practically inapplicable in States where distances were great, where there were many foreign nationals, or in federal States. The fact that certain provisions of the convention were inapplicable would only give rise to dissatisfaction and friction between States. The USSR delegation considered that paragraph 1 (*b*) of article 36 was unacceptable as it stood.

15. Mr. PEREZ-CHIRIBOGA (Venezuela) said that his delegation's position had been fully explained in the Second Committee. Some representatives had just expressed the fear that if the joint amendment was adopted the nationals of the sending State would not be adequately protected; but adequate safeguards were provided by sub-paragraphs (*a*) and (*c*) of paragraph 1 and by paragraph 2. The proposed amendment was in no way intended to lessen those safeguards, but only to avoid placing an excessive burden on the receiving State, particularly on countries of immigration such as Venezuela.

16. Mr. VU-VAN-MAU (Republic of Viet-Nam) said that it was a matter of reconciling the interests of two equal sovereign States — the sending State and the receiving State — with respect for the rights of the detained person. He must not be deprived of his right to communicate with his consul, but his wishes must be respected if he did not want the consular authorities of his country to know of the action taken against him.

17. It was obviously consideration of the principle of respect for the wishes of the person concerned which constituted the motive of paragraph 1 (*d*), under which that person could object to any intervention by his consul on his behalf. The joint amendment took into account the equal rights of the two States as well as the wishes of the person concerned. It therefore constituted a well-balanced and necessary compromise.

18. He had also listened with great attention to the representatives of Thailand and of the Federation of Malaya who had referred to the need to take account of the special situation prevalent in certain countries in all parts of the world. In the progressive development of international law which had been achieved in the past few years every effort had been made to discover solutions that could be adapted to special situations. The Conference must also pursue that purpose.

19. Mr. BOUZIRI (Tunisia) regretted that the Conference should have before it a text almost identical with the oral amendment which had been rejected by the Second Committee. The reasons given by the sponsors of the joint amendment carried no conviction. Much emphasis had been placed on the fact that the obligation to inform the consular authorities would be too heavy a burden for the receiving State. Tunisia was not influenced by that argument although it, too, had many foreigners, either permanent residents or tourists, on its territory. A consul could not help the nationals of the sending State if he was not informed of their arrest.

20. The representative of the USSR had very justly remarked on a serious omission in the text of the joint amendment for it contained no safeguard. Freedom was one of the most valuable possessions of man, and must not be restricted unless the restriction was accompanied by the greatest possible safeguards. When a State assumed the responsibility of committing a foreign national to prison, it must be obliged to inform the competent consul. His delegation would vote against the joint amendment.

21. Mr. BLANKINSHIP (United States of America) supported the joint amendment and associated himself with the views expressed by its sponsors and by the representative of New Zealand. In its present form the draft of article 36 placed an excessive and useless burden on the receiving State by requiring that all arrests of nationals of the sending State should be notified to the competent consul and it did not recognize the freedom of action of the detained persons who might not wish their consulate to be informed.

22. His delegation would request a separate vote on paragraph 1 (*c*) because, in its view, the receiving State should not be required to furnish a consular post of the sending State periodically with a list of the nationals of that State who were detained within the consular district concerned. The provision was in fact a new rule and did not codify existing practice; sub-paragraph (*c*), which had been added by the Second Committee by a very small majority — 31 votes to 29 — in no way improved the International Law Commission's text.

23. Mr. UCHIDA (Japan) said that he had little to add to the explanations by the representative of Thailand and other sponsors of the joint amendment. He would simply stress that in certain countries it would be impossible, not for political but for practical reasons, to apply article 36 in its present form. The rule adopted must be acceptable for all countries; the joint amendment represented a very reasonable compromise solution which he would strongly urge the Conference to adopt.

24. Mr. de MENTHON (France) warmly supported the joint amendment both for reasons of principle and for practical considerations. With regard to the principle, the amendment affirmed one of the fundamental rights of man — the right to express his will freely. From the practical point of view the adoption of the amendment would remove the excessive obligation placed on the receiving State by the first sentence of paragraph 1 (*b*) which would cause serious difficulties in application. The French delegation would therefore vote for the joint amendment as well as for the amendment to paragraph 2 submitted by the Soviet Union whereby it was proposed to restore the International Law Commission text, which seemed preferable to that approved by the Second Committee.

25. Mr. ANGHEL (Romania) said that article 36 formed a very important part of the convention on consular relations, but, as worded, it would be difficult to adopt, and even more difficult to apply, owing to the clauses added by the Second Committee to the International Law Commission's original draft. Those clauses, the usefulness of which was doubtful, would oblige the receiving State to inform the consulate of the sending State of the reason for which the national of the sending State had been deprived of his liberty (sub-paragraph (*b*)) — which was unnecessary because the consulate had the right of communication with the national; and further would oblige the receiving State to furnish the consulate of the sending State periodically with a list of the nationals of that State who were in prison (sub-paragraph (*c*)) — which was superfluous because the consulate would be informed of every specific case. Lastly, the last part of paragraph 1 (*d*) threw doubts on the protection the consulate could give its nationals.

26. The Romanian delegation considered that the rights granted by article 36, paragraph 1, should be subject to the laws and regulations of the receiving State. The aim of the convention was not to codify criminal law or criminal procedure, but international law as it affected consular relations. The provisions of the article could not possibly attempt to modify the criminal laws and regulations or the criminal procedure of the receiving State. Further, an alien could not be granted more favourable treatment than a national, for that would savour of the obsolete system of capitulations. That principle had been stressed by several delegations at the Conference.

27. His delegation could not accept either the joint amendment or the last part of paragraph 2 of the article because the text was confused and would give rise to widely varying interpretations. With regard to that paragraph, some speakers in the Second Committee had supported the view that international law should predominate over municipal law but fortunately that had not been approved and could not be invoked against the principle of the sovereignty of States. International law and municipal law were closely linked but there could be no question of one predominating over the other. The Romanian delegation much preferred the International Law Commission's draft and supported the Soviet Union amendment, which would reintroduce that text.

28. He asked the Chairman to put article 36 to the vote, sub-paragraph by sub-paragraph, and then paragraph by paragraph, and, furthermore, to take separate votes on the following: in sub-paragraph (*b*) of paragraph 1, the phrase " and shall state the reason why he is being deprived of his liberty "; in sub-paragraph (*d*) of paragraph 1, the sentence " Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action "; in paragraph 2 — if the Soviet Union amendment was not adopted — the phrase " subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended ".

29. Mr. TSHIMBALANGA (Congo, Leopoldville) said that the Second Committee had rejected an oral amendment very similar to the six-power amendment. His delegation had voted against that amendment. If the joint amendment were adopted, it would open the way to abuse, since the authorities of the receiving State might abstain from informing the consulate of the sending State of the detention of one of its nationals on the pretext that the individual concerned had not asked for it. For that reason, his delegation would vote against the joint amendment.

30. After considering the Soviet Union amendment and comparing it with paragraph 2, as drafted by the Second Committee, the Congolese delegation had come to the conclusion that the wording of the amendment

was more flexible and took greater account of the possibilities of application. The Second Committee's draft implied the revi ion of certain laws or regulations, which it would be difficult to carry out in practice. Consequently, he would vote for the Soviet Union amendment.

31. Mr. DEJANY (Saudi Arabia) said that he supported the United States motion for a separate vote on paragraph 1, sub-paragraph (*c*). He considered that sub-paragraphs (*b*) and (*c*) of paragraph 1, apart from the fact that they laid too heavy a burden on the receiving State, would be absolutely impracticable in certain circumstances in his country. Hence, he supported the joint amendment and hoped that sub-paragraph (*c*) would be deleted. Should sub-paragraphs (*b*) and (c) be adopted, he would abstain from voting on the article as a whole. He supported the Soviet Union's proposal concerning paragraph 2.

32. Mr. SPYRIDAKIS (Greece) said that, as had been stated in the Second Committee, where article 36, paragraph 1 (*b*) had been adopted by a large majority, the purpose of the obligation imposed on the authorities of the receiving State to state the reasons for which a foreign national was being deprived of his liberty was to establish an additional safeguard for the rights of the individual and to reinforce the ideal of humanism. There was no doubt that in most countries the local authorities co-operated with the consulates but it happened sometimes that the police for various reasons of a purely domestic character arrested innocent foreigners and kept them in prison for a considerable time without making any effort to inform their consulates of the reason for their arrest. The inclusion of the guarantee in article 36 for the protection of aliens in the territory of the receiving State who were either permanent residents or temporary visitors there was intended precisely to avoid in future abuses and violations of international law by the authorities of the receiving State.

33. The Greek delegation well understood the position of those countries which would face administrative difficulties in complying with those obligations by reason of the fact that a great number of aliens lived in their territory, but it could not understand why those countries, although they accepted the principle of notifying the consulates and all the other important stipulations of article 36, should find it difficult to say a few words about the reason for the arrest at the time of notifying the consulate when an arrest took place. In opposing the joint amendment his delegation did not have in mind petty offences but much more serious cases where the duty to give the reason for the arrest would provide a very useful and necessary safeguard. If that obligation was laid down in the article, the Conference could be proud of having further strengthened human rights through the convention. In the Second Committee, as had been stated by the representative of Yugoslavia, amendments similar to the joint amendment had been rejected and the phrase in paragraph 1 (*b*) which had been submitted by Greece had been adopted by a large majority of 39 votes in favour, 13 against and 16 abstentions.

34. If the six Powers who sponsored the amendment deleting the phrase in question could not themselves comply with such an obligation, they would be free to make a reservation either at the time of signing or at the time of ratifying the convention, but it was not right or fair that they should try to eliminate a noble principle merely because of the practical difficulties.

35. Greece, which firmly believed in the ideal of humanism and which was fully conscious of the importance of the convention for the promotion of international law and peaceful relations among nations, could not but oppose the joint amendment which would weaken a very important stipulation in article 36.

36. If the joint amendment should be approved, his delegation would reserve the right to reintroduce a proposal for the inclusion of the phrase " and shall state the reason why he is being deprived of his liberty " in article 36, paragraph 1.

37. Mr. KEVIN (Australia) drew attention to a contradiction in principle between sub-paragraphs (*c*) and (*d*) of paragraph 1 in the Second Committee's draft. The first of those sub-paragraphs did not mention the consent of the individual concerned, whereas the second did. For the reasons stated by previous speakers, the Australian delegation would vote for the joint amendment.

38. Mr. PETRŽELKA (Czechoslovakia) thought it would be difficult to find a wording for article 36 which would meet with the full approval of all States. The International Law Commission had tried to find an acceptable compromise and had prepared a draft to which the Czechoslovak delegation was prepared to agree. On the other hand, it could not accept the wording of article 36 adopted by the Second Committee, and it was also opposed to the joint amendment, the adoption of which would have the effect of depriving the sending State of one of its fundamental rights, that of protecting its nationals.

39. The Czechoslovak delegation would support any proposal for the re-establishment of the International Law Commission's text and it would therefore vote for the Soviet Union amendment.

40. The PRESIDENT put to the vote the joint amendment submitted by the Federation of Malaya, Japan, Philippines, Thailand, the United Arab Republic and Venezuela (A/CONF.25/L.30).

The joint amendment was rejected by 39 votes to 31, with 7 abstentions.

The meeting rose at 1.5 p.m.

TWELFTH PLENARY MEETING

Wednesday, 17 April 1963, at 3.25 p.m.

President: Mr. VEROSTA (Austria)

Third Report of the general committee (A/CONF.25/11)

1. The PRESIDENT drew the attention of the Conference to the third report of the general committee (A/CONF.25/11), which contained proposals for expediting the work of the Conference. He drew attention to

paragraph 3 (*c*) in which it was suggested that, under rule 23 of the rules of procedure, a time-limit of five minutes should be set for statements by representatives on each article.

The report was adopted unanimously.

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 36 (Communication and contact with nationals of the sending State) (*continued*)

2. The PRESIDENT invited the Conference to continue its consideration of article 36 of the draft convention.

3. Mr. KHLESTOV (Union of Soviet Socialist Republics) introduced his delegation's amendment (A/CONF.25/L.34) restoring the International Law Commission's draft of paragraph 2. He pointed out that the matters dealt with in article 36 were connected with the criminal law and procedure of the receiving State, which were outside the scope of the codification of consular law. In drafting the convention the Conference should constantly bear in mind the emphasis placed by the United Nations Charter on the sovereign equality of States. The International Law Commission had recognized that national jurisdiction should not be interfered with, and in drafting paragraph 2, which provided that the rights referred to in paragraph 1 should be exercised in conformity with the laws and regulations of the receiving State, had established a satisfactory balance between the consul's right to protect his nationals and the requirements of municipal law in the receiving State. Any change in that balance might have the effect of giving consular officials the right to interfere in the internal affairs of the receiving State.

4. The amendment to paragraph 2 approved by the Second Committee might force States to alter their criminal laws and regulations and allow consuls to interfere with normal legal procedure in order to protect alien offenders; such a provision in an international convention could have serious consequences for the receiving State where an alien committed a crime. In fact, it attempted to bring back an unsatisfactory situation from the past, when the consuls of colonial powers interfered with the internal affairs of States by hampering the administration of justice in regard to aliens. Aliens should observe the law of the State in which they were living and should be subject to its penalties if they infringed it. Paragraph 2 as approved by the Second Committee could make it difficult for States to exercise their sovereign right to prosecute aliens who broke the law. The provisions it contained were entirely unacceptable and might prevent States from signing the convention. An international convention should respect sovereign rights, and he appealed to representatives to support his amendment restoring the International Law Commission's draft.

5. Mr. MARESCA (Italy) considered that paragraph 2 as approved by the Second Committee was one of the most important provisions in the draft convention. It was designed to help the receiving State to provide the greatest possible freedom for the exercise of consular functions, and he hoped that it would be retained.

6. Mr. EVANS (United Kingdom) said that the consul's task of protecting and helping nationals of the sending State had become one of his most important functions. Article 36 was therefore of the greatest importance and it was essential that it should lay down clear and unequivocal rights and obligations. Paragraph 1 was satisfactory but it was important that nothing in paragraph 2 should lessen its effectiveness. The Soviet amendment was not acceptable, because it meant that the laws and regulations of the receiving State would govern the rights specified in paragraph 1 provided that they did not render those rights completely inoperative — for " to nullify " meant to " render completely inoperative ". But rights could be seriously impaired without becoming completely inoperative. He therefore greatly preferred the positive approach of paragraph 2 as approved by the Second Committee.

7. Consular officials should, of course, comply with the laws and regulations of the receiving State in such matters as the times for visiting prisoners, but it was most important that the substance of the rights and obligations specified in paragraph 1 should be preserved, which they would not be if the Soviet Union amendment were adopted. He would vote against the Soviet Union amendment and against the motion for a separate vote on the last part of paragraph 2.

8. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) supported the USSR amendment because the wording approved by the Second Committee was less forceful than the International Law Commission's draft and introduced a possibility that the rights granted in article 36 might not be given full effect. He did not agree with the United Kingdom representative that the Soviet amendment would make the rights inoperative. The Conference was drafting a consular convention, not an international penal code, and it had no right to attempt to dictate the penal codes of sovereign States. It was not enough to say, as the United Kingdom representative had said, that consular officials should comply with the laws of the receiving State: they must be compelled to do so, for otherwise there would be a return to former conditions under which they had enjoyed excessive privileges.

9. Mr. AMLIE (Norway) said he would vote againts the Soviet Union amendment. It was of the greatest importance to retain the text approved by the Second Committee.

The amendment by the Union of Soviet Socialist Republics (A/CONF.25/L.34) was rejected by 33 votes to 32, with 16 abstentions.

10. The PRESIDENT reminded the Conference that it had before it a motion by the representatives of Saudi Arabia and the United States for a separate vote on paragraph 1 (*c*) and a motion by the representative of Romania for a number of separate votes.

11. Mr. CRISTESCU (Romania) maintained his delegation's motion, despite the rejection of the USSR amendment. He requested separate votes on paragraph 1 and each of its sub-paragraphs and on the second part of paragraph 2.

12. Mr. EVANS (United Kingdom) opposed the motion for a separate vote on each sub-paragraph of paragraph 1 because most of the provisions contained in the sub-paragraphs were essential and many of them were related. He would, however, support a separate vote on sub-paragraph (*c*).

13. Mr. KRISHNA RAO (India) supported the motion for separate votes on sub-paragraph (*b*), on the words " and shall state the reason why he is being deprived of his liberty " contained in that sub-paragraph, and on sub-paragraph (*c*).

14. Mr. KEVIN (Australia) was in favour of a separate vote on each sub-paragraph of paragraph 1.

15. Mr. KHLESTOV (Union of Soviet Socialist Republics) supported the motion for separate votes on each sub-paragraph of paragraph 1 and on paragraphs 1 and 2. It would be illogical to vote separately on certain sub-paragraphs only.

16. Mr. MARESCA (Italy) opposed the motion for separate votes because article 1 was indivisible; paragraph 2 was a necessary complement of paragraph 1.

17. The PRESIDENT invited the Conference to decide by a vote whether paragraphs 1 and 2 should be voted on separately.

18. Mr. KHLESTOV (Union of Soviet Socialist Republics), speaking on a point of order, said that it would be more logical to start by voting on paragraph 1 and its sub-paragraphs.

19. Mr. DEJANY (Saudi Arabia) asked whether rejection of the proposal for separate votes on paragraphs 1 and 2 would prevent a separate vote on paragraph 1 (*c*). There had been no opposition to the motion for such a vote and he suggested that it be dealt with apart from the other motions.

20. The PRESIDENT said that he was starting with the Romanian motion because it was the most drastic. If adopted, it would cover the motion for a separate vote on paragraph 1 (*c*); if not, he would put that motion to the vote.

21. Mr. CAMERON (United States of America) said that that procedure would be logical but for the fact that no one had objected to the motion for a separate vote on paragraph 1 (*c*).

22. Mr. de MENTHON (France) opposed the motion for a separate vote on paragraph 1 (*c*).

23. The PRESIDENT invited the Committee to vote on the motion for separate votes on the sub-paragraphs of paragraph 1, taking each sub-paragraph in turn.

The motion for a separate vote on paragraph 1 (a) *was defeated by 42 votes to 28, with 10 abstentions.*

24. Mr. PETRŽELKA (Czechoslovakia), speaking on a point of order, said that the Romanian motion was that paragraph 1 should be voted on sub-paragraph by sub-paragraph.

25. The PRESIDENT said that the Romanian representative had raised no objection to his procedure. He was willing, however, to take a vote first on the motion for separate votes on each sub-paragraph.

26. After a procedural discussion on whether rejection of that motion would rule out the motions for separate votes on particular sub-paragraphs or phrases, the PRESIDENT ruled that it would not.

27. Mr. GIBSON BARBOZA (Brazil) agreed with the President's ruling. There were four proposals before the Conference: to vote on article 36 paragraph by paragraph and sub-paragraph by sub-paragraph; to take a separate vote on paragraph 1 (*c*); to take a separate vote on the words " and shall state the reason why he is being deprived of his liberty " in paragraph 1 (*b*); and to take a separate vote on the last sentence of paragraph 1 (*d*). Those proposals were not mutually exclusive.

28. Mr. CAMERON (United States of America) agreed with the representative of Brazil.

29. Mr. BOUZIRI (Tunisia) did not agree with the President. He appealed to the representative of Romania to withdraw or modify his motion so that the voting could be continued as it had been begun.

30. Mr. SPYRIDAKIS (Greece) supported the representative of Tunisia.

31. Mr. CRISTESCU (Romania), in response to an appeal from the PRESIDENT, said he would press for a single vote on whether the sub-paragraphs of paragraph 1 should be voted on separately.

The motion for a separate vote on paragraph 1 (b) was carried by 42 votes to 36, with 5 abstentions.

The motion for a separate vote on paragraph 1 (c) was carried by 47 votes to 25, with 10 abstentions.

The motion for a separate vote on paragraph 1 (d) was defeated by 42 votes to 30, with 10 abstentions.

The motion for a separate vote on paragraph 2 was defeated by 47 votes to 27, with 9 abstentions.

32. Mr. CRISTESCU (Romania) moved that a separate vote be taken on the words " and shall state the reason why he is being deprived of his liberty " in sub-paragraph (*b*) of paragraph 1, as already requested by the Indian representative. Those words were out of place and unnecessary; he had stated the reasons for deleting them at the previous meeting.

33. Mr. SPYRIDAKIS (Greece), speaking on a point of order, objected that the separate vote requested by the Romanian representative was at variance with the decision taken by the Conference at the previous meeting to reject the joint amendment to the first sentence of paragraph 1 (*b*) (A/CONF.25/L.30). The main purpose of that amendment had been, precisely, to delete the

words in question, and since the Conference had already decided that point, the motion to vote on it again was out of order.

34. Mr. MARESCA (Italy) agreed with the Greek representative. Since the Romanian motion would reverse the decision to reject the joint amendment, under rule 33 of the rules of procedure a majority of two-thirds would be required to carry it.

35. The PRESIDENT ruled that the decision taken at the previous meeting on the joint amendment did not preclude voting on the Romanian motion.

36. Mr. BOUZIRI (Tunisia) agreed with the President's ruling. Rule 33 did not apply because the matter decided at the previous meeting was not identical with the subject of the Romanian motion. The joint amendment called for two changes in the first sentence of sub-paragraph (*b*), whereas the Romanian motion could result in only one change. Hence, it was perfectly in order to put the Romanian motion to the vote.

37. The PRESIDENT put to the vote the Romanian motion for a separate vote on the words " and shall state the reason why he is being deprived of his liberty " in paragraph 1 (*b*).

The motion was defeated by 42 votes to 24, with 15 abstentions.

38. The PRESIDENT invited the meeting to vote on paragraph 1 (*b*).

The result of the vote was 45 in favour and 29 against, with 6 abstentions.

Paragraph 1 (b) was not adopted, having failed to obtain the required two-thirds majority.

39. The PRESIDENT invited the meeting to vote on paragraph 1 (*c*).

Paragraph 1 (c) *was rejected by 39 votes to 35, with 10 abstentions.*

40. In reply to a question by Mr. USTOR (Hungary), the PRESIDENT said he understood that the Romanian representative did not wish to press for a separate vote on the last sentence of sub-paragraph (*d*) of paragraph 1.

41. Mr. KHLESTOV (Union of Soviet Socialist Republics), speaking on a point of order, formally requested that the motion for a separate vote on the last sentence of sub-paragraph (*d*) should be put to the Conference. The decision that a separate vote should not be taken on sub-paragraph (*d*) as a whole did not preclude a separate vote on the last sentence.

42. Mr. CAMERON (United States of America) opposed the motion for a separate vote on the last sentence of sub-paragraph (*d*).

43. Mr. EVANS (United Kingdom), speaking on a point of order, moved that the meeting be suspended under rule 27 of the rules of procedure. A new situation had arisen as a result of the rejection of sub-paragraphs (*b*) and (*c*). His delegation seriously doubted whether the remainder of article 36 was worth retaining at all. A suspension of the meeting would enable delegations to consult on both substance and procedure and thereby help the Conference to deal with the new situation which had arisen.

The motion for suspension was carried by 32 votes to 29, with 12 abstentions.

The meeting was suspended at 5.15 p.m. and resumed at 6.15 p.m.

44. Mr. PUREVJAL (Mongolia) said he would support the motion for division of paragraph 1 (*d*).

The motion was defeated by 15 votes to 13, with 10 abstentions.

45. Mr. CRISTESCU (Romania) moved that a separate vote be taken on the last part of paragraph 2, reading: " subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended."

46. Mr. BOUZIRI (Tunisia) and Mr. EVANS (United Kingdom) opposed the motion. If the proviso in paragraph 2 were omitted, the rights enumerated in paragraph 1 would be subject to the laws and regulations of the receiving State without any qualification whatsoever, and would thus be completely nullified.

47. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) supported the Romanian motion. The words in question entailed a serious danger of pressure by international rules on national legislation and, moreover, vitiated the provision of the first part of the paragraph.

48. Mr. AVILOV (Union of Soviet Socialist Republics) also supported the Romanian motion.

The Romanian motion was defeated by 53 votes to 13, with 14 abstentions.

49. Miss LAGERS (Netherlands), speaking on a point of order, said her delegation found it difficult to believe that the Conference could adopt a consular convention which did not contain a provision obliging the authorities of the receiving State to inform the consular post concerned of the imprisonment of a national of the sending State. The whole question should be reconsidered.

50. Mr. KEVIN (Australia) and Mr. PETRŽELKA (Czechoslovakia) asked whether the matter raised by the Netherlands representative was in fact a point of order. Under rule 39 of the rules of procedure, after the beginning of voting had been announced, no representative could interrupt the voting except on a point of order in connexion with the actual conduct of the voting.

51. The PRESIDENT ruled the Netherlands representative out of order.

52. Mr. EVANS (United Kingdom), speaking on a point of order, said that if the Netherlands representative had been allowed to complete her statement, it would have been clear that she had wished to make a point of order in connexion with the conduct of the voting. In view of certain deletions from paragraph 1, some

delegations considered it desirable to reconsider the paragraph before a final vote was taken on article 36.

The President's ruling was upheld by 48 votes to 18, with 12 abstentions.

53. The PRESIDENT invited the Conference to vote on article 36, as amended.

54. Mr. AVILOV (Union of Soviet Socialist Republics), explaining his delegation's vote, in accordance with rule 39 of the rules of procedure, said that, since the USSR amendment to article 36 had been rejected, he would vote against the text as it stood.

55. Mr. BOUZIRI (Tunisia) said that, as a result of the deletion of paragraphs 1 (*b*) and 1 (*c*), article 36 was now totally devoid of substance. The Tunisian delegation would vote against the article in the belief that its complete omission would be preferable to the inclusion of such a distorted text. The Conference should reflect on that serious situation; it might decide either to reconsider the article, or to omit it altogether and allow the whole question of communication and contact with nationals of the sending State to be governed by customary international law, in accordance with the sixth paragraph of the preamble.

56. Mr. KEVIN (Australia) moved the adjournment of the meeting.

The motion for adjournment was carried by 50 votes to 11, with 6 abstentions.

The meeting rose at 6.55 p.m.

THIRTEENTH PLENARY MEETING

Wednesday, 17 April 1963, at 8.40 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 36 (Communication and contact with nationals of the sending State) (*continued*)

1 The PRESIDENT recalled that at its preceding meeting the Conference had decided to delete sub-paragraphs (*b*) and (*c*) of article 36, paragraph 1. Before putting the remainder of the article to the vote, representatives could take the opportunity of explaining their vote on the article as a whole.

2. Mr. RUEGGER (Switzerland) regretted that the substance of article 36 had been appreciably reduced; even in its curtailed form, however, it contained some part of the International Law Commission's ideas and was of value. He would vote for the article, but pointed out that account must be taken in every case of the customary rules of international law, mentioned in the preamble to the convention, a text that would help to clarify the meaning of article 36. It must also be clearly understood that the application of those provisions depended on the freely expressed wishes of the persons concerned.

3. Mr. KRISHNA RAO (India) said that what was left of article 36 had little meaning and he would therefore be obliged to vote against the article.

4. Mr. KEVIN (Australia) asked whether it would be possible to put the remainder of article 36 to the vote. If it were adopted, then in order to meet the desires of some delegations, sub-paragraph (*b*) might be reintroduced into the convention in the form of a new article, some such phrase as " provided the national in question does not oppose such action " being added after the word " liberty ".

5. Mrs. VILLGRATTNER (Austria) said that, although her delegation was not satisfied with the amended text of article 36, she believed that the article stated rights that must be recognized. She would vote for article 36, as amended, and in so doing agreed with the remarks made by the Swiss representative on the enduring validity of the rules of customary international law.

6. Mr. DADZIE (Ghana) regretted that the draft so carefully prepared by the International Law Commission had been heavily truncated. His delegation did not believe that what remained of article 36 was worth lingering over, and would vote against it. It reserved its position on the Australian suggestion, which should be considered at a later stage.

7. Mr. NESHO (Albania) said that article 36 was not acceptable to his delegation, which preferred the International Law Commission's draft.

8. Mr. EVANS (United Kingdom) regretted the deletion of sub-paragraphs (*b*) and (*c*). Nevertheless, the remainder of the article had a certain value and he would vote for it. Sub-paragraph (*b*) was of great importance, and his delegation would consider sympathetically the Australian proposal for its inclusion in the convention in another form.

9. Mr. CAMERON (United States of America) said that his delegation would vote for article 36, as amended, and was in favour of the insertion in the convention of a new article based on sub-paragraph (*b*), which the Conference had decided to delete.

10. Mr. LEE (Canada) said that he would vote for the remaining provisions of article 36, which seemed to him to serve a useful purpose, since the complete elimination of the article concerning communication with nationals of the sending State would deprive other articles of the convention of all meaning.

11. Mr. SHARP (New Zealand) said that in his opinion there was a tendency to exaggerate the importance of sub-paragraphs (*b*) and (*c*), whereas the most important sub-paragraph was sub-paragraph (*a*), which had been adopted. He would vote for article 36.

12. Mr. PETRŽELKA (Czechoslovakia) recalled that he had already explained the reasons why his delegation could not accept article 36. He confirmed that he would vote against the article.

13. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that his delegation would vote for article 36 on the understanding in connexion with sub-paragraph (*a*) of paragraph 1 that consular officers would not have freedom of communication with nationals of the sending State who had left their country of origin to take refuge in the receiving State.

14. Mr. VAZ PINTO (Portugal) regretted that article 36 had been shorn of sub-paragraph (*b*), one of its most important sub-paragraphs. What remained of the article however, seemed useful. He shared the opinion of the Swiss representative and regretted that the proposal made at the previous meeting by the Netherlands delegation had not been considered. He was ready to accept the Australian proposal and he would therefore vote for article 36, as amended, in the hope that it would be supplemented later.

15. Mr. WESTRUP (Sweden) shared the view expressed by the Tunisian representative at the previous meeting, but said that he could not follow him as far as his conclusions. His delegation would support any proposal for the reintroduction of the International Law Commission's draft. He would, however, vote for article 36 since rather than see the article deleted he preferred a truncated text.

16. Mr. WALDRON (Ireland) agreed with the Swiss representative and was in favour of retaining article 36 as amended. He would therefore vote for the article but hoped that a solution in line with the proposals made by several representatives would shortly be found.

17. Mr. MARESCA (Italy) considered that the deletion of sub-paragraph (*b*) had seriously weakened the effectiveness of article 36. Nevertheless, the remaining provisions still constituted an article of substance and should be adopted. His delegation would vote for article 36, as amended, in the hope that the Conference would reconsider sub-paragraph (*b*) in another form.

18. Mr. de MENTHON (France) said that he would vote in favour of article 36 although as a result of numerous deletions it had become quite inadequate. It seemed inconceivable that in such a comprehensive convention there should be no provision for the protection of nationals committed to prison, who were the very persons most in need of assistance.

19. Mr. BARTOŠ (Yugoslavia) found it regrettable that it had been impossible to preserve the International Law Commission text, and still more regrettable that the Second Committee's text had been subjected to such extensive deletions. The remainder of the text, however, was worth consideration and his delegation would vote for its retention, while remaining ready to consider proposals for the reinstatement of sub-paragraph (*b*) in another form.

20. Mr. SPYRIDAKIS (Greece) also regretted the deletions from the article, but said that he would vote for the maintenance of the remaining provisions. His delegation was ready to support any proposal for the restoration of certain parts of the original text.

21. Mr. MARAMBIO (Chile) associated himself with those representatives who intended to vote for article 36 as amended, and hoped that consideration would be given to the Australian suggestion.

22. Mr. KONSTANTINOV (Bulgaria) said that he would vote against article 36; in his delegation's view, its suppression would leave no gap, since in any event the question of consular functions was amply covered in article 5.

23. Mr. SHIN (Republic of Korea) regretted that the most important part of article 36 had been deleted. He would, however, vote in favour of the remaining provisions, which were still of value. He would support any proposal to restore sub-paragraphs (*b*) and (*c*) of paragraph 1.

24. Mr. VRANKEN (Belgium) said that he would vote in favour of article 36, as amended, and would accept any proposal for a new draft of sub-paragraphs (*b*) and (*c*) of paragraph 1.

25. Mr. TILAKARATNA (Ceylon) said that he recognized the importance of article 36 but could not accept it after the deletions which had been made. He hoped that consideration would be given to the Australian proposal.

26. Mr. DEJANY (Saudi Arabia) said that the remaining provisions of article 36 dealt with several important matters which would provide ample material for one or even two articles; it would therefore be unwise to vote against it. He regretted that some representatives had insisted on adding to sub-paragraph (*b*) elements so controversial as to render it unacceptable to many delegations. He urged representatives to reconsider their positions and not to vote against the remainder of the article as it was uncertain whether a satisfactory substitute for it would be reintroduced and adopted.

27. Mr. ZEILINGER (Costa Rica) agreed with the views of the representatives of the Federal Republic of Germany, Australia and Ceylon. He would vote in favour of article 36, as amended, but hoped that a new text would be drafted on the basis of the provisions of sub-paragraph (*b*).

28. The PRESIDENT invited the Conference to vote on article 36, as amended.

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

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

In favour: Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Greece, Holy See, Indonesia, Ireland, Israel, Italy, Republic of Korea, Lebanon, Libya, Liechtenstein, Mexico, Morocco, Netherlands, New Zealand, Norway, Panama, Portugal, San Marino, Saudi Arabia, South Africa, Spain, Sweden, Switzerland, Syria, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America,

Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chili, China, Colombia, Costa Rica.

Against: Cuba, Czechoslovakia, Federation of Malaya, Ghana, Guinea, Hungary, India, Japan, Liberia, Mali, Mongolia, Pakistan, Poland, Romania, Sierra Leone, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Congo (Leopoldville).

Abstaining: Iran, Peru, Upper Volta, Congo (Brazzaville).

The result of the vote was 47 in favour and 24 against, with 4 abstentions.

Article 36 was not adopted, having failed to obtain the required two-thirds majority.[1]

Article 37 (Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents) *(resumed from the 10th meeting and concluded)*

29. The PRESIDENT said that two motions for a division of the article had been submitted at the 10th meeting: one, by the United States delegation, for a separate vote on the words " and, as soon as possible, to transmit to it a certificate of death " at the end of sub-paragraph (*a*); and the other, by the delegation of Thailand, for separate votes on sub-paragraphs (*a*) and (*b*).

30. Mr. SALLEH bin ABAS (Federation of Malaya) said that since article 36 had not been adopted his delegation was in favour of separate votes on sub-paragraphs (*a*) and (*b*) for the reasons it had already given. He would, however, stress that the purpose of the Conference was not to produce a theoretical and ideal text for use as a model, but to draft a convention which would be applicable in practice and acceptable to all. In the interests of such universality, it would be desirable to take into account the special situation of certain States, particularly those which had recently attained independence. In many cases, the obligations laid down in sub-paragraphs (*a*) and (*b*) might impose too great a burden on the receiving States, particularly as the purely formal restriction contained in the introductory phrase would have no effect, because registers of births, deaths and marriages existed in almost every country. The obligations involved would force some States to set up costly administrative machinery when the funds necessary to operate it might be more usefully employed for economic development. The Federation of Malaya would find itself in that position in view of the many foreign permanent residents among its population.

31. Mr. WALDRON (Ireland) urged the Conference to adopt article 37 as drafted and to reject the motion for a separate vote by division on sub-paragraphs (*a*) and (*b*). If the two sub-paragraphs were rejected the article would no longer be necessary and would not be worth keeping in the convention. The International Law Commission's original draft had provided for an absolute obligation. The text had been modified by the Second Committee to take account of difficulties which some States might encounter. The text before the Conference constituted a satisfactory compromise. He would abstain from voting on the United States motion for a separate vote on the last words of paragraph (*a*) as it raised no question of principle; but if the motion were adopted he would vote for the retention of the words.

32. Mr. PETRŽELKA (Czechoslovakia) said that he would vote against the motions for division. He thought that the Conference should adopt article 37 as drafted.

33. Mr. DADZIE (Ghana) said that it was inconceivable that any State should claim that it did not possess the information referred to in article 37. The condition in the introductory sentence had therefore no real value, and the " if " really meant " since ". It might be advisable to ask the drafting committee to examine the point, and he hoped that his suggestion would be borne in mind.

The motion for a separate vote submitted by the United States of America was carried by 33 votes to 24, with 13 abstentions.

34. Mr. DADZIE (Ghana), supported by Mr. KONSTANTINOV (Bulgaria) and Mr. EL KOHEN (Morocco), said that the Conference should vote, not on the words on which the United States had asked for a separate vote, but on the deletion of the words.

35. Mr. BARTOŠ (Yugoslavia), supported by Mr. BARNES (Liberia), Mr. KRISHNA RAO (India) and Mr. GIBSON BARBOZA (Brazil), said that there was no question of voting on a motion for the deletion of a text, but of voting on the text itself, which had to be adopted by a two-thirds majority, like the rest of the convention.

36. Mr. WESTRUP (Sweden) shared that opinion and found it surprising that a procedure which had been followed on numerous occasions and which had lead to the mutilation of article 36 should be called in question.

37. The PRESIDENT put to the vote the words " and, as soon as possible, to transmit to it a certificate of death ".

The result of the vote was 35 in favour and 30 against, with 11 abstentions.

The words were not adopted, having failed to obtain the required two-thirds majority.

The motion for a separate vote on sub-paragraphs (a) *and* (b) *submitted by Thailand was defeated by 51 votes to 16, with 7 abstentions.*

Article 37 as a whole, as amended was adopted by 67 votes to 3, with 6 abstentions.

38. Mr. KEVIN (Australia) explained that his delegation had abstained in the vote on article 37 because it considered that the obligation imposed by sub-paragraph (*a*) should arise only when the whereabouts of the next of kin were not known.

39. Mr. SALLEH bin ABAS (Federation of Malaya) said that his delegation had abstained in the vote on article 37 on the same grounds as the Australian delegation.

[1] Article 36 was reconsidered at the twentieth plenary meeting.

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. If 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. BINDSCHEDLER (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 artibrarily 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

crime and was caught *in flagrante delicto* would not be liable to arrest or detention; that would be absolutely contrary to the basic requirements and principles of law and order. Provisions along the lines of the Tunisian amendment were contained in a number of consular conventions concluded by his country; for instance, in article 8, paragraph 2, of the consular convention between the Federal Republic of Germany and the Soviet Union signed on 25 April 1958. If the Tunisian amendment was not adopted, his delegation would ask for a separate vote on the words " and pursuant to a decision by the competent judicial authority " in paragraph 1.

6. Mr. PAPAS (Greece) said he could not support the Belgian amendment. Its effect would be to make paragraph 1 even vaguer than it was in the drafting committee's text, since the degree of gravity of the action would not be specified, and the immunity of consular officers would consequently be restricted. The Greek delegation had opposed proposals to the same effect in the Second Committee, in the belief that an offence, however grave, was not a crime.

7. He could not support paragraph I (*a*) of the Tunisian amendment, which went to the opposite extreme by extending the immunity unduly. The absence of any reference to the term of imprisonment that could be imposed for the crime was bound to lead to difficulties of interpretation; the Conference should adopt a text specifying that term, thus following the example of the majority of consular conventions. In that connexion, his delegation saw merit in paragraph I (*b*) of the Tunisian amendment; it welcomed the reference to the law of the receiving State as a specific criterion.

8. Mr. MARESCA (Italy) said he would support the Belgian amendment, because the word " offence " was more generally used in the legal terminology of different countries than " crime "; in the case in point, it meant an offence against the penal law of the receiving State. He also supported the Tunisian proposal to introduce liability to arrest or detention in cases of *flagrante delicto*. That proposal had the merit of stating expressly an idea which was undoubtedly in conformity with the spirit of the rule as formulated. It was absolutely necessary, not only for punitive but also for preventive purposes, that it should be possible to arrest a person *in flagrante delicto*, and even consuls could not be immune to that rule.

9. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said he could not support the Belgian proposal to replace the term " grave crime ", which would be interpreted by each State according to its own law, by the imprecise words " grave offence ". Nor could he agree with the Tunisian representative's arguments against the inclusion of the word " grave ", since a crime without that qualification might be one which was not punishable by imprisonment. He could not support the reference to imprisonment for a term of at least five years, since, in view of the wide differences between the penal codes of different countries, it was difficult to specify a lowest common denominator. Finally, the provision that consular officers might not be held in custody for more than forty-eight hours was open to the same criticism. The Byelorussian delegation could not vote for either of the amendments.

10. Mr. EVANS (United Kingdom) said that his delegation could vote for the Belgian and Tunisian amendments. It also strongly supported the proposal of the Federal Republic of Germany for a separate vote on the words " and pursuant to a decision by the competent judicial authority " in paragraph 1. Although that phrase had been adopted by the International Law Commission and by the Second Committee, it had been apparent from the debate in the latter body that a number of delegations had been dissatisfied with it and wished to re-examine it in the plenary meeting. Paragraph 1 as it stood provided an unreasonable degree of immunity from arrest or detention; his delegation agreed that consular officers should not be arrested or detained except for a grave crime, but it was essential to provide that they could be arrested or detained for such a crime without a prior judicial decision.

11. Mr. NASCIMENTO o SILVA (Brazil) observed that the Belgian amendment had once again shown the difficulty of reconciling national laws and terminologies. Whereas the term " grave offence " was satisfactory to English-speaking delegations, the Spanish word " infracción " and the French word " infraction " had a different meaning; the Spanish term, in particular, usually related to relatively unimportant violations of criminal laws. Perhaps the Belgian representative could explain the scope of his amendment in greater detail.

12. His delegation welcomed the Tunisian amendment, for it was important to mention the case of *flagrante delicto*. Moreover, it was wise to specify that the offence concerned should be one punishable by imprisonment for a term of at least five years; the Brazilian delegation had always been in favour of an objective criterion which would eliminate all possible difficulties of interpretation due to differences in national legal systems.

13. Mr. VRANKEN (Belgium) said that the French term " crime grave " went beyond the obvious intentions of the International Law Commission and of the majority of delegations, in that it might carry a penalty of ten or fifteen years, or even life, imprisonment, whereas the penalty for an " infraction grave " might be imprisonment for five years, as specified in the Tunisian amendment. The Belgian delegation had not wished to go so far as to specify the exact period. Nevertheless, he asked that the Tunisian amendment should be put to the vote first; if it were adopted, he would not press for a vote on his own proposal.

14. Mr. BARUNI (Libya) said he would vote for the Tunisian amendment. While his delegation supported the principle of personal inviolability for consular officers in the exercise of their functions, it could not agree that such inviolability should be enjoyed even in cases of *flagrante delicto*.

15. Mr. MOUSSAVI (Iran) said he would vote for the Belgian and Tunisian amendments. If the Tunisian amendment was rejected, he would support the motion of the Federal Republic of Germany for a separate vote on the last phrase of paragraph 1.

16. Mr. de MENTHON (France) said that his delegation had supported the text proposed by the International Law Commission, which preserved the delicate balance between principle and practical experience. It preferred the term " grave crime " to " grave offence ", in any case, however, it would be most unwise to leave a decision on the gravity of a crime or offence to low-level administrative authorities who had no legal knowledge whatsoever. It was obvious that only the competent judicial authorities could prevent regrettable abuses of immunity and protect consular officers against arbitrary decisions. Even in cases of *flagrante delicto*, it would be inadmissible to allow a mere policeman to judge the gravity of the offence. His delegation would therefore vote in favour of paragraph 1 as it stood, and against all the amendments thereto.

17. Mr. BOUZIRI (Tunisia), replying to the Byelorussian representative, said that the word " crime " as used in his amendment did not include offences which were not punishable by imprisonment. He would be prepared to include the word " grave " in paragraph I (*a*) of his amendment, although it added nothing to the meaning of the French text. Finally, in connexion with the French representative's remarks, he asked whether or not the French police should be entitled to arrest a consul who had just murdered a Frenchman in the Place de la Concorde.

18. Mr. HENAO-HENAO (Colombia) observed that the treatment of article 41 in the Second Committee, which had discussed a number of amendments but had reverted to the International Law Commission's text, had been due to the wide differences between the criminal laws and terminologies of various countries. The draft as it stood was an attempt to reconcile these differences, and the Colombian delegation believed that the term " grave crime " satisfied the requirements of the largest number of delegations. He could not support the original Tunisian proposal to delete the word " grave ", which was essential to the correct understanding of the paragraph in Spanish. Finally, his delegation believed that the details included in paragraph I (*b*) of the Tunisian amendment were inappropriate in a general codifying convention. It would therefore vote for article 41 as submitted by the drafting committee.

19. Mr. de ERICE y O'SHEA (Spain) said that he did not think that paragraph I (*a*) of the Tunisian amendment was really applicable to article 41, which related only to imprisonment pending trial, and left it to the competent judicial authority to decide whether the crime was serious; the amendment implied that the exception should also apply to crimes which were not serious. With regard to paragraph I (*b*) of the Tunisian amendment, the exception in cases of *flagrante delicto* seemed to be nullified by the omission of the word " grave " in paragraph I (*a*), since a consular officer could escape arrest or detention for an offence which was not punishable by at least five years' imprisonment. From the practical point of view, moreover, a policeman called upon to deal with the very grave crime mentioned by the Tunisian representative would presumably be obliged to consult his country's penal code to ascertain whether the crime was punishable by the stated term of imprisonment, and that was patently absurd. His delegation was in favour of article 41 as submitted by the drafting committee.

20. Mr. KRISHNA RAO (India) observed that the question of the personal inviolability of consular officers had given rise to difficulties since the seventeenth century : in the theory and practice of consular relations, personal inviolability was subject to exceptions which were differently defined in various consular conventions and differently applied in various States. The acts for which exceptions were allowed were described as grave offences, atrocious crimes, cases of *flagrante delicto*, very serious criminal offences, grave crimes and so forth; there was no single criterion and the Conference was faced with the task of laying down a rule for the progressive development of international law. The International Law Commission had decided on a general provision for paragraph 1, which balanced the article as a whole and took into account the trend towards assimilating diplomatic and consular functions in the matter of protecting nationals of the sending State. It would therefore be inadvisable to adopt unduly rigid criteria.

21. Hitherto, cases of grave crimes committed by consular officers had fortunately been rare, and the article in its present form would raise no difficulties. Responsibility for determining the gravity of the offence might be said to rest with the receiving State, the sending State or the local courts, but the Indian delegation believed that it was for the receiving State to decide whether a grave crime had been committed. It should not be assumed *a priori* that the receiving State would act unreasonably in the matter; it would naturally take the views of the sending State into account. It was therefore clear that an arrest should be made only by decision of the competent judicial authority. His delegation would accordingly oppose a separate vote on the last phrase of paragraph 1.

22. Mr. DADZIE (Ghana) said he could not support the Belgian amendment, for although the term " grave crime " was open to interpretation in accordance with the municipal law of each State, the term " grave offence " was even more ambiguous. Under the law of his country and a number of others, the word " offence " covered violations of civil rights and minor breaches of criminal laws; his delegation did not believe that consular officers should be arrested or detained in the case of an offence which was not a crime.

23. With regard to paragraph I (*b*) of the Tunisian amendment, he could not support the *prima facie* assumption that a consular officer could be arrested or detained in any case of *flagrante delicto*. The proviso that the crime must be punishable by imprisonment for a term of at least five years was unrealistic, since a policeman could not ascertain the term of imprisonment immediately; that must be decided by the examining magistrate. The provision that consular officers might not be held in custody for more than forty-eight hours was also unacceptable. The Ghanaian delegation asked for a separate vote on paragraph I (*b*) of the amendment.

24. Mr. AMLIE (Norway) said that in the Second Committee he had been one of the strongest opponents of any attempt to weaken the personal inviolability of consular officials and had urged the retention of the International Law Commission's draft of paragraph 1. Since then, however, he had heard convincing arguments for the inclusion of a provision to cover cases of *flagrante delicto*. The Tunisian amendment offered a good basis for such a provision and he would support it if the Tunisian representative were willing to accept two changes. In paragraph 1 (*a*) he would prefer the term " grave crime ", used by the International Law Commission. In paragraph 1 (*a*) he suggested that the words " punishable by imprisonment for a term of at least five years " should be replaced by the words " a grave crime ". The severity of the penalty was, he thought, an unsatisfactory and arbitrary criterion.

25. Mr. BOUZIRI (Tunisia) agreed to the changes; he thought they would improve the amendment and make it more generally acceptable. The amended text would read:

" (*a*) In the case of a grave crime and pursuant to a decision by the competent judicial authority; or

" (*b*) In a case of *flagrante delicto*, provided that under the law of the receiving State the offence is a grave crime. In this case . . ."

26. Mr. AMLIE (Norway) regretted that he still could not support the text of sub-paragraph (*b*), because it made the definition of a grave crime dependent on the law of the receiving State.

27. Mr. ALVARADO GARAICOA (Ecuador) said he would vote against the amendments of Belgium and Tunisia and in favour of the International Law Commission's draft. He fully agreed with the views of the Brazilian and Colombian representatives. As he had explained in the Second Committee, " crime " and " offence " had entirely different connotations under his country's law, a crime being far more serious than an offence.

28. Mr. PETRŽELKA (Czechoslovakia) opposed the insertion of the word " grave " before the word " crime " in sub-paragraph (*b*) of the Tunisian amendment on the grounds that it introduced an element that was not recognized in national criminal codes. He doubted whether the criminal codes of any of the States represented at the Conference recognized different categories of crime: the Czechoslovak criminal code recognized only punishable acts.

29. In reply to a comment Mr. BOUZIRI (Tunisia), he pointed out that in sub-paragraph (*a*) the term " grave crime " was used in the general sense of an act damaging to the receiving State's interests, whereas in sub-paragraph (*b*) it was used in the strictly legal sense.

30. At the request of Mr. AMLIE (Norway), the PRESIDENT invited Mr. Žourek to explain why the International Law Commission had decided on the term " grave crime " rather than the criterion of the severity of the penalty.

31. Mr. ŽOUREK (Expert) said that in the 1960 draft the International Law Commission had proposed two alternatives: the definition of a crime by the duration of the penalty imposed, or a general term. In its final text the Commission had adopted the general term " grave crime " because the wide differences in national laws made it impossible to find a satisfactory universal criterion. In some bilateral conventions, the criterion of duration of penalty was different for the two contracting States and the penalties applicable in each of them had to be specified. Since the provision should be acceptable to a large number of countries with differing laws, the International Law Commission had adopted the most general term possible.

32. In reply to a question from Mr. VRANKEN (Belgium), he said that the Commission had used the term " grave crime " rather than " grave offence ", because it was more favourable to the consular official.

33. The PRESIDENT put the Tunisian amendment (A/CONF.25/L.39), as orally revised, to the vote.

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

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

In favour: Saudi Arabia, Sierra Leone, South Africa, Syria, Tunisia, Turkey, United Kingdom of Great Britain and Northen Ireland, United States of America, Upper Volta, Republic of Viet-Nam, Algeria, Australia, Belgium, Canada, China, Federation of Malaya, Federal Republic of Germany, Iran, Ireland, Italy, Republic of Korea, Lebanon, Libya, Luxembourg, New Zealand, Philippines, Portugal.

Against: Romania, Spain, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yugoslavia, Albania, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Colombia, Cuba, Czechoslavakia, Dominican Republic, Ecuador, Finland, France, Greece, Hungary, India, Indonesia, Japan, Liberia, Mali, Mexico, Mongolia, Panama, Peru, Poland.

Abstaining: San Marino, Sweden, Switzerland, United Arab Republic, Austria, Cambodia, Congo (Brazzaville), Congo (Leopoldville), Costa Rica, Denmark, El Salvador, Ghana, Guinea, Holy See, Israel, Laos, Liechtenstein, Netherlands, Nigeria, Norway, Pakistan.

The Tunisian amendment, as orally revised, was rejected by 34 votes to 27, with 21 abstentions.

The Belgian amendment (A/CONF.25/L.35) was rejected by 39 votes to 26, with 17 abstentions.

34. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted against the Tunisian amendment for the reasons stated by the representatives of Spain and Colombia. He had voted against the Belgian amendment because the terms " grave offence " and " grave crime " were not interchangeable in Venezuelan law.

35. The PRESIDENT drew attention to the motion by the representative of the Federal Republic of Germany for a separate vote on the words " and pursuant to a decision by the competent judicial authority ", at the end of paragraph 1 of article 41.

36. Mr. KRISHNA RAO (India) said that deletion of the words in question would have serious consequences, for the decision to arrest would be left entirely to the police.

37. Mr. USTOR (Hungary) opposed the motion for the reason given by the Indian representative.

38. Mr. BARTOŠ (Yugoslavia) also opposed the motion because deletion of the words in question would place the consular officer entirely in the hands of the police.

39. Mr. CHIN (Republic of Korea) supported the motion. If paragraph 1 remained as drafted a consular officer could not be arrested for a grave crime until a decision had been made by the competent judicial authority.

40. Mr. VRANKEN (Belgium) also supported the motion.

The motion was rejected by 40 votes to 28, with 11 abstentions.

Article 41 was adopted by 63 votes to 6, with 11 abstentions.

41. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that his delegation interpreted the words " competent judicial authority " as including the authority known in his country as the " procurator ". Under the law of many countries, including the Ukrainian SSR, that authority performed, among other functions, those which in other countries with different legal systems were performed by the judicial authorities.

42. Mr. HABIBUR RAHMAN (Pakistan) said that he had abstained from voting on article 41 because the immunity which it accorded to consular officers went beyond what was generally accepted under international law.

43. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation interpreted the term " comptetent judicial authority " in the same manner as the Ukrainian delegation.

44. Mr. CRISTESCU (Romania) said that his delegation interpreted the term " competent judicial authority " in the manner it had explained during the discussion in the Second Committee — i.e., as including the public prosecutor.

45. Mr. ENDEMANN (South Africa) said that his delegation had voted against article 41 as a whole for the same reasons as the representative of Pakistan.

Article 42
(Notification of arrest, detention or prosecution)

46. Mr. SHU (China) introduced his amendment (A/CONF.25/L.32) inserting the words " or other appropriate " between the words " through the diplomatic " and the word " channel ". He pointed out that article 11, paragraph 2, as adopted by the Conference, required the sending State to transmit the consular commission " through the diplomatic or other appropriate channel " to the government of the receiving State. His delegation thought it logical and appropriate to adopt the same wording in article 42.

47. Mr. MARESCA (Italy) said that it was already difficult to see how the consular commission could be communicated other than by the diplomatic channel. But notification of the arrest, detention or prosecution of the head of a consular post was an entirely different matter. It was essential that such a grave act by the authorities of the receiving State should be notified to the sending State in the most formal manner; hence the notification could only be made through the diplomatic channel. The diplomatic channel could be used even if the sending State concerned did not maintain a diplomatic mission at the capital of the receiving State.

48. Mr. KRISHNA RAO (India) pointed out that the communication referred to in article 11, paragraph 2, was in the nature of a routine matter, whereas the notification referred to in article 42 dealt with an extremely serious incident and could therefore only be made through a responsible agency. He drew attention to the vagueness of the expression " or other appropriate channel "; such an expression could be construed as meaning a letter sent through the ordinary post or a mere conversation.

49. Mr. de ERICE y O'SHEA (Spain) agreed with the Italian representative in opposing the amendment. Apart from the reasons already stated by other speakers, it should be remembered that the head of consular post was subordinate to the diplomatic mission of his country and it was therefore appropriate that any communication regarding his arrest, detention or prosecution should be made through that mission.

The amendment submitted by China (A/CONF.25/L.32) was rejected by 30 votes to 18, with 23 abstentions.

Article 42 as a whole was adopted by 72 votes to none, with 1 abstention.

Article 43 (Immunity from jurisdiction)

50. The PRESIDENT invited the Conference to consider article 43 and the amendment thereto (A/CONF.25/L.33) submitted jointly by Belgium, Canada, the Federal Republic of Germany, Ghana, India, Norway, Poland and the Ukrainian Soviet Socialist Republic. The amendment by the Ukrainian SSR (A/CONF.25/L.14) had been withdrawn in favour of the joint amendment.

51. Mr. WASZCZUK (Poland) introduced the joint amendment replacing the words " consular officers " by the words " members of the consular post " in paragraph 1. He pointed out that its adoption would entail a consequential amendment in paragraph 2 (*a*), where the words " consular officer " would have to be replaced by " member of the consular post ".

52. Paragraph 1 of article 43, as adopted by the Second Committeee, could be construed *a contrario* as meaning that members of the consular post other than consular officers were amenable to the jurisdiction of the receiving State in respect of acts performed in the exercise of consular functions. Such a proposition was completely

unacceptable and would alone justify the joint amendment. However, there were seven other reasons for adopting it.

53. First, as pointed out in paragraph 2 of the International Law Commission's commentary on article 43, the exemption from jurisdiction provided in article 43 represented " an immunity which the sending State is recognized as possessing in respect of acts which are those of a sovereign State ". The acts in question were not those of the consular officer or member of the consular post concerned, but the acts of the sending State itself. That argument applied regardless of whether the acts were performed by a consular officer or by a consular employee.

54. Secondly, it was stated in the fifth paragraph of the preamble, which the Conference had already adopted, that the purpose of the consular privileges and immunities was not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States. It should be remembered that such employees as secretaries and accountants performed functions which were essential to the conduct of consular relations; hence they should not be amenable to the jurisdiction of the receiving State in respect of acts performed in the exercise of those functions.

55. Thirdly, immunity from the jurisdiction of the receiving State in respect of official acts performed by members of the consular post was part of customary international law and was embodied in many bilateral consular conventions, such as those concluded by the United Kingdom with France, the United States of America and Mexico.

56. Fourthly, article 53, paragraph 4, as adopted by the First Committee provided that " with respect to acts performed by a member of the consular post in the exercise of his functions, his immunity from jurisdiction shall continue to subsist without limitation of time ". The fact that that provision covered all members of the consular post was a strong argument in favour of the joint amendment.

57. Fifthly, consular functions were not infrequently performed by consular employees, and the provisions of article 43 should therefore cover consular employees as well as consular officers.

58. Sixthly, the sponsors of the amendment believed that immunity from jurisdiction in the exercise of consular functions should be as wide as possible.

59. Lastly, article 37, paragraph 3, of the 1961 Vienna Convention on Diplomatic Relations provided that members of the service staff of a diplomatic mission " who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties ". It would be paradoxical if consular employees did not enjoy a privilege which was thus extended to members of the service staff of a diplomatic mission.

60. Mr. EVANS (United Kingdom) pointed out that article 43 dealt with immunity from jurisdiction in respect of acts performed in the exercise of consular functions. Normally, such functions were performed by consular officers, but he recognized that consular employees also performed them occasionally, and he could therefore agree to the provisions of article 43 being extended to include consular employees. The joint amendment went much further, however, for it would extend immunity from jurisdiction to all members of the consular post, thereby including not only consular employees but also members of the service staff, who were defined in article 1 (*f*), as adopted by the Conference, as persons " employed in the domestic service of a consular post ". It would be wrong to extend immunity from jurisdiction to such persons.

61. The representative of Poland had referred to a number of bilateral consular conventions entered into by the United Kingdom. Those conventions extended immunity from jurisdiction to consular officers and consular employees, but not to members of the service staff. He urged the sponsors of the joint amendment to modify it in such a manner as to exclude members of the service staff.

62. Mr. NASCIMENTO e SILVA (Brazil) was in favour of amending article 43 in the manner indicated by the United Kingdom representative; that had been the object of the Ukrainian amendment (A/CONF.25/L.14) which had unfortunately been withdrawn. Article 43, paragraph 1, as it now stood did not reflect existing international law or contribute to its progressive development. In fact, it was in direct conflict with international law.

63. The International Law Commission had drawn attention to the immunity from jurisdiction which applied to acts of State. If a judicial or other authority in the receiving State were to take proceedings in respect of an act by a consular employee which constituted an act of State, it would be infringing the immunity of States and thereby violating the principle of the sovereignty of States.

64. His delegation had favoured the Ukrainian amendment, but if that amendment was not reintroduced, it would be prepared to support the joint amendment, because cases in which members of the service staff of a consulate performed consular functions were extremely rare.

65. Mr. de MENTHON (France) shared the views expressed by the United Kingdom representative. It would be going too far to extend immunity from jurisdiction to members of the service staff. His delegation would vote against the joint amendment, or if it was altered as suggested by the United Kingdom representative, would abstain from voting on it.

66. Mr. SILVEIRA-BARRIOS (Venezuela) opposed the joint amendment for the reasons given by the United Kingdom representative. In the Second Committee, the Venezuelan delegation had proposed an amendment (A/CONF.25/C.2/L.167) to the International Law Commission's draft of article 43, replacing the words " members of the consulate " by the narrower term " consular officials ". It would therefore oppose the joint amendment, which was tantamount to an attempt to revert to the International Law Commission's text.

67. Mr. de ERICE y O'SHEA (Spain) opposed the joint amendment because it would extend immunity from jurisdiction to persons who were not appointed by the government of the receiving State, which therefore had no control over them. It was not uncommon for the consular section of an embassy to have locally recruited employees who were not appointed by the sending State; if one of them committed an offence, no disciplinary action could be taken against him by the sending State.

68. Mr. SICOTTE (Canada), speaking on behalf of the sponsors of the joint amendment, accepted the suggestion made by the United Kingdom representative. The amendment, as revised, would replace the words " consular officers " in paragraph 1 by the words " consular officers and consular employees ".

69. Mr. MARESCA (Italy) said that consular employees, who were defined in article 1 (*c*), as adopted by the Conference, as persons " employed in the administrative or technical service of a consular post " formed an integral part of the consular post. The acts which they performed in the exercise of their functions were therefore acts of the sending State and should, as such, enjoy immunity from the jurisdiction of another State.

70. Mr. MARAMBIO (Chile) said that in the Second Committee he had supported the Venezuelan amendment, which had confined the provisions of article 43 to consular officials, and thus narrowed the scope of the original text. The joint amendment, even in its revised form, went much further than his delegation was prepared to go. He would therefore have to vote for the text adopted by the Second Committee.

71. Mr. JESTAEDT (Federal Republic of Germany) pointed out that the definition in article 5, as adopted by the Conference, included a wide range of consular functions. In his delegation's opinion, all persons who participated in the activities referred to in sub-paragraph (*c*) of that article should have immunity from jurisdiction. For example, an employee such as the typist who typed a report to the government of the sending State should enjoy immunity in respect of her activities in the consulate. In fact, members of the service staff, such as messengers, occasionally performed acts which should be covered by immunity from jurisdiction.

72. Mr. KEVIN (Australia) supported the joint amendment in its revised form.

The joint amendment (A/CONF.25/L.33), as orally revised, was adopted by 65 votes to 7, with 7 abstentions.

Article 43 as a whole, as amended, was adopted by 70 votes to 1, with 4 abstentions.

Article 44 (Liability to give evidence)

73. Mr. CAMERON (United States of America) moved that the last two sentences of paragraph 1 be voted on separately from the first sentence. The question of the right of the receiving State to oblige the members of the consular post to attend as witnesses in judicial or administrative proceedings had been discussed at great length in the Second Committee. In the course of that discussion several delegations had proposed the deletion of the last sentence of paragraph 1, but the proposal had been rejected by a narrow margin, and many delegations thought that the matter should be carefully reconsidered by the Conference. He intended to vote against the adoption of the last two sentences of paragraph 1.

74. The fact that a consular officer could be called upon to give evidence did not mean that he would be under an obligation to give evidence concerning matters connected with the exercise of his functions or to produce official correspondence or documents. That point was fully covered by the provisions of paragraph 3 of article 44, which afforded every necessary safeguard. In addition, article 32 amply safeguarded the inviolability of consular archives and documents.

75. The interests of justice and fairness required that if a consular officer had knowledge that was of vital importance in court proceedings, he should not withhold it. He might, for example, be the only witness to a traffic accident and thus be the only person able to give evidence on the basic question of responsibility or negligence. A refusal to give evidence in such a case might well result in an injustice. There could even be graver cases, in which an innocent person might be punished because a consular officer who was a vital witness did not give evidence. It was difficult to believe that a consular officer would refuse to give evidence in cases of that kind, but the Conference should not adopt a provision under which there would seem to be no legal obligation for him to give evidence.

76. He drew attention to paragraph 2, which provided that the authority requiring the evidence of a consular officer must avoid interference with the performance of his functions, and that when possible, it could take evidence at his residence or at the consular post, or accept a statement from him in writing. Those provisions fully protected the consular post from any interference in its activities.

77. Some delegations had taken the view that, without the last sentence of paragraph 1, the receiving State would be in a position to decide whether the required evidence related to the exercise of consular functions or not. In fact, paragraph 3 clearly stated that members of a consular post were under no obligation to give evidence concerning matters connected with the exercise of their functions; that provision did not prejudice the question who was to decide whether the evidence required concerned an official matter or not. He could not understand how an obligation to attend as a witness could be established in the first sentence of paragraph 1, only to be rendered meaningless by the subsequent sentences of that paragraph.

78. Mr. DEJANY (Saudi Arabia) moved the adjournment of the meeting.

The motion was carried by 39 votes to 19, with 9 abstentions.

The meeting rose at 6.30 p.m.

SIXTEENTH PLENARY MEETING

Friday, 19 April 1963, at 9.45 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 44
(Liability to give evidence) (*concluded*)

1. The PRESIDENT invited the Conference to continue its consideration of the draft convention. He recalled that the United States delegation had asked for a separate vote on the last two sentences of article 44, paragraph 1.

2. Mr. AMLIE (Norway) contested the statement of the United States delegation that the impossibility of taking coercive measures against a consular officer who refused to testify might hinder the administration of justice in the receiving State. After all, if the receiving State should find that the consul's refusal to testify was unreasonable, it could submit the case to the sending State with a view to obtaining the waiver of his immunity. The matter would then be investigated by the authorities of the sending State, and, if they agreed with the authorities of the receiving State, the immunity would be waived. Thus the course of justice in the receiving State would not be jeopardized by the arbitrary decision of the consul himself.

3. There were situations in which it might be embarrassing or even dangerous for a consul to testify. Such situations should not be settled by the local chief of police.

4. Mr. TSHIMBALANGA (Congo) said that he would vote against the United States motion.

5. Mr. EVANS (United Kingdom) said he was in favour of the motion for a separate vote. He considered that the third sentence of paragraph 1 in particular embodied a mistaken principle, which was contrary to the interests of justice, and that it was, moreover, incompatible with the first sentence of the same paragraph, and with the provisions of paragraph 3. It was clearly stipulated that consuls could be called upon to give evidence and, at the same time, they were allowed to refuse with impunity. That contradiction introduced an element of confusion into the text, and might be harmful to the interests of innocent persons in matters that were not connected with the exercise of consular functions. Cases in which a person by giving evidence incurred a risk of physical injury by third parties were extremely rare, and there was no reason why a consular officer should enjoy in that connexion privileges refused to private persons. For all those reasons the United Kingdom delegation would vote against the last two sentences of paragraph 1.

6. Mr. PEREZ-CHIRIBOGA (Venezuela) said that he was in favour of the United States motion and reiterated his delegation's opinion that it was unacceptable to lay down an obligation and to provide for a refusal to comply with it with impunity in the following sentence. Contrary to the opinion expressed by the Norwegian representative, he did not see why consular officers should enjoy a privileged position with respect to the administration of justice. His delegation would accordingly vote against the two last sentences of paragraph 1.

7. Mr. HARASZTI (Hungary) said that he was against the United States motion, since it was essential that the right of consular officers to refuse to testify on matters relating to the exercise of their functions should be safeguarded by article 44. If the receiving State had the right to adopt measures of coercion or sanctions against a consular officer who refused to testify, the privilege envisaged in the article would be reduced to nothing. Admittedly, a consular officer should not refuse to testify, but the exemption provided in article 44 should be retained, and the individual concerned should not be made liable to coercive measures.

8. The PRESIDENT put to the vote the United States delegation's motion for a separate vote.

The motion was not adopted, 30 votes being cast in favour and 30 against, with 11 abstentions.

9. Mr. BOUZIRI (Tunisia) explained that he had voted for the United States motion, but reluctantly, since it went too far. His delegation would nevertheless like the last sentence of paragraph 1 to be eliminated, and he therefore asked for a separate vote on that sentence.

10. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the Conference had just defeated a motion for a separate vote on the last two sentences of the paragraph. The motion proposed by the Tunisian representative should therefore be regarded as inadmissible, since it referred to one of those two sentences; it would be tantamount to reopening the question and that would require a two-thirds majority under rule 33 of the rules of procedure. In any case, his delegation would oppose the motion.

11. Mr. KONSTANTINOV (Bulgaria) endorsed the comments of the Soviet Union representative and said that the Conference could not proceed to a second vote on a question that had already been decided.

12. Mr. AMLIE (Norway) also opposed the Tunisian motion, because the question had already been decided by the vote just taken.

13. Mr. BOUZIRI (Tunisia) pointed out that to vote separately on two sentences regarded as a whole and on one of them alone were two quite different operations. The purpose of his motion was quite different from that of the United States proposal; he thought it perfectly admissible.

14. Mr. KRISHNA RAO (India) thought that the Tunisian delegation was quite in order in proposing a motion for a separate vote on the last sentence of the

paragraph. His delegation, however, would vote against the motion, since it considered that consular officers should not be subjected to coercive measures.

15. Mr. EL KOHEN (Morocco) said he could not share the opinion of the Soviet Union representative, which would be valid only if it was intended to take a further vote on a question of substance. In fact, the matter was one of procedure under rule 36 of the rules of procedure. The Tunisian delegation was therefore perfectly justified in proposing its motion for a separate vote and his delegation would endorse it.

16. Mr. CHIN (Republic of Korea) and Mr. BARUNI (Libya) also considered the Tunisian motion to be admissible.

17. The PRESIDENT said that the Tunisian delegation's motion was different from that of the United States and was therefore admissible.

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

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

In favour: Ethiopia, Federation of Malaya, Finland, Iran, Ireland, Israel, Italy, Japan, Liberia, Libya, Liechtenstein, Luxembourg, Morocco, New Zealand, Pakistan, Philippines, San Marino, Sierra Leone, South Africa, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Brazil, Canada, China, Denmark, El Salvador.

Against: France, Federal Republic of Germany, Ghana, Guinea, Hungary, India, Indonesia, Mexico, Mongolia, Netherlands, Nigeria, Norway, Panama, Poland, Portugal Romania, Saudi Arabia, Spain, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Upper Volta, Venezuela, Yugoslavia, Albania, Algeria, Austria, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Colombia, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador.

Abstaining: Greece, Holy See, Republic of Korea, Laos, Argentina, Belgium, Cambodia, Chile, Costa Rica, Dominican Republic.

The motion by the Tunisian delegation was defeated by 36 votes to 33, with 10 abstentions.

18. Mr. PEREZ-CHIRIBOGA (Venezuela) said that he had voted against the Tunisian motion for a separate vote because if the last sentence of paragraph 1 were deleted, the remainder of the text would then imply *a contrario* that a consular officer could refuse to give evidence.

19. Mr. de ERICE y O'SHEA (Spain) explained that he had voted against the Tunisian motion for the reasons given by the Venezuelan representative.

20. The PRESIDENT put to the vote article 44 as a whole.

Article 44 was adopted by 63 votes to 7, with 6 abstentions.

21. Mr. ENDEMANN (South Africa) said that he had voted against article 44 because under paragraph 1 a consular officer could refuse to give evidence and consequently impede the course of justice.

Article 45
(Waiver of privileges and immunities)

22. Mr. BOUZIRI (Tunisia) said that his delegation could not agree that after having waived immunity from jurisdiction in respect of acts performed in the exercise of their functions consular officers might invoke immunity from measures of execution resulting from the judicial decision. When a judgement was final it became enforceable and a plea of immunity could not be entered. His delegation would therefore vote against paragraph 4, if put to the vote separately; if it were not it would abstain on article 45 as a whole.

23. Mr. de ERICE y O'SHEA (Spain) said that he shared the point of view of the Tunisian representative. It would be inadmissible to allow a consular officer, who had waived immunity from jurisdiction, to invoke immunity from measures of execution. Should article 45 be put to the vote as a whole, however, his delegation would vote for it.

24. Mr. BARTOŠ (Yugoslavia) pointed out that in many countries a distinction was made between immunity from jurisdiction and immunity from measures of execution of the judgement. One could perfectly well take place without the other. If, moreover, the judgement was enforceable, a government would not fail to take the necessary steps to oblige the consular officer to accept execution of judgement. The Yugoslav delegation was accordingly opposed to the elimination of paragraph 4, which might result from a separate vote.

25. Mr. PEREZ-CHIRIBOGA (Venezuela) drew attention to the fact that paragraph 3 of article 45 contained a reference to article 43. The wording of the two articles should therefore be brought into line by making article 45 refer to " consular officers " and not to " members of the consular post ".

26. The PRESIDENT said that the drafting committee would bring the two articles into line.

Article 45 was adopted by 71 votes to none, with 1 abstention.

Article 46 (Exemption from registration of aliens, and residence permits)

Article 46 was adopted by 74 votes to none, with 1 abstention.

Article 46 A (Exemption from work permits)

27. Mr. SPYRIDAKIS (Greece) requested a separate vote on article 46 A, paragraph 2. As had been stated in the Second Committee, the exemption granted by the paragraph to the private staff of consular officers went too far and it was evident that it might cause difficulties in the receiving State. Moreover, practice had proved that it was highly improbable that the authorities of the receiving State would deny the issue of work

permits for the private staff of a consular or diplomatic mission, though an exemption such as that stipulated in paragraph 2 of article 46 A did not as yet exist. Besides, the Convention on Diplomatic Relations did not provide for such an exemption in the case of the private staff of diplomatic missions.

28. For all those reasons the exemption given to the private staff of consulates under the provision in question seemed paradoxical and illogical; he could not see why the private staff of a consulate should be placed in a more favourable position than the private staff of diplomatic missions.

29. Mr. DEJANY (Saudi Arabia), Mr. KAMEL (United Arab Republic) and Mr. HART (United Kingdom) supported the Greek representative's motion for a separate vote.

30. Mr. KEVIN (Australia) also supported that motion. The Conference was showing a regrettable tendency to treat consular officers more favourably than diplomatists. That tendency should be resisted and the elimination of article 46 A, paragraph 2, would provide an opportunity.

31. Mr. HARASZTI (Hungary), Mr. KONSTANTINOV (Bulgaria) and Mr. KRISHNA RAO (India) opposed the motion for a separate vote.

The motion for a separate vote on article 46 A, paragraph 2, was defeated by 36 votes to 29, with 13 abstentions.

Article 46 A was adopted by 66 votes to 4, with 9 abstentions.

32. Mr. PEREZ-CHIRIBOGA (Venezuela) explained that he had abstained for the reasons stated by the Australian representative.

33. Mr. KEVIN (Australia) expressed doubts as regards article 46 A, which had just been adopted. The application of the provisions of that article to members of the private staff of consular officers might prove difficult.

Article 47 (Social security exemption)

Article 47 was adopted unanimously.

Article 48 (Exemption from taxation)

34. Mr. de ERICE y O'SHEA (Spain) said that his amendment to article 48 (A/CONF.25/L.28) was a matter of form. Many States drew a distinction between income and capital gains, which were not regarded as private income. Spain considered that capital gains having their source in the receiving State should be regarded as private income and subject to dues and taxes like private income.

35. Mr. VAZ PINTO (Portugal) supported the Spanish amendment.

36. Mr. STRUDWICK (United Kingdom) said he would vote for the Spanish amendment. His delegation accepted all the provisions of article 48 except that exempting members of the private staff in the employ of consular officers from dues and taxes on their wages. Members of the private staff in the receiving State who, as nationals of or permanent residents in that State, enjoyed the privileges and immunities provided in article 69 would be entirely exempt from taxes and dues and would thus be more favourably placed than diplomatic agents or consular officers. His delegation would therefore move that a separate vote be taken on the phrase " and members of the private staff in the sole employ of members of the consular post ", in paragraph 2 of article 48. If his motion for division was defeated his delegation would abstain from the vote on article 48 as a whole.

37. Mr. MEYER-LINDENBERG (Federal Republic of Germany) and Mr. ALVARADO GARAICOA (Ecuador) said that they would vote for the Spanish amendment and would support the United Kingdom motion for a separate vote.

38. Mr. HENAO-HENAO (Colombia) said that his delegation welcomed the Spanish amendment. The United Kingdom's motion for a separate vote might perhaps be avoided if the phrase concerned were deleted and if paragraph 2 were to begin with the words " Subject to the provisions of article 69 . . ."

39. Mr. GIBSON BARBOZA (Brazil), Mr. SPYRIDAKIS (Greece) and Mr. SICOTTE (Canada) supported the Spanish amendment.

The Spanish amendment (A/CONF.25/L.38) was adopted by 70 votes to none, with 7 abstentions.

40. M. ZABIGAILO (Ukrainian Soviet Socialist Republic) opposed the United Kingdom motion for a separate vote. He supported paragraph 2 as drafted by the International Law Commission.

41. Mr. KAMEL (United Arab Republic) and Mr. BANGOURA (Guinea) supported the United Kingdom motion for a separate vote.

42. The PRESIDENT put to the vote the United Kingdom motion for a separate vote on paragraph 2 of article 48.

The motion was carried by 53 votes to 14, with 9 abstentions.

43. The PRESIDENT asked the Conference to decide whether to retain the phrase " and members of the private staff in the sole employ of members of the consular post " in paragraph 2 of article 48.

It was decided, by 45 votes to 23, with 10 abstentions, to delete that phrase.

Article 48, as amended, was adopted by 78 votes to 1.

44. Mr. SILVEIRA-BARRIOS (Venezuela) said that he had voted against the adoption of article 48 because it granted members of the families of consular officers and employees an exemption from taxation that was not justified.

Article 49
(Exemption from customs duties and inspection)

45. Mr. KRISHNA RAO (India) pointed out that under article 49 of the International Law Commission's draft the receiving State, in accordance with such laws

and regulations as it might adopt, permitted entry of and granted exemption from all customs duties, taxes, and related charges on articles for the personal use of a consular official or members of his family, including articles intended for his establishment. Paragraph 2 of the same draft provided that consular employees, except those belonging to the service staff, should enjoy the same immunities in respect of articles imported at the time of first installation. The word " export " had been added to paragraph 1 by the Second Committee on the proposal of the Polish representative. The purpose of the Polish proposal was to enable the consular officer, when his mission came to an end, to take away the articles he had acquired in the receiving State during the period of his mission. The Second Committee had also added in paragraph 2 the words " or exported thereafter " and had asked the drafting committee to prepare the final version.

46. Some members of the drafting committee had pointed out that if it was desired to extend the exemption in respect of articles acquired in the receiving State to consular employees, it would be better to state expressly in paragraph 2 " or articles acquired during their mission and exported thereafter ". The drafting committee had not thought it necessary to make that amendment, but he wished to call the Conference's attention to the point.

47. Mr. DADZIE (Ghana) said that consular employees could export only the articles they had imported at the time of first installation, as laid down in article 37 of the 1961 Vienna Convention in respect of administrative and technical staff. The word " export " in the English text of paragraph 1 of article 49 of the draft had a wider meaning than the word " entry ", and the facilities granted were therefore greater than those enjoyed by the staff of diplomatic missions. He proposed that the Conference should vote separately on the words " and export " in paragraph 1 and on the words " or exported thereafter " in paragraph 2. His delegation would vote for their deletion.

48. Mr. DE CASTRO (Philippines) said that he was afraid that paragraph 3 might give rise to misunderstandings between the sending State and the receiving State. The draft did not set any limits to the number of entries and if the baggage arrived after the consular officer, the inspection which, also according to paragraph 3, should " be carried out in the presence of the consular officer or member of his family concerned " might occasion difficulties. The view might be taken that a consular officer arriving in the territory of the receiving State should not take offence if the customs authorities requested him to open his baggage. His delegation requested a separate vote on paragraph 3.

49. Mr. CAMERON (United States of America) agreed with the representative of Ghana. The text of article 49 granted wider facilities to consular officers and employees than to diplomatic agents and administrative and technical staff. The United States delegation supported the Philippine motion for a separate vote on paragraph 3.

50. Mr. TILAKARATNA (Ceylon) agreed with the United States representative. In his opinion, the word " exported " in paragraph 2 had a commercial connotation; the consular employee should be allowed to take away only the articles he had brought with him when he first arrived in the receiving State. That right was implicit and it would be difficult for the receiving State to contest it. Either the words should be deleted or the drafting committee should be asked to find a formula that would leave no room for doubt.

51. Mr. DEJANY (Saudi Arabia) said that his delegation could not approve of such extensive exemptions as those provided under article 49, especially in paragraph 1 (*b*), which went beyond established usage and were not necessary for the proper performance of their functions by consular officers. Consular employees could be entitled only to such exemptions as were granted to them by the laws and regulations of the receiving State. Paragraph 3 also granted to consular officers many more privileges than those recognized by international law, and his delegation could agree to the grant of those privileges only on one occasion — namely, at the time of first entry.

52. Mr. KEVIN (Australia) considered that the adoption of the words " or exported thereafter " was liable to raise difficulties for the administrative authorities of the receiving State. A consular employee might purchase certain articles, a motor-car for instance, and at the time of his departure, when he was exporting it, claim customs rebate. That would be an excessive privilege.

53. Mr. SILVEIRA-BARRIOS (Venezuela) requested a separate vote on paragraph 2.

54. Mr. RUEGGER (Switzerland) hoped that the Conference would avoid including in the convention provisions that might prevent some States signing or ratifying it. The instrument should be capable of receiving the accession of the largest possible number of States, and, it was to be hoped, would be of universal application. The Conference should carefully weight the consequences of adopting an article such as that under discussion and paragraph 3 in particular, under which excessive privileges were given to consular officers and members of their families.

55. Mr. WASZCZUK (Poland) recalled that draft article 49 had been modified in accordance with an amendment (A/CONF.25/C.2/L.119) submitted by his delegation and adopted by the Second Committee. The International Law Commission's draft did not go far enough and the Polish delegation had considered it necessary to provide specific safeguards for the exemption from all export dues or taxes of articles the consular officer or employee might have acquired during his tour of duty in the receiving State. The article was perhaps capable of improvement, and he asked for the addition in paragraph 2 of the words " and acquired in the receiving State " after the word " installation ".

56. Mr. BARTOŠ (Yugoslavia) said that he would be prepared to support the Polish amendment, but it should be drafted more clearly.

57. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) noted that paragraph 3 was based on the corresponding provisions of the 1961 Convention. To submit the personal luggage of consular officials to customs inspection was inconceivable and by eliminating that obligation, which implied a certain distrust of persons assuming official functions, the Conference would contribute to the development of international law. His delegation would vote against the motions for separate votes on article 49.

58. Mr. KEVIN (Australia) said that paragraph 2 caused him some concern. Should that paragraph be adopted consular employees would enjoy excessive privileges. The Polish proposition could give rise to abuse.

59. Mr. WASZCZUK (Poland) said that in his view the exemptions provided were not exceptional. The amendment he had submitted orally could be improved as suggested by the Yugoslav representative. He asked for an adjournment of the discussion to enable him to submit a more precise text at the next meeting.

The meeting rose at 1 p.m.

SEVENTEENTH PLENARY MEETING

Friday, 19 April 1963, at 3.15 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 49 (Exemption from customs duties and inspection) (*concluded*)

1. The PRESIDENT invited the Conference to resume its consideration of article 49 of the draft convention.

2. Mr. WASZCZUK (Poland) said that since the previous meeting his delegation had carefully considered the motion by Ghana for separate votes on the words " and export " in paragraph 1 and the words " or exported thereafter " in paragraph 2. It was clear that on returning to his country of origin, a consular officer or employee should be permitted to export, without difficulty, any articles he had imported for his establishment. Since the receiving State had agreed to the importation of those articles at the time of establishment, it should also permit their exportation on the departure of the person concerned. During the discussion in the Second Committee, the Polish delegation had submitted a written amendment to paragraph 1 and an oral amendment to paragraph 2; but the Committee had left the wording of the text to the drafting committee, which had been unable to settle the matter satisfactorily. In the circumstances, his delegation would not oppose the motion for a separate vote on the words " or exported thereafter " in paragraph 2 relating to consular employees, and would withdraw the oral amendment to paragraph 2 which it had submitted at the previous meeting. He could not support the motion for a separate vote on the words " and export " in paragraph 1: no obstacle should be placed in the way of re-export by a consular officer of the articles referred to in sub-paragraphs (*a*) and (*b*).

3. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that that committee had naturally been unable to deal with the matter referred to by the Polish representative, since it was a point of substance. That was clearly indicated by the motion for a separate vote.

4. Mr. TILAKARATNA (Ceylon) said that his delegation had opposed the use of the words " import " and " export " in paragraph 1. It favoured a provision on the lines of article 36, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations, which provided that the receiving State should permit " entry " of the articles in question. The term " import " had a completely different connotation.

5. As to the re-export of the articles on the departure of the consular officer concerned, he could not conceive of any restriction being placed on it by a receiving State which had permitted their entry for the consular officer's establishment. In any event, the condition " in accordance with such laws and regulations as it [the receiving State] may adopt " would permit the receiving State to limit the quantity or value of the articles exported. In the circumstances, the words " and export " were quite unnecessary, and his delegation supported the motion for a separate vote on them.

6. The words " or exported thereafter ", in paragraph 2, lacked clarity. The intention was that articles which had been brought into the country by a consular employee should be re-exportable when he finally left the country. It was obviously not intended that a consular employee should, for example, be able to take a car with him when going on holiday and sell it outside the receiving State. All delegations recognized the basic right of both consular officers and consular employees to re-export articles they had brought into the receiving State at the time of their establishment.

7. Mr. DADZIE (Ghana) thanked the Polish representative for his supporting his motion for a separate vote on the words " or exported thereafter " in paragraph 2, and regretted that he had been unable to adopt the same attitude regarding the words " and export " in paragraph 1. It would be undesirable for the convention on consular relations to be more liberal than the Convention on Diplomatic Relations. A diplomatic agent was entitled to exemption only in respect of the entry of the articles in question, whereas under article 49 a consular officer would be granted exemption in respect of both import and export. For those reasons, his delegation maintained its motion for a separate vote on the words " or export " in paragraph 1.

8. Mr. ENDEMANN (South Africa) endorsed the arguments of the representatives of Ghana and Ceylon. The terms " import " and " export " were normally used

in English in connexion with business transactions. The words " permit import and export " in paragraph 1 could therefore be construed as giving a consul the exemption for a private import and export business. It was for that reason that the Convention on Diplomatic Relations merely referred to the " entry " of the articles in question. There was of course no intention of preventing the person concerned from taking his belongings back to his country. The purpose of those who supported the motion for a separate vote was to avoid the use of terms that could be misinterpreted.

9. Mr. MARESCA (Italy) observed that the provisions of article 49 introduced an innovation. Existing international law granted a consul exemption from customs duties and inspection only in respect of articles intended for his establishment. The provisions of article 49 went much further and, for his part, he would welcome a liberalization of the existing rules. There should, however, be a limit to such liberalization. The articles covered by the exemption should be those necessary for the daily life of the consular officer and his family; they should be consumed in the receiving State or taken back to his country on his repatriation. There would be no justification for authorizing a consul to export articles free of duty at any time during his period of residence in the receiving State. Among other objections, the export of works of art, for instance, was prohibited in many countries. If a consul happened to be a wealthy man and could purchase works of art, it would be quite inadmissible that he should be able to export them in defiance of a general prohibition. For those reasons, his delegation would vote in favour of the motion for separate votes and against the words " and export " in paragraph 1 and " or exported thereafter " in paragraph 2.

10. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he could not understand the concern expressed by some delegations regarding the use of the words " and export " in paragraph 1. Those words must be understood in the context of sub-paragraphs (*a*) and (*b*) which followed. Sub-paragraph (*a*) referred to articles for the official use of the consular post. He could see no harm in such objects as flags and coats-of-arms being freely exported. Sub-paragraph (*b*) referred to articles for the personal use of a consular officer or members of his family, and specified that articles intended for consumption must not exceed the quantities necessary for direct utilization by the persons concerned. It was therefore obvious that the provisions in question could not possibly be used as a cover for business transactions. His delegation accordingly opposed the motion for a separate vote on the words " and export " in paragraph 1. It did not, however, object to a separate vote on the words " or exported thereafter " in paragraph 2.

11. Mr. ALVARADO GARAICOA (Ecuador) supported the motion for division of the text. Such terms as " import " and " export " were entirely inappropriate. The appropriate words in Spanish were " entrada " and " salida ".

12. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that there appeared to be some slight difference in meaning between the words used in the various languages. The word used for " export " in Russian did not imply a business operation.

13. Mr. de ERICE y O'SHEA (Spain) opposed the motion for division of the text. If the reference to " export " were to be deleted, obstacles might well be placed in the way of a consul taking his furniture and effects back to his own country.

14. Mr. DADZIE (Ghana) urged that decisions should be taken on his delegation's two motions for separate votes. If, as he hoped, the words " and export " were deleted from paragraph 1, the Conference could then consider replacing the word " import " by the word " entry ", which was used in article 36 of the Convention on Diplomatic Relations.

15. Mr. WESTRUP (Sweden), Mr. KRISHNA RAO (India), Mr. GIBSON BARBOZA (Brazil) and Mr. ALVARADO GARAICOA (Eduador) supported that suggestion.

16. The PRESIDENT put to the vote the motion for a separate vote on the words " and export " in paragraph 1.

The motion was carried by 48 votes to 20, with 9 abstentions.

The words " and export " were rejected by 46 votes to 23, with 11 abstentions.

17. Mr. GIBSON BARBOZA (Brazil) proposed that the word " import " in paragraph 1 should be replaced by " entry " in the English text, " entrée " in the French text and " entrada " in the Spanish text.

18. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that there appeared to be no difficulty with the Russian text, but he proposed that the matter should be referred to the drafting committee.

19. The PRESIDENT said that, if there were no objection, he would consider that the Conference agreed to the proposals made by the representatives of Brazil and the Union of Soviet Socialist Republics.

It was so agreed.

20. The PRESIDENT said that, in the absence of any objection, he would consider that the Conference agreed to the proposal by the representative of Ghana that a separate vote be taken on the words " or exported thereafter " in paragraph 2.

It was so agreed.

The words " or exported thereafter " were rejected by 68 votes to 2, with 9 abstentions.

21. The PRESIDENT drew attention to the Venezuelan motion for a separate vote on paragraph 2 as a whole, which had been submitted at the previous meeting.

22. Mr. SILVEIRA-BARRIOS (Venezuela) said that, even after the deletion of the words " or exported thereafter ", he maintained his motion for a separate vote.

23. Mr. HEPPEL (United Kingdom) and Mr. KRISHNA RAO (India) opposed the motion.

24. Mr. DEJANY (Saudi Arabia) supported the motion.

The motion for a separate vote on paragraph 2 was defeated by 60 votes to 9, with 8 abstentions.

25. The PRESIDENT recalled that, as the previous meeting, the representative of the Philippines had moved that a separate vote be taken on paragraph 3.

26. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) and Mr. ALVARADO GARAICOA (Ecuador) opposed the motion.

27. Mr. TÜREL (Turkey) supported the motion.

The motion for a separate vote on paragraph 3 was defeated by 40 votes to 26, with 13 abstentions.

Article 49 as a whole, as amended, was adopted by 76 votes to 2, with 4 abstentions.

28. Mr. TILAKARATNA (Ceylon) said that he had voted against the words " and export of " in paragraph 1 and against the words " or exported thereafter " in paragraph 2. The deletion of those words would not deprive consular officials and employees of the right to take away articles imported for their personal use when they left the receiving State.

29. Mr. DE CASTRO (Philippines) said that he had abstained from voting for the reasons he had given when proposing a separate vote on paragraph 3.

30. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted against article 49 as a whole because he did not consider that consular employees should be granted exemption from customs duties. His views had been fully explained in the Second Committee.

31. Mr. TÜREL (Turkey) said he had voted against article 49 because the exemption provided by paragraph 2 was too wide. His government would find it unacceptable and would not apply it.

Article 50 (Estate of a member of the consular post or of a member of his family)

Article 50 was adopted unanimously.

32. Mr. ALVARADO GARAICOA (Ecuador) suggested that article 50 should be referred to the drafting committee as it contained the word " export " which had been deleted from article 49.

33. Mr. de ERICE y O'SHEA (Spain) pointed out that articles 49 and 50 dealt with entirely different situations. In article 49 the word " export " had referred to articles taken out of the country by a consular official and his family on leaving his post. Article 50 dealt with the removal of property on the death of a member of the consular post or of a member of his family; it would be only fitting to allow the family to take away such property.

34. Mr. GIBSON BARBOZA (Brazil) agreed with the representative of Spain.

35. Mr. KRISHNA RAO (India) thought it would be advisable to refer the article to the drafting committee. The 1960 draft of the convention had used the word " withdrawal " and the word " export " had been introduced because it appeared in article 49.

36. Mr. ALVARADO GARAICOA (Ecuador) agreed that the word " export " was acceptable in the text of article 50 and withdrew his suggestion.

37. Mr. DADZIE (Ghana), supported by Mr. CAMARA (Guinea), said that the Indian representative had made a useful comment and that nothing would be lost by referring the article to the drafting committee.

It was so agreed.

Article 51
(Exemption from personal services and contributions)

Article 51 was adopted unanimously.

Article 53 (Beginning and end of consular privileges and immunities)

38. The PRESIDENT noted that article 52 had been deleted [1] and invited the Conference to consider article 53.

39. Mr. EVANS (United Kingdom) proposed that, in paragraph 1, the words " from the moment when his appointment is notified to the Ministry for Foreign Affairs or to the authority designated by that Ministry " should be replaced by the words " from the moment when he enters on his duties with the consular post ". Article 53 should be considered in conjunction with article 23, paragraph 3, which provided that a person appointed as a member of a consular post could be declared unacceptable " before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post ", and also with article 19, paragraph 2, which provided that " the full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of article 23 ". It followed that the date from which the consular officer was entitled to enjoy privileges and immunities was not the date of notification under article 19, but the date of entering on his duties referred to in article 23.

40. Mr. VAN HEERSWIJNGHELS (Belgium) suggested that the words " or from the date of their entry into the territory of the receiving State " in paragraph 2 were rendered unnecessary by the reference to paragraph 1.

41. Mr. BARTOŠ (Yugoslavia) suggested that the United Kingdom representative be invited to submit his amendment in writing. He did not oppose the Belgian amendment, which was a drafting matter.

42. Mr. KRISHNA RAO (India) was in favour of deferring the discussion as he had not fully understood the United Kingdom representative's reasoning. He could not support the Belgian proposal because, whereas paragraph 2 referred only to the entry of members of the

[1] The First Committee had decided at its thirty-first meeting to delete article 52, and to request the drafting committee to prepare an optional protocol concerning acquisition of nationality.

family, in paragraph 1 the entry of the member of the consular post was linked with other considerations.

43. Mr. DADZIE (Ghana) said that the United Kingdom representative had raised an important point which needed careful consideration. He would have no objection to deferring the discussion of article 53.

44. Mr. KHLESTOV (Union of Soviet Socialist Republics) thought that the Belgian amendment should also be submitted in writing.

45. The PRESIDENT suggested that the discussion of article 53 should be deferred so that the amendments submitted by the United Kingdom and Belgium could be submitted in writing.

It was so agreed.

Article 54 (Obligations of third States)

46. Mr. ENDEMANN (South Africa) moved that a separate vote be taken on the words " or making other official journeys " in paragraph 1. The Polish amendment (A/CONF.25/C.2/L.141) discussed in the First Committee had included the qualifying words " to the sending State ", but the Committee had adopted the shorter phrase appearing in the article. " Other official journeys ", unless they were made in connexion with consular functions or on returning to the sending State, did not come within the scope of the convention. When the amendment had been submitted in the First Committee, it had been pointed out, by way of example, that many consular officers had come to the present conference direct from a consular post. In fact, however, they had come not in their consular capacity, but as delegates to an international conference. As the representative of Canada had said in the First Committee (thirty-third meeting), the International Law Commission would be studying the question of *ad hoc* official journeys, and the inclusion of the words in question would go beyond the purpose of a convention on consular relations.

47. Mr. PAPAS (Greece) said that, in the First Committee, his delegation had opposed the grant of immunities to the consular officers of a third country while in transit. The practice of a few States could not be invoked to justify such a course. Moreover, even in the case of diplomatic agents in transit, the question whether they should enjoy certain immunities was a controversial one. Article 54 introduced a completely new rule, which went beyond the limits of codification, and his delegation would accordingly abstain from voting on that article.

48. Mr. LEE (Canada) opposed the inclusion of the phrase, as his delegation had done in the First Committee: he considered it unnecessary and unacceptable. A consular officer received by a third State in that capacity would be accorded the privileges and immunities provided by the preceding articles of the convention. If he went to a third State on a special mission, he would be accorded the privileges and immunities customary in international practice for special missions. Whether he were a diplomatic or a consular agent the mission would still be *ad hoc* and he should not be granted the rights and privileges provided by the consular convention. The International Law Commission would be reconsidering the question with a view to codification, but it was not within the competence of the present conference. He therefore supported the motion for a separate vote and would vote against the words in question.

49. Mr. NALL (Israel) said that, during the debate on article 54 at the 33rd meeting of the First Committee, his delegation had expressed its satisfaction at the adoption by the Second Committee of the provision on *ad hoc* couriers appearing in article 35, paragraph 6. It had drawn attention to the desirability of co-ordinating that provision with article 54, paragraph 3, and had stated that as the matter could be treated as a consequential amendment, it would not make a formal proposal. The Chairman of the First Committee had said that if article 54, paragraph 3, were adopted, the drafting committee could take the Second Committee's decision into account and his delegation had accepted that statement.

50. He pointed out that article 1 contained no definition of the term " consular courier ", although article 35, paragraph 1, stated that " in communicating with the government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers . . ." Those words referred to career consular couriers as distinct from the *ad hoc* or occasional couriers referred to in paragraph 6 of the same article.

51. There was no mention of *ad hoc* couriers in article 54. That omission was particularly regrettable because the term " consular couriers " could only be interpreted with reference to article 35, paragraph 1, which referred to career consular couriers. It could not be assumed that article 54 should be extended to include the *ad hoc* couriers specifically referred to in article 35, paragraph 6. The Second Committee had attached the greatest importance to protecting *ad hoc* couriers, as was clear from the fact that article 35, paragraph 6, had been adopted as an amendment to the International Law Commission's draft. If the omission was due to a consensus of opinion in the drafting committee that the term " consular courier " in article 54 should be understood to include *ad hoc* couriers, he would be grateful if the chairman of the drafting committee would confirm the fact.

52. Mr. KRISHNA RAO (India), chairman of the drafting committee, confirmed that that committee had considered the question raised by the representative of Israel and had agreed that the term " consular courier " included *ad hoc* consular couriers.

53. Speaking as the representative of India, and referring to the words " or making other official journeys ", he said that very few international agreements dealt with that question, because consular immunities, unlike diplomatic immunities, were usually regulated by bilateral conventions which were not concerned with third States. The convention should therefore provide for other official journeys if they were made in the course of official duty. The International Law Commission, in

paragraph 2 of its commentary on article 54, listed the kinds of journey for which third States should grant immunities. He supported the motion for a separate vote on the words " or making other official journeys ".

54. Mr. HEPPEL (United Kingdom) said that in the First Committee the United Kingdom delegation had opposed the inclusion of the words " or making other official journeys "; he agreed with other speakers that such journeys were not made in a consular capacity and were in any case difficult to define. The journeys which should be covered by the article were those between the sending State and the consular officer's post. As he recalled it, the reason for the Polish amendment referred to by the South African representative was that the preceding words " when returning to the sending State " were too limited and appeared to cover only the return home at the end of a mission. But since the First Committee had voted to delete the words " to the sending State " from the Polish amendment, it no longer served its original purpose. The words " or making other official journeys " were an unnecessary extension of the corresponding provision in the diplomatic convention and the intention of article 54 would be clear without them. He therefore supported the motion for a separate vote on these words.

55. Mr. MARESCA (Italy) said that article 54 was one of the most important in the convention, since the other provisions might be covered by bilateral agreements, but the obligations of third States could only be dealt with in a multilateral convention. Nevertheless, the solution of the problem must be kept within the framework of consular relations. A consular officer was entitled to protection under the convention by a third State only when he was exercising consular functions; a convention on consular relations could not establish rules for travel on other missions. The Italian delegation was therefore in favour of deleting the words " or making other official journeys ".

56. Mr. ABDELMAGID (United Arab Republic) agreed that the official journey on which consular officers were entitled to claim protection from a third State should only be those relating to consular functions. He would therefore support the proposal for a separate vote on the words in question.

57. His delegation had abstained from voting on article 54, paragraph 4, in the First Committee. It would not, however, ask for a separate vote on that paragraph.

58. Mr. DADZIE (Ghana) said he could not agree that the obligations of a third State under article 54 related only to consular officers passing through its territory or in its territory while proceeding to take up or return to their posts, or to return to their own country. The Conference itself provided a good example of a case in which a number of consular officers had made official journeys to a third State in order to represent their countries. Moreover, article 17, paragraph 2, referred to other official journeys on which a consular officer was entitled to claim protection from a third State. His delegation was therefore opposed to a separate vote.

59. Mr. WASZCZUK (Poland) also opposed the South African motion. The words in question made good an omission from the International Law Commission's draft, since consular officers might be obliged to make official journeys other than those specified in paragraph 2 of the commentary on article 54. For instance, they might be recalled to their capital for consultation with the Minister for Foreign Affairs; some countries arranged meetings of consular officers to exchange experience of consular work; and conferences in various countries were sometimes attended by consular officers. It was essential to guarantee the necessary privileges and immunities for those officers; the present conference clearly showed that need.

60. Mr. KIRCHSCHLAEGER (Austria) said that his delegation was strongly in favour of retaining the reference to " other official journeys ". The consular officers of his country were often obliged to pass through third States when travelling from their posts to consult a superior residing in another country, or even when travelling from one post to another in the same consular district. They should be accorded the same protection during such journeys as they received when travelling to and from the sending State.

61. Mr. WESTRUP (Sweden) supported the addition of the phrase in question to the original text. Although there was no corresponding provision in the Convention on Diplomatic Relations, the purpose of the Conference was not only to codify existing rules, but also to contribute to the progressive development of international law; in his delegation's opinion, the phrase in question was a contribution to that development.

62. Mr. CAMERON (United States of America) said he would vote against the phrase. While consular officers travelling through third States should enjoy some privileges and immunities, provision for official journeys other than those already specified should be made by special agreement. In the case of the present conference, for example, two consuls-general serving elsewhere in Europe were members of the United States delegation, but neither of them were acting under a consular commission or in a consular capacity; the United States delegation did not consider that the privileges and immunities extended to them should be those laid down in a general multilateral convention on consular relations.

63. Mr. TORROBA (Spain) reiterated the view advanced by his delegation in the First Committee that the words " or making other official journeys " should be retained, since they would benefit all consular officers.

64. Mr. USTOR (Hungary) considered those words a useful addition and clarification. He would vote against the South African motion and, if it were carried, in favour of retaining the reference to " other official journeys ".

The South African motion for a separate vote was carried by 34 votes to 30, with 12 abstentions.

65. The PRESIDENT put to the vote the words " or making other official journeys " in paragraph 1.

The result of the vote was 34 in favour and 31 against, with 13 abstentions.

The words were not adopted, having failed to obtain the required two-thirds majority.

Article 54, as a whole, as amended, was adopted by 72 votes to none, with 4 abstentions.

66. Mr. DE CASTRO (Philippines) explained that he had abstained from voting on the article because paragraph 3 accorded special inviolability to consular couriers. In connexion with article 35, his delegation had explained that, under Philippine law, that inviolability was limited exclusively to the exercise of the courier's functions, and could not be extended to a courier who committed unlawful acts. The chairman of the drafting committee had reinforced his delegation's views on the matter by stating that the term " consular couriers " should be understood to include *ad hoc* consular couriers.

Article 55 (Respect for the laws and regulations of the receiving State)

Article 55 was adopted unanimously.

Article 55 A
(Insurance against third party risks) [2]

Article 55 A was adopted unanimously.

Article 56 (Special provisions concerning private gainful occupation) [3]

Article 56 was adopted unanimously.

Report of the credentials committee

67. The PRESIDENT invited the Conference to consider the report of the credentials committee (A/CONF.25/L.37).

68. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation felt obliged to restate the position of the Soviet Union with regard to the credentials of the Chiang Kai-shek group. The only valid credentials for representatives of China were those issued by the Government of the People's Republic of China. Although his delegation was in favour of approving the report of the credentials committee, it wished to stress its view that the participation of members of the Chiang Kai-shek group at the Conference was illegal.

69. Mr. PUREVJAL (Mongolia) said that, although he, too, was in favour of approving the report of the credentials committee, he felt obliged to state that his country could not recognize the credentials of the Chiang Kai-shek group, which was participating in the Conference on an illegal basis. The only legitimate representatives of China were those authorized by the Government of the People's Republic of China.

70. Mr. CHIN (Republic of Korea) considered that the remarks of the preceding speakers, questioning the credentials of the delegation of China, were out of order. Since those credentials had been issued by the competent authorities of the Republic of China in accordance with rules 3 and 4 of the rules of procedure, their authenticity was unquestionable.

71. Mr. HOANG XUAN KHÔI (Republic of Viet-Nam) said that his delegation was in favour of approving the report of the credentials committee and, in particular, the credentials of the delegation of China. From the purely legal point of view, that delegation had been duly vested full powers by its government, which had been invited to participate in the Conference under General Assembly resolution 1685 (XVI). Moreover, the Republic of China was a real democracy, and its government was legitimate, since it corresponded to the aspirations of the great Chinese people ; that people was traditionally peace-loving, and could be represented only by the government which was a founder Member of the United Nations, not by authorities which showed their contempt for peaceful co-existence by perpetrating acts of aggression against a neighbouring country. In view of China's spiritual heritage, of which all Asia should be proud, its people could not freely agree to be governed by a clique imposing a foreign ideology diametrically opposed to their own.

72. Mr. CAMERON (United States of America) was in favour of approving the report of the credentials committee. His delegation considered that the action taken by the committee with regard to the representation of China was entirely correct, for the question of participation in the Conference had been settled by General Assembly resolution 1685 (XVI), under which all States Members of the United Nations and the specialized agencies and States parties to the Statute of the International Court of Justice had been invited to participate. The Republic of China was a Member of the United Nations and the specialized agencies, its government represented China in all international organizations, and it alone was entitled to represent China at the Conference.

73. Mr. DE CASTRO (Philippines) expressed the view that the Republic of China alone was entitled to represent the Chinese people at the Conference. He was in favour of approving the report of the credentials committee.

74. Mr. WU (China) expressed his gratification at the report of the credentials committee, which had acted wisely in resisting attempts to question the legality of his delegation's credentials. While he was glad that the report as a whole would probably be approved unanimously, he regretted that the delegations of certain countries had again taken the opportunity of using the Conference as a political forum for their propaganda. The suggestion that his delegation's credentials were not in order because they were not issued by the communist regime in China was absurd; his government had been invited to attend the Conference under a General Assembly resolution, and his delegation had full powers issued by the President and the Minister for Foreign Affairs. Such suggestions were, in fact, a challenge to the General Assembly resolution, which constituted the terms of reference of the Conference itself, and were illegal and

[2] Formerly paragraph 3 of article 43.

[3] The drafting committee had decided to merge the additional article adopted by the Second Committee at its forty-fourth meeting with article 56.

out of order. It had also been asserted that his government and delegation did not represent the Chinese people. He was glad that that question had been raised; conditions on the Hong Kong border, the fact that over 14,000 Chinese communist soldiers had chosen to settle in Taiwan in 1954 and the continuous stream of political refugees fleeing from the mainland of China to Taiwan offered ample proof of who really represented the Chinese people. He had made his statement in exercise of his right of reply, and hoped that the dignity of the Conference would be upheld during the remainder of the debate.

75. Mr. NESHO (Albania) pointed out that his delegation had stressed, at the first plenary meeting, that a conference engaged in preparing an international instrument must include all the sovereign States in the world which supported its humanitarian purposes. The Albanian delegation had then proposed that the Conference should immediately decide to exclude the representatives of the Chiang Kai-shek group and admit the representatives of the People's Republic of China, who were alone qualified to represent the Chinese people. It had also urged the admission of the German Democratic Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam to participation in the Conference. To deny participation to the representatives of one-quarter of the world's population was a violation of the most elementary rules of international law; the Albanian delegation therefore considered the credentials of the Chiang Kai-shek group to be unacceptable.

76. Mr. ROSZAK (Poland) said his delegation would vote for approval of the report of the credentials committee in order to maintain the harmony that had hitherto prevailed at the Conference; but it reserved its position with regard to the credentials of the private persons from Taiwan who were usurping the rightful place of the representatives of the People's Republic of China, the only legitimate representatives of the great Chinese people. Most of the countries represented at the Conference maintained diplomatic relations with the People's Republic of China, and only that State was qualified to undertake international obligations on behalf of the Chinese people.

77. Mr. SRESHTHAPUTRA (Thailand) said there was no reason to object to the presence at the Conference of the representatives of the Republic of China, which was a Member of the United Nations and had been invited to attend the Conference under General Assembly resolution 1685 (XVI). It was also clear from the report of the credentials committee that the credentials of the Republic of China had been issued in accordance with rule 3 of the rules of procedure, and were in proper order.

78. Mr. SILVEIRA-BARRIOS (Venezuela) said he was in favour of approving the report of the credentials committee.

79. Mr. HEPPEL (United Kingdom) said that his delegation was in favour of approving the report of the credentials committee, but wished to put it on record that his delegation would vote for it solely on the ground that the credentials concerned were, considered as documents, in order. Approval did not therefore necessarily imply recognition of the issuing authorities.

80. With regard to paragraph 7 of the report, he reserved his government's position on the credentials of the Hungarian delegation.

81. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said the fact that the People's Republic of China had been debarred from participating in international conferences and organizations was contrary to the United Nations Charter and to the principles of equal rights and state sovereignty. Under international law, the Government of the People's Republic of China was alone entitled to represent China at the Conference, since it was the only government which legally and effectively controlled the country with the support of the people. Although the Ukrainian delegation was in favour of approval of the report of the credentials committee, it could not recognize the credentials of the Chiang Kai-shek group.

82. Mr. ALVARADO GARAICOA (Ecuador) said his delegation was in favour of approving the report of the credentials committee as submitted to the Conference.

83. Mr. PETRŽELKA (Czechoslovakia) observed that only representatives of the People's Republic of China could legitimately sign international treaties on behalf of that great country. That government had issued no credentials to any representative to the Conference, and the Czechoslovak delegation could not recognize the credentials of a group of private persons surrounding Chiang Kai-shek. None of the calumnies that had been uttered against the People's Republic of China could alter the fact that the Chinese people were not represented at the Conference. His delegation's approval of the report of the credentials committee must be interpreted in the light of that statement.

84. Mr. CRISTESCU (Romania) said his delegation could not recognize the credentials of persons who, while claiming to represent China, actually belonged to a bankrupt clique rejected by the Chinese people. The fact that the legal representatives of that people — those authorized by the Government of the People's Republic of China — had been prevented from attending the Conference, could only detract from the importance of both the Conference and the instrument resulting from it.

85. Mr. USTOR (Hungary) said that his delegation had noted and appreciated the fact that the United States delegation had departed from its earlier untenable practice of not recognizing the credentials of the Hungarian delegation. He wished, however, to register a strong objection to the reservation made in paragraph 7 of the report and the one made orally by the United Kingdom representative.

86. His delegation's approval of the report of the credentials committee should not be interpreted as an endorsement of the right of Taiwan to represent China; only the People's Republic of China was entitled to do so.

87. Mr. WU (China), exercising his right of reply, observed that references to the " Chiang Kai-shek group " showed complete ignorance of conditions in his country. President Chiang Kai-shek was not only the legal president of China, but a national leader enjoying the support of millions of Chinese all over the world, including the 600 million groaning under the yoke of communist oppression on the mainland. Although the Chinese people were proud of their leader, the representatives of China could not be described as his clique or group.

The report of the credentials committee was adopted unanimously.

The meeting rose at 6.15 p.m.

EIGHTEENTH PLENARY MEETING

Friday, 19 April 1963, at 8.40 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 53 (Beginning and end of consular privileges and immunities) (*concluded*)

1. The PRESIDENT invited the Conference to continue its consideration of article 53 to which amendments had now been submitted in writing by the delegations of Belgium (A/CONF.25/L.47) and the United Kingdom (A/CONF.25/L.48).

2. Mr. EVANS (United Kingdom) drew attention to the explanatory note annexed to his amendment.

3. Mr. MARESCA (Italy) said that the United Kingdom proposal was logically and legally correct. A consul could only be a consul in the legal sense if he had been admitted by the receiving State; the fact of admission conferred on him his status as a consul. In the light of the provisions of article 53, read together with article 19, paragraph 2, and article 23, paragraph 1, the sending State was under a duty to notify the receiving State of the appointment of a consular officer other than the head of post before his arrival in the territory of the receiving State, and sufficiently in advance to enable the receiving State to declare him, possibly, *persona non grata*. If the consular officer appointed was already residing in the State, notification of his appointment before his arrival was obviously impossible. In that case it was necessary to state in the text of article 53 that a consul's status should begin with his entry into his consular functions. He fully supported the United Kingdom proposal.

4. Mr. BARTOŠ (Yugoslavia) said that he was grateful that the United Kingdom amendment had been issued in writing but, after studying it, he was all the more convinced that it lacked logic. The rules concerning the appointment of a consul required prior notification before a consul could enter on his duties. The United Kingdom amendment made no mention of that notification. It left open the possibility that a consul could be arrested before he could enter on his duties. The receiving State would be free, if it felt so inclined, without declaring him unacceptable or *persona non grata*, to resort to police measures to prevent him from taking up his duties. That was contrary to articles 19 to 23, and in particular article 24, according to which notification by the sending State was necessary before a consul could enter on his duties. That was why the 1961 Convention on Diplomatic Relations had not adopted the approach used in the United Kingdom amendment, as was admitted in the explanatory note attached to the amendment. He was convinced that it was a question not of a small drafting change but of a substantial change in the sense of the article and therefore could not support the United Kingdom amendment.

5. Mr. SPACIL (Czechoslovakia) said that he preferred the text prepared by the drafting committee and approved by the First Committee. He agreed with the argument of the Yugoslav representative as to the principle. But there was also the practical side and he would like the United Kingdom representative to explain the expression " enters on his duties ": did it mean the moment the consul entered the consular premises, the moment when he started work, or some other moment ? He found it difficult to accept a proposal that was less specific than the provisions of article 53 as drafted.

6. It might perhaps be argued that to state the time when a consular officer entered on his duties corresponded to the provisions of paragraph 3 of article 23; but the amendment did not mention whether the officer had been accepted by the receiving State, and it made no reference to notification. His delegation could not accept the United Kingdom amendment.

7. Mr. DE CASTRO (Philippines) said that the draft reversed the proper order with respect to the time from when a consular officer should enjoy privileges and immunities; that was remedied by the United Kingdom amendment. The expression " from the moment when he enters on his duties " meant the moment when he was granted provisional recognition or the exequatur.

8. Mr. ALVARADO GARAICOA (Ecuador) said that he found difficulty in understanding the United Kingdom amendment. To say that the consular official should enjoy privileges and immunities from the moment when he entered on his duties was equivalent to saying that this would be from the moment when he received the exequatur, since until he received it he could not enter on his duties.

9. The explanatory note referred to article 23. His interpretation of article 13 was that it referred to the notification that had to be made by the sending State in order to receive the acceptance of the receiving State. If a consular officer were to receive privileges and immunities from the time of that notification, which would be before the grant of the exequatur, he would be placed in a better position than the head of a diplomatic mission.

Pending a satisfactory explanation of that important point his delegation could not support the United Kingdom amendment.

10. Mr. BINDSCHEDLER (Switzerland) said that his delegation could not support the United Kingdom amendment for the reasons given by the Yugoslav representative. It was indispensable that a consular officer should enjoy certain privileges and immunities from the moment he entered the territory of the receiving State, and not from the moment he entered on his duties. The latter provision left a gap which would enable the receiving State to make difficulties at the time when he entered on his duties.

11. The drafting committee's text, which referred to the moment of the notification of an officer's appointment to the competent authorities of the receiving State, did not mean that he could enjoy privileges if his appointment were not accepted by the receiving State: he could not enjoy privileges unless the exequatur had been granted. There was no reason why the existing text should be changed for one which was contradictory and inapplicable.

12. Mr. CRISTESCU (Romania) said that he opposed the United Kingdom amendment because some of the privileges and immunities provided in chapter II were necessary for the consular officer from the moment he entered the territory of the receiving State; for example, exemption from customs duties and inspection. The case of a consular officer being declared *persona non grata* was too rare to justify the postponement of the time when a consular officer would receive privileges and immunities as under the United Kingdom amendment.

13. Mr. CAMERON (United States of America) said that he had received the impression that certain delegations had misinterpreted the import of the United Kingdom proposal. Two possibilities were referred to in paragraph 1 of article 53. In the case of a person appointed to the consular post when he was outside the territory of the receiving State, his privileges and immunities would begin from the moment he entered the receiving State to take up his duties. The United Kingdom amendment did not refer to such persons. It applied only to persons who were already in the receiving State but who had not yet taken up their duties. It was inconceivable that an individual already in the receiving State should receive the privileges and immunities accorded by the convention before entering on his duties. He would therefore support the United Kingdom proposal.

14. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that he fully supported the United Kingdom amendment for the reasons given in the explanatory note attached to it.

15. Mr. ENDEMANN (South Africa) also expressed his full support for the United Kingdom amendment. One of the main functions of the plenary meetings was to reconcile the provisions of various articles which had been passed by the committees, and in which it was sometimes possible to find contradictions and discrepancies. That was the purpose of the United Kingdom amendment. He agreed with the United States representative that some delegations seemed to have misunderstood the amendment, which was only concerned with those consular officers who were already on the territory of the receiving State. Such persons might be consular officers from another post, or members of the diplomatic staff, or again other officials who already in their various capacities enjoyed certain privileges and immunities sufficient for their needs until they assumed their new position. It was therefore essential that, in their case, consular privileges and immunities should only begin with the assumption of consular duties. The United Kingdom amendment was logical and if it were not adopted an important element would be missing from the convention.

16. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that he could not support the United Kingdom amendment for two reasons. Firstly, because it did not state who would decide when a consular officer entered on his duties — the consular officer himself or the receiving State; as the Czechoslovak representative had pointed out, the term " entering on his duties " was vague. Secondly, because the amendment was in contradiction with the preceding text. He was not convinced by the arguments of the United States and South African representatives. Every member of a consular post should enjoy consular privileges from the moment of entering the receiving State or from the moment of his appointment. He interpreted the text as drafted to mean that a member of the consular staff should enjoy privileges from the moment of his entry into the territory of the receiving State, which implied that he had already assumed his functions and had received acceptance from the receiving State. The United Kingdom amendment contradicted the text which had been adopted by the First Committee, and he would therefore vote against it.

17. Mr. USTOR (Hungary) said that he failed to see the merits of the amendment. The explanatory note did not state what dangers the United Kingdom amendment hoped to avoid. There might be a danger that a person, appointed by the sending State as a consular officer, a consular employee or a member of the service staff, of whose appointment the receiving State had been duly notified, should enjoy privileges and immunities before the receiving State had had time to signify its approval. Yet that did not seem to be a catastrophe justifying a departure from the text previously adopted or from the provisions of the Convention on Diplomatic Relations. To depart from the text of that convention meant demanding greater guarantees for the receiving State in the case of the appointment of a consular officer than in the case of the appointment of a diplomatic officer. He saw no need to discriminate in that respect between diplomatic and consular officers. The amendment should not be adopted and he would vote against it.

18. Mr. EVANS (United Kingdom) said that the objections of the Swiss, Romanian and Byelorussian representatives were quite misconceived. The amendment did not refer to persons entering the territory of the receiving State, but only to persons who were already in the receiving State. It in no way affected the first part of paragraph 1 of article 53.

19. The point made by the Yugoslav representative, that paragraph 3 of article 23 provided that a member of a consular post must be accepted by the receiving State before entering on his duties, was the very point the United Kingdom delegation had had in mind, and which seemed to make the amendment necessary. The existing draft of article 53 meant that a person already on the territory of the receiving State should receive privileges and immunities even before being accepted by the receiving State. That seemed to be quite wrong in principle and inconsistent with the provisions of articles 19 and 23.

20. The Hungarian representative had asked what danger there was in the existing text. To give an example, it should be noted that, under paragraph 3 of article 53, consular privileges and immunities ceased only when the person concerned left the territory of the receiving State or on the expiry of a reasonable period in which to do so. If a case arose in which the appointment as a member of the consular staff of a person already living in the receiving State was not accepted by the receiving State, that person would, according to the existing draft of paragraph 1, enjoy consular privileges and immunities from the date of the notification of his appointment and, notwithstanding the fact that he had been declared unacceptable by the receiving State, he would continue to enjoy them until he left the receiving State. That was a situation very much open to abuse.

21. Mr. de ERICE y O'SHEA (Spain) said that the United Kingdom amendment in no way prejudiced the consular privileges and immunities which it had been the concern of the Spanish delegation to defend throughout the Conference, and he therefore supported it. Moreover, the amendment gave a guarantee to the receiving State that might require a certain lapse of time between the notification of the appointment of a consular officer and the grant of its acceptance of that appointment, with the privileges and immunities entailed. In the case of a person who was outside the receiving State that period was the time necessary for him to arrive in the receiving State, but in the case of a person already in the receiving State there was, according to the provisions of the existing draft of paragraph 1, no such margin. The appointment of the officer and his enjoyment of privileges and immunities were simultaneous, which led to a paradoxical situation. The absurd position might arise that a government which was greatly interested in protecting a certain citizen who had committed a crime and against whom legal proceedings were pending in the receiving State, would paralyse those legal proceedings by simply appointing the person concerned as a member of a consular post.

22. The receiving State should have a certain margin of time in which to decide whether a given appointment was desirable. That margin existed in the case of a person coming from abroad; in the case of a person already in the receiving State, it should be the time between his appointment and the moment he entered on his duties.

23. Mr. BARUNI (Libya) moved the closure of the debate.

It was so decided.

The United Kingdom amendment (A/CONF.25/L.48) was adopted by 52 votes to 17, with 5 abstentions.

24. The PRESIDENT put to the vote the Belgian amendment (A/CONF.25/L.47).

The result of the vote was 25 in favour and 16 against, with 31 abstentions.

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

Article 53, as emended, was adopted by 72 votes to none, with 3 abstentions.

Article 57 (General provisions relating to facilities, privileges and immunities)

25. The PRESIDENT invited the Conference to consider chapter III (Regime relating to honorary consular officers and consular posts headed by such officers), beginning with article 57, to which two amendments (A/CONF.25/L.42 and A/CONF.25/L.44) had been submitted by Switzerland.

26. Mr. REBSAMEN (Switzerland) referred to the statement made by his delegation when paragraph 3 of article 57 was approved by the Second Committee. In his delegation's view, the text of that paragraph did not correspond to the practice of many States or to the practical requirements of the consular service. His delegation had therefore proposed (A/CONF.25/L.42) the deletion of the words " or of a consular employee employed at a consular post headed by an honorary consular officer " at the end of paragraph 3 which, as it stood, discriminated between the families of consular employees and those of service staff, and more important, treated the families of career consular officers differently according to whether the head of the family was employed at a consular post headed by an honorary consular officer or by a career consular officer. His delegation would, however, reserve the right to withdraw its amendment and to ask for a separate vote on the words which it wished to delete.

27. Mr. PAPAS (Greece) said that he could not support the Swiss amendment, which would have the effect of depriving the family of an honorary consular general, for example, of privileges and immunities which would be granted to the family of a subordinate employee.

28. Mr. MARESCA (Italy) regretted that his delegation could not support the Swiss amendment to paragraph 3, or the proposal to add a new paragraph to article 57 (A/CONF.25/L.44). There seemed no reason for granting to members of the family of a consular employee the privileges and immunities which were refused to members of the family of an honorary consul. In regard to the proposal for a new paragraph, there seemed no reason why two honorary consular officers should not be allowed to exchange consular bags.

29. Mr. VAZ PINTO (Portugal) supported the Swiss amendment (A/CONF.25/L.42), which had a sound and equitable basis.

30. Mrs. VILLGRATTNER (Austria) and Mr. MEYER-LINDENBERG (Federal Republic of Germany) endorsed that view.

31. The PRESIDENT invited the Conference to vote on the Swiss amendment to article 57, paragraph 3 (A/CONF.25/L.42).

The result of the vote was 31 in favour and 26 against, with 18 abstentions.

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

32. Mr. REBSAMEN (Switzerland) said that, although it was appropriate that the exchange of consular bags should be permitted between consular posts headed by honorary consular officers or by career consular officers, it would be unjustifiable to make general provision for the exchange of consular bags between consular posts headed by honorary consular officers. It must be borne in mind that the latter were private persons carrying on private activities, to whom article 35 applied. His delegation had therefore proposed the addition of a fourth paragraph in article 57 (A/CONF.25/L.44) to provide that the exchange of consular bags between two consular posts headed by honorary consular officers should not be allowed without the consent of the two receiving States concerned, which would decide in the light of local circumstances known only to the competent authorities in those States.

33. In reply to a question by Mr. BARTOŠ (Yugoslavia), he explained that the additional paragraph was intended to refer to consular posts in two different States.

34. Mr. CHIN (Republic of Korea), Mr. PAPAS (Greece), Mr. DONATO (Lebanon) and Mr. SILVEIRA-BARRIOS (Venezuela) supported the Swiss proposal.

The Swiss proposal (A/CONF.25/L.44) for the addition of a fourth paragraph in article 57 was adopted by 37 votes to 12, with 21 abstentions.

35. The PRESIDENT invited the Committee to vote on article 57 as amended.

36. Mr. KIRCHSCHLAEGER (Austria) moved that a separate vote should be taken on the words " or of a consular employee employed at a consular post headed by an honorary consular officer " at the end of paragraph 3.

37. Mr. EL KOHEN (Morocco) objected that the motion for division of the text was the same as the Swiss proposal for the deletion of the words concerned, which had already been rejected. The Conference could not revert to a matter with which it had already dealt.

38. Mr. DEJANY (Saudi Arabia) and Mr. MAHOUATA (Congo, Brazzaville) endorsed that view.

39. Mr. KIRCHSCHLAEGER (Austria) drew attention to rule 40 of the rules of procedure which accorded representatives the unconditional right to move that parts of a proposal should be voted on separately, irrespective of the result of any previous vote.

40. Mr. VAZ PINTO (Portugal) and Mr. CAMERON (United States of America) agreed.

41. Mr. ZEMANEK (Holy See) requested the President to put the motion for division of the text to the vote in accordance with rule 40.

42. Mr. DEJANY (Saudi Arabia) said that the Conference was not yet considering the motion itself, but whether it was appropriate to move that a part of a proposal which the Conference had already decided should not be deleted, should again be voted on separately in order to effect its deletion. He wished to stress the fact that his delegation had voted in support of the Swiss amendment for deletion; naturally, therefore, it ought to favour another attempt to bring about the deletion, but that was not the right and proper course for the Conference to adopt. It was obvious that the purpose of the motion for a separate vote was to delete the very same words as the amendment sought to delete. Since the Conference had just decided not to delete that part of paragraph 3, it could not now cast a second vote by resorting to rule 40 of the rules of procedure, unless a two-thirds majority was in favour of such a reconsideration.

43. The PRESIDENT ruled that the Austrian motion for division of the vote was in accordance with the rules of procedure.

44. Mr. EL KOHEN (Morocco) and Mr. BOUZIRI (Tunisia) challenged that ruling.

45. Mr. AMLIE (Norway) and Mr. van SANTEN (Netherlands) supported the President's ruling.

46. The PRESIDENT invited the Conference to vote on the Austrian motion for a separate vote on the words " or of a consular employee employed at a consular post headed by an honorary consular officer " in paragraph 3 of article 57.

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

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

In favour: Liechtenstein, Luxembourg, Norway, Panama, Portugal, Sierra Leone, South Africa, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Austria, Belgium, Colombia, Dominican Republic, Finland, Federal Republic of Germany, Ghana, Holy See, Honduras.

Against: Liberia, Libya, Mali, Mexico, Morocco, Netherlands, New Zealand, Pakistan, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Algeria, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Chile, Congo (Brazzaville), Congo (Leopoldville), Czechoslovakia, Ecuador, France, Greece, Guinea, Hungary, India, Indonesia, Italy, Japan.

Abstaining: Mongolia, Philippines, Poland, Romania, San Marino, Spain, Syria, Republic of Viet-Nam, Albania, Cambodia, Ceylon, China, Costa Rica, Denmark, Federation of Malaya, Iran, Ireland, Republic of Korea, Lebanon.

Present and not voting: Saudi Arabia, Tunisia.

The motion for a separate vote was defeated by 35 votes to 21, with 19 abstentions.

47. Mr. WESTRUP (Sweden) said that the rules of procedure were not inappropriate. The rejection of the Swiss amendment to paragraph 3 meant that part of the convention had been retained by a minority vote, which was not equitable. The attempt to rectify the situation by a motion for division of the vote on paragraph 3 had unfortunately failed, but the procedure had been quite correct.

48. Mr. BOUZIRI (Tunisia) explained that he had not participated in the vote on the motion for division of the text because he had not considered that the vote should be taken, a view which appeared to be confirmed by the result of the vote.

49. Mr. SPACIL (Czechoslovakia) said that his delegation's vote against the motion should not be interpreted as disagreement with the President's ruling. In the view of his delegation, any representative had the right at any time to request a separate vote.

50. Mr. VAZ PINTO (Portugal) said that the Conference had been hampered from the outset by the inadequacy of the rules of procedure, and in particular by the fact that, although a two-thirds majority was required for the adoption of a proposal, only a simple majority was required under rule 40. It would be of great importance for future conferences to ensure that the rules of procedure were revised, and he would request the President to draw attention to the matter.

51. Mr. Kamel (United Arab Republic) and Mr. HENAO-HEANO (Colombia) agreed that the Conference had been frustrated by its rules of procedure.

52. The PRESIDENT said that he intended to submit his personal recommendations in regard to the rules of procedure at the end of the Conference.

53. Mr. STAVROPOULOS (Representative of the Secretary-General) agreed that rule 40 proved troublesome at the present Conference. It was not a new rule, however, since it reproduced rule 91 of the rules of procedure of the United Nations General Assembly, and a similar rule had worked perfectly at three previous codification conferences. There was a certain wisdom in the fact that it gave a right to the minority to seek a decision by a simple instead of a two-thirds majority.

54. Mr. KRISHNA RAO (India) suggested that consideration might also be given to the procedural difficulties which arose when the drafting committee decided to make a separate article of a provision passed to it by a committee.

55. The PRESIDENT put to the vote article 57, as amended.

Article 57, as amended, was adopted by 68 votes to none, with 10 abstentions.

The meeting rose at 10.45 p.m.

NINETEENTH PLENARY MEETING

Saturday, 20 April 1963, at 10.35 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

1. The PRESIDENT invited the Conference to continue its consideration of the draft convention.

Article 58 (Protection of the consular premises)

Article 58 was adopted unanimously.

Article 59
(Exemption from taxation of consular premises)

Article 59 was adopted unanimously.

Article 60
(Inviolability of consular archives and documents)

Article 60 was adopted unanimously.

Article 60 A
(Exemption from customs duties)

2. Mr. MOLITOR (Luxembourg) said that it would be necessary to delete the words "and export" in order to take into account the decision made by the Conference with respect to article 49.

It was so agreed.

Article 60 A was adopted unanimously.

Article 60 B (Criminal proceedings)

Article 60 B was adopted unanimously.

Article 61
(Protection of honorary consular officers)

Article 61 was adopted unanimously.

Article 62 (Exemption from registration of aliens, and residence permits)

Article 62 was adopted unanimously.

Article 63 (Exemption from taxation)

Article 63 was adopted unanimously.

Article 64 (Exemption from personal services and contributions)

3. Mr. KEVIN (Australia) pointed out that the text prepared by the drafting committee did not specify, as had been done in the text adopted by the Second Committee, that in order to benefit by the exemption, honorary consular officers should be neither nationals nor permanent residents of the receiving State. In view of the fact that article 69 contained provisions concerning those

two categories of consular officers, he proposed that the vote on article 64 should be postponed until a decision had been taken on article 69, thus enabling a request to be made, if necessary, for the re-insertion in article 64 of the words which had been omitted.

It was so decided.

Article 67 (Optional character of the institution of honorary consular officers)

Article 67 was adopted unanimously.

Article 67 A
(Consular agents who are not heads of consular posts)

Article 67 A was adopted unanimously.

Article 68 (Exercise of consular functions by diplomatic missions)

4. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said that the draft proposed by the International Law Commission embodied one of the essential principles of international law which had been omitted from the drafting committee's text. Article 68 had been modified in the First Committee by the adoption of an amendment of the United Kingdom (A/CONF.25/C.1/L.153). The delegations that supported that amendment had asserted that it was necessary to bring the text into harmony with article 38. He considered that the analogy they had tried to establish between the two articles was misleading. It was not a question of consular officials but of members of a diplomatic mission whose official business was governed by paragraph 2 of article 41 of the 1961 Convention in so far as their relations with the receiving State were concerned. It was therefore inadmissible that the future convention on consular relations should contain provisions incompatible with those of the 1961 Convention. Moreover, the attitude adopted by the United Kingdom delegation appeared to differ widely from the practice followed by the government of that country.

5. Generally speaking, the laws of the receiving State should be respected, allowing, however, for the possibility of finding a more flexible formula for each case, with the consent of that State. That was the purpose of the amendment (A/CONF.25/L.22) to article 68 submitted by his delegation.

6. Mr. MUÑOZ MORATORIO (Uruguay) said that the intention of his delegation's amendment (A/CONF. 25/L.45) was to make it quite clear that the consent of the receiving State was necessary. Paragraph 2 of article 68 only mentioned that the names of members of a diplomatic mission assigned to the consular section should be notified to the receiving State. He was of the opinion that the consent of the receiving State was implicitly necessary even if his delegation's amendment was not adopted. In Uruguay, for example, the authorization must be given by the executive authority. Further, the members of a diplomatic mission who performed consular functions were not covered by article 9 concerning classes of heads of consular posts. There was therefore an omission, all the more since a wide difference was made between the functions of a diplomatic mission and those of the consular section of that mission. It was inadmissible that the head of that section should be able to perform his functions without the express consent of the receiving State.

7. Mr. MARESCA (Italy) thought that the original draft of article 68 had been improved in committee, since paragraph 1 referred to the whole of the convention and not only to certain articles. The new text made it absolutely clear that the consular section of a diplomatic mission was a consular post for all purposes. Accordingly, the rules relating to the establishment of a consular post, and in particular the rule requiring the prior consent of the receiving State, applied in such a case. He was of the opinion that the officers of the consular section of a diplomatic mission should not be allowed to perform those functions without the consent of the receiving State, and he would accordingly support the Uruguayan amendment.

8. Mr. KOCMAN (Czechoslovakia) pointed out that the original draft prepared by the International Law Commission conformed in every way with international law and contemporary practice. In particular, it allowed relations between consular officers and local authorities to continue to be governed by bilateral agreements. The drafting committee's text did not permit that latitude and might therefore conflict with national laws. For that reason he would support the amendment of the Ukrainian Soviet Socialist Republic.

9. With regard to the Uruguayan amendment (L.45) he did not see why the consent of the receiving State should be required when members of a diplomatic mission were assigned to consular functions, since those members had already been accredited by the government concerned. He would therefore vote against that amendment.

10. Mr. EVANS (United Kingdom) pointed out that the provisions of the 1961 Convention to which the representative of the Ukrainian Soviet Socialist Republic had alluded were not intended to apply to the exercise of consular functions by a diplomatic mission. That was clear from article 3, paragraph 2, of the 1961 Convention. But it was necessary that members of a diplomatic mission, when exercising consular functions, should enjoy the same facilities as consular officers attached to a consular post which did not form part of a diplomatic mission. The purpose of paragraph 3 of article 68 was precisely to grant them those facilities. For that reason the drafting committee's text should be retained and the Ukrainian amendment rejected. He supported the Uruguayan amendment.

11. With regard to the Ukrainian representative's remarks about the consistency of the United Kingdom delegation's attitude with the previously expressed views of the United Kingdom Government, his delegation denied that there was any such inconsistency. Furthermore, it wished to emphasize the fact that a delegation at an international conference must be permitted to interpret the positions of principle previously adopted by its government.

12. Mr. de ERICE y O'SHEA (Spain) said that he supported the Uruguayan amendment. It might well be that the consent of the receiving State was implicit in the drafting committee's text, but there would be no harm in inserting an express reminder. With regard to the Ukrainian amendment, he pointed out that nearly all diplomatic missions included a consular section. The adoption of that amendment would have the result of denying to officers belonging to the consular section the possibility of addressing the local authorities, whereas the head of a consular post, whether career or honorary, was able to do so. The 1961 Convention enabled members of diplomatic missions to perform consular functions and it would seem that the least that could be done would be to grant them facilities similar to those conferred on consular officers, properly so called. For all those reasons the Spanish representative considered that the Ukrainian delegation should withdraw its amendment.

13. Mr. FUJIYAMA (Japan) said that there was no reason why a diplomatic mission, when performing consular functions, should have to comply with certain conditions in order to address the local authorities. His delegation was therefore unable to support the Ukrainian amendment but would support the Uruguayan amendment.

14. Mr. BARUNI (Libya) said that the Ukrainian amendment was drafted in such terms as to make it acceptable to all countries and he would therefore support it. The Uruguayan amendment, on the other hand, could not give satisfaction to the smaller countries and he would be unable to accept it.

15. Mr. CRISTESCU (Romania) said that his delegation attached great importance to article 68. Paragraph 3 of that article was not in accordance with the practice followed by many countries with respect to the performance of consular functions by a diplomatic mission. Furthermore, it contradicted the clauses of the Vienna Convention on Diplomatic Relations which governed all the activities of diplomatic missions; consular functions were among the functions entrusted to such missions. When drafting paragraph 3 of article 68 the International Law Commission had based itself on the provisions of that convention. The text of paragraph 3 as drawn up by the drafting committee contradicted every practice followed in that connexion and was not acceptable to the Romanian delegation. The Ukrainian amendment was a compromise between the two points of view. It had been said that paragraph 3 of article 68 should be adapted to the text of article 38 adopted by the Second Committee. Article 38 confirmed the practice followed by consulates of addressing local authorities, whereas article 68 as adopted by the First Committee was not in accord with usual practice and introduced a new rule which was in contradiction with the provisions of the 1961 Convention. The Ukrainian amendment took the practical side of the question into account and offered a better solution. The Romanian delegation would therefore vote in favour of that amendment. If it were not adopted it would ask for a separate vote on sub-paragraph (*a*) of paragraph 3. The adoption of article 68, paragraph 3, as it stood might give rise to a large number of reservations when the convention was signed.

16. Mr. PAPAS (Greece) supported the Uruguayan amendment, which added a necessary clause to paragraph 2 since in the existing state of affairs the exequatur was not required for the performance of consular functions by a member of a diplomatic mission. On the other hand, his delegation would not be able to vote for the Ukrainian amendment.

17. Mr. CAMERON (United States of America) said that he would vote for the Uruguayan amendment. It had been said that it was contrary to international law to require the approval of the receiving State for the performance of consular functions. There was no such principle; if there was any principle at all on the subject, it was to the contrary, namely that approval to perform consular functions was required. That was particularly true when the functions were performed by a diplomatic mission. The United States delegation would vote against the Ukrainian amendment for the reasons given by the representatives of Japan and the United Kingdom.

18. Mr. ABDELMAGID (United Arab Republic) supported the Uruguayan amendment, which added an essential element to paragraph 2 of article 68. The Ukrainian amendment filled a gap without preventing diplomatic missions in the exercise of consular functions from addressing local authorities as they were already in the habit of doing, and his delegation would support it.

19. Mr. CONTRERAS CHAVEZ (El Salvador) said that he would vote in favour of the Uruguayan amendment and against the Ukrainian amendment.

20. Mr. KHLESTOV (Union of Soviet Socialist Republics) pointed out that the text of article 38 had been transferred mechanically to paragraph 3 of article 68. It would be illogical to say that when performing consular functions the diplomatic mission should not address the central authorities of the receiving State unless permitted under the laws and regulations of that State or under an international agreement, since article 41, paragraph 2, of the Vienna Convention on Diplomatic Relations made it obligatory for the mission to address those authorities. The Ukrainian amendment offered a more flexible formula than the drafting committee's text and provided a neat way out of the difficulty.

21. Under article 3 of the 1961 Convention, nothing in that convention could be construed as preventing the performance of consular functions by a diplomatic mission. It was therefore difficult to understand that the performance of those functions should depend on the consent of the receiving State, as laid down in the Uruguayan amendment.

22. Mr. BARTOŠ (Yugoslavia) said that he was unable to accept the Uruguayan amendment, which was contrary to the principle stated in article 15 and would cause difficulties to the smaller countries in the exercise of consular functions.

23. Mr. MUÑOZ MORATORIO (Uruguay), replying to the criticisms made against the Uruguayan amendment (L.45), said that that amendment was not contrary to international law, as claimed by certain delegations, nor to general practice. The representative of Czechoslovakia had stated that a member of the diplomatic mission did not need an exequatur from the receiving State in order to perform consular functions. The Uruguayan amendment did not mention the word exequatur but merely "the consent of the receiving State"; such consent could be given by an exequatur or by some other means, according to the practice in force in the receiving State. The representative of Libya had stated that the Uruguayan amendment was hardly acceptable to the smaller countries. Uruguay was a small country, but it did not believe that the obligation incumbent upon members of a diplomatic mission assigned to consular work to obtain the consent of the receiving State could cause any difficulty to smaller countries. In reply to the representative of the Soviet Union, he pointed out that the principle laid down in the Vienna Convention on Diplomatic Relations was not in contradiction with the Uruguayan proposal. The Yugoslav representative's argument was based on an article which dealt with the temporary exercise of consular functions.

24. The PRESIDENT put to the vote the amendment submitted by Uruguay to paragraph 2 of article 68 (A/CONF.25/L.45).

The result of the vote was 39 in favour and 29 against, with 9 abstentions.

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

25. The PRESIDENT put to the vote the amendment of the Ukrainian Soviet Socialist Republic to paragraph 3 of article 68 (A/CONF.25/L.22).

The amendment was rejected by 42 votes to 23, with 13 abstentions.

26. The PRESIDENT asked the Conference to decide on the Romanian motion for a separate vote on sub-paragraph (*a*) of paragraph 3.

27. Mr. MEYER LINDENBERG (Federal Republic of Germany) opposed the Romanian motion since under international law and the bilateral conventions to which the Federal Republic of Germany was a party the consular section of a diplomatic mission had the right to address the local authorities of the consular district.

28. Mr. PUREVJAL (Mongolia) and Mr. EL KOHEN (Morocco) supported the motion.

29. Mr. EVANS (United Kingdom) opposed the motion.

30. The PRESIDENT put to the vote the motion for a separate vote on sub-paragraph (*a*) of paragraph 3.

The motion was defeated by 49 votes to 19, with 12 abstentions.

31. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that paragraph 3 was illogical and asked for a separate vote on that paragraph.

32. Mr. CAMERON (United States of America) opposed a separate vote because, in his opinion, the rights and obligations of States should be defined and it was necessary to maintain paragraph 3 of article 68.

33. Mr. KONSTANTINOV (Bulgaria) supported the motion: paragraph 3 was incompatible with the corresponding provisions of the Vienna Convention of 1961 and the deletion of the paragraph would not in the least diminish the effective value of the future convention.

34. Mr. SPACIL (Czechoslovakia) also supported the motion for a separate vote, which would give delegations an opportunity to decide whether to maintain paragraph 3. The matter could be settled by means of bilateral agreements such as that which the Soviet Union had concluded with the Federal Republic of Germany.

The motion for a separate vote on paragraph 3 was defeated by 54 votes to 15, with 12 abstentions.

Article 68 was adopted by 67 votes to 2, with 12 abstentions.

35. Mr. DADZIE (Ghana) said that he had voted against the Uruguayan amendment, which did not appear to him to improve the text of the article. He had supported the Ukrainian amendment because no diplomatic mission could infringe the laws and regulations of the receiving State. His delegation had voted in favour of article 68 as a whole because it thought that a diplomatic mission could address local authorities or central authorities if it obtained the consent of the receiving State.

36. Mr. SILVEIRA-BARRIOS (Venezuela) said that he had voted against article 68 because it was contrary to the public law of Venezuela.

37. Mr. SPACIL (Czechoslovakia) said that he had abstained from voting on article 68. Paragraph 3 as drafted did not appear acceptable and he would reserve his government's position when signing the convention.

38. Mr. KHLESTOV (Union of Soviet Socialist Republics) explained that he had abstained from the vote on article 68 because paragraph 3 was contrary to the provisions of the 1961 Vienna Convention. That paragraph did not take into account the laws and practice of States and it was regrettable that the text proposed by the International Law Commission had not been maintained.

39. Mr. MUÑOZ MORATORIO (Uruguay) said that he had voted for article 68 because he was of the opinion that paragraph 2 of that article did not imply that the consent of the receiving State was unnecessary to enable a member of a diplomatic mission to perform consular functions.

40. Mr. CRISTESCU (Romania) said that he had voted in favour of the Ukrainian amendment. Paragraph 3 of article 68 appeared to be contrary to international practice and incompatible with the provisions adopted in Vienna in 1961. His government would reserve its position on the matter.

41. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) made the same reservation with respect to paragraph 3 and regretted that the International Law Commission's text had not been retained.

42. Mr. NESHO (Albania) made a statement to the same effect.

43. Mr. BARUNI (Libya) said that he had voted against the adoption of article 68 because it did not take the interests of the receiving State sufficiently into account.

Article 69 (Nationals or permanent residents of the receiving State)

44. The PRESIDENT drew attention to the amendments to article 69 submitted by Australia (A/CONF.25/L.43) and Greece (A/CONF.25/L.51).

45. Mr. KEVIN (Australia) said that he had submitted his amendment to insert the word " facilities " before the words " privileges and immunities " in paragraphs 1 and 2 in order to bring the text into line with the other provisions of the convention.

46. Mr. PAPAS (Greece) said that article 69 contained no provision concerning consular posts headed by nationals of the receiving State and his amendment was intended to fill that gap. The receiving State could not allow an honorary consul who was a national of that State to communicate with the sending State by consular courier. The privileges granted to consular officers differed according to whether they were honorary or career officers. The adoption of article 69 as drafted might encourage certain States not to allow consular posts to be headed by their own nationals.

47. Mr. KEVIN (Australia) approved the Greek amendment (L.51) but proposed the addition of the words " or permanent residents of the receiving State ".

48. Mr. PAPAS (Greece) agreed to incorporate in his amendment the words suggested by the Australian representative.

49. Mr. BARNES (Liberia) reminded the Conference that it had adopted article 57 under which article 35 would apply to a consular post headed by an honorary consular officer. If the Conference were to change article 69 as suggested by the Greek representative it would then have to take up article 57 once again.

50. Mr. DONATO (Lebanon) supported the Greek amendment (L.51).

51. Mr. RUEGGER (Switzerland) said that, while he agreed with the principle underlying the Greek amendment, he thought that it could be re-drafted so as to take article 57 into account.

52. Mrs. VILLGRATTNER (Austria) regretted that she was unable to support the Greek amendment: it was impossible to prevent a consular post headed by an honorary consul from using consular couriers for the purpose of communicating with the sending State.

53. Mr. AMLIE (Norway) said that even when they were nationals of the receiving State honorary consuls were still consular officers. In order to perform their functions as defined in article 5 they should be able to communicate with the sending State by means of consular couriers. He considered that the Greek amendment seriously undermined the institution of honorary consuls.

54. Mr. ENDEMANN (South Africa) pointed out that honorary consuls who were not nationals or permanent residents of the receiving State were entitled to benefit by article 35.

55. Mr. EVANS (United Kingdom) said that he would vote against the Greek amendment. It was essential that the head of a consular post, whether a career consul or an honorary consul, should be able to communicate freely with the sending State.

The meeting rose at 12.55 p.m.

TWENTIETH PLENARY MEETING

Saturday, 20 April 1963, at 3.15 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 69 (Nationals or permanent residents of the receiving State) (*concluded*)

1. The PRESIDENT invited the Conference to continue its consideration of article 69 and the amendments thereto by Australia (A/CONF.25/L.43) and Greece (A/CONF.25/L.51).

2. Mr. PAPAS (Greece) withdrew his delegation's amendment because the majority of the Conference did not seem to be in favour of it.

3. Mr. AMLIE (Norway) said he was grateful to the Greek representative for withdrawing his amendment.

4. Mr. ENGLANDER (Honduras) said he was glad that the Greek amendment had been withdrawn. That text expressed a wrong attitude to the institution of honorary consuls, since it reflected a certain mistrust of such persons. In actual fact, honorary consuls were usually respectable, well-to-do persons who would not be likely to risk their reputations for the sake of smuggling articles in a consular bag.

5. Mr. MARESCA (Italy) said that paragraph 2 of article 69 raised an important legal question. Under article 43 as adopted by the Conference, consular employees, who exercised technical and administrative functions and thus formed a part of the consulate, were immune from jurisdiction in the exercise of their functions, even if they were nationals of the receiving State. Paragraph 2 of article 69, however, derogated seriously from that principle in that it accorded those privileges and immunities only in so far as they were granted to consular employees by the receiving State. The Italian delegation considered it inadmissible to refuse immunities which were absolutely essential for the exercise of certain consular functions and therefore would be unable to vote for the article.

6. Mr. KEVIN (Australia) said that the intention of the Greek amendment appeared to have been not so much to control the consular bag as the person conveying it. It would be very difficult to concede to a courier who was a permanent resident of Australia, even if he were a national of the sending State, a privileged position over and above Australian citizens.

The Australian amendment (A/CONF.25/L.43) was adopted by 61 votes to none, with 7 abstentions.

Article 69, as amended, was adopted by 62 votes to none, with 7 abstentions.

7. Mr. AMLIE (Norway) said that his delegation had abstained from the vote on article 69 because it objected to the phrase " or permanently resident in ". In actual fact, there were no honorary consuls other than permanent residents in or nationals of the receiving State; chapter III therefore related to a non-existent category of officials.

8. Mr. VRANKEN (Belgium) said he had abstained from voting on article 69 for the same reasons as the Norwegian representative.

9. Mr. ENDEMANN (South Africa) said he had abstained from voting on the Australian amendment because it was not clear what was meant by the word " facilities ". His delegation could not agree that those facilities should not be accorded in the exercise of consular functions. He regretted that the Greek amendment had been withdrawn, but had voted for the article as a whole in the belief that it served a useful purpose.

10. Mr. KRISHNA RAO (India) said he had voted in favour of the article for the opposite reason from that given by the Norwegian representative.

11. Mr. NESHO (Albania) said he had abstained from voting on article 69 because it was unacceptable to his delegation.

Article 64 (Exemption from personal services and contributions) (*concluded*)

12. Mr. KEVIN (Australia) said that the text of the article differed from that adopted by the Second Committee in that the words " who are neither nationals nor permanent residents of the receiving State " had been omitted. The drafting committee had apparently regarded that phrase as unnecessary in the light of the provisions of article 69 as adopted by the Second Committee.

13. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that it was for the Conference to decide on that question. The drafting committee's decision had been taken on the basis of the texts adopted by the Second Committee.

14. Mr. EVANS (United Kingdom) thought that the drafting committee had been mistaken in deleting the phrase, since article 64 was concerned solely with the question of the extent to which honorary consular officers were exempt from the personal services and contributions in respect of which career consular officials enjoyed immunity. Article 69, paragraph 1, had the effect of denying to consular officers who were nationals or permanent residents of the receiving State the privileges and immunities set out in chapter II, with the exception of immunity from jurisdiction and personal inviolability in the exercise of consular functions. Article 64, however, did not relate to those two exceptions, and it was therefore necessary to specify in the article itself that it related to honorary consular officers who were neither nationals nor permanent residents of the receiving State.

15. Mr. GIBSON BARBOZA (Brazil), Chairman of the Second Committee, said that the phrase in question had presumably been omitted on the assumption that it was unnecessary in view of the provisions of article 69. It was for the Conference to decide whether the phrase should be reintroduced.

16. Mr. KONSTANTINOV (Bulgaria), Rapporteur of the Second Committee, confirmed Mr. Gibson Barboza's remarks.

17. Mr. DADZIE (Ghana) agreed with the Australian representative. Article 64 in fact related to honorary consuls who were neither nationals nor permanent residents of the receiving State, and the drafting committee's deletion had therefore been incorrect.

18. Mr. KRISHNA RAO (India), chairman of the drafting committee, pointed out that there was no reason to vote again on the inclusion of the phrase in question, which the Second Committee had adopted by an overwhelming majority. The Committee's intention had been perfectly clear and the drafting committee's decision to delete the phrase had merely been consequential upon the text of article 69 as adopted at the time.

Article 64 was adopted, with the phrase in question, by 72 votes to none, with 4 abstentions.

19. Mr. EVANS (United Kingdom) observed that exactly the same point arose in connexion with article 50 (Estate of a member of the consular post or of a member of his family). Nationals and residents of the receiving State should be excluded from that provision, in the light of the present wording of article 69. He thought it would be in accordance with the intentions of the Conference to restore that phrase.

20. Mr. SRESHTHAPUTRA (Thailand) said that the same consequential amendment should be made to article 48, paragraph 2.

21. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that, now that article 69 had been amended, consequential amendments would have to be introduced into some other articles. He suggested that that task should be entrusted to the drafting committee.

22. Mr. CAMERON (United States of America) observed that, under article 69, consular officers who were nationals of or permanent residents in the receiving State enjoyed only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, unless additional pri-

vileges and immunities were granted by the receiving State. By article 69, such persons were excluded from the benefits of article 50. The matter should be referred back to the drafting committee, were it had been discussed previously, for further consideration in the light of the problem which had been raised.

23. Mr. KONSTANTINOV (Bulgaria), Rapporteur of the Second Committee, pointed out that a number of amendments relating to the point under discussion had been submitted to many of the articles in chapter III, but had been either rejected or withdrawn on the understanding that the drafting committee would decide on the matter when the definitive wording of article 69 had been settled.

24. The PRESIDENT suggested that the changes consequential upon the amendment of article 69 should be referred to the drafting committee.

It was so agreed.[1]

25. Mr. TÜREL (Turkey) said that his delegation had agreed to the President's suggestion on the understanding that, if the drafting committee decided not to include the phrase in certain articles, article 69 should not be deemed to confer additional benefits upon nationals and permanent residents of the receiving State.

Article 70 (Non-discrimination)

26. Mr. HARASZTI (Hungary) suggested that paragraph 2 (*a*) should be deleted and the original text of the International Law Commission incorporated into the convention with the drafting changes approved by the First Committee. The Hungarian delegation believed that the provision was theoretically and practically erroneous. In the first place, if a State should apply the convention restrictively, that State would be violating the convention. As Mr. Ago had said at the 608th meeting of the International Law Commission, the use of the term " restrictively " seemed to imply that it was possible, by way of retaliation, lawfully to reduce the obligations set forth in the convention. Secondly, the paragraph provided no security for the victim of discrimination. If the convention were violated, the other party could resort to a series of measures admissible under general international law, and retaliate within certain limits and proportions. The Hungarian delegation saw no justification for the provision in the fact that the Convention on Diplomatic Relations contained a similar clause: Mr. Padilla Nervo had stated at the same meeting of the International Law Commission that in his opinion sub-paragraph (*a*) of article 47 was quite the most regrettable provision in the whole of the 1961 Vienna Convention. That error should not be perpetuated; his delegation asked for a separate vote on paragraph 2 (*a*) of article 70.

[1] In order to take into account the observations made on the subject of the phrase " who are neither nationals nor permanent residents of the receiving State ", the drafting committee subsequently decided to reintroduce in part, in article 1, with some drafting changes, the text of paragraphs 2 and 3 of article 1 of the International Law Commission's text (see the summary record of the twenty-second plenary meeting).

27. Mr. KRISHNA RAO (India) agreed that the provision might lead to abuse and counter-abuse, but thought that that would be unavoidable. The solution proposed by the International Law Commission would be ideal if all the parties implemented the convention, but if the instrument was misapplied by a unilateral decision, that breach could only be countered in the same manner. He did not think that the abuse would be perpetuated, but only that the other party would be allowed to take the same action as the violator.

28. Mr. WASZCZUK (Poland) thought that the adoption of paragraph 2 (*a*) by the First Committee had been unjustified for a number of reasons. In the first place, the provision cast doubt on the efficacy of the convention, and was a kind of invitation for the non-application of certain articles. Secondly, although a similar provision appeared in article 47, paragraph 2 (*a*), of the Convention on Diplomatic Relations, it was obviously impossible to follow that instrument in all respects in the convention on consular relations. Thirdly, the deletion of paragraph 2 (*a*) would only mean that in exceptional cases States would not be entitled to employ retortion. He therefore supported the Hungarian motion for a separate vote.

29. Mr. CAMERON (United States of America), opposing the motion for a separate vote on paragraph 2 (*a*), said that his delegation strongly favoured the retention of the whole of article 70. He recalled that, during the 1961 Conference, at the 37th meeting of the Committee of the Whole, there had been a similar discussion with regard to an identical provision contained in the corresponding article of the Convention on Diplomatic Relations.

30. An examination of the articles of the convention on consular relations would show that some of its provisions were mandatory and should therefore be applied to the letter; other provisions were discretionary and left some room for flexibility. It was for that reason that his delegation supported the retention of paragraph 2 (*a*), on the ground that a State could apply the discretionary provisions of the convention either restrictively or liberally, without in any way violating the terms of the convention. Where a State applied certain provisions restrictively, retaliation in kind by another State affected would not be an act of discrimination. It was therefore logical to retain the provisions of paragraph 2 (*a*).

31. Mr. CHIN (Republic of Korea) agreed that the provisions of paragraph 2 (*a*) were unsatisfactory from the academic point of view. From a realistic point of view, however, he saw no other way of maintaining the principle of reciprocity between States. Accordingly, he strongly opposed the motion for a separate vote on that clause.

32. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said he could not agree to the retention of paragraph 2 (*a*). In practice, its provisions would lead to the restrictive application of the whole convention by certain States. The provisions of paragraph 2 (*a*)

were at variance with a fundamental principle of international law: *pacta sunt servanda*. If a breach of one of the provisions of the convention were to be committed, it would be a mistake to retaliate in kind. There existed many means of peaceful settlement of disputes, even serious disputes, under the Charter and other instruments. A State which felt that it had been the victim of discriminatory measures should resort to these means of peaceful settlement. It would be a mistake to answer a lawless act by an equally lawless act. For these reasons, his delegation favoured a separate vote on paragraph 2 (*a*).

The motion for a separate vote on paragraph 2 (a) *was defeated by 54 votes to 12, with 10 abstentions.*

Article 70 was adopted by 63 votes to none, with 11 abstentions.

33. Mr. PETRŽELKA (Czechoslovakia) said that his delegation had abstained from voting on article 70 because it was not satisfied with the approach adopted in that article. The article seemed to recognize the *a priori* possibility that the convention would not be implemented. Yet surely the obligations derived from a convention which was signed and ratified, or accepted, by a State had to be fulfilled by that State. The provisions of paragraph 2 (*a*) were at variance with one of the most important principles of international law: *pacta sunt servanda*.

34. Mr. WU (China), explaining his vote, said that his delegation had voted in favour of article 70 on the understanding that the words " as between States " in paragraph 1 should be construed as referring to States parties to the convention on consular relations and no other.

35. He recalled that a proposal had been made in the First Committee (26th meeting) for deleting the words " parties to this convention " which appeared at the end of paragraph 1 as drafted by the International Law Commission and that no action had been taken on that proposal, the matter having been referred to the drafting committee. In that committee, certain delegations (including his own) had expressed doubts as to whether the proposal in question touched on substance. However, the general sense of the drafting committee had been that the words " parties to this convention " were unnecessary and that the word " States " in the context could only be construed as referring to the States parties to the convention on consular relations.

36. Mr. WESTRUP (Sweden), explaining his vote against the motion for a separate vote, said that his delegation would have been prepared to agree to the omission of paragraph 2 (*a*) if the convention had contained adequate objective provisions for the settlement of disputes regarding its interpretation. In the absence of such provisions, the possibility of measures of retaliation as an *ultima ratio* should be retained. It was for those reasons that his delegation had voted against the motion and in support of the retention of paragraph 2 (*a*).

37. Mr. PAPAS (Greece) said that many of the provisions of the convention were subject to the observance of the laws and regulations of the receiving State or to that State's consent. If, as a result of that qualification, some of those provisions were to be applied restrictively by a receiving State, that State could not claim that its consuls were being discriminated against if the sending State affected retaliation in kind. That retaliation would merely redress the balance and avoid inequality; it was a matter of reciprocity and not of discrimination. It had been for those reasons that his delegation had voted against the motion for a separate vote and in favour of article 70 as a whole.

38. Mr. DADZIE (Ghana) said that his delegation had abstained from the vote on article 70 because the provisions of paragraph 2 (*a*) were illogical and out of place in the article. His delegation was not impressed by the fact that the provision thus criticized corresponded to article 47, paragraph 2 (*a*), of the Vienna Convention on Diplomatic Relations; it was the duty of the Conference to use whatever provisions were satisfactory in the 1961 Convention, but it should obviously not copy that convention blindly.

39. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that article 70, paragraph 1, as drafted by the International Law Commission, ended with the words " shall not discriminate as between States parties to this convention ". A proposal by the delegation of the United Arab Republic to delete the words " parties to this convention " as unnecessary had been referred to the drafting committee. The drafting committee had taken the view that the words " the application of the provisions of the present convention " in paragraph 1 made it perfectly clear that the reference was to States parties to the convention and to no other.

40. Speaking as representative of India, he said that the Czechoslovak representative had spoken of the principle *pacta sunt servanda*; but there was another principle of international law which was also relevant, the principle that States should not abuse their rights in their reciprocal relations.

Article 71 (Relationship between the present convention and other international agreements)

Article 71 was adopted unanimously.

41. Mr. CRISTESCU (Romania) stated with reference to article 71 that it was the understanding of his delegation that the provisions of the convention on consular relations which would be adopted by the Conference would not affect conventions or other international agreements in force, in the relations between States parties to those conventions or agreements.

42. He added that it went without saying that article 71 could not be interpreted as meaning that the convention on consular relations would not in any way affect the consular conventions or agreements entered into towards the end of the nineteenth century, to which Romania had been a party and which had become obsolete and thereby lost all legal validity.

Article 36 (Communication and contact with nationals of the sending State) *(resumed from the 13th plenary meeting and concluded)*

43. The PRESIDENT recalled that the Conference had not adopted article 36 in the drafting committee's text. Two proposals for a new article 36 had been submitted, one by Czechoslovakia and the Ukrainian Soviet Socialist Republic (A/CONF.25/L.40) and the other by a group of seventeen delegations (A/CONF.25/L.41).[2] The first question for the Conference to decide was whether it wished to reconsider its earlier decision regarding article 36.

44. Mr. KRISHNA RAO (India) moved, under rule 33 of the rules of procedure, the reconsideration of proposals for inclusion as article 36 of the convention on consular relations.

45. The Conference had rejected a number of proposals regarding article 36 and it was now faced with the problem that none of the important matters dealt with in that article was covered in the draft convention. If the convention to be adopted by the Conference were to be silent on the subject of communication and contact with nationals of the sending State, it would be an admission of dismal failure.

46. As drafted by the International Law Commission, article 36 had dealt with the right of nationals of the sending State to communicate with and to have access to their consulate, with the rights of consular officers in that regard and with the important consular rights relating to persons who were in prison, custody or detention. It was therefore essential that the Conference should consider the drafting of an article 36, taking into consideration the proposals before it.

47. Mr. PETRŽELKA (Czechoslovakia) supported the Indian motion for reconsideration.

The motion was carried by 71 votes to none, with 6 abstentions.

48. Mr. AVILOV (Union of Soviet Socialist Republics) explained that his delegation had abstained from voting on the motion for reconsideration. Article 36 had been clearly rejected by the Conference because, for a number of reasons, some of its provisions were not acceptable to a considerable number of States. His delegation believed that it would be unwise to endeavour to make an effort at that late stage of the Conference, when it was pressed for time, to find a satisfactory solution likely to meet with the approval of the Conference. He understood the concern of certain delegations to include in the convention on consular relations provisions covering the matters dealt with in article 36, but unfortunately he saw no practical possibility of a satisfactory result being achieved in that respect, in view of the pressure of time and of the differences of opinion. A hasty decision would be worse than no decision at all. It was preferable not to adopt any such provision as article 36; instead, the Conference might either adopt an optional protocol on its subject matter, as had been done for acquisition of nationality, or else leave the matter to be settled by bilateral agreements between States in accordance with the existing practice.

49. International practice had evolved satisfactory solutions for the situations which article 36 purported to cover. His delegation therefore felt that the matter could be left as it stood.

50. Mr. DEJANY (Saudi Arabia) said that his delegation regretted that it had been unable to vote for the motion for reconsideration because the proposals which had been introduced for reconsideration were the same as those which had been rejected in committee and in the plenary and were against the interests of his country. If there had been a compromise proposal to accommodate the various points of view expressed at the Conference his delegation would have gladly given its support. Unfortunately, however, no compromise solution had appeared. There appeared to be little or no prospect that reconsideration of the matter would have any better result than the earlier discussion which had led to the rejection of draft article 36.

51. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) introduced the proposal of Czechoslovakia and the Ukrainian SSR for the reconsideration of article 36. The discussion in the Second Committee and the plenary had shown that the rules of international law on the subject matter of article 36 were not yet sufficiently for codification and for progressive development. However, in view of the Conference's decision to reconsider article 36, his delegation and that of Czechoslovakia proposed that the new discussion should take place on the basis of the text drafted by the International Law Commission. That text was the fruit of many years of work by a body of leading jurists representing the world's different legal systems and took into account the peculiarities of the various national laws. It was therefore appropriate that, once again, it should form the basis for the Conference's discussion.

52. The International Law Commission's text contained adequate and detailed provisions to ensure communication and contact between the consul and his nationals in the receiving State; in addition, it guaranteed the right of consular officers to contact their nationals in pursuance of their functions and gave them the necessary facilities in that respect.

53. A great advantage of the International Law Commission's text by comparison with other texts which had been submitted both in the Second Committee and in plenary meeting, was that its provisions on implementation wisely combined the rules set forth in paragraph 1 with a reference to the observance of the laws and regulations of the receiving State. Very properly, paragraph 2 did not contemplate the provisions of paragraph 1 on the one hand and the laws and regulations of the receiving State on the other as being in opposition to each other, but envisaged rather that they should be combined in their application. It was undesirable to speak of the primacy either of the law of the receiving State or of international law, especially

[2] This proposal was sponsored by Algeria, Ceylon, Congo (Brazzaville), Congo (Leopoldville), Guinea, India, Indonesia, Iran, Lebanon, Liberia, Mali, Nigeria, Pakistan, Republic of Korea, Sierra Leone, Tunisia and Upper Volta.

the provisions of article 36. In that respect, the text sponsored by his delegation and that of Czechoslovakia offered a happy solution by taking into account national peculiarities and different forms of government. The two sponsors of the amendment did not close the door to compromise, provided that it was without prejudice to the principles involved.

54. Mr. BOUZIRI (Tunisia), introducing the seventeen-power proposal, said that it reproduced in substance the text which had been approved by the Second Committee and which had been almost adopted by the Conference. However, some changes had been introduced in order to meet certain criticisms which had been made of the article as approved in the Second Committee.

55. In the first place, the former sub-paragraph (*c*) of paragraph 1 had been dropped because the obligation to communicate lists of arrested persons had appeared to many delegations to impose an unduly heavy burden upon the authorities of the receiving State. In addition, it had been thought by some that the provisions of that sub-paragraph were unnecessary in view of the provisions of sub-paragraph (*b*) which specified that the competent authorities of the receiving State had to inform a consulate without delay of the arrest of one of its nationals.

56. As far as sub-paragraph (*b*) was concerned, the sponsors had introduced the initial proviso " unless he expressly opposes it ", thereby relieving the receiving State of the automatic duty to inform the consul of the arrest of the person concerned. The reason for that proviso was the need to take into consideration the prisoner's own freedom of choice. It had been argued that in some cases a prisoner might not wish the consul to know that he had been in prison. The sponsors had hesitated at first; they had, however, ultimately agreed to take that point into account, but with appropriate safeguards. It was for that reason that the proviso was so drafted that the duty to notify would exist unless the person concerned explicitly stated that he did not wish the consul to be advised.

57. A second change had been made in sub-paragraph (*b*) as adopted by the Second Committee: the sponsors of the joint proposal had deleted the passage which would have required the receiving State to indicate the reasons for the arrest of the national of the sending State. In the opinion of many delegations the application of that provision might have involved interference in the internal affairs of the receiving State. In addition, many delegations had felt that such a provision might interfere with the investigation of the case because the reasons indicated at the earliest stage for the arrest might well not prove to be the reasons for the continued detention and, possibly, for the conviction of the person concerned.

58. He urged delegations to support the proposal, which adequately safeguarded individual freedom and the exercise of consular functions.

59. Mr. de MENTHON (France) agreed with the Indian representative that it would be a lamentable failure on the part of the Conference not to adopt a provision on the subject matter of article 36. It would be inconceivable for the Conference to adopt a convention on consular relations which did not contain an article on the essential matter of the protection of the nationals of the sending State and in particular the protection of those who needed it most because they were in prison, custody or detention. His delegation regretted that some of the provisions adopted by the Second Committee should have been dropped from the joint proposal, particularly since one of those provisions originated in an amendment submitted by the French delegation. However, he was prepared to support at that stage the seventeen-power proposal provided it was amended as proposed in the joint amendment (A/CONF. 25/L.49).

60. Mr. KAMEL (United Arab Republic), introducing the joint amendment (A/CONF.25/L.49) on behalf of its sponsors,[3] welcomed the Conference's decision to reconsider article 36 and the prospect of an appropriate provision being adopted in the convention. In the Second Committee, his delegation had been one of the twenty-seven delegations which had abstained when the Second Committee had adopted an amended text of article 36. The reason for that abstention had been that the provisions of paragraph 1 (*b*) as then drafted were very weak. It had been the hope of his delegation that the Conference in plenary would reconsider the matter, and its expectations had been fulfilled.

61. The Conference was faced with a new situation: as yet, it had not adopted an article on communication and contact between the consulate and nationals of the sending State. To fill that gap, there were two proposals before the Conference. That submitted by Czechoslovakia and the Ukrainian SSR would reintroduce the text of the International Law Commission which had been amended after lengthy discussion in the Second Committee. Most delegations had not changed their points of view on the issues involved, and his own delegation could not possibly accept a return to the International Law Commission's text.

62. The seventeen-power proposal did not contain the original sub-paragraph (*c*) of paragraph 1 which had been the object of considerable criticism. However, it maintained sub-paragraph (*b*), which was not acceptable to many delegations and, for that reason, the sponsors of the joint amendment proposed that the opening words of that sub-paragraph " unless he expressly opposes it " should be replaced by " if he so requests ". The purpose of the amendment was to lessen the burden on the authorities of receiving States, especially those which had large numbers of resident aliens or which received many tourists and visitors. The language proposed in the joint amendment would ensure that the authorities of the receiving State would not be blamed if, owing to pressure of work or to other circumstances, there was a failure to report the arrest of a national of the

[3] Canada, Ceylon, Congo (Brazzaville), Congo (Leopoldville), Ecuador, Federation of Malaya, Guinea, India, Indonesia, Japan, Liberia, Mali, Pakistan, Philippines, Republic of Korea, Sierra Leone, Syria, Thailand, United Arab Republic, Venezuela.

sending State. Also, by stating that the consul should be notified if the national of the sending State so requested, the amendment would avoid misunderstanding between the consulate and the authorities of the receiving State. It would thus serve one of the purposes of the convention on consular relations, which was to ensure that understanding and harmony should prevail in the relations between the receiving State and the sending State.

63. Mr. TILAKARATNA (Ceylon), replying to a question by Mr. EL KOHEN (Morocco), explained that his delegation, one of the sponsors of the seventeen-power proposal, had joined in sponsoring the joint amendment in a spirit of compromise. Like other sponsors of the seventeen-power proposal who had done the same, it had reconsidered the matter with the object of arriving at a satisfactory compromise solution.

64. Mr. TSHIMBALANGA (Congo, Leopoldville) and Mr. BARNES (Liberia) said that their position was similar to that of the representative of Ceylon.

65. Mr. SILVEIRA-BARRIOS (Venezuela) said that he agreed with the arguments put forward by the representative of the United Arab Republic. His delegation, like many others, attached great importance to the subject matter of article 36. He appealed to the sponsors of the seventeen-power proposal and to the other delegations to accept the joint amendment which offered the prospect of a satisfactory compromise solution. Approval of the amendment would ensure the adoption of an article 36 worthy of the Conference.

66. Mr. SICOTTE (Canada), speaking as one of the sponsors of the joint amendment (A/CONF.25/L.49), congratulated the delegation which had made it possible to put it forward as a compromise solution that he hoped would meet with the approval of the Conference.

67. He pointed out that, in the view of the sponsors of the joint amendment, sub-paragraph (*b*) of paragraph 1 of the seventeen-power proposal would impose an unduly onerous obligation on the police and other authorities of the receiving State by requiring those authorities to inform the consulate of every arrest of a national of the sending State unless that national expressly objected to that notification.

68. Mr. TILAKARATNA (Ceylon) explained that at the 13th plenary meeting his delegation had voted against the adoption of the remainder of article 36 because, after the deletions made to that article, the text had become too vague. As a country which was mainly a receiving State in the matter of consular relations, Ceylon would have been content if the convention had lacked a clause dealing with the subject of article 36, which would place certain onerous responsibilities upon its authorities. However, acting in the interests of the Conference as a whole, his delegation had joined in sponsoring the joint amendment (A/CONF.25/L.49), the adoption of which would ensure the incorporation into the convention on consular relations of an article on communication and contact with nationals of the sending State, which should prove acceptable to all.

69. Mr. BARTOŠ (Yugoslavia) stressed the importance of the subject matter of article 36, dealing with one of the traditional duties of a consul, which was to protect nationals of a sending State who were in difficulties in a foreign country. In view of the importance which his delegation attached to the matter, it had been naturally very concerned at the failure of the Conference to adopt an article 36. Accordingly, it welcomed the two proposals (A/CONF.25/L.40 and L.41) to fill the gap.

70. He would refrain from entering into the details of what was an extremely complex and difficult subject and would confine his remarks to stating his preference for the proposal of Czechoslovakia and the Ukrainian SSR. That proposal would introduce into the convention on consular relations the text originally adopted by the International Law Commission, a text which his government had instructed him to support. Nevertheless, if the Conference, contrary to the wishes of his delegation, were to reject the proposal of Czechoslovakia and the Ukrainian SSR, his delegation would vote in favour of the seventeen-power proposal because it preferred a less satisfactory text to the total absence of a provision on the subject. That proposal should, however, be amended as proposed by the United Kingdom, for in that way the proposed provisions would become more effective.

71. Mr. EVANS (United Kingdom) observed that the proposal of Czechoslovakia and the Ukrainian SSR reproduced the International Law Commission's text which the Second Committee had found unsatisfactory in a number of respects. That text contained several expressions which weakened to an unacceptable degree the basic rights and obligations which article 36 sought to safeguard. He referred, in particular, to the use of the expression " in appropriate cases " in paragraph 1 (*a*) and the word " undue " before " delay " in paragraph 1 (*b*), both of which the Second Committee had very rightly deleted. In addition, the proposed text reproduced paragraph 2 in the very unsatisfactory form in which it had been decisively rejected by the Conference itself in plenary meeting.

72. In order to ensure the effective implementation of the obligations relating to the protection of nationals, his delegation preferred that those obligations should be stated in the unequivocal terms adopted by the Second Committee. Accordingly, he found the seventeen-power proposal generally acceptable; its terms were largely similar to those adopted by the Second Committee.

73. However, the text of that proposal differed from the one adopted by the Second Committee in one important respect: the inclusion in paragraph 1 (*b*) of the proviso " unless he expressly opposes it ". As it had said in the discussions in the Second Committee, his delegation preferred the statement of an unequivocal obligation and did not favour a qualification of any kind. Nevertheless, it had carefully considered both the proviso embodied in paragraph 1 (*b*) of the seventeen-power proposal and the alternative one in the joint amendment (A/CONF.25/L.49). The language of the latter was unacceptable as it stood, because it could give rise to abuses and misunderstanding. It could well make the provisions of article 36 ineffective because

the person arrested might not be aware of his rights. There could also be misunderstandings owing to language and other difficulties. For those reasons, his delegation considered that if the obligation set forth in paragraph 1 (*b*) were to be qualified in the manner proposed by the sponsors of the joint amendment it was essential to introduce a provision to the effect that the authorities of the receiving State should inform the person concerned without delay of his rights under sub-paragraph (*b*). That was the purpose of his delegation's amendment (A/CONF.25/L.50).

74. If the Conference preferred the proviso proposed in the joint amendment " if he so requests ", his delegation would thus be prepared to accept it on the condition that the United Kingdom amendment was also accepted. Since his delegation would be prepared to vote for the seventeen-power proposal and for the joint amendment if its own amendment were accepted, he urged the sponsors of both texts to agree that the United Kingdom amendment should be voted upon first.

75. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said his delegation attached the greatest importance to article 36; without it, the convention would be unsatisfactory and incomplete. He would have preferred the text approved by the Second Committee, but it had been rejected by the plenary meeting. In the circumstances, the joint proposal offered a reasonable compromise and he would vote in favour of it and also of the amendments thereto.

76. Mr. DE CASTRO (Philippines) said that there were three possibilities before the Conference: to place an unequivocal obligation of the receiving State to notify the consular post of the receiving State of the arrest, imprisonment or detention of a national of the sending State; to provide that the receiving State should notify the consulate only if requested by the person concerned; or to make it incumbent on the receiving State to notify the consular post unless the national concerned expressly opposed it. He strongly supported the joint amendment (A/CONF.25/L.49). If it were not adopted, however, he would propose a separate vote on the first sentence of paragraph 1 (*b*) of the two proposals (A/CONF.25/L.40 and L.41). The sentence had the same meaning in both cases and he would like it to be deleted. The remaining text would represent a reasonable compromise between the differing points of view and would reinforce the rights and principles set forth in paragraph 1 (*a*).

77. Mr. GIBSON BARBOZA (Brazil) shared the views of the representative of India. It would be inconceivable to draft a convention which did not include a provision of the kind contemplated in article 36. He had doubts whether any of the proposals before the meeting represented a real effort at compromise, for the concessions made did not go far enough. Nevertheless, he would vote in favour of any of them that were put to the vote rather than see the convention without the article at all.

78. Mr. LAHAM (Syria) said he could not conceive of a convention which provided the first international codification of the law concerning consular relations and which did not make provision for free communication between consular officials and nationals of the sending State, on the lines proposed by the International Law Commission in article 36. It was unfortunate that the divergence of opinion had led to the deletion of the article — a situation which he was sure no delegation had intended. He had sponsored the joint amendment (A/CONF.25/L.49) in an effort to help the Conference to write a convention that would be acceptable to all States. He supported the representative of Venezuela in urging the adoption of the amendment.

79. Mr. ATABAKI (Iran) said he had joined the sponsors of the seventeen-power proposal for the reasons so lucidly explained by the representatives of India and Tunisia. He could accept the joint amendment.

80. Mr. REZKALLAH (Algeria), speaking as one of the sponsors of the seventeen-power proposal, supported the joint amendment and the United Kingdom amendment for the reasons given by the representatives of India, Czechoslovakia and the United Kingdom. He was not in favour of the proposal of Czechoslovakia and the Ukrainian SSR, though he would support it if the other proposal was not adopted.

81. Mr. CRISTESCU (Romania) said he could not agree to the inclusion in the convention of any provision that would affect criminal procedure and put aliens in a better position than nationals. The seventeen-power proposal would restore some provisions that the Conference had rejected earlier: in particular, it would restore the whole of paragraph 2 as approved by the Second Committee, which had prevented many representatives from voting in favour of article 36 in the plenary. The convention was concerned with consular privileges and immunities and not with national laws. No receiving State could admit interference in its internal judicial affairs and article 36 was unnecessary: articles 5 and 27 A provided all that was necessary to enable the consul to carry out his duty to protect his fellow nationals in the receiving State. He would vote against the seventeen-power proposal.

82. Mr. MARAMBIO (Chile) said that article 36 as drafted by the International Law Commission embodied all the basic ideas that such a provision should contain, namely: the right of communication between the consular officer and the nationals of his country; the guarantee that the consular officer would be notified without delay if one of his nationals was deprived of his freedom in the receiving State; and the right of a consul to visit a national under detention in that State. The text approved by the Second Committee, which retained the basic structure of the International Law Commission's draft, had been rejected in plenary, after long discussion and after suffering severe mutilation. But, as he and many other representatives agreed, a convention of the kind being drafted, which codified universal rules for consular relations, should contain an article setting out the basic ideas contained in article 36 as drafted by the International Law Commission; and for that reason several proposals had been submitted to the Conference.

83. He did not find the texts fully satisfactory; but as it was essential to fill the serious gap which at the moment existed in the draft convention, he was ready to support any proposal for including in the convention a text which was as close as possible to the International Law Commission's draft and which would specify the three basic rights he had mentioned. He hoped the Conference would make a real effort to restore article 36 in a satisfactory form; its absence would be a permanent reflection on the Conference.

84. Mr. BOUZIRI (Tunisia) agreed with the representative of Chile. He regretted that he could not accept the joint amendment as it was not a compromise: it reproduced a phrase which had been rejected by the Second Committee and by the plenary meeting. Article 36 was important but it should be acceptable to the greatest possible number of States, particularly on the point in question. The joint amendment (A/CONF.25/L.49) removed one of the fundamental obligations of the receiving State; it would deny to the consul the means of performing one of his most important functions under article 5 and frustrate the national's right to protection from his consulate, for the decision to notify the consul of a national's detention in the receiving State would be left entirely to the discretion of that State's authorities. The United Kingdom amendment would in no way improve the situation. He did not agree with the argument that a positive obligation would place an excessive burden on the receiving State, for in practice there were very few cases where a national would not want his consul to be notified of his detention. He would vote against the joint amendment and, if it should be adopted, he would vote against the whole article. It would be better to shelve the question than to deal with it in an unsatisfactory way.

85. Mr. TSHIMBALANGA (Congo, Leopoldville) supported the representative of Ceylon. The Conference should adopt some provision on the subject, for it was too important to be passed over in silence. None of the proposals was entirely satisfactory, but he would join the majority in order to reach a compromise. He would support the United Kingdom amendment.

86. Mr. MARESCA (Italy) said it was essential that the convention should contain a provision on so important a matter as communication and contact between the consulate and nationals of the sending State. Although it would not entirely dispel the doubts expressed during discussion, the seventeen-power proposal was acceptable. He did not support the joint amendment and if it were adopted he would vote for the United Kingdom amendment.

87. Mr. KALENZAGA (Upper Volta) said that, although he had supported the text approved by the Second Committee, he had now sponsored the seventeen-power proposal. In a spirit of compromise, he would also vote for the joint amendment provided that the United Kingdom text was also adopted.

88. Mr. JAYANAMA (Thailand) said that he had fully explained his delegation's position in the debate in the Second Committee. Article 36 was one of the most important in the convention, and he had become a sponsor of the joint amendment in a spirit of compromise; he particularly supported the arguments of the representatives of the United Arab Republic, the Philippines and Canada. He opposed the proposal submitted by Czechoslovakia and the Ukrainian SSR, and he also opposed the United Kingdom amendment.

89. Mr. AVILOV (Union of Soviet Socialist Republics) said that none of the texts before the Conference were satisfactory to all representatives. The seventeen-power proposal reproduced a text which the Conference had previously rejected; his delegation would like an article 36 to be included in the convention but could not accept that proposal as it would infringe the sovereign rights of the receiving State. In his opinion, the best text was that prepared by the International Law Commission, but he realized that some of its provisions were not acceptable to other delegations. The Conference should try to find a solution acceptable to all delegations; otherwise the convention would not receive a sufficient number of ratifications. It would be better to have no provision than an unsatisfactory one.

90. Mr. PAPAS (Greece) expressed general support for the seventeen-power proposal but reserved his position on the first sentence of paragraph 1 (*b*). The receiving State's obligation should be unqualified, to avoid the risk of authorities failing in their duty on some pretext. He requested a separate vote on the sentence in question.

91. Mr. AMLIE (Norway) said that paragraph 1 of the proposal by Czechoslovakia and the Ukrainian SSR, which reproduced the International Law Commission's text, was satisfactory, but paragraph 2 contained no provision for the enforcement of the provisions of paragraph 1. In that respect, the seventeen-power proposal was better, though it was not entirely satisfactory; he was not, for example, satisfied that the duty to report the detention of a national of the sending State in the receiving State should be made subject to that person's wishes. Since, however, it seemed that an article imposing an absolute obligation on the receiving State would not obtain the necessary two-thirds majority in the Conference, he would have to accept the qualification. He would only support the seventeen-power proposal, however, if it was amended in the manner proposed by the United Kingdom, which should be voted on first.

92. Mr. MAHOUATA (Congo, Brazzaville) said that article 36 was of the greatest importance, as it concerned one of the most vital consular functions. He had been greatly disturbed at the deletion of the article, which had left a serious gap in the convention. He had therefore sponsored the seventeen-power proposal and hoped it would help the Conference to find a satisfactory way out of the difficulty.

93. Mr. CAMARA (Guinea) said he had voted in favour of article 36 as approved by the Second Committee and he regretted its rejection in the plenary. In a spirit of compromise he had become a sponsor of the

seventeen-power proposal. He supported the United Kingdom amendment, which would strengthen the text.

94. Mr. N'DIAYE (Mali), also speaking as a sponsor of the seventeen-power proposal, said it was essential that the convention should contain an article dealing with one of the principal consular functions.

95. Mr. PETRŽELKA (Czechoslovakia) said that his delegation and that of the Ukrainian SSR were willing to seek a compromise solution with the sponsors of the seventeen-power proposal. In the short time available, it was difficult to consider all the suggestions made during the discussion, but he would agree to delete the first sentence of paragraph 1 (*b*) of the Czechoslovak and Ukrainian proposal (A/CONF.25/L.40). The International Law Commission's text, on which that proposal was based, was well balanced, and was itself the result of compromise; to depart from it too far would lead to the risk of conflict with national laws. He was therefore unable to support any of the other amendments. He urged that the dignity of the Conference should not be impaired by hasty voting on an important matter.

96. Mrs. VILLGRATTNER (Austria) said that the provisions of article 36 were an essential part of the convention, and she would vote for the seventeen-power proposal and for the amendments thereto. In whatever form it was adopted, article 36 would not hinder the application of the well-established principles of international law set out in the preamble to the convention: it would be subordinate to the free will of the individual.

97. Mr. KRISHNA RAO (India) said the seventeen-power proposal as amended by the United Kingdom would constitute the best text in the circumstances. It was essential to restore article 36.

98. The PRESIDENT said he would put the proposal by Czechoslovakia and the Ukrainian SSR to the vote first, as it had been submitted first.

99. Mr. RUEGGER (Switzerland) said that, although he had not taken part in the discussion during the current meeting, he attached the greatest importance to article 36 and to its inclusion in the convention. He urged that the seventeen-power proposal should be voted on first, so that if it were rejected the Conference would still have the International Law Commission's text, proposed by Czechoslovakia and Ukraine, to fall back on. If the seventeen-power proposal did not obtain the necessary two-thirds majority, the Conference should not give the impression that it regarded as unacceptable a text which the eminent jurists of the International Law Commission had considered for so long.

100. Mr. PETRŽELKA (Czechoslovakia) pointed out that the first sentence in paragraph 1 (*b*) of the proposal sponsored by his delegation and that of the Ukrainian SSR had been withdrawn. He considered that his amendment should be put to the vote first.

101. Mr. EL KOHEN (Morocco) said that the discussion had shown that there were points of agreement between the various proposals and that the differences were small. He suggested that voting should be postponed to the following meeting so that the sponsors could meet and work out a compromise.

102. Mr. RUEGGER (Switzerland) Mr. PETRŽELKA (Czechoslovakia) and Mr. BOUZIRI (Tunisia) supported the suggestion.

103. Mr. CAMERON (United States of America) said that the Conference had voted on the article once before and since then had had prolonged discussions on its subject matter. It had a long discussion at the current meeting and every delegation had had full opportunity to speak. He urged that the vote should take place forthwith. If the result was unsatisfactory, the sponsors could meet the following day as suggested by the representative of Switzerland, and he would be very glad to be present. But it would be unreasonable to postpone the vote at that juncture.

104. Mr. KAMEL (United Arab Republic) and Mr. TSHIMBALANGA (Congo, Leopoldville) agreed with the United States representative.

105. Mr. RUEGGER (Switzerland), in reply to a question from the PRESIDENT, said that if the meeting was going to vote, he would maintain his request that the proposal by Czechoslovakia and the Ukrainian SSR should be voted on last, for the reasons he had already given.

106. Mr. PETRŽELKA (Czechoslovakia) agreed that the Czechoslovak and Ukrainian proposal should be put to the vote after the other proposals before the Conference.

107. Mr. EVANS (United Kingdom) asked that his delegation's amendment should be voted on before the joint amendment.

108. The PRESIDENT invited the Conference to vote on the United Kingdom amendment.

At the request of the representative of the United Arab Republic, a vote was taken by roll-call.

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

In favour: Liechtenstein, Luxembourg, Mali, Mexico, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Sierra Leone, Sweden, Switzerland, Syria, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Leopoldville), Costa Rica, Denmark, Dominican Republic, El Salvador, Federation of Malaya, Finland, France, Federal Republic of Germany, Ghana, Greece, Guinea, Holy See, Hungary, India, Iran, Ireland, Italy, Republic of Korea, Lebanon, Liberia.

Against: Mongolia, Thailand.

Abstaining: Morocco, Philippines, San Marino, Saudi Arabia, South Africa, Spain, Tunisia, Cuba, Czechoslovakia, Ethiopia, Indonesia, Japan, Libya.

The United Kingdom amendment (A/CONF.25/L.50) was adopted by 65 votes to 2, with 13 abstentions.

109. The PRESIDENT invited the Conference to vote on the joint amendment (A/CONF.25/L.49).

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

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

In favour: Liberia, Liechtenstein, Luxembourg, Mali, Mexico, Morocco, Netherlands, New Zealand, Pakistan, Panama, Peru, Philippines, San Marino, Sierra Leone, South Africa, Sweden, Switzerland, Syria, Thailand, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela, Republic of Viet-Nam, Argentina, Australia, Austria, Brazil, Cambodia, Canada, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Leopoldville), Costa Rica, Denmark, Dominican Republic, El Salvador, Ethiopia, Federation of Malaya, France, Federal Republic of Germany, Ghana, Guinea, Holy See, India, Indonesia, Iran, Ireland, Japan, Republic of Korea.

Against: Lebanon, Mongolia, Norway, Poland, Portugal, Romania, Spain, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Albania, Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Finland, Hungary, Italy.

Abstaining: Libya, Saudi Arabia, Turkey, Belgium, Greece.

The joint amendment (A/CONF.25/L.49) was adopted by 55 votes to 20, with 5 abstentions.

110. Mr. PETRŽELKA (Czechoslovakia) moved that a separate vote be taken on the last sentence of paragraph 1 (*c*) of the seventeen-power proposal.

111. Mr. CAMERON (United States of America) opposed the Czechoslovak motion.

112. Mr. USTOR (Hungary) supported the motion.

The Czechoslovak motion was defeated by 58 votes to 12, with 9 abstentions.

The seventeen-power proposal (A/CONF.25/L.41), as amended, was adopted by 64 votes to 13, with 3 abstentions.

113. Mr. DEJANY (Saudi Arabia) said he had abstained from voting on all the proposals. His delegation accepted the principle in article 36 as adopted, but reserved its position with regard to paragraph 1 (*b*). His country would conform to that provision, but in the time which was practicable in the particular circumstances.

114. Mr. AVILOV (Union of Soviet Socialist Republics) said he had voted against the seventeen-power proposal, since article 36 in that form was absolutely unacceptable to his delegation for reasons which he had explained in the course of the discussion.

115. Mr. PETRŽELKA (Czechoslovakia) said he had voted against the revised text of article 36 because it did not provide a sound basis for the development of customary international law. He had abstained from voting on the United Kingdom amendment — although it proposed a perfectly reasonable provision — because the priority given to the vote on that amendment was contrary to rule 41 of the rules of procedure.

116. Mr. CRISTESCU (Romania), Mr. NESHO (Albania), Mr. KONSTANTINOV (Bulgaria), Mr. AVAKOV (Byelorussian Soviet Socialist Republic) and Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that they had voted against the article as revised because it was totally unacceptable to their delegations.

The meeting rose at 7.45 p.m.

TWENTY-FIRST PLENARY MEETING

Monday, 22 April 1963, at 10.45 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 72 (Settlement of disputes)

Proposal for an Optional Protocol concerning the Compulsory Settlement of Disputes

1. The PRESIDENT invited the Conference to consider article 72 (Settlement of disputes). No amendments had been proposed to that article but the Conference had before it a joint proposal (A/CONF.25/L.46) put forward by twenty delegations for an optional protocol concerning the compulsory settlement of disputes, as an alternative to the inclusion of article 72.

2. Mr. KRISHNA RAO (India), introducing the joint proposal on behalf of its sponsors, said that in the First Committee a sort of public opinion poll had been conducted by means of a roll-call vote on article 72.[1] The result of that vote had been described by some as a victory of the ideals of justice. The vote in question had placed in an awkward and embarrassing position many countries which had accepted the jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Court's statute.

3. The impression had been created that the Court was a perfect instrument for the purpose of deciding all legal disputes and that any criticism of the Court should not be tolerated. He could fully understand the attitude of some European countries which genuinely placed their faith in the Court. However, he could not accept

[1] For the discussion of this question in the First Committee, see the summary records of the twenty-ninth, thirtieth, and thirty-first meetings of that committee.

that great concern for the Court should be expressed by States which, in their declarations under article 36, paragraph 2, of the Statute, denied the Court the right to decide its own jurisdiction, as set forth in paragraph 6 of the same article 36. The record of India in that respect was much better than that of the latter group of countries. In that connexion, it was not inappropriate to cite the dictum of English law that " those who come to equity should come with clean hands ". He agreed that every endeavour should be made to encourage as many States as possible to accept the jurisdiction of the Court. At the same time, however, an effort should be made to ascertain the reasons why so many States did not accept that jurisdiction and to remedy any defects which might thus be revealed.

4. While he agreed that the subject of the discussion came within the scope of paragraphs 1 and 2 of Article 36 of the Court's statute, he thought it essential to face the problem of the reasons for the reluctance of States to submit their disputes to the Court. Some of those reasons were apparent and some were concealed. He would not attempt an exhaustive analysis of those reasons but would confine his remarks to some of the more important ones.

5. The first reason was a general fear arising from the insufficiency and uncertainty of the rules of international law for the purpose of dealing with all the situations arising between States. Owing to the recent origin of many rules of international law, to the fact that they were few in number and uncertain in character, and to the constitutional difficulty of creating new rules and of amending obsolete ones, international law, more than any other system of law, suffered from considerable gaps and deficiencies. As a result, a decision in accordance with the law was frequently impossible to obtain.

6. Secondly, it had been stressed by many leading authorities that, in order to make reference to a court compulsory, the law of nations first had to be defined with greater precision. The late Mr. John Foster Dulles had pointed out that resort to alleged custom and to the teachings of publicists in order to fill the gaps in international law would inevitably lead the International Court into the path of judicial legislation and political expediency.

7. Another fundamental objection was that not all conflicts of interest were capable of being terminated by judicial techniques within the existing legal framework. The absence of any effective machinery for the execution of the Court's judgements was another important point to be borne in mind.

8. But perhaps the most important reason for the rejection by some States of the jurisdiction of the Court was a lack of confidence in the impartiality of its judgements. The composition of the Court did not, as the Statute desired, represent equally the different legal systems of the world. The American continent was represented by five members, whereas there were only two judges from Asia and one from Africa. In the circumstances, a new country of Asia of Africa could hardly be criticized for hesitating to accept the jurisdiction of the Court in any matter. The General Assembly had been endeavouring to remedy the defects of the Court for a number of years but had met with no success whatsoever.

9. The element of confidence had been and remained the most important factor in determining the extent to which States were prepared to accept the jurisdiction of the Court. It was therefore the duty of all lawyers to strengthen that confidence and to remedy the deficiencies of the Court, while at the same time encouraging States to accept its jurisdiction.

10. Article 72 as drafted would create political and also legal difficulties. It would mean that reservations to other articles would be formulated. In any case, it made illogical reading because what was contained in paragraph 1 was, in fact, taken away by paragraph 2. Accordingly, the sponsors of the joint proposal (A/CONF.25/L.46) considered that article 72 should be replaced by an optional protocol on the compulsory settlement of disputes. He recalled, in that connexion, that the United States representative at the San Francisco Conference in 1945 had stressed the advantages of an optional provision which would enable States favouring compulsory jurisdiction to remain consistent with their principles while permitting other States to maintain their views.

11. The sponsors of the joint proposal would, at the appropriate stage, request that it should be voted upon before article 72.

12. Mr. RUEGGER (Switzerland) said that article 72 should be adopted as it stood. Paragraph 1 of the article set forth in clear and simple terms the principle of the compulsory jurisdiction of the International Court of Justice, in accordance with the practice of a large number of States in connexion with the settlement of disputes concerning the interpretation or application of bilateral and multilateral treaties.

13. He had noted with great satisfaction that many States, including a number of newly independent States, had shown by their votes that they favoured the principle of compulsory jurisdiction, at least with respect to a technical convention like that on consular relations and with respect to disputes which were legal and not political in character. He hoped that the number of such States would increase when the next codification conferences were held and that still more States would realize, as Switzerland had done as the result of its long and fruitful experience, that the principle of the judicial settlement of legal disputes at the request of any of the parties constituted a most valuable safeguard, especially for small States. That form of settlement of legal disputes removed them from the realm of political pressures and ensured that they would be settled in accordance with law.

14. He pointed out that in at least one other sphere — one that was undoubtedly more important than that which formed the subject of the Conference — a provision similar to article 72 had already been universally accepted. That provision was contained in the Constitution of the International Labour Organisation. Nearly all the States represented at the Conference were members of that Organisation and, in order to become members,

they had had to subscribe to its Constitution, which contained an absolute jurisdiction clause.

15. Nevertheless, it had to be recognized that not all of the States which wished to codify consular law were ready at the moment to subscribe to an absolute jurisdiction clause. It had been for that reason that the Swiss delegation had proposed the escape clause which had become paragraph 2 of article 72. That formula represented a definite advance by comparison with an optional protocol, which should remain in the background as a solution to be adopted in the last resort. He recalled that it had been his own delegation which had proposed the latter formula at the first Conference on the Law of the Sea, held at Geneva in 1958.

16. He did not believe that reservations under paragraph 2 would weaken the convention on consular relations in any way. Many treaties admitted reservations regarding the application of those treaties to certain territories or regarding certain special clauses. Above all, article 72 in its existing form established an effective link between the principle of compulsory jurisdiction and the convention, and it did not embody that principle in a separate document which several States might fail to sign, as experience since 1958 had shown.

17. Mr. CAMERON (United States of America) said that his delegation had voted in favour of article 72 when it had been considered by the First Committee. The adoption of that article indicated that some progress, albeit small, had been made towards the ultimate objective of ensuring that all legal disputes were disposed of by judicial settlement. The adoption of an optional protocol would be an admission that no progress had been made in the matter since the 1958 Conference on the Law of the Sea.

18. In the debate in the First Committee, he had pointed out the difference between the acceptance of the jurisdiction of the International Court of Justice with regard to the interpretation and application of a particular treaty, and the general acceptance of the jurisdiction of the Court under article 36, paragraph 1, of the Statute of the Court. The scope and range of Article 36, paragraph 1, of the Statute of the Court was very wide indeed, but a clause for the settlement of disputes such as article 72 constituted a provision on judicial settlement limited to the subject matter of the treaty. It would only affect the interpretation and application of the convention on consular relations. For that reason, his delegation had hoped that certain States which could not accept the jurisdiction of the Court under article 36, paragraph 2, of the Statute would nevertheless be prepared to accept that jurisdiction with regard to a purely technical convention having very modest political implications. His delegation had also hoped that all States which proclaimed their faith in the principle of the peaceful settlement of disputes would join in urging other delegations to accept article 72.

19. Article 72 had been adopted by the First Committee by a simple majority. The vote had clearly shown that the provision did not have the support of two-thirds of the delegations. Thorough and recent consultations had confirmed that the article would not obtain that two-thirds majority. In that event, the Conference had before it an alternative proposal for an optional protocol along the lines of that adopted at the 1958 Conference on the Law of the Sea and the 1961 Conference on Diplomatic Relations. His delegation would be prepared to accept such an optional protocol as an alternative to article 72, but regretted the indication that little progress had been made during the past five years towards a system of compulsory judicial settlement of legal disputes.

20. His delegation would not oppose a motion by the sponsors of the joint proposal that that proposal should be put to the vote first.

21. Mr. WESTRUP (Sweden) paid a tribute to the United States delegation, whose attitude had made it possible to adopt in the First Committee the provision on settlement of disputes embodied in paragraph 1 of article 72. He also paid a tribute to the Yugoslav delegation which, by reintroducing during the discussion in the First Committee the proposal for what was now paragraph 2, had enabled that committee to adopt a disputes clause which represented some progress from the formula of the optional protocol.

22. The advantage of the formula embodied in article 72 lay in the fact that a State which did not wish paragraph 1 of that article to apply would have to make an express declaration under paragraph 2. Silence would be construed as signifying support for the principle of judicial settlement. The position would be exactly the reverse if article 72 were to be replaced by an optional protocol.

23. He regretted that a move should have been made for putting the proposed optional protocol to the vote first. That procedural move would have the result of avoiding a vote on the substance of the question. However, Sweden had always bowed to the will of the majority in such procedural matters and would not adopt an intransigent attitude regarding the motion for priority.

24. His delegation saw grounds for satisfaction in the results of the work of the First Committee. The adoption of article 72 by that committee represented some progress towards the ideal of judicial settlement of international disputes to which Sweden had always been faithful. The votes cast in that committee had shown increasing support for that ideal.

25. Mr. RUEGGER (Switzerland) said that his delegation would not oppose the motion that the proposed optional protocol should be put to the vote first. It had decided on that course in the light of the special circumstances prevailing at the close of the Conference and more particularly in the light of the attitude adopted by the delegations of the United States and Sweden and the fact that opinion in the Conference was clearly divided. His delegation had also taken into account the fact that the roll-call vote in the First Committee had shown that satisfactory progress had been made towards the idea of a genuinely compulsory clause for judicial settlement. He was convinced that the idea put forward by his delegation would continue to gain ground and that as a result of a wider measure of agreement, future conventions codifying international law

would contain watertight clauses for the judicial settlement or arbitration of disputes. He earnestly appealed to all States which had signified by their votes their support for the idea of compulsory jurisdiction to sign the protocol and to render it a living and effective instrument, thus contributing to the establishment of a link between international legislation and compulsory jurisdiction.

26. Mr. MAMELI (Italy) said that the Italian school of public law had consistently upheld the principle that all disputes, however important, could and should be settled by the International Court of Justice or alternatively by arbitration. Accordingly, his delegation had voted in favour of article 72 in the First Committee. His delegation would also have been prepared to accept an arbitration clause, if one had been proposed. If, however, article 72 was not included in the convention finally adopted by the plenary and if no arbitration clause was suggested, his delegation would accept an optional protocol as a second best, or perhaps even a third best, solution. The adoption of such a protocol would mean that something would remain of the principle of the judicial settlement of disputes.

27. Mr. QUINTANA (Argentina) said that his delegation had fully explained its views in the First Committee. His government was in favour of the pacific settlement of international disputes and it had always been its policy to resort to arbitration in disputes with another country. Many important problems had been solved by that method, but in each case his government had accepted arbitration only for the particular matter in question: the only exceptions made by his government concerned certain humanitarian conventions. He would therefore be unable to accept any article which did not provide for consent in each case where a dispute was to be submitted to the International Court of Justice.

28. For the reasons stated, he considered that the convention under consideration should follow the precedent set by the Convention on Diplomatic Relations and be accompanied by an optional protocol. Such a solution would meet the wishes of most delegations and remove the risk of reservations to the convention. He therefore supported the joint proposal.

29. Mr. USTOR (Hungary) endorsed the statement of the representative of India. The peaceful settlement of disputes was one of the most important problems of international law. There were numerous methods for peaceful settlement, ranging from direct negotiation between the States concerned to compulsory submission to the International Court of Justice. Although he preferred the method of direct negotiation, he would not oppose other methods, such as recourse to the International Court of Justice; but his government, like most other governments, would not wish to commit itself irrevocably under the convention to accept the jurisdiction of the Court.

30. The question facing the Conference was really a procedural and not a substantive one — namely, how to deal with a situation in which some States were ready to submit disputes to the International Court and some were not. There were two solutions: to adopt article 72, which did not correspond with existing practice and would therefore cause difficulty to many States which would have to make reservations, or to adopt the proposal for an optional protocol, which in his opinion fully met the requirements of the situation. He would therefore vote against article 72 and in favour of the joint proposal. He would also support the motion that the proposal be put to the vote first.

31. Mr. de ERICE y O'SEA (Spain) said he had sponsored the joint proposal in a spirit of co-operation with friendly States and also because the Convention on Diplomatic Relations had an optional protocol. He reaffirmed his belief in international justice and in the peaceful settlement of disputes, the value of which had been amply demonstrated in practice. Nevertheless, he agreed with the views of the representatives of Argentina, Sweden, Switzerland and the United States of America and recognized that an optional protocol would be better than an article which might attract reservations. He therefore supported the proposal for an optional protocol and the Indian motion that it be voted on first.

32. Mr. VAZ PINTO (Portugal) said that he was in general agreement with the statements made by the representatives of Switzerland, United States of America, Sweden and Italy. The question of the settlement of disputes raised serious issues of principle. His delegation would not oppose the joint proposal for an optional protocol on the subject, but wished to make it clear that it accepted the protocol as a mere political expedient. The Portuguese delegation in no wise accepted the reasons which had been put forward in favour of that proposal. It considered it as a compromise solution and as such, as one based not on legal grounds but on grounds of policy.

33. Professor Kelsen had once referred to the three key figures in an organized society: the legislator, the judge and the policeman. He had said that, in international society, it was the judge who was needed most. The work of the legislator was useless without a judge to apply it, and the policeman could not perform his task unless the judge was there to lay down the law. International law was greatly in need of a judiciary capable of performing the role fulfilled by the Praetor in Roman law and by the judge in countries where English and American law prevailed. It had been suggested that international justice was imperfect because of the imperfection of international law. In fact, the position was quite the reverse: it was the deficiency of international justice which accounted for the imperfections of international law.

34. Mr. BARTOŠ (Yugoslavia) recalled that, in the First Committee, his delegation had reintroduced that part of the Swiss amendment which had since become paragraph 2 of article 72. Accordingly, his delegation had a duty to make its position clear on that article and on the proposal for an optional protocol in lieu thereof.

35. The United Nations Charter embodied the ideal of the compulsory jurisdiction of the International Court of Justice; that jurisdiction would not only provide

international law with a sanction but would also make for the certainty of international law. In that connexion, he was in agreement with the valuable remarks made by the representative of Portugal. However, the Charter did not impose a legal obligation upon States Members to accept judicial settlement. The Charter had thus accepted the idea that, for a variety of reasons, States might not be able to subscribe to a clause on the compulsory settlement of disputes by the Court. It would therefore not be appropriate to impose at the present Conference an obligation which, according to the Charter, did not constitute a general obligation under international law. It was necessary to take into account the reasons for which compulsory jurisdiction might have been rejected or accepted by States Members in pursuance of the right given to them by the Charter to subscribe to that compulsory jurisdiction or not, at their choice.

36. His delegation could support any solution which was consistent with the foregoing principles. It would therefore vote in favour of the joint proposal for an optional protocol when that proposal was put to the vote. In that connexion, he stated that, of all the countries of Europe and America, Yugoslavia alone had deposited its instrument of ratification of the Optional Protocol concerning the Compulsory Settlement of Disputes attached to the Convention on Diplomatic Relations, 1961.

37. He fully understood, however, the reluctance of some States to accept an obligation which was not imposed by the Charter but which was presented by the Charter as an ideal. It would not serve the cause of the development of international justice, nor would it strengthen the authority of the International Court of Justice, to insist on a vote on the text of article 72, which had no prospect of obtaining the two-thirds majority required for adoption. The failure to obtain the required majority might even be interpreted as a rejection of the idea of the judicial settlement of international disputes.

38. After the adoption of paragraph 1 of article 72, his delegation had sponsored the introduction of paragraph 2, although it believed that the resulting formula would be less elegant than an optional protocol on the settlement of disputes. A declaration under paragraph 2 would mean that the State making the reservation wished to depart from the general principle of international justice. With the formula of an optional protocol, however, States would instead be invited to affirm their faith in international justice by subscribing to the protocol. The adoption of paragraph 1 of article 72, however, had left his delegation no option but to propose the adoption of the somewhat inelegant formula of inserting paragraph 2 but he still preferred an optional protocol and would vote in favour of the joint proposal to that effect.

39. His delegation would agree to the optional protocol being voted upon first.

40. Mr. CRISTESCU (Romania) said that he had fully explained in the First Committee the reasons why his delegation could not accept article 72, which provided for the settlement of disputes arising out of the convention by the International Court of Justice. When the Statute of the Court had been drafted, most States had taken the view that its jurisdiction should not be compulsory but that the consent of all parties to a dispute concerning the interpretation of any article of an international convention should be required before the dispute could be submitted to the Court. In other words, the majority of States had recognized that the procedure should be optional and not compulsory; of the few which had recognized compulsory jurisdiction, some had made extensive reservations. Article 36, paragraph 1, of the Statute should accordingly be applied subject to the proviso that States were free to decide in each specific case whether they would accept the Court's jurisdiction; otherwise the sovereign rights of States would be infringed. The principle of freedom of recourse to the Court was the basis of international justice. National sovereignty was of paramount importance to countries which had acquired it through hard struggle and at the cost of many sacrifices. The introduction in the convention of an article imposing a compulsory obligation would be at variance with the practice observed at other United Nations codification conferences, such as the Conference on the Law of the Sea and the Conference on Diplomatic Relations, where separate optional protocols had been adopted. Even the provision for reservations under article 72, paragraph 2, would be unacceptable to many delegations. It was true that every sovereign State had the right to make reservations to multilateral conventions in order to protect their special interests, but paragraph 2 would open the door to arbitrary interpretations of the convention. In his opinion a provision for the compulsory settlement of disputes on the interpretation and application of the convention by the International Court of Justice would be out of place in an instrument codifying the international law on consular relations. There were many modes of peaceful settlement, such as those mentioned in Article 33 of the Charter. The best method was negotiation. Recourse to the International Court of Justice was the most difficult and the most costly. For those reasons he would vote against article 72 and would support the proposed optional protocol.

41. Mr. LETTS (Peru) supported the joint proposal for an optional protocol concerning the settlement of disputes and also the motion that it should be voted on first. The optional protocol would be consistent with practice; it would promote acceptance and ratification of the convention; and it followed an established precedent. The adoption of article 72 would undoubtedly cause difficulties. He would vote for the optional protocol and, if it were adopted, would sign it.

42. Mr. MUÑOZ MORATORIO (Uruguay) said he would support article 72 if it were put to the vote, for its provisions were in keeping with his government's traditional policy, though he would have preferred the article without paragraph 2, which gave States the possibility of making reservations. If, however, the Conference adopted the joint proposal for an optional protocol, he would sign the protocol. He would abstain

from voting on the motion that it be put to the vote first, for in his opinion the optional protocol and article 72 were of equal importance.

43. Mr. EVANS (United Kingdom) said that his government fully supported the International Court of Justice and regarded it as the appropriate body to adjudicate on disputes arising from the convention. He would have preferred the article on the settlement of disputes as approved by the First Committee, for it represented a step forward; but he would vote for the optional protocol if the Conference preferred it and decided to vote on it first. He would abstain from voting on the motion for giving the protocol priority.

44. Mr. PETRŽELKA (Czechoslovakia) said that he had opposed article 72 in the First Committee. A convention on consular relations should become part of general international law and it should not contain a provision making it compulsory for States to refer disputes arising out of the convention to the International Court of Justice. Such a provision would violate the principle of the sovereignty and equality of States. He fully supported the optional protocol, which represented a serious effort to reach a compromise acceptable to all the States represented at the Conference. He also supported the motion that the protocol be put to the vote first.

45. Mr. HENAO-HENAO (Colombia) said that his delegation had voted in favour of article 72 in the First Committee and recalled that the Colombian delegation had proposed the compulsory settlement of disputes at the Conference on the Law of the Sea in 1958.[2] At the Conference on Diplomatic Relations in 1961, the Colombian delegation had voted in favour of the optional protocol because, like the other countries of Latin America, Colombia's traditional policy was to seek the peaceful settlement of international disputes.

46. Of the many efforts made in the past to promote methods of peaceful settlement of disputes, he would mention only the treaties of conciliation and peaceful settlement known as the Gondra and Saavedra Lamas treaties which, between 1923 and 1931, had started the codification of such methods. The most far-reaching effort had been made by the Latin American countries at the Ninth Pan-American Conference at Bogotá, which had adopted a treaty known as the Pact of Bogotá or Inter-American Treaty on Pacific Settlement, whose fundamental article provided that States parties to the treaty recognized, in relation to other American States, as compulsory *ipso facto*, without the necessity of any special agreement, the jurisdiction of the International Court of Justice in all disputes of a juridical nature arising between them concerning, among other things, the interpretation of a treaty.[3]

47. That treaty had been ratified by Colombia, in keeping with his country's traditional policy, shared with other Latin American countries, of endeavouring to secure the settlement of international disputes by judicial process.

48. He supported the views of the representatives of Switzerland, Italy and Portugal. Although the compromise of an optional protocol was not the ideal solution, nor fully satisfactory, he was prepared to accept it as the best obtainable in the circumstances and because it maintained the position of the International Court of Justice.

49. Mr. CABRERA-MACIA (Mexico) said that article 72 had been produced after prolonged debate in the First Committee as a compromise between representatives who wanted a provision for compulsory jurisdiction and those who did not. To that extent the result was a good one, but it was made less satisfactory by the escape clause in paragraph 2. The proposed optional protocol was also a compromise solution, and it would be better to have a convention with an optional protocol than a convention which invited reservations. He would therefore vote for the proposed optional protocol.

50. Mr. MARAMBIO (Chile) confirmed the views of his delegation as stated in the First Committee. He was anxious that the convention should contain a provision concerning the settlement of disputes. He would support the proposal for an optional protocol because such a protocol would satisfy the majority of delegations and enable their governments to accept the convention.

51. The PRESIDENT invited the Conference to vote on the motion of the representative of India that the proposal for an optional protocol should be put to the vote first.

The motion was carried by 48 votes to 1, with 28 abstentions.

The proposal for an optional protocol (A/CONF.25/L.46) was adopted by 79 votes to none, with 3 abstentions.[4]

52. Mr. de MENTHON (France) said he had supported article 72 in the First Committee because it was realistic. Although he was in favour of compulsory jurisdiction, he had voted for the optional protocol and would sign it when he signed the convention.

53. Miss LAGERS (Netherlands) said that as representative of the host country of the International Court of Justice, which had accepted the Court's compulsory jurisdiction, she was disappointed at the rejection of article 72. She had not, however, wished to vote against the wishes of the majority and had therefore abstained from voting on the motion for priority and on the optional protocol itself. She shared the views of the representative of Switzerland and hoped that as many countries as possible would sign the optional protocol.

54. Mr. SHU (China) said that his government was a strong supporter of the compulsory jurisdiction of the International Court of Justice. He would have preferred article 72 as approved by the First Committee for the reason stated by the representative of Switzerland, and had therefore voted against the motion for priority. In a spirit of co-operation, however, he had voted in favour of the optional protocol as the second best solution.

[2] See *United Nations Conference on the Law of the Sea, 1958, Official Records*, vol. II (United Nations publication, Sales No. 58.V.4, vol. II), p. 111.

[3] See United Nations, *Treaty Series*, vol. 30, No. 449, p. 94.

[4] In consequence of this decision, it was unnecessary to vote on article 72. The text of the optional protocol will be found in document A/CONF.25/15.

FINAL PROVISIONS

Article 73 (Signature)

55. The PRESIDENT invited debate on the final provisions (articles 73 to 78) as prepared by the drafting committee (A/CONF.25/L.11).

56. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he would like to outline his delegation's attitude to the final provisions. The task of the Conference had been to draw up a convention governing consular relations between all States. The Convention dealt with a wide range of questions concerning consular services, and he hoped that it would be used by many States. It should consequently be open to accession by the largest possible number of States. Such broad participation would enhance the authority of the Convention and would be a favourable omen for its effective application in practice. Since ancient times, States had established consular relations; to restrict the number of possible parties was therefore historically unjustifiable and contrary to the spirit of the convention and the principle of international co-operation. One of the objects of consular relations was to foster amicable relations between States; the greater the number of States which could become parties to the Convention, the more widely would friendly relations be developed. Consequently, it was wrong to include in article 73 provisions limiting the number of potential parties.

57. In the First Committee, the Soviet Union delegation had introduced an amendment (A/CONF.25/L.158) to enable all States to become parties to the convention. It deeply regretted that the Committee had not seen its way to support that proposal. His delegation would vote against article 73 as drafted on account of the unjustified restrictions it contained and would also vote against the other articles (articles 75, 77 and 78) which contained like restrictions.

58. Mr. PETRŽELKA (Czechoslovakia) said the Czechoslovak delegation had always been firmly of the opinion that important international conventions covering general subjects of international life should be open to all States of the world without any discrimination and not only to limited groups of States. Accordingly, the Czechoslovak delegation could not consider articles 73, 75 and 77 acceptable, for those articles debarred a group of States, which for unfounded and unjustified political reasons had been prevented from participating in the Conference and from becoming parties to the Convention on Consular Relations. His delegation's attitude would be reflected in the vote on the articles in question.

59. Mr. MEYER LINDENBERG (Federal Republic of Germany) said that he supported the final provisions as drafted. He had previously pointed out in the First Committee that his country agreed that the convention, which codified international law, should be governed by the principle of universality. But that principle only applied to States, and not to other entities which did not possess the character of States. The Convention should be open to all States which were duly recognized as such but it could not be open to entities which were regarded by the majority of the international community as lacking the character of States. Article 73 as drafted did not discriminate against any States. It enabled any new and truly sovereign State to accede to the Convention provided that the General Assembly of the United Nations invited it to become a party to it. The text submitted was satisfactory and his delegation would vote for it.

60. Mr. KRISHNA RAO (India) said that agreements between States were a necessary element of international intercourse; the increase in their number and variety as international intercourse expanded produced a consciousness of mutual dependency. The scope and design of such agreements had reflected the changing needs of international society and the trend from isolation to intimate association with other nations. The treaties which a State concluded marked the progress of its relations with the outside world and the direction it had chosen. The increasing readiness of States to enter into agreements reflected their awareness of the common advantages to be derived from reciprocal undertakings to limit their individual freedom of action and their increasing confidence in the efficacy of international compacts.

61. The same considerations had played their part in encouraging States to conclude numerous multilateral conventions such as that under discussion. Since the beginning of the century, States had shown increasing readiness to conclude multilateral agreements that laid down rules of conduct binding on the parties thereto; those agreements had created a conventional international law. The fact that certain unscrupulous States had shown contempt for their compacts was no argument against the generally established trend towards the acceptance of international obligations.

62. Those considerations suggested that all States should be permitted to become parties to a multilateral convention which was non-political and utilitarian. The accession to the Convention of a State which was not recognized by all States would have no effect on international law or on the international recognition or representation of that State. The provisions of the convention were applicable between two States which had agreed to establish consular relations. If his delegation voted for the limitations to the accession of States as laid down in the article his government would not be able to appeal to the Convention or to apply its terms, if a dispute arose with a State which had been excluded from becoming a party to it. To do so would be illegal, illogical, unpractical and indefensible.

63. On the other hand, he thought that the Convention, which had been drawn up with such great labour, should not be endangered by a negative vote on the final provisions. His delegation would therefore abstain in the vote on article 73. If that article were adopted, it would vote in favour of articles 74 to 78.

64. Mr. BARTOŠ (Yugoslavia) said that the Convention should be regarded both as a treaty and as a law-making treaty [traité-loi] and should therefore be applied by all States. International law was tending to become universal and therefore despite its contractual

form, a traité-loi should be acceptable to all States, and all States should be obliged to respect it. Consequently he could not agree with the restrictions laid down in articles 73 and 75 and his delegation would abstain from voting on these articles.

65. His delegation hoped and desired that the General Assembly would take account of the principle of universality and would show itself sufficiently liberal to allow all States in the world to accede to the Convention.

66. Mr. USTOR (Hungary) protested against the overt discrimination contained in the final provisions. The provisions debarring certain States from becoming parties to the Convention violated the rules of contemporary international law and the requirements of the Convention itself. The Convention contained rules for universal application to all States, irrespective of their social system. The final provisions discriminated against certain socialist States, a discrimination introduced for political reasons. The German Democratic Republic, the Democratic Republic of Viet-Nam and the Democratic People's Republic of Korea had the same right to be parties to the Convention as any other States, not only in the interest of those States but in the interest of the international community as a whole. His delegation considered that the final provisions did not in any way affect the People's Republic of China because that State was a rightful member of the United Nations and of the Security Council.

67. Mr. DADZIE (Ghana) said that in view of the wide scope of consular relations, his delegation would have preferred participation in the Convention to be open to all States, even though General Assembly resolution 1685 (XVI) had denied to certain States the right to participate in the Conference. His delegation had stated its position quite clearly at the beginning of the Conference and he did not wish to add to that statement. He regretted that by debarring certain States from becoming parties to the Convention the final provisions would infringe the principle of universality which was preached in the Charter, but which certain nations did not find it convenient to practise. That discrimination would adversely affect the efficacy of the Convention. His delegation would therefore abstain in the vote on article 73.

68. Mr. TSHIMBALANGA (Congo, Leopoldville) agreed with the remarks of the representative of the Federal Republic of Germany and said that he would vote for article 73 and the other articles of the final provisions.

69. Mr. CHIN (Republic of Korea) said that the final provisions as drafted by the drafting committee were analogous to the corresponding clauses of the 1961 Convention on Diplomatic Relations. They were based on the principle of universality and contained no discrimination. Moreover, they were in conformity with General Assembly resolution 1685 (XVI) under which the Conference had been convened. The North Korean group was nothing but an illegal occupant against the will of the Korean people. The Government of the Republic of Korea was the only lawful government of the Korean peninsula recognized by the United Nations. In the First Committee, the Soviet Union amendment (A/CONF.25/C.1/L.158) had been rejected and the text before the Conference had been approved by more than a two-thirds majority. He fully supported the text as it stood.

70. Mr. OSIECKI (Poland) said that the final provisions as drafted were not acceptable to his delegation. The Polish Government had always been a firm supporter of the principle of universality to which it attached great importance and had defended it at a number of international conferences. The development of international relations showed that increasing importance was attached to the principle of universality, a tendency which was expressed in numerous important international conventions, notably in the four Geneva conventions of 12 August 1949 on the protection of war victims, which were open to all States. A convention of a general character could not be closed to any State wishing to accede to it. To prevent certain States from becoming parties to a convention of fundamental importance was contrary to international law. The desire of those States to accede to the Convention was perfectly legitimate, as it was in the interests of the Convention and of all States without distinction. His delegation would vote against articles 73, 75, 77 and 78.

71. Mr. NESHO (Albania) said that the Convention on Consular Relations was a universal instrument and should be open to all countries, including those which had not been able to participate in the Conference. Those countries included more than one-third of the world's population. His delegation would vote against articles 73, 75, 77 and 78.

72. Mr. CRISTESCU (Romania) said that his delegation would vote against article 73 because it was discriminatory and contrary to the principle of universality. The final provisions as drafted were contrary to contemporary international law and hindered the codification and progressive development of international law. He would vote against the articles.

73. Mr. RODRIGUEZ (Cuba) said that articles 73, 75, 77 and 78 were discriminatory and implied the negation of the principle of universality which should inform the Convention. He would vote against them.

74. Mr. ISMAIL bin AMBIA (Federation of Malaya) said that, at the 1961 Conference on Diplomatic Intercourse and Immunities (11th plenary meeting), the Malayan delegation had urged that all nations in the world should be given the opportunity of acceding to the Convention on Diplomatic Relations, but unfortunately its arguments had not found acceptance. In view of that, his delegation would abstain from voting on the final provisions.

75. Mr. CAMERON (United States of America) said that the United States delegation whole-heartedly supported the final provisions as prepared by the drafting committee because they followed the traditional pattern laid down in earlier conventions negotiated under the auspices of the United Nations. The deletion of the limitations in articles 73, 75, 77 and 78 would raise serious political questions which would make it difficult

for a number of States to sign the Convention. The responsibility for deciding which entities constituted States qualified to sign the Convention would be placed on the Secretary-General and on the Government of Austria. For those reasons, he considered articles 73 to 78 entirely acceptable and would vote for them.

76. Mr. PUREVJAL (Mongolia) said his delegation opposed articles 73, 75, 77 and 78 because they infringed one of the principles of the United Nations Charter; the principle of universality in international relations. All States, regardless of their form of political organization, should be free to accede to such fundamental international instruments as the convention under discussion. To deprive certain States of that right for political reasons was a continuation of the policy of discrimination practised against certain States. The Convention should be universal and without discrimination of any kind.

77. The PRESIDENT put article 73 to the vote.

At the request of the representative of the Federal Republic of Germany, a vote was taken by roll-call.

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

In favour: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Congo (Brazzaville), Congo (Leopoldville), Costa Rica, Denmark, Dominican Republic, El Salvador, Finland, France, Federal Republic of Germany, Greece, Holy See, Honduras, Iran, Ireland, Israel, Italy, Japan, Republic of Korea, Lebanon, Liberia, Liechtenstein, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Panama, Peru, Philippines, Portugal, San Marino, Sierra Leone, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela, Republic of Viet-Nam.

Against: Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Hungary, Mongolia, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania.

Abstaining: Algeria, Cambodia, Ceylon, Federation of Malaya, Ghana, Guinea, India, Indonesia, Libya, Mali, Morocco, Saudi Arabia, Syria, Tunisia, United Arab Republic, Yugoslavia.

Article 73 was adopted by 54 votes to 11, with 16 abstentions.

78. Mr. SHU (China) said that his delegation had voted for article 73, because it considered that its provisions were adequate and in conformity with the letter and the spirit of the resolution of the General Assembly under which the Conference had been convened. The remarks made by certain representatives of communist countries concerning his country were out of order.

79. Mr. KIRCHSCHLAEGER (Austria) thanked the Conference for the confidence it had shown in his government by providing in article 73 that until 31 October 1963 the Convention would be open for signature at the Federal Ministry for Foreign Affairs in Vienna. He recognized the honour done to his country and assured the Conference that his government would fulfil the task entrusted to it in close co-operation with the General Assembly of the United Nations.

Article 74 (Ratification)

80. Mr. BARUNI (Libya) suggested that, since they were only general rules and did not raise any question of principle, the subsequent articles should be voted on together.

81. Mr. KHLESTOV (Union of Soviet Socialist Republics) opposed the suggestion. The articles in question should be put to the vote one by one in keeping with custom.

82. Mr. PETRŽELKA (Czechoslovakia) said that his delegation opposed some of the final provisions and wished to signify its disapproval by voting on them individually. He objected to the suggestion that the articles should be voted on together.

Article 74 was adopted unanimously.

Article 75 (Accession)

Article 75 was adopted by 60 votes to 11, with 9 abstentions.

Article 76 (Entry into force)

Article 76 was adopted unanimously.

Article 77
(Notifications by the Secretary-General)

83. Mr. KRISHNA RAO (India), chairman of the drafting committee, pointed out that sub-paragraph (*c*) should no longer appear in article 77 because article 72 had been replaced by an optional protocol.

Article 77 was adopted by 65 votes to 11, with 6 abstentions

Article 78 (Authentic texts)

Article 78 was adopted by 63 votes to 11, with 5 abstentions.

The final paragraphs, beginning " In witness whereof . . ." were adopted unanimously.

84. Mr. DADZIE (Ghana) said that his delegation had abstained from voting on articles 75, 77 and 78 in view of their close connexion with article 73.

85. Mr. KALENZAGA (Upper Volta) said that his delegation had been given full powers to sign the document on behalf, not only of his country, but of other countries of the African and Malagasy Union — namely, the Governments of Congo (Brazzaville), Cameroun, Niger, and Dahomey. Although those States would have signed the Convention by delegation, their governments would be glad to receive copies.

STATEMENT BY THE REPRESENTATIVE OF ITALY

86. The PRESIDENT said that the representative of Italy had asked to make a statement.

87. Mr. MARESCA (Italy) said that as he had stated in the First Committee, he considered that paragraph 2 of article 2 introduced in the Convention a contradictory element which was both specific and general. Specifically it conflicted with paragraph 3 and established a rule which was completely opposed to the spirit of the Convention which was based on the idea of the independence of consular from diplomatic relations. Like many other representatives, he had hoped that the paragraph would be deleted, but it had been retained. He therefore wished to state that paragraph 2 should not be interpreted to mean that consular relations were subsidiary or accessory to diplomatic relations or that the consent to the establishment of diplomatic relations necessarily implied a consent to the establishment of consular relations. Article 2, paragraph 2, did no more than raise a bare presumption — neither an irrebuttable nor even a rebuttable presumption within the meaning of the law, but a bare presumption which was, consequently, subject to severe qualification and which could be overridden by the slightest evidence to the contrary. Accordingly, the provision should be interpreted strictly in accordance with the rules of international courtesy and prudence, under which a country should take all necessary steps beforehand and not expose another country to the embarrassment of a refusal.

The meeting rose at 1.20 p.m.

TWENTY-SECOND PLENARY MEETING

Monday, 22 April 1963, at 4.53 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]

OPTIONAL PROTOCOL CONCERNING ACQUISITION OF NATIONALITY

1. The PRESIDENT invited the Conference to comment on the optional protocol concerning the acquisition of nationality.

The protocol was adopted unanimously.[1]

DRAFT RESOLUTION ON REFUGEES

2. The PRESIDENT invited the Conference to consider the draft resolution on refugees.

3. Mr. RUEGGER (Switzerland) said that he would not oppose the draft resolution submitted to the Conference by the First Committee. Nevertheless, he did not think it really necessary to transmit to the organs of the United Nations, and more particularly to the High Commissioner for Refugees, the records of debates which had taken place under the auspices of the United Nations and which would shortly be available to everyone. The adoption of such a course might lead people to suppose that there was some problem, whereas in his view no real problem existed. Nothing in the Convention as adopted could affect the provisions of other international instruments in favour of refugees; such provisions constituted a *lex specialis*. In that connexion, the text of the Convention was confirmed by the statements of several delegations regarding their interpretation of certain clauses and the practice followed in their countries. It might perhaps have been useful to include an actual provision to that effect in the final clauses; but, even in the absence of such a provision, the legal position was perfectly clear. A convention of a technical nature on consular relations could not invalidate rules that were established by custom, like the rules dealing with the right of asylum, which was part of a State's sovereign rights. Reference could also be made in that connexion to the last paragraph of the preamble, which gave international customary law its rightful place.

4. For those reasons his delegation would not oppose the text of the resolution, but would abstain when it was put to the vote.

5. Mr. DADZIE (Ghana) thought that the very interesting debate in the Conference on the question of refugees which had led to the draft resolution before the Conference was a clear sign of the importance of the refugee question. Ghana was the most recent State to have ratified the Convention on the Status of Refugees, to which forty States were now parties, and he hoped that States which had not yet ratified the Convention would do so without delay, thus contributing to the rapid solution of the question.

6. Mr. EVANS (United Kingdom) said that the effect of the resolution was that the Conference would take no decision on the questions concerning refugees referred to in the memorandum of the United Nations High Commissioner for Refugees. Those questions therefore remained as they had been before the Conference began and if disputes arose, they would have to be settled outside the Convention. The Convention therefore in no way prejudiced the special status of refugees or their international protection.

7. Mr. MARESCA (Italy) agreed that the question of refugees remained open. But the answer lay in the old axiom *lex generalis non derogat priori speciali*; the relationship between the Convention on Consular Relations and the Convention relating to the Status of Refugees was the same as that between a subsequent general law and a pre-existing special law. The Italian delegation agreed with the statement by the Swiss representative and would also abstain from voting on the resolution.

8. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that he would vote for the draft resolution on refugees on the understanding that the Conven-

[1] The text will be found in document A/CONF.25/14.

tion in no way affected the relationship between the consulates of sending States and refugees who were nationals of those States. His country would therefore continue its practice of not authorizing consular officials to get into touch with refugees against their will.

The draft resolution on refugees was adopted by 65 votes to none, with 10 abstentions.[2]

9. Mr. SHARP (New Zealand) explained that he had abstained in the vote on the draft resolution, although it constituted a compromise, because he regretted that no solution had been found for a humanitarian side of consular work. New Zealand would not interpret the Convention as restricting the rights and liberties of refugees in New Zealand.

Tribute to the International Law Commission

10. The PRESIDENT invited the Conference to consider the draft resolution (A/CONF.25/L.8) submitted by Iran, Spain, the Union of Soviet Socialist Republics and the United Arab Republic, expressing the Conference's gratitude to the International Law Commission.

11. Mr. KRISHNA RAO (India) and Mr. de MENTHON (France) joined the sponsors of the draft resolution in thanking the International Law Commission, and Mr. Žourek, its special rapporteur, whose help had been invaluable for the work of the conference committees, the Conference itself and the drafting committee.

12. Mr. CRISTESCU (Romania) warmly congratulated the International Law Commission and its special rapporteur on their excellent work in the codification of international law during the past eight years. The draft convention had provided a solid foundation for the work of the Conference. In the opinion of his delegation, that draft was on a number of points preferable to the text adopted by the Conference.

13. Mr. BARNES (Liberia) joined in the tribute to the International Law Commission and thanked its special rapporteur for the very valuable help he had given to the First Committee which had greatly contributed to the success of the Conference.

14. Mr. GIBSON BARBOZA (Brazil) also congratulated the International Law Commission, whose draft had provided an excellent basis for the work of the Conference. As Chairman of the Second Committee, he particularly thanked the Special Rapporteur for the help he had given to the Committee.

15. Mr. DADZIE (Ghana) also congratulated the International Law Commission and its Special Rapporteur on their splendid work.

The draft resolution was adopted unanimously.[3]

[2] The text will be found in document A/CONF.25/13/Add.1, resolution I.

[3] The text will be found in document A/CONF.25/13/Add.1, resolution II.

Tribute to the Federal Government and to the People of the Republic of Austria

16. The PRESIDENT invited the Conference to consider the draft resolution (A/CONF.25/L.9) sponsored by a large member of delegations expressing the Conference's appreciation to the Government and people of the Republic of Austria.

17. Mr. BARTOŠ (Yugoslavia) said that he wholeheartedly supported the resolution and on behalf of the Yugoslav Government thanked the Government and people of the Republic of Austria for their generous hospitality.

18. Mr. USTOR (Hungary) warmly supported the draft resolution. The cordial hospitality of the Austrian Government and people and their friendly attitude had earned the gratitude of the Conference.

The draft resolution was adopted unanimously.[4]

19. Mr. KIRCHSCHLAEGER (Austria) said that the Austrian people and the Austrian Government, as well as the authorities of the city of Vienna, would certainly be deeply moved by the resolution adopted by the Conference. Efforts had been made to avoid the shortcomings of the 1961 Conference and, if any shortcomings had still occurred, he asked the forgiveness of the Conference.

20. He thanked the representatives and their wives and families who had come to Vienna for the friendly feelings which they had shown for the Austrian people. He emphasized the gratitude of his government and his delegation to the United Nations for having organized a second international conference at Vienna, dealing with the very important subject of the law of consular relations and thus attempting to strengthen the order of the international community. Lastly, he expressed his most sincere thanks to all members of the Secretariat, who had done their work with the high ability and impartiality well known to all delegations.

21. Mr. DONATO (Lebanon) associated himself with the thanks expressed to the Austrian Government and people for their generous hospitality. During the Conference, Pope John XXIII had addressed an impressive call for peace to all men of goodwill, and the Lebanese delegation wished to express its respect and gratitude to the Holy Father.

22. Mr. TSHIMBALANGA (Congo, Leopoldville) said that he wished to convey the thanks of his government to the Government and people of Austria for their friendly reception of the Conference. He congratulated the President of the Conference, the chairman of the two committees and all those who had contributed to the success of the Conference. The Convention on Consular Relations opened a new era in international relations. But the labour and efforts of the Conference would only be rewarded if they made a useful contribution to the welfare of mankind. The encyclical of Pope John XXIII had been most timely. His country would

[4] The text will be found in document A/CONF.25/13/Add.1, resolution III.

do all in its power to contribute to universal peace. With the help of the United Nations, it would soon finally emerge from the crisis through which it was passing, and he wished to take the opportunity to thank all those who had helped it to survive a difficult period.

23. Mr. MARESCA (Italy) whole-heartedly supported the statement of the representative of Lebanon. No rule of law could be of use unless it were applied in a spirit of co-operation and an atmosphere of mutual confidence. The Papal encyclical appealing to the goodwill of all men had resounded throughout the world.

24. The Italian delegation joined the other speakers who had thanked the Government and the people of Austria, and also of the city of Vienna, whose name was once again associated with a great international conference.

25. Mr. HENAO-HENAO (Colombia) endorsed the statements of the Libyan, Italian and other representatives who had paid a tribute to the Government and people of Austria. He also joined in the tribute to His Holiness the Pope for his work for universal peace.

26. Mgr. CASAROLI (Holy See) wished to be associated with the speakers who had expressed their gratitude to the International Law Commission and to the Government and people of Austria. He thanked representatives for their tributes to the Holy Father.

27. The Holy See had gladly agreed to take part in the work of the Conference as an indication of the importance it attached to the establishment of friendly relations between the peoples and nations of the world. But the Holy See had a more direct interest in the question of consular relations: it had institutions and Catholic communities in all the countries of the world and therefore could not keep aloof from one of the most important consular functions — to protect the interests of the sending State and its nationals in the receiving State. It was true that the Holy See was in a special position; but it was to be noted that the development of the consular institution and its part in the growing importance of cultural and friendly relations in a way brought the range of consular activity closer to the activities of the Holy See. Receiving States already recognized the competence of the Apostolic delegates of the Holy See to perform protective functions similar to those of consuls. In 1938, for instance, the Holy See had planned to open a consulate at Vienna, and although that project had not materialized it was evidence of the Holy See's interest in the consular institution.

28. He thanked the Conference for the co-operative spirit shown in its work, which had helped to solve many difficulties. The results of the Conference had been encouraging and were a source of gratification to the Holy See.

Statement by the chairman of the drafting committee

29. Mr. KRISHNA RAO (India), speaking as chairman of the drafting committee, informed the Conference of that committee's decision on certain drafting points relating to articles 8, 27, 35, 58 and 71, and also to articles 1, 45 and 53.

30. In article 8, the drafting committee had decided to replace the expression " the consular post " by " a consular post ", as suggested by the representative of Czechoslovakia at the ninth plenary meeting.

31. With regard to article 27, the representative of Belgium had drawn attention (eighth plenary meeting) to an apparent inconsistency in paragraph 1, sub-paragraph (*a*) of which referred to " the consular premises, together with the property of the consular post ", whereas sub-paragraph (*b*) referred to " the consular premises, together with the property contained therein ". After considering the question, the drafting committee had decided to leave the texts of the two sub-paragraphs unchanged, because they dealt with two different situations.

32. With regard to article 35, the Conference, at its tenth plenary meeting, after adopting the Danish amendment to paragraph 5 (A/CONF.25/L.31), had entrusted the drafting committee with the task of formulating the text of that paragraph, and its second sentence in particular. The drafting committee had decided to replace in the English text the word " citizen " by the word " national " and to insert a comma between the words " receiving State " and " nor ". The second sentence would thus read: " Except with the consent of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State."

33. In paragraph 4 of article 58, it had been proposed at the eighteenth plenary meeting to specify that the exchange of consular bags in question took place between consular posts situated in different States. The drafting committee had agreed to insert the words " in different States " between the words " honorary consular officers " and the words " shall not be allowed " in the text of the Swiss amendment (A/CONF.25/L.44) adopted by the Conference. The text of the paragraph would thus read:

" 4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned."

34. In order to take into account the observations made at the nineteenth and twentieth plenary meetings during the consideration of articles 64 to 69 on the subject of the provisions containing the phrase " who are neither nationals nor permanent residents of the receiving State ", the drafting committee, after considering several possible solutions, had decided to reintroduce in part in article 1, with some drafting changes, the text of paragraphs 2 and 3 of article 1 of the International Law Commission's draft.

35. Accordingly, paragraphs 2 and 3 of article 1 would read:

" 2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of chapter II of the present convention apply to consular posts headed by career consular officers; the provisions of chapter III govern consular posts headed by honorary consular officers.

" 3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by article 71 of the present convention."

36. In addition, the drafting committee had agreed to omit from article 67 (formerly article 64) the phrase " who are neither nationals nor permanent residents of the receiving State ", provided that the word " privileges " in article 71 was construed as comprising " exemptions ".

37. Finally, in article 45, paragraph 3, and in article 53, paragraph 4, the drafting committee had replaced the words " a member of the consular post " by the words " a consular officer or a consular employee ".

38. Mr. KEVIN (Australia) expressed his delegation's thanks to the drafting committee for the admirable way in which it had done its work.

Adoption of the Draft Convention as a whole

39. The PRESIDENT put the text of the Convention as a whole to the vote, taking account of the changes referred to by the chairman of the drafting committee.

The Vienna Convention on Consular Relations, as a whole, was adopted unanimously.

40. Mr. EVANS (United Kingdom) said that his government wished to study the text of the Convention carefully before signing it and that meanwhile he reserved the position of the United Kingdom with respect to certain articles, in particular articles 31, 41 and 44.

Final Act

41. The PRESIDENT put the Final Act to the vote.

The Final Act was adopted unanimously.[5]

42. Mr. CRISTESCU (Romania) explained that he had voted for the Convention, but expressed his government's reservations with respect to articles 31, 36, 70 and 74, which were unacceptable to his delegation.

43. Mr. KONTANTINOV (Bulgaria) said that he had voted for the text of the Convention as a whole although it contained a number of provisions unacceptable to his government, which would formulate its reservation in due course.

44. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he had voted for the Convention as drafted although some of its provisions were less satisfactory than the corresponding clauses of the International Law Commission's draft. That was true in particular of article 31, which contained provisions enabling the authorities of the receiving State to enter the consular premises without the permission of the head of post; of article 36, paragraph 2 of which had been amended in a way which might affect the sovereign right of States to enact and apply legislation on criminal procedure to punish crimes committed by aliens in the territory of the receiving State; of the provisions of article 70 on the methods of communication between the diplomatic mission and the authorities of the receiving State; and of article 74, which restricted the right of all States to become parties to the Convention. The USSR delegation could not agree with those provisions for the reasons it had stated during the discussion.

45. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that he had voted for the Convention as a whole although several of its provisions were not acceptable to his delegation. He referred particularly to article 31, which did not provide adequate immunity for the property and premises of consulates; to article 36, the provisions of which concerning the relations between consular officers and nationals of the sending State might involve pressure to bring municipal law into line with international law; and article 70, of which the provisions were inconsistent with diplomatic practice.

46. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that he had voted for the Convention, but found certain provisions unsatisfactory: article 31, which in certain cases allowed the authorities of the receiving State to enter consular premises without the consent of the head of post; paragraph 2 of article 36 might lead to pressure on the criminal laws of the receiving State and even to some violation of its sovereignty; paragraph 3 of article 70, which was contrary to current practice in the relations between diplomatic agents and the authorities of the receiving State; and article 74, which tended to restrict the number of parties to the Convention.

47. Mr. NESHO (Albania) said that he had voted for the Convention as a whole, though some of its provisions were not entirely acceptable, particularly articles 31, 36, 70 and 74.

48. Mr. PETRŽELKA (Czechoslovakia) said that he had voted for the Convention as a whole as he was convinced that it would promote friendly relations between countries, irrespective of their constitutional and social systems, as was stated in the fourth paragraph of the preamble. To achieve that aim completely, it would have been necessary to include in the Convention only rules which were very generally acceptable. Unfortunately, a number of the provisions reflected the narrow views of certain States and were unacceptable to the Czechoslovak delegation: for example, articles 31, 36, 70 and 74, among others, on which he reserved his government's position.

49. Mr. PUREVJAL (Mongolia) said that he had voted for the Convention as a whole, but he did not approve of all its articles, with respect to certain of which he reserved his government's position.

50. He had also voted for the Final Act, but that did not mean that he recognized the participation in the Conference of a Chinese delegation representing General Chiang Kai-shek as legitimate.

51. Mr. USTOR (Hungary) said that he had voted for the Convention as a whole. The conclusion of the Con-

[5] For the text of the Final Act, see document A/CONF.25/13.

vention would mark an important stage in the progressive development of international law. However, he reserved his government's position with respect to articles 31, 36, 70 and 74.

52. Mr. RODRIGUEZ (Cuba) said that he had voted for the Convention as a whole, but that his delegation would formulate its reservations with regard to articles 31, 36, 70 and 74 in due course.

53. Mr. WU (China) said that he was obliged to reply to the unflattering remarks of certain delegations concerning the participation of the Chinese delegation. The question had been settled unequivocally by United Nations General Assembly resolution 1685 (XVI), so that the remarks referred to were out of order. The Chinese delegation had voted for the Convention and for the Final Act, although some of the articles of the Convention did not seem entirely satisfactory. But it was necessary to know how to compromise, and the Chinese delegation would sign the Convention. Its ratification, however, was a matter for his government.

54. Mr. PAPAS (Greece) reserved his government's position with respect to articles 35, 47, 50, 53, 54, 58 and 71.

Closure of the Conference

55. Mr. BOUZIRI (Tunisia), speaking for the representatives of the countries of Africa and Asia, said that the Conference had reached a very satisfactory conclusion to its work, and the positive results would long be remembered by those who had taken part. The convention just adopted would make a positive contribution to the development of international law; and the name of its President, Mr. Verosta, would remain in the memory of all. He had courageously accepted the onerous task entrusted to him and had performed it well; he had shown not only outstanding competence as a jurist but also great human qualities. He thanked him warmly for the way in which he had guided the discussions and also thanked the secretariat who, at all levels, had spared no effort to ensure the Conference's success.

56. Mr. TSHIMBALANGA (Congo, Leopoldville) said that as representative of an African State he fully supported the words spoken by the Tunisian representative to the members of the Conference, to its President and to the secretariat.

57. Mr. CAMARA (Guinea), on behalf of the people, the government and the delegation of his country, thanked the people of Austria for having once again offered such a warm welcome and hospitality. They would certainly have grasped the importance of the Convention, for it was the peoples of the world who would be most affected by the success of a conference whose work would form the basis for developing international co-operation and friendly relations between nations.

58. Mr. CABRERA-MACIA (Mexico), speaking on behalf of the Latin American republics, thanked the President of the Conference for the intelligence and impartiality with which he had conducted the proceedings. The names of Mr. Verosta and of the city of Vienna would henceforth be associated with the Convention just adopted by the Conference. He warmly thanked the President of the Republic of Austria.

59. Mr. CAMERON (United States of America) said that he desired to pay a special tribute to the President who had brought the work of the Conference to a successful conclusion in spite of the unprecedented difficulties due as much to the questions under discussion as to the defects in the rules of procedure. He mentioned also the valuable work of the secretariat, whose impartiality and competence had become legendary. The Government and people of Austria had remained faithful to their tradition of hospitality just as in 1961.

60. Mr. JAYANAMA (Thailand), supported by Mr. CHIN (Republic of Korea) and Mr. WU (China) congratulated the President of the Conference on the way in which he had guided the discussions, thanks to his profound knowledge of the subject and his great human qualities. He also thanked the chairmen of the First and Second Committees and of the drafting committee and the rapporteurs of those committees for the manner in which they had carried out their work, and the secretariat officials whose valuable co-operation had greatly contributed to the success of the Conference.

61. Mr. NALL (Israel) said that the Convention which had just been adopted would not only influence the development of international law and help to bring about friendly relations between all the countries of the world but would perhaps become the starting point for a new organization of the official relations between States. He paid particular tribute to the qualities shown by the President as a jurist and the way in which he had acquitted himself of his task; he also thanked the chairmen of the committees, whose tact and competence had ensured the successful issue of the debates. Thanks were also due to the Representative of the Secretary General, the Executive Secretary, and the Secretariat as a whole for having helped to make the Conference a success, and to the city of Vienna for its warm hospitality.

62. Mr. EVANS (United Kingdom), in the name of the countries of the Commonwealth, thanked Mr. Verosta, the President, who had played so important a part throughout that historic Conference. Thanks to his unfailing patience, good humour and courtesy, the discussions had taken place in an atmosphere of cordiality and goodwill which had enabled the Conference to achieve results of which it might well be proud. He commended the representative of the Secretary-General and the whole secretariat of the Conference for the constant efforts made to ensure the success of the work. Finally, he thanked the Government and people of Austria and the city of Vienna most warmly for their generous contribution to the cause of peace.

63. Mr. PETRŽELKA (Czechoslovakia), speaking also for the delegations of Bulgaria, the Byelorussian Soviet Socialist Republic, Hungary, Mongolia, Poland, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics, whole-heartedly associated himself with the tributes paid to the President for the

outstanding qualities which he had shown during the proceedings of the Conference, and which had enabled the Conference to attain its purpose. He also thanked all the members of the Secretariat who had contributed to the success of the Conference and expressed his gratitude to the Austrian Government and people, who had once again showed their proverbial hospitality and cordiality.

64. Mr. WESTRUP (Sweden), speaking for the delegations of Denmark, Finland, Norway and Sweden, Mr. BARTOŠ (Yugoslavia) and Mr. MAMELI (Italy) emphasized the historic importance of the adoption of the Convention on Consular Relations and associated themselves with the warm tributes paid and congratulations addressed to the President of the Conference, the members of the various committees, the Secretariat and all those whose devoted efforts had led to the satisfactory outcome of the Conference's work.

65. Mr. RUEGGER (Switzerland), speaking also for the delegations of Belgium, France, the Federal Republic of Germany, Greece, Ireland, Liechtenstein, Luxembourg, Netherlands, Portugal, San Marino, Spain, Turkey and Austria, expressed his sincere thanks to the President, whose outstanding qualities all the participants had had the opportunity to appreciate during the difficult moments of the Conference. In particular, he paid tribute to the President's great tolerance and to the respect he had shown at all times for everyone's opinion. The devoted work of the President's assistants, especially the chairmen of the two committees and of the drafting committee, and that of all members of the Secretariat and general services had also contributed to the success of the Conference.

66. Mr. DADZIE (Ghana) associated himself with the tributes paid by the previous speakers, and expressed his thanks in particular to the chairman of the drafting committee, who deserved the gratitude and sympathy of all participants in the Conference.

67. Mr. KRISHNA RAO (India) thanked the representative of Ghana for his kind words and said he was grateful to the members of the drafting committee, whose goodwill and co-operative spirit had enabled the Committee to fulfil a very difficult task. He joined in the congratulations to the President and the secretariat of the Conference.

68. The PRESIDENT said that the adoption of the Convention on Consular Relations established an important date in the history of international law, for a new branch had been codified. Despite the difficulties of the subject and the problems caused by rules of procedure that were sometimes ill-adapted to the discussions, the Conference had been able, through the understanding and goodwill of its participants, to accomplish its task. He paid a special tribute to the International Law Commission and to its special rapporteur, whose work had formed the basis of the Conference's discussions. He also thanked the chairmen and the members of the committees of the Conference for the zeal with which they had dealt with the exacting and difficult tasks entrusted to them.

69. He was deeply touched by the kind words addressed to him by members of the Conference and hoped that the 1963 Convention would long remain the basis for consular relations between the nations of the world.

70. He then declared the United Nations Conference on Consular Relations closed.

The meeting rose at 7.10 p.m.

SUMMARY RECORDS OF THE FIRST COMMITTEE

FIRST MEETING

Tuesday, 5 March 1963, at 4 p.m.

Acting Chairman: Mr. VEROSTA (Austria)
President of the Conference

Election of Chairman

1. The ACTING CHAIRMAN called for nominations for the office of chairman of the First Committee.

2. Mr. CHAVEZ (El Salvador) nominated Mr. Barnes, head of the delegation of Liberia, whose distinguished diplomatic and legal career made him eminently qualified for the office of chairman.

3. Miss ROESAD (Indonesia) seconded the nomination.

4. The ACTING CHAIRMAN said that, in the circumstances, a secret ballot could be dispensed with, as provided in rule 43 of the rules of procedure.

Mr. Barnes (Liberia) was elected Chairman of the First Committee by acclamation.

The meeting rose at 4.10 p.m.

SECOND MEETING

Wednesday, 6 March 1963, at 11 a.m.

Chairman: Mr. BARNES (Liberia)

Election of officers

1. The CHAIRMAN thanked the Committee for the honour it had conferred upon him and his country in electing him Chairman. He realized the difficulty of his task, and he counted for its successful accomplishment on the spirit of co-operation, understanding and tolerance of all the members of the Committee.

2. The Committee's first task was to elect its officers — namely, the first and second vice-chairmen and the rapporteur.

Election of the First Vice-Chairman

3. The CHAIRMAN invited the members of the Committee to nominate candidates for the office of first vice-chairman.

4. Mr. LEE (Canada) nominated Mr. Silveira-Barrios (Venezuela).

5. Mr. MIRANDA e SILVA (Brazil) seconded the nomination.

Mr. Silveira-Barrios (Venezuela) was elected First Vice-Chairman by acclamation.

Election of the Second Vice-Chairman

6. The CHAIRMAN called for nominations for the office of second vice-chairman.

7. Mr. KIRCHSCHLAEGER (Austria) nominated Mr. Osiecki (Poland).

8. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) seconded the nomination.

Mr. Osiecki (Poland) was elected Second Vice-Chairman by acclamation.

Election of the Rapporteur

9. The CHAIRMAN called for nominations for the office of rapporteur.

10. Mr. KEVIN (Australia) nominated Mr. Westrup (Sweden).

11. Mr. RUEGGER (Switzerland) seconded the nomination.

Mr. Westrup (Sweden) was elected Rapporteur by acclamation.

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6)

12. The CHAIRMAN recalled that, according to the methods of work and procedures suggested by the Secretary-General and approved by the plenary conference at its second meeting, the First Committee should examine the preamble, articles 2 to 27 and 68 to 71 of the draft prepared by the International Law Commission, the Final Act of the Conference and any protocols which the Conference might consider necessary. The Committee would doubtless wish to postpone the examination of the preamble till later and proceed at once to examine the International Law Commission's draft articles, beginning with article 2 since, at the Secretary-General's suggestion, which the Conference had approved, article 1 was to be sent to the drafting committee, which would report to the plenary conference direct.

It was so decided.

Article 2 (Establishment of consular relations)

13. The CHAIRMAN pointed out that draft article 2 had been the subject of eight amendments submitted by Czechoslovakia (A/CONF.25/C.1/L.1), Bulgaria (A/CONF.25/C.1/L.2), the United Arab Republic (A/CONF.25/C.1/L.9), Hungary (A/CONF.25/C.1/L.13), Brazil, Italy and the United Kingdom (A/CONF.25/C.1/L.19), Spain (A/CONF.25/C.1/L.22), the Republic

of Viet-Nam (A/CONF.25/C.1/L.30) and India (A/CONF.25/C.1/L.36). The amendment by the Republic of Viet-Nam was identical with the joint amendment.

14. Mr. PETRŽELKA (Czechoslovakia) welcomed the spirit of co-operation already shown at the Conference, which augured well for the outcome of its deliberations. The success of the Conference would doubtless contribute to the maintenance of friendly relations between States. The Conference had before it a draft prepared by the International Law Commission, which could serve as a basis for its work. With regard to article 2 of the draft, Czechoslovakia had submitted an amendment (L.1) which, in his opinion, suitably completed the existing text of the article. The right of all States to establish consular relations with foreign States should be written into the future convention, as this right was indefeasible.

15. Mr. HAEFTEN (Federal Republic of Germany) said that the Czechoslovak amendment merely repeated a similar proposal concerning the right of legation which the Czechoslovak delegation had submitted to the Conference on diplomatic relations and immunities and which that Conference had rejected. In any case, the Czechoslovak amendment was liable to create confusion by suggesting that the right of a State to establish consular relations with another State was an absolute right, whereas it could only be exercised with the consent of the second State. The delegation of the Federal Republic of Germany was therefore opposed to the Czechoslovak amendment.

16. Mr. USTOR (Hungary) supported the Czechoslovak amendment, which the Hungarian delegation regarded as important. The fact that the conference on diplomatic relations and immunities had not adopted a similar provision did not constitute a valid precedent for the conference on consular relations.

17. Mr. WU (China) thought that the text of the Czechoslovak amendment contradicted that of article 2, paragraph 1, which stated that the establishment of consular relations between States took place by mutual consent; the exercise of an absolute right by a State was therefore excluded. Hence the Chinese delegation could not accept the Czech amendment.

18. Mr. PALIERAKIS (Greece) associated himself with the remarks of the delegation of the Federal Republic of Germany.

19. Mr. PETRŽELKA (Czechoslovakia) observed that the fact referred to by the representative of the Federal Republic of Germany was not an argument. No comparison could be made between two conventions that were entirely different. As a matter of substance it should be stressed that the right of a State to establish consular relations with other States was a fundamental right deriving from the prerogatives of its sovereignty.

20. Mr. MARTINS (Portugal) thought it was clear that a State could not establish consular relations with another State without that State's consent. In those circumstances, one could not speak of a State's right to establish consular relations and still less could such a right be embodied in a convention. The Portuguese delegation therefore rejected the Czechoslovak amendment.

21. Mr. KHLESTOV (Union of Soviet Socialist Republics) observed that a State's right to establish consular relations with other States was an inalienable right which should be laid down in the convention. As opposed to what had been argued, the Czechoslovak amendment did not contradict article 2, paragraph 1, as there was no incompatibility between the exercise of a right and mutual consent.

22. Mr. FUJIYAMA (Japan) associated himself with the remarks of the representative of the Federal Republic of Germany on the Czechoslovak amendment, which he could not accept.

23. Mr. D'ESTEFANO PISANI (Cuba) said that paragraph 1 constituted a rule of procedure, whereas the statement contained in the Czechoslovak amendment was a rule of substance which it would be advisable to incorporate in the convention.

24. Mr. SILVEIRA-BARRIOS (Venezuela) said that he shared the opinion of the Portuguese representative. No State was obliged to receive consular officials on its territory, and there could therefore be no question of the exercise of a right. The Venezuelan delegation opposed the Czechoslovak amendment.

25. Mr. DE CASTRO (Philippines) said that his delegation was not opposed to the Czechoslovak amendment, but the existing text of article 2, paragraph 1, seemed to conform to established usage, and there was no need to complete it by an additional paragraph.

26. Mr. TSYBA (Ukrainian Soviet Socialist Republic) unreservedly supported the Czechoslovak amendment, which was based on a fundamental principle of international law, which was moreover laid down in the United Nations Charter and was a necessary condition for the peaceful coexistence of States: the right of every State to establish international relations with other States. Although every State possessed that right, it also had the right to refuse to establish relations with other States. The apprehensions concerning the Czechoslovak amendment expressed by the Portuguese and Venezuelan representatives were therefore groundless.

27. Mr. HEPPEL (United Kingdom) noted that the purpose of the Czechoslovak amendment was to lay down the fundamental right of States to establish consular relations; but that right was implicit in the whole of article 2, and the Czechoslovak amendment seemed to be superfluous. In addition, it might give rise to mistaken interpretations. Accordingly, if the Czechoslovak amendment were put to the vote, the United Kingdom delegation would vote against it.

28. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) agreed with the members of the Committee who opposed the Czechoslovak amendment. The right of legation had been the subject of numerous debates at the 1961 conference, and the grounds on which that conference had rejected the notion as applied to diploma-

tic relations held good also for consular relations. It should be added that the exercise of consular functions was fraught with more extensive consequences for the internal order of the receiving State than the exercise of diplomatic functions. For those reasons, the delegation of Viet-Nam opposed the Czechoslovak amendment.

29. Mr. CAMARA (Guinea) said that the right of every State to establish consular relations was a natural right which should be affirmed, and indeed reaffirmed; that was what the Czechoslovak amendment proposed. The text of article 2 dealt with the modes of applying that right. There was therefore no incompatibility between the proposed amendment and the text of the article. Before effect could be given to that natural right the mutual consent of the two States concerned was necessary, as stated in article 2, paragraph 1.

30. Mr. TÜREL (Turkey) endorsed the remarks of the representatives of the Federal Republic of Germany and Portugal. The Turkish delegation could not accept the Czechoslovak amendment.

31. Mr. BOUZIRI (Tunisia) believed that every State had the right to establish consular relations and solemnly to affirm that right. The establishment of consular relations could only strengthen friendly relations between nations; but every State also had the right to refuse to establish consular relations. Such a refusal was undesirable, but unfortunately was sometimes necessary. Positive and customary law accepted those two contradictory postulates.

32. Although he understood the purpose of the amendment, he found it hard to see what would be the practical significance of including it as it stood in the text of article 2. It might be better to incorporate in the preamble some more or less flexible formula which would also take account of the right of all States to refuse to establish consular relations.

33. Mr. SEID (Chad) said that every State had the right to establish consular relations, but it was also free to accept or refuse the establishment of such relations. Mutual consent was a highly respected principle of international law. His delegation would therefore vote against the proposed amendment.

34. Mr. DI MOTTOLA (Costa Rica), opposing the amendment, said that every State was at liberty to enter or not to enter into consular relations with another State. In his view, nothing should induce a State to forge that essential right, which was an important attribute of its sovereignty.

35. Mr. SHARP (New Zealand) said that the principle set forth in the amendment was not sound. A State had the right to establish consular relations with another State only when the second State acknowledged a corresponding obligation to receive consular representation. Until such an obligation was acknowledged, no right could exist. It was true that every State had an inherent capacity to enter into negotiations with a view to establishing consular relations, but that was a very different thing from a right. The amendment was not only unnecessary, but inappropriate.

36. Mr. ANIONWU (Nigeria) thought there was no need to insert the amendment submitted by Czechoslovakia in the text of article 2. If each State had the right to establish consular relations, other States likewise had the right to refuse to establish them: one right would offset the other. The amendment, if adopted, might create confusion in the minds of those concerned. Furthermore, it was not clear how far that right would extend, or how many consulates would be opened as a result. On all those counts, the Nigerian delegation would vote against the amendment.

37. Mr. GHEORGHIEV (Bulgaria) said that the amendment embodied an essential principle of international law. That should be clearly indicated in the text. There was no question of forcing a State to accept anything whatsoever. The Bulgarian delegation would therefore support the amendment, which it considered to be extremely useful.

38. Mr. MAMELI (Italy) said that he supported the arguments of the representative of the Federal Republic of Germany. Every country certainly had the right to establish consular relations, but that right was not absolute; it was subordinated to the consent of the other State concerned. It was therefore a choice, not a right. The proposed amendment might give rise to confusion and he was therefore against its adoption.

39. Mr. KRISHNA RAO (India) congratulated the members of the International Law Commission and the special rapporteur, Mr. Žourek, on their intensive and patient work in formulating the draft, which showed a remarkable degree of objectivity. He said that, while his delegation fully approved paragraph 1 of article 2, which set forth a principle of international law that was universally acknowledged, it was opposed to the Czechoslovak amendment.

40. So far as paragraph 2 was concerned, there had been two trends of thought in the International Law Commission: one in favour of inserting it, and the other against. The Indian delegation thought it would be advisable to embody in the convention the principle on which paragraph 2 was based. There were three reasons for doing so. Firstly, that principle was gaining ever wider acceptance in present-day international practice. That was nothing new, indeed, since as long ago as the eighteenth century there had already existed a tendency to combine diplomatic and consular functions. Even in those days it was not uncommon for States to appoint their diplomatic officers simultaneously as consular representatives. For example, Mr. Gérard, the first minister plenipotentiary sent by France to the United States in 1778, had been given a commission appointing him as consul-general at Boston and other ports belonging to the United States. The Havana Convention of 1928 on Consular Agents appeared to embody the idea underlying that growing practice; article 13 of that convention provided that " A person duly accredited for the purpose may combine diplomatic representation and the consular function, provided the State before which he is accredited consents to it." Above all, there was no instance of a diplomatic mission being completely dis-

sociated from consular functions or debarred from exercising them. Secondly, it had to be borne in mind that article 3, paragraph 2, of the Vienna Convention on Diplomatic Relations stipulated that " Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission." It would therefore be quite in order for the convention to state that the establishment of diplomatic relations implied consent to the establishment of consular relations. Lastly, if paragraph 2 were deleted, the scope of the convention would be considerably reduced, for it would then apply only to the activities of consulates, and not to those of consular sections of diplomatic missions.

41. The Indian delegation thought that the words " unless otherwise stated " gave clarity to paragraph 2. To improve it still further, however, his delegation proposed the addition at the end of the paragraph of the words: " In conformity with the local laws and customs of the receiving State " (A/CONF.25/C.1/L.36).

42. He had no objection to paragraph 3, for nowadays it was an acknowledged principle of international law that the severance of diplomatic relations did not *ipso facto* involve the severance of consular relations, except in the event of a declaration of war.

43. Mr. REZKALLAH (Algeria) said that from the legal standpoint the Czechoslovak amendment in no way ran counter to the wording of article 2. Nevertheless, in seeking to establish a right, it ran the risk of provoking a counter-right, due to the terms in which it was couched. The principle of mutual consent would appear to afford an essential safeguard against that risk. He would therefore stand by article 2 as it appeared in the draft, and regretted that he could not accept the amendment.

44. Mr. BARUNI (Libya) said that his delegation would accept the draft of article 2, paragraph 1, as proposed by the International Law Commission. The right of the receiving State must be safeguarded. The need for mutual consent was an acknowledged principle of international law. He could only accept the minor amendment submitted by the United Arab Republic (L.9), which clarified the draft without altering its meaning.

45. Mr. LEE (Canada) said he was likewise unable to accept the amendment. Like the New Zealand delegation, he felt that the proposal was incompatible with paragraph 1 of article 2. All rights involved certain duties. It would therefore be the duty of the receiving State to accept the establishment of consular relations; that would be against the universally acknowledged principle according to which consular relations were based on the mutual consent of the two States concerned. The receiving State was at liberty to refuse. The Canadian delegation would therefore vote against the amendment.

46. Mr. N'DIAYE (Mali) likewise stressed the fact that the establishment of consular relations between two countries must be the result of mutual agreement. The Czechoslovak amendment might give rise to a certain confusion and render inoperative the principle of prior consent on the part of the receiving State. His delegation was therefore unable to accept the amendment.

47. Mr. RAHMAN (Federation of Malaya) said that the amendment was inappropriate. The right of the receiving State to refuse to establish consular relations was ignored. If the amendment were restricted to saying that each State had the right to establish or to refuse to establish consular relations it might perhaps be acceptable. As it was, the delegation of Malaya did not think the amendment opportune, and would vote against it.

48. Mr. SRESHTHAPUTRA (Thailand) said that he would vote against the amendment which, in his view, would strike a blow at a fundamental right of sovereign states.

49. Mr. ABDELMAGID (United Arab Republic) thought that the addition proposed by the Czechoslovak delegation had aroused misgivings which were perhaps groundless. Nevertheless, he could not agree to it.

50. The amendment he himself had submitted (L.9) was in keeping with the idea defined in paragraph 1 of the International Law Commission's commentary.

51. Mr. MAHOUATA (Congo, Brazzaville) said that he supported the clear and concise arguments adduced against the Czechoslovak amendment, which he was obliged to reject.

52. Mr. KALENZAGA (Upper Volta) said that he quite understood that the sponsor of the amendment had wished to affirm the right of all countries to establish consular relations. That right, however, went without saying; but the consent of the other party was necessary for its effective operation. He agreed with what had been said by the representative of Tunisia, and regretted that he could not accept the Czechoslovak amendment.

53. Miss ROESAD (Indonesia) said that, while she was in sympathy with the idea underlying the amendment, she could not accept it as drafted. On the other hand, she was ready to support the amendment submitted by the United Arab Republic, which would make for greater clarity in the wording.

54. Mr. PETRŽELKA (Czechoslovakia) said that he wished to define the scope of his delegation's amendment. There was no question of forcing a State to accept the dictates of any other State, but rather of setting forth a fundamental right recognized under international law as belonging to all States. In view of the feeling which seemed to prevail in the Committee, he would not insist on his amendment being put to the vote; but a provision to the same effect might be incorporated in the preamble.

55. The PRESIDENT asked the Committee to take a decision on the amendment submitted by the United Arab Republic (L.9), which seemed to him to be purely a question of drafting.

56. Mr. BOUZIRI (Tunisia) said that he was not sure that it was merely a matter of form. He was in favour of retaining the wording which appeared in the convention on diplomatic relations.

57. The PRESIDENT suggested that the amendment submitted by the United Arab Republic should be referred to the drafting committee.

It was so decided.

The meeting rose at 1 p.m.

THIRD MEETING

Wednesday, 6 March 1963, at 3.15 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 2 (Establishment of consular relations) (*continued*)

1. The CHAIRMAN reminded the Committee that, at the previous meeting, the representative of Czechoslovakia had said that he would not press for a vote on his amendment (A/CONF.25/C.1/L.1) and that it had been agreed to refer the United Arab Republic amendment (A/CONF.25/C.1/L.9) to the drafting committee.

2. If there was no objection, he would therefore assume that the Committee agreed to approve paragraph 1 of article 2, subject to the drafting committee's consideration of the United Arab Republic amendment.

It was so agreed.

3. The CHAIRMAN invited the Committee to consider paragraph 2. He drew attention to the amendments submitted by Bulgaria (L.2), Hungary (L.13), Brazil, Italy and the United Kingdom (L.19), Viet-Nam (L.30) and India (L.36).

4. Mr. de ERICE y O'SHEA (Spain) proposed that the Spanish title of section I (*Establecimiento y conducta . . .*) should be amended to read: " *Establecimiento y ejercicio . . .*"

5. The CHAIRMAN said that that point would be referred to the drafting committee.

6. Mr. EL-SABAH EL-SALEM (Kuwait) expressed his country's satisfaction at participating for the first time in a conference of plenipotentiaries.

7. Referring to the amendments to paragraph 2, he suggested that the Committee should consider first the amendments furthest removed from the International Law Commission's test — namely, those in which it was proposed to delete the paragraph altogether (L.19 and L.30).[1]

8. With regard to the substance of the paragraph, he reserved his delegation's position.

9. The CHAIRMAN said that, in accordance with rule 41 of the rules of procedure, the proposal to delete paragraph 2 would be voted on first. During the discussion, however, delegations could speak on all the amendments to paragraph 2.

10. Mr. BARUNI (Libya) expressed the view that paragraphs 2 and 3 should be brought into line. If the Committee retained paragraph 2, paragraph 3 should be amended to provide that the severance of diplomatic relations involved the severance of consular relations. That was the only solution consistent with the provision in paragraph 2 that the establishment of diplomatic relations implied consent to the establishment of consular relations.

11. Mr. SILVEIRA-BARRIOS (Venezuela) opposed the proposal to delete paragraph 2; that paragraph embodied a generally accepted international practice. Diplomatic relations and consular relations were separate matters, governed by different rules. The establishment and the severance of diplomatic relations were governed by the 1961 Vienna Convention; consular relations would be governed by the convention to be adopted by the present conference. As far as consular relations were concerned, paragraph 2 constituted a complement of the rule embodied in paragraph 1.

12. Mr. TSYBA (Ukrainian Soviet Socialist Republic) also opposed the proposal to delete paragraph 2. The provision contained in that paragraph embodied a world-wide practice. Consular functions were often performed by diplomatic missions, and the 1961 Vienna Convention on Diplomatic Relations expressly stated, in article 3, paragraph 2, that " Nothing in the present convention shall be construed as preventing the performance of consular functions by a diplomatic mission." His delegation accordingly considered it essential to retain paragraph 2.

13. Mr. DUARTE DA ROCHA (Brazil) said that the spirit and the letter not only of article 2, paragraph 1, but also of article 4 were somewhat distorted by the provision contained in paragraph 2 of article 2.

14. Article 2, paragraph 1, and article 4 stated the fundamental principle of international law that the establishment of consular relations, and the establishment of a consulate, were subject to the express consent of the States concerned. Paragraph 2 of article 2 introduced a new element, which was at variance with that fundamental principle; it introduced the concept of tacit agreement for the establishment of consular relations. That was a departure from the fundamental principle, which had no practical advantage whatsoever.

15. It was not uncommon, at the time when two States established diplomatic relations, for one of them not to wish to enter into consular relations with the other. Paragraph 2 would make it necessary to state such disinclination expressly — a situation which would be quite intolerable in practice.

16. Another important consideration was that paragraph 2 could be construed to mean that when the future convention on consular relations came into effect, all States parties to it must accept the proposition that they were *ipso facto* in consular relations with all States with which they maintained diplomatic relations.

[1] All references in this and subsequent records of the First Committee to " L " documents are references to documents in the series A/CONF.25/C.1/L . . .

17. Mr. BARTOŠ (Yugoslavia) said that he saw no contradiction between paragraphs 1 and 2 of article 2. Paragraph 1 stated the principle that the establishment of consular relations between States took place by mutual consent. Paragraph 2 stated the presumption that such consent existed in the event of diplomatic relations being established between two States.

18. He drew attention to the practice initiated by the United Kingdom Government after the First World War, of entrusting consular functions to diplomatic missions. That practice had been followed by many countries, including his own; as a result, it was common for diplomatic officers to exercise consular functions and to hold an exequatur for the purpose. That practice had many practical advantages; it enabled the sending State to reduce expenses and facilitated protection of the interests of its nationals.

19. The International Law Commission, of which he had the honour to be a member, had taken that widespread practice into consideration and had embodied it in paragraph 2. The rule contained in that paragraph was, moreover, of a purely permissive character, since it was qualified by the proviso " unless otherwise stated ".

20. Lastly, there was no reason to fear that the provisions of paragraph 2 would enable a State to claim the right to establish consulates anywhere in the territory of another State, purely on the grounds that diplomatic relations were maintained. As explained by the International Law Commission in paragraph 5 of its commentary on article 2, an agreement respecting the establishment of a consulate was necessary by virtue of article 4 of the draft.

21. Mr. OSIECKI (Poland) also opposed the proposal to delete paragraph 2. It was perfectly logical that the consent of a State to the establishment of the more important type of relations — i.e., diplomatic relations — should imply consent to the establishment of consular relations; it was a case of the whole including the part.

22. The provisions of paragraph 2 were consistent with international practice, as demonstrated by consular conventions in force. Poland maintained consular relations with a large number of States and had consistently applied the principle stated in paragraph 2 without encountering any difficulties. He urged the Committee to retain that principle, which would facilitate international co-operation.

23. Mr. MARAMBIO (Chile) saw no advantage in retaining paragraph 2. His delegation did not agree that consular relations could be regarded as being subordinate to diplomatic relations. He thought it both useful and desirable to respect the absolute freedom of States in regard to the establishment and maintenance of consular relations. For those reasons, his delegation supported the proposal to delete paragraph 2.

24. Mr. de ERICE y O'SHEA (Spain) considered that paragraph 2 should be retained, since it was a delicately balanced compromise text reached by the International Law Commission after mature consideration. In a sense, it might be considered redundant because it reiterated the principle of mutual consent already stated in paragraph 1; but there was no harm in reaffirming such an important principle.

25. The fact that diplomatic missions could exercise consular functions was an argument in favour of the provision contained in paragraph 2. A further argument was that the establishment of diplomatic relations impliep the mutual recognition by the States concerned of each other's sovereignty, and full sovereignty implied the capacity to establish consular relations.

26. Referring to the other amendments, he opposed the proposal by Bulgaria (L.2) that the words " unless otherwise stated " be deleted. If those words were removed, the establishment of consular relations would be left to the discretion of one of the two parties concerned.

27. On the other hand, he supported the Hungarian proposal (L.13) that the words in question be replaced by the words " unless otherwise agreed ". That was a useful drafting improvement, which laid appropriate stress on the element of bilateral agreement in the establishment of consular relations.

28. Lastly, he supported the Indian amendment (L.36) but suggested adding a reference to the Convention on the following lines: " in accordance with the present convention and in conformity with local laws and customs of the receiving State."

29. Mr. KRISHNA RAO (India) accepted the new wording suggested by the Spanish representative.

30. Mr. ABDELMAGID (United Arab Republic) thought that, contrary to what had been suggested by the Brazilian representative, there was no conflict between paragraphs 1 and 2. Both provisions were based on the principle that mutual consent was necessary for the establishment of consular relations. He stressed the difference between the establishment of consular relations (governed by article 2) and the establishment of a consulate (governed by article 4).

31. His delegation would vote against the proposal to delete paragraph 2.

32. Mr. HEPPEL (United Kingdom) said that the Committee was faced with a comparatively simple question — namely, whether consent to the establishment of diplomatic relations implied consent to the establishment of consular relations. The point was a somewhat controversial one and the International Law Commission itself had not been altogether unequivocal on it. By introducing the proviso " unless otherwise stated " the Commission had in fact recognized that consent to the establishment of diplomatic relations did not always imply consent to the establishment of consular relations.

33. It had been suggested in the amendments that the proposition contained in paragraph 2 should be further qualified. For his part, he felt that the question whether the establishment of diplomatic relations implied consent to the establishment of consular relations could only be answered in the negative. Paragraph 1 clearly laid down that the establishment of consular relations between States took place by mutual consent. Diplomatic relations and consular relations were different in charac-

ter; the provisions of paragraph 2 ignored that fact and introduced an unnecessary complication.

34. It had been suggested that the deletion of paragraph 2 could affect the provisions of article 68 on the exercise of consular functions by diplomatic missions. He wished to stress that in his opinion the provisions of article 68 would not be affected in any way.

35. The matter under discussion had a certain practical importance. The United Kingdom, for example, maintained diplomatic relations with a number of States with which it did not have consular relations. It was therefore essential, from the point of view of his country, to keep the two matters separate; a separate agreement was necessary for the establishment of consular relations.

36. Mr. CAMARA (Guinea) thought it essential to maintain the provisions of paragraph 2 notwithstanding the general rule laid down in paragraph 1. The two paragraphs dealt with two different cases. Paragraph 1 dealt with the establishment of consular relations by express agreement between two States concerned; paragraph 2 dealt with tacid consent to the establishment of consular relations. There was also a strong practical argument in favour of the provisions of paragraph 2: many countries, like his own, were not in a position to maintain consulates separate from their diplomatic missions. Those countries were therefore most desirous of retaining provisions of the type contained in paragraph 2.

37. Turning to the other amendments submitted, he said he could support the Indian amendment (L.36) provided that the words proposed were placed at the beginning rather than at the end of paragraph 2. With regard to the words " unless otherwise stated ", his delegation proposed that they should be replaced by the words " unless there is a provision to the contrary ".

38. Mr. MARTINS (Portugal) supported the proposal to delete paragraph 2. As he saw it, there was little difference of opinion with regard to the principles involved. He drew particular attention, in that connexion, to the provisions of article 4, paragraph 1, to the effect that a consulate could only be established with the consent of the receiving State. In the circumstances, he felt that paragraph 2 could be deleted and that the idea it contained could be embodied in the preamble.

39. Mr. CAMERON (United States of America) said that his delegation had initially intended to accept paragraph 2. That had been on the understanding, however, that the discussion would indicate unanimity with regard to the scope of the paragraph and its effect on the mutual consent provided for in paragraph 1. But the discussion had clearly shown not only that there was no unanimity on the question of retaining paragraph 2, but also that there was no unanimous understanding on the scope of its provisions and their effect on the general principle laid down in paragraph 1. For those reasons his delegation could not support paragraph 2 in its existing form, and would vote in favour of the proposal to delete it.

40. His delegation could not support the Hungarian amendment (L.13) because it would mean that the consent of a State to the establishment of diplomatic relations would imply the establishment of consular relations and that, if one of the two States concerned nevertheless declined in those circumstances to establish consular relations, it would have to come to a special agreement with the other State regarding the non-establishment of such relations.

41. Lastly, his delegation opposed the Bulgarian proposal (L.2) to delete the words " unless otherwise stated " because that would leave paragraph 2 in a form which completely negated the principle of mutual consent laid down in paragraph 1.

42. Mr. BREWER (Liberia) was in favour of retaining paragraph 2. The proviso " unless otherwise stated " afforded adequate protection, by giving each of the States concerned the right to prevent the establishment of diplomatic relations from entailing the establishment of consular relations.

43. Moreover, it was appropriate that the establishment of relations between States at the higher, or diplomatic, level should imply the establishment of relations at the lower level.

44. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) associated himself with the arguments put forward by the other sponsors of the proposal to delete paragraph 2. He stressed the difference in character between diplomatic and consular functions and the different legal régimes applicable to them. A comparison of the provisions of the 1961 Vienna Convention on Diplomatic Relations with those of the draft on consular relations clearly showed the differences between the two types of relations. The question of the establishment of consular relations should not be linked to that of diplomatic relations.

45. The exercise of consular functions by diplomatic missions was a different problem from the one under discussion. Article 2 dealt with the principle of the establishment of consular relations. The exercise of consular functions by diplomatic missions was dealt with in article 3, paragraph 2, of the 1961 Vienna Convention on Diplomatic Relations and in article 68 of the consular draft.

46. If, as his delegation proposed, paragraph 2 were deleted and two States agreed to establish consular relations, there would be nothing to prevent a diplomatic mission from exercising consular functions.

47. Mr. D'ESTEFANO PISANI (Cuba) was in favour of retaining paragraph 2. The establishment of diplomatic relations normally implied that of consular relations. As correctly stated in paragraph 3, however, the severance of diplomatic relations did not *ipso facto* involve that of consular relations. His delegation felt strongly on that point, because his country had been the victim of economic and other forms of pressure, in which the severance of consular relations had played a part.

48. Lastly, his delegation supported the Hungarian amendment (L.13).

49. Mr. SEID (Chad) said that he was opposed to the deletion of paragraph 2. He did not think its provisions were superfluous, as some delegations had suggested.

50. His delegation supported the Hungarian amendment (L.13), which would improve the legal drafting of paragraph 2.

51. Mr. MAMELI (Italy) drew attention to the fundamental technical and legal differences between consular relations and diplomatic relations. His delegation, together with other delegations, had proposed the deletion of paragraph 2 because, among other reasons, it was at variance with the terms of paragraph 3. While he sympathized with the practical considerations put forward by the representative of Guinea, those considerations should not lead to the adoption of a provision which was unacceptable from the point of view of legal principle.

52. Mr. N'DIAYE (Mali) considered that no connexion should be established between the provisions of paragraph 2 and those of paragraph 3. The two paragraphs dealt with totally different matters. Paragraph 2 stated that the consent given to the establishment of diplomatic relations between two States normally implied consent to the establishment of consular relations. Paragraph 3, on the other hand, dealt with the maintenance of consular relations for the purpose of safeguarding the interests of the nationals of the country concerned after the severance of diplomatic relations, at least for a time.

53. The provisions of paragraph 2 were, moreover, necessary in order to enable a diplomatic mission to exercise consular functions until consulates were established.

54. His delegation supported the Hungarian amendment (L.13), which improved the wording of paragraph 2; it also supported the Indian amendment (L.36), which had the merit of safeguarding the sovereignty and prerogatives of the receiving State under its municipal law.

55. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said that the provision in paragraph 2 that the establishment of diplomatic relations implied consent to the establishment of consular relations was in conformity with modern international law and the existing practice of States. The provision had both practical and theoretical significance: the very fact of the establishment of diplomatic relations was usually enough to allow consular functions to be exercised. In establishing diplomatic relations between the Soviet Union and about forty countries, no special declaration had been made concerning the establishment of consular relations. The Consular Convention of 1958 between the USSR and the Federal Republic of Germany, however, stated that the parties wished to regulate consular relations between them, while the Soviet Union's consular convention between the Soviet Union and Czechoslovakia referred to further development of consular relations between the two States. In view of that widespread practice, his delegation would vote against the deletion of paragraph 2 as proposed in documents L.19 and L.30. He also wished to point out to the authors of the proposal that, if paragraph 2 were deleted, paragraph 3 would no longer have any meaning.

56. The Soviet delegation would support the Hungarian and Bulgarian amendments (L.2 and L.13).

57. Mr. KRISHNA RAO (India) observed that the United Kingdom representative seemed to have misunderstood his reference to the Vienna Convention; the clause he had had in mind had been article 3, paragraph 2, of that convention. If he had had any lingering doubt in his mind concerning the need to retain paragraph 2, it would have been dispelled by the United Kingdom representative's reference to article 68, paragraph 1, and also by paragraph 4 of the commentary on article 2 of the draft.

58. He could accept the Spanish representative's oral amendment to his delegation's proposal, and suggested that the text might be referred to the drafting committee. On the other hand, he thought placing the Indian amendment at the beginning of the paragraph, as proposed by the representative of Guinea, would alter the meaning of the text.

59. Mr. DE CASTRO (Philippines) said that his delegation would vote against the proposal to delete paragraph 2 for three reasons. First, the idea that the establishment of diplomatic relations was accompanied by the establishment of consular relations was gaining increasingly wide recognition. Secondly, paragraph 2 might be beneficial to smaller countries. Thirdly, paragraph 2 provided safeguards for those countries which might not feel prepared to accept by implication the establishment of consular relations at the time when diplomatic relations were established.

60. Mr. DI MOTTOLA (Costa Rica) agreed with some previous speakers that paragraph 2 might be an unnecessary complication. It could be argued that it might be difficult to establish diplomatic relations if there was a wish to avoid consular relations; but that argument was nullified by the provision in paragraph 2 that a State which had established diplomatic relations could refuse to establish consular relations. The paragraph was therefore redundant, and he would vote for its deletion.

61. Mr. USTOR (Hungary) said that two main questions seemed to be involved in the dispute concerning the deletion of paragraph 2. The first was whether the rule stated in the paragraph was new or old, and the second, whether it should be inserted in the convention. The first question could be put in a different way — namely, whether the rule represented codification of international law or its progressive development. The Hungarian delegation believed that the rule was well established and conformed with modern practice. If two States agreed to establish diplomatic relations and missions, then, under article 3, paragraph 2, of the Vienna Convention on Diplomatic Relations, those missions could perform consular functions, and consular relations thus automatically came into being. Consequently, the answer to the second question was self-evident, and there was no reason to delete the paragraph.

62. With regard to the intentions of the Bulgarian and Hungarian amendments, neither of those delegations

wished to change the meaning of the rule as stated by the International Law Commission. The Bulgarian amendment (L.2) had obviously been introduced because the words " unless otherwise stated " were redundant in view of the obvious right of a State to refuse consent to the establishment of consular relations. He would be prepared to support that amendment, but would press his own delegation's proposal (L.13) if the majority of the Committee could not accept the Bulgarian amendment. The Hungarian proposal contained no new element, but merely stressed the point that only bilateral agreements, and not unilateral acts, could be binding in the case in point.

63. He had some doubts concerning the wisdom of adopting the Indian amendment, because it introduced the laws of the receiving State into the establishment of consular relations, which was governed by international law, rather than by local laws and customs. Moreover, the observance of municipal law was adequately safeguarded by article 55 of the draft.

64. Mr. PALIERAKIS (Greece) said that his delegation was in favour of deleting paragraph 2 because it might introduce difficulties into friendly diplomatic and consular relations between States. In some cases, diplomatic relations might be established without consular relations, owing to local or other conditions. If States were compelled to establish consular relations as a result of the establishment of diplomatic relations, the results might be quite contrary to the wishes of the International Law Commission. His delegation believed that the concepts of diplomatic relations and consular relations should not be connected in the draft.

65. Mr. KEVIN (Australia) said that his delegation would vote in favour of deleting the paragraph, because it was undesirable to include a clause which might have a retroactive effect.

66. Mr. PETRŽELKA (Czechoslovakia) said he would vote against the deletion of paragraph 2 because it embodied a generally recognized principle of international practice and its retention would be a contribution to the progressive development of international law. The principal fact in the establishment of consular relations was the express wish of the States concerned to establish them, and the phrase " unless otherwise stated " was therefore unnecessary; he would vote for the Bulgarian amendment and, if it were rejected, for the Hungarian amendment.

67. Mr. REZKALLAH (Algeria) agreed with the Spanish and Guinean representatives that the provision in paragraph 2 was an essential complement to the principle set out in paragraph 1. He did not consider the Indian amendment to be necessary, and thought that the words " unless otherwise stated " were insufficiently precise. He would therefore vote against the deletion of paragraph 2 and in favour of the Hungarian amendment.

68. Mr. BOUZIRI (Tunisia) said he would vote against the deletion of paragraph 2, since it would both complicate the text of the article and run counter to established practice. He would vote for the Hungarian amendment and thought that the Indian amendment should be referred to the drafting committee.

69. Mr. CAMARA (Guinea), replying to the Italian representative, recalled that he had mentioned two legal considerations and one practical argument in favour of retaining paragraph 2. It was a fact that certain States were not always in a position to maintain diplomatic and consular relations separately. Moreover, the delegations which wished to delete paragraph 2 seemed to want to retain paragraph 3, although it was consequential on paragraph 2. In his opinion, a logical consequence of deleting paragraph 2 should be the deletion of paragraph 3 also; in that event, only paragraph 1, which stated a principle without any practical consequences, would remain.

70. Mr. RABASA (Mexico) said that, before the debate had begun, his delegation had been prepared to accept paragraph 2. The many arguments advanced in the Committee, however, had drawn the Mexican delegation's attention to the essential point that the establishment of diplomatic and consular relations was an act whereby States exercised a sovereign right. That right should be maintained intact and without any limitations on its free exercise. The Vienna Convention on Diplomatic Relations should be the keystone of the debate, which must be based on the will of the State to establish diplomatic and consular relations. That principle had been established in article 2 of the Vienna Convention, which referred exclusively to the mutual consent of the States concerned to establish diplomatic relations. It must be borne in mind that, in terms of exchanges between two sovereign States, diplomatic and consular relations were of the same importance and that neither could be restricted. The Mexican delegation would therefore vote for the deletion of paragraph 2.

71. The CHAIRMAN put to the vote the amendments submitted by Brazil, Italy and the United Kingdom (A/CONF.25/C.1/L.19) and by Viet-Nam (A/CONF.25/C.1/L.30), both of which called for the deletion of paragraph 2.

The amendments were rejected by 37 votes to 35, with 3 abstentions.

72. The CHAIRMAN put the Bulgarian amendment (A/CONF.25/C.1/L.2) to the vote.

The amendment was rejected by 57 votes to 2, with 3 abstentions.

73. The CHAIRMAN put to the vote the Guinean oral amendment, proposing that the words " unless otherwise stated " be replaced by the words " unless there is a provision to the contrary ".

The amendment was rejected by 51 votes to 7, with 13 abstentions.

74. The CHAIRMAN put the Hungarian amendment (A/CONF.25/C.1/L.13) to the vote.

The amendment was rejected by 36 votes to 21, with 16 abstentions.

75, The CHAIRMAN put to the vote the Indian amendment (A/CONF.25/C.1/L.36), as orally amended by the Spanish representative.

The amendment was rejected by 37 votes to 23, with 14 abstentions.

Paragraph 2 of article 2 was adopted.

76. The CHAIRMAN invited the Committee to consider article 2, paragraph 3.

77. Mr. de ERICE y O'SHEA (Spain), introducing his delegation's amendment (L.22), said that its purpose was to establish a distinction between the " severance " of diplomatic relations and their " interruption or suspension ". In his delegation's opinion, a violent breaking off of diplomatic relations implied the severance of consular relations also, whereas interruption or suspension of diplomatic relations meant that the work of the diplomatic mission ceased without actual severance of relations and without obligation on the part of either of the States concerned to give a reason for such cessation. The Spanish delegation believed that actual severance of relations called for a formal and solemn declaration and entailed cessation of consular functions as well as diplomatic functions. In other words, " severance " was too strong a word to use in cases where some kind of relations were to be maintained.

78. Mr. D'ESTEFANO PISANI (Cuba) said he could not agree with the Spanish representative. The amendment would entirely change the meaning of the paragraph.

79. Mr. BARTOŠ (Yugoslavia) observed that the term " severance " precisely conveyed the meaning of breaking off diplomatic relations in the legal sense. Perhaps the Spanish representative had meant to use the expression " severance and interruption ".

80. Mr. WESTRUP (Sweden) agreed with the Yugoslav representative. The Spanish amendment as it had been explained would fundamentally alter the meaning of the article and was therefore unacceptable to the Swedish delegation.

81. Mr. DADZIE (Ghana) said that the word " severance " conveyed precisely the correct meaning in the English text; it included interruption and suspension of relations until they were resumed. Moreover, the words " *ipso facto* " had been chosen with great care, to show that consular relations would continue automatically after severance of diplomatic relations, unless the contrary intention was expressed. He could not support the Spanish amendment.

82. Mr. CAMARA (Guinea) observed that the Spanish amendment would add nothing to the text of paragraph 3, since, in the French text at least, the words " interruption ou suspension " conveyed the same meaning as " rupture ". Moreover, if the severance of diplomatic relations did not *ipso facto* involve the severance of consular relations, suspension of diplomatic relations would obviously not involve suspension of consular relations.

83. Mr. RUEGGER (Switzerland) considered that the Law Commission's text should be retained. Severance of diplomatic relations was a recognized act of public international law; the practical aim must be to protect individuals as far as possible, in the event of severance — and not only of interruption or suspension — of diplomatic relations. Furthermore, it was stated in paragraph 6 of the commentary on article 2 that paragraph 3 laid down a generally accepted rule of international law. It would be wise to respect as far as possible a text which had been discussed by eminent jurists for over eight years.

84. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) agreed that the Spanish amendment was unacceptable. The meaning of the word " severance " was perfectly clear from the very context of paragraph 3.

85. Mr. de ERICE y O'SHEA (Spain) regretted that the majority of representatives seemed to have misunderstood the purport of his delegation's amendment; in view of the consensus of opinion in the Committee, he withdrew it.

Article 2 was adopted, subject to the drafting committee's decision on the amendment submitted by the United Arab Republic (A/CONF.25/C.1/L.9).

The meeting rose at 6.15 p.m.

FOURTH MEETING

Thursday, 7 March 1963, at 10.35 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 3 (Exercise of consular functions)

1. The CHAIRMAN invited the comments of the members of the Committee on the amendments to article 3 of the International Law Commission's draft.[1]

2. Mr. ABDELMAGID (United Arab Republic) said that his delegation's amendment (L.10) to article 3 was an amendment of form; he agreed that it should be referred to the drafting committee.

3. Mr. de ERICE y O'SHEA (Spain) explained that the purpose of the Spanish amendment (L.24) to article 3 was merely that the scope of the reference to article 68 should extend to the whole convention. As that might be regarded as purely an amendment of form, his delegation would agree to its being referred to the drafting committee.

4. The United States amendment (L.40) clarified the wording of the article. Consular functions were in fact exercised by consular officials, not by consulates. On the other hand, the Italian amendment (L.41) seemed unnecessary, since it had been established that the

[1] The following amendments had been submitted: United Arab Republic, A/CONF.25/C.1/L.10; Spain, A/CONF.25/C.1/L.24; United States of America, A/CONF.25/C.1/L.40; Italy, A/CONF.25/C.1/L.41; Japan, A/CONF.25/C.1/L.46.

exercise of consular functions was in fact dependent upon the consent of the receiving State.

5. Mr. BARUNI (Libya) supported the United States amendment (L. 40), which was in conformity with the definitions in article 1.

6. Mr. CRISTESCU (Romania) said that he was in favour of article 3 as worded in the International Law Commission's draft. The United States amendment (L.40) indeed ran counter to present-day developments in international law, according to which functions were exercised by bodies and not by individuals. The Romanian delegation would therefore vote against the United States amendment. It would likewise vote against the Spanish amendment (L.24), which would reduce the part played by consulates. Lastly, and for the same reason, it would vote against the Italian amendment (L.41).

7. Mr. WU (China) said that the first sentence of article 3 was redundant and the second was unnecessary. If, however, it was absolutely necessary to retain the substance of the article, then its proper place was in article 5. The Chinese delegation would support the United States amendment (L.40) as well as the Italian amendment (L.41) with the proviso that the latter was more applicable to article 68.

8. Mr. KESSLER (Poland) said that he had studied all the amendments to article 3 and was convinced that it would be better to retain the wording of the draft. The Polish delegation deplored the great number of amendments to the International Law Commission's draft, which ought to be treated with greater respect.

9. Mr. FUJIYAMA (Japan) pointed out that his delegation had proposed (L.46) the deletion of article 3 for the reasons so ably explained by the representative of China. The second sentence of the article alone had a certain degree of importance, but the consideration involved had already been dealt with in article 68.

10. Mr. TSYBA (Ukrainian Soviet Socialist Republic) stated that his delegation could not accept the Italian amendment (L.41), which had already been rejected by the International Law Commission. Nor was the United States amendment acceptable to the Ukrainian delegation, since it ran counter to what had been established by the Vienna Convention on Diplomatic Relations. The amendment (L.24) submitted by Spain recognized a very widespread usage, and might be referred to the drafting committee.

11. Mr. MAMELI (Italy) explained that the Italian delegation had submitted its amendment to article 3 because article 68 on the exercise of consular functions by diplomatic missions made no mention of the consent of the receiving State, and that gap would have to be filled.

12. Mr. BARTOŠ (Yugoslavia) stressed the need to retain the International Law Commission's draft as far as possible. Admittedly, it could be improved upon; but it should not be completely rewritten from start to finish. At first glance, the United States amendment (L.40) appeared to be an amendment of form, but in fact it touched the very basis of the system, and raised a point that had been debated exhaustively in the International Law Commission. The Commission had finally decided in favour of the conception that the functions should be exercised by bodies and not by individuals, and it was on that conception that the entire system of consular relations was based.

13. It would be dangerous to delete article 3 as proposed by Japan. The Italian amendment (L.41) was of a restrictive nature; tht was not justifiable, since article 3 referred to article 68, which set no limits to the exercise of consular functions by a diplomatic mission.

14. The Spanish amendment (L.24) might of course be referred to the drafting committee, but the question of substance would have to be decided first, because the drafting committee was not competent to do so.

15. Mr. DOHERTY (Sierra Leone) thought there was no need to substitute the words " consular officials " for the word " consulates " as proposed in the United States amendment, as consular functions were not exercised by individuals, but by bodies. The delegation of Sierra Leone would therefore vote against the United States amendment.

16. Mr. CAMERON (United States of America) said that if the Japanese amendment (L.46) were put to the vote, his delegation would vote in favour of it. If, however, article 3 were to be retained, the United States delegation proposed that it should be modified as in the United States amendment (L.40), which affected only the first sentence. Furthermore, to bring the wording of the article into line, the United States delegation saw no objection to substituting the words " members of diplomatic mission " for the words " diplomatic missions " in the second sentence of the article. Lastly, the United States delegation would support the amendments submitted by Spain (L.24) and Italy (L.41).

17. Mr. DADZIE (Ghana) said that the amendment of the United Arab Republic improved the text of article 3; his delegation would therefore support it. The United States amendment clearly introduced an inconsistency between the first and second sentences of the article. The United States representative had made a constructive proposal on that point which the Ghanaian delegation would study, but on which it reserved its position for the time being. The value of the Italian amendment was not very clear since the establishment of consular relations was only possible with the mutual consent of the States concerned. The Ghanaian delegation could not approve the Japanese amendment.

18. Mr. de MENTHON (France) expressed his appreciation of the work of the International Law Commission, but thought that the text of article 3, as adopted by the Commission, called for comment. Despite the arguments of the Yugoslav representative it was hard to see why the consent of the receiving State, expressly required under article 4 for the establishment of a consulate in its territory, should not be required for establishing a consular section in a diplomatic mission, which was current practice. It was true that article 3, paragraph 2, of the Vienna Convention on Diplomatic Relations

specified that nothing in that convention should be construed as preventing the performance of consular functions by a diplomatic mission; but it did not follow from that that a consular section could be established by a diplomatic mission without the consent of the receiving State. The French delegation was therefore in favour of the amendment submitted by Italy (L.41), which only filled a gap. The French delegation felt more hesitant about the United States amendment for that involved changing a basic text which amplified article 2 by specifying the two means by which consular relations were conducted. The French delegation therefore adhered to the existing text of article 3 as amended by the Italian proposal and recast in accordance with the drafting amendment submitted by Spain.

19. Mr. D'ESTEFANO PISANO (Cuba) said that he was in favour of the existing text of article 3, which was the fruit of the excellent work done by the International Law Commission.

20. Mr. MARTINS (Portugal) thought that article 3 was essential to the structure of the draft, as it specified the organs which could exercise consular functions. The Spanish amendment would clarify article 3 by widening the scope of the reference to the relevant provisions. The Portuguese delegation would therefore vote for article 3 as amended by the Spanish proposal.

21. Mr. ENDEMANN (South Africa) supported the Spanish amendment which, without making any change in substance, better expressed the intention of the International Law Commission. The South African delegation would also support the United States amendment; many consular functions in fact involved activities which could only be carried out by consular officials. On the other hand, it could not support the Italian amendment.

22. Mr. CAMARA (Guinea) opposed the Japanese amendment calling for the deletion of article 3. That article was essential, for it stated by whom consular functions could be exercised. While it understood the intentions of the United States delegation in submitting its amendment, the delegation of Guinea felt that the convention under discussion should be modelled, in that respect, on the 1961 Convention, which spoke of the functions exercised by diplomatic missions. The delegation of Guinea would therefore be obliged to vote against the United States amendment.

23. The amendment submitted by Italy seemed hardly necessary. The obligation to obtain the consent of the receiving State when establishing consular relations was already laid down in articles 2 and 4 and there was no need to repeat it in article 3. The delegation of Guinea would therefore vote against the Italian amendment. It was, however, prepared to vote for the Spanish amendment (L.24) if its author would agree to delete the word " also ". That proposal constituted a formal subamendment submitted by the Guinean delegation.

24. Mr. EL-SABAH EL-SALEM (Kuwait) said that the real purpose of article 3 was to confirm a development of international law which was tending to combine diplomatic and consular functions in a single mission. Hence the insertion of the second sentence of article 3 in a convention on consular relations would, in his opinion, be a most important advance in the codification of international relations. Not to adopt the article would be a retrograde step. It established the existence of a suppletory rule recognizing the right of diplomatic missions to exercise consular functions, unless otherwise provided. He therefore considered that the substance of article 3 should be retained in one form or another. The wording was perhaps not sufficiently clear and the formula proposed by the United Arab Republic would be an improvement; the delegation of Kuwait was therefore prepared to support that proposal.

25. Mr. DAVOUDI (Iran) said he could support the Spanish amendment, which would remove certain inconsistencies.

26. Mr. NEJJARI (Morocco) said that for reasons which had already been explained by other representatives, and more particularly because the provisions of article 3 took account of the situation of certain countries whose means were limited, he would support the retention of article 3 with the amendment proposed by Italy.

27. Mr. SILVEIRA-BARRIOS (Venezuela) pointed out that under the municipal law of Venezuela one and the same person could not combine diplomatic and consular functions. The Venezuelan delegation would therefore vote against article 3 in its existing form and would be obliged to formulate reservations if it were adopted. The case might be different if the Italian and Spanish amendments were accepted.

28. Mr. ANIONWU (Nigeria) stressed the importance of conventions such as that which the Committee was endeavouring to draft for, once adopted, they might serve as a basis on which countries could draw up their municipal law on consular relations. In instruments of that sort, there were often repetitions which sometimes made it easier to interpret the text. The Nigerian representative saw no objection to the repetition in article 3 of what had already been said elsewhere. There seemed no need for any addition to the draft text, and the Nigerian delegation therefore did not support the Italian amendment. It was inclined to favour the United States amendment but was reluctant to take up a definite position until article 1, containing the definition of " consular official ", had been studied.

29. Mr. CASAS-MANRIQUE (Colombia) supported the adoption of article 3 in the International Law Commission's text with the Spanish amendment which, by deleting the reference to article 68, had the advantage of avoiding difficulties of interpretation.

30. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said that he would be in favour of the Spanish amendment provided that the beginning of the second sentence of article 3: " They are aslo exercised by diplomatic missions . . ." was retained as drafted. He further formally proposed the deletion of the word " may " which seemed to impose a restriction on the activities of diplomatic missions. If that double modification were adopted, the text would read: " They are also

exercised by diplomatic missions in accordance with the provisions of the present convention."

31. Mr. PALIERAKIS (Greece) said that to avoid any errors of interpretation it would be better not to reject the Italian amendment. As article 68 did not mention the consent of the receiving State and referred to articles 5, 7, 36, 37 and 39, but not to article 4, one might be led to conclude that consent of the receiving State was not necessary. The addition proposed by Italy seemed therefore indispensable.

32. Mr. DONATO (Lebanon) said he thought it valuable to retain article 3. He was not entirely opposed to the United States amendment and felt that the amendment submitted by the United Arab Republic would unquestionably improve the text. But the Spanish amendment seemed best of all as it did not refer to article 68, but to the convention as a whole. His delegation would therefore vote for the Spanish amendment.

33. Mr. HEPPEL (United Kingdom) endorsed the remarks of the Greek and Lebanese representatives. In his opinion, the Italian amendment was indispensable as it brought out a point which was not sufficiently clearly expressed in the text. With regard to the United States amendment, he recalled that the definition of " consular official " contained in article 1 had not yet been adopted. He would like the expression " consular official " to be replaced in the English text by some other term.

34. Subject to any improvements in form which the drafting committee might introduce, his delegation favoured the formula according to which consular functions were exercised by consular officials and members of diplomatic missions.

35. In conclusion he said that he was prepared to support all the amendments mentioned except that of the United Arab Republic, which had already been sent to the drafting committee.

36. Miss ROESAD (Indonesia) supported the retention of article 3 as drafted. Consulates were the organs normally entrusted with the exercise of consular functions. But if a country lacked the financial means, it could entrust those functions to a single mission fulfilling diplomatic functions at the same time. The Indonesian delegation would therefore vote against the Japanese amendment and also against the United States amendment, which would not improve the text.

37. Mr. WESTRUP (Sweden) said that he shared the opinion expressed by the Swiss representative, that great care should be exercised in modifying the text worked out by the International Law Commission, and he had been deeply impressed by the logical statement of the French representative. The difficulty in connexion with article 3 was to find some way of preventing a State from sending an embassy secretary on a consular mission to a town where, he feared, the receiving State might refuse authorization to set up a consulate. He was therefore inclined to support the Italian amendment.

38. Mr. KONZHUKOV (Union of Soviet Socialist Republics) expressed the opinion that the text of article 3 should be retained as drafted by the International Law Commission, as the rules stated therein conformed to a generally admitted practice according to which diplomatic missions could exercise consular functions. The Soviet delegation would vote against the Japanese amendment to delete article 3 and against the amendments contained in document L.41. It would support the Ukrainian sub-amendment to the Spanish amendment.

39. Mr. N'DIAYE (Mali) said that article 3 was needed in the Convention, and there could accordingly be no question of supporting the Japanese amendment. Neither could he accept the United States amendment, for the reasons which had been given by the Yugoslav representative. The Italian amendment was superfluous. He favoured retaining the first part of the Spanish amendment while deleting the word " also ", which seemed pointless. The existing text should be voted together with the amendment which the Guinean representative had proposed to bring it into line with the 1961 Vienna Convention on Diplomatic Relations.

40. Mr. RUDA (Argentina) expressed his support of the International Law Commission's text. He would, however, support the United States amendment, while drawing the attention of representatives to sub-paragraph (*d*) of article 1. He was also inclined to support the Spanish amendment.

41. Mr. RABASA (Mexico) supported the amendment to the title in Spanish of section I of chapter I proposed by the representative of Spain.

42. With regard to article 3, he hoped that the text prepared by the International Law Commission would be retained. It was indeed a question of an axiom, but it was sometimes necessary to enunciate axioms to avoid upsetting the structure of a juridical text. He would therefore vote in favour of that text and of the Spanish amendment in which there was no reason for deleting the word " may " as desired by the Ukrainian representative. On the other hand, the word " convenio " in the Spanish text of that amendment should be replaced by the word " convención ".

43. Mr. PETRŽELKA (Czechoslovakia) thought that article 3 was a fundamental article of the Convention which it was essential to retain. He would therefore vote against the Japanese amendment.

44. So far as the United States amendment was concerned, he considered that the draft as a whole was based on the essential idea of the institution of the consulate. Consular officials were only individuals. Consulates had functions and duties which should not be performed by certain individuals only. Substitution of the words " consular officials " for the word " consulates " might affect the general idea of the draft. It was illogical to attribute to individuals functions pertaining to consulates. That would imply that there were as many consulates as consular officials, which would be an absurdity. Hence the Czechoslovak delegation could not accept the United States amendment.

45. He reminded the Committee that article 3, paragraph 2, of the Vienna Convention on Diplomatic Relations provided that " Nothing in the present convention

shall be construed as preventing the performance of consular functions by a diplomatic mission." But if the Italian amendment were adopted, every official performing consular functions would need a special authorization, which would be senseless.

46. With regard to the Spanish amendment, he shared the views of the representative of the Ukrainian Soviet Socialist Republic. He proposed that separate votes be taken on the two phrases " may also be exercised " and " in accordance with the provisions of the present convention ". The Czechoslovak delegation would vote for the second phrase only.

47. Mr. FUJIYAMA (Japan) said that his delegation was not convinced by the arguments advanced in favour of retaining article 3; but in view of the opinion prevailing in the Committee, he would not insist on his amendment being put to the vote.

48. Mr. WARNOCK (Ireland) said he had no strong views on the matter. The purpose of the conference would be achieved if article 3 as drafted by the International Law Commission were retained; but he would gladly support the Italian and Spanish amendments, and was also in favour of the United States amendment.

49. Mr. CHIN (Republic of Korea) was in favour of adopting the text of the draft, with the United States amendment.

50. Mr. de ERICE y O'SHEA (Spain) said that he was prepared to support article 3 as drafted by the International Law Commission, merely substituting the words " in accordance with the present convention " for the words " in accordance with the provisions of article 68 ". Perhaps the Czechoslovak representative would then be able to withdraw his proposal for separate votes on the two parts of the sentence.

51. Mr. BREWER (Liberia) thought that the United States amendment would improve the wording of article 3. He was also in favour of the Spanish amendment.

52. Mr. RABASA (Mexico) insisted that the word " convención " be substituted for the word " convenio " in the Spanish text, to bring it into line with the other languages. He pointed out in addition that the word " convención " would appear in the title of the Convention.

53. Mr. de ERICE y O'SHEA (Spain) thought it would be better not to delete the word " also ". That would bring the text into conformity with the International Law Commission's draft. The comment made by the representative of Mexico concerned the Spanish text only; the matter could be settled privately.

54. Mr. PALIERAKIS (Greece) proposed a sub-amendment to the United States amendment. He asked the United States representative if he would be willing to substitute the words " by diplomatic officials " for the words " by diplomatic missions " in the second sentence, so as to bring both parts of the article into line.

55. Mr. CAMERON (United States of America) said that, if the representative of Greece wished to make that proposal, he would gladly support it.

56. Mr. BOUZIRI (Tunisia) thought that article 3 as it stood was quite satisfactory, but that the Spanish amendment would improve it. He would therefore support that amendment as finally revised by the representative of Spain, retaining the word " also ", which had its meaning and effect.

57. He did not quite understand the point of the United States amendment. If it was merely a matter of drafting, it should be referred to the drafting committee. If it affected the substance, he did not see that it served any useful purpose. He would therefore vote against it, and against the Italian amendment.

58. Mr. KRISHNA RAO (India) was opposed to the Greek sub-amendment, which was intended to interpret the 1961 Convention, because it was not possible to make changes, even indirectly, in the scope of a convention which had already been adopted and ratified — namely, the Vienna Convention on Diplomatic Relations, 1961.

59. Mr. USTOR (Hungary) warmly supported the representative of India. He thought that the Greek and United States amendments would destroy the harmony of article 3, as well as the harmony between the convention being drawn up and the Convention on Diplomatic Relations. The draft of article 3 as it stood seemed more in line with the Convention on Diplomatic Relations, and with international practice.

60. The CHAIRMAN put the amendments to the vote.

The Italian amendment (A/CONF.25/C.1/L.41) was rejected by 44 votes to 19, with 9 abstentions.

The United States amendment (A/CONF.25/C.1/L.40) was rejected by 40 votes to 19, with 13 abstentions.

The verbal sub-amendment submitted by Guinea, to delete the word " also " from the Spanish amendment (A/CONF.25/C.1/L.24) was rejected by 52 votes to 4, with 13 abstentions.

The Spanish amendment (A/CONF.25/C.1/L.24) was adopted by 57 votes to 5, with 6 abstentions.

Article 3, as amended, was adopted by 64 votes to 1, with 6 abstentions.

The meeting rose at 1.15 p.m.

FIFTH MEETING

Thursday, 7 March 1963, at 3.15 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 4 (Establishment of a consulate)

Paragraph 1

1. The CHAIRMAN announced that no amendments to paragraph 1 had been submitted; he therefore sug-

gested that the draft prepared by the International Law Commission should be adopted.

Paragraph 1 was adopted.

Paragraph 2

2. The CHAIRMAN drew attention to two amendments to paragraph 2, one submitted by Brazil (A/CONF.25/C.1/L.35), and the other by Italy (A/CONF.25/C.1/L.42).

3. Mr. SILVEIRA-BARRIOS (Venezuela) said he wished to submit an oral amendment to paragraph 2. The paragraph as it stood laid down a strict rule presupposing the conclusion of an agreement between States to determine the seat of the consulate and the consular district. That was contrary to international practice, since the decision in question contained an element which came within the province of municipal law. His delegation therefore proposed that the paragraph should be amended to read as follows: " The seat of the consulate and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State."

4. Mr. MIRANDA e SILVA (Brazil) observed that the Venezuelan proposal coincided with the amendment submitted by his own delegation. The Brazilian amendment was not intended to be a radical alteration of the draft, but merely to show more clearly that while the sending State determined the seat of the consulate and the consular district, the consent of the receiving State must be obtained. His delegation would be prepared to sponsor the amendment jointly with the Venezuelan delegation, in the wording proposed by that delegation.

5. Mr. MAMELI (Italy) said that the purpose of his delegation's amendment was to make it clear that the category of the consulate to be established must also be subject to mutual agreement between the receiving State and the sending State.

6. Mr. HEPPEL (United Kingdom) said that his delegation was in favour of altering the wording of the paragraph along the lines suggested by the Brazilian and Venezuelan delegations. With regard to the Italian amendment, he believed that deciding the rank of a consulate was essentially a matter for the sending State.

7. Mr. von HAEFTEN (Federal Republic of Germany) supported the Italian amendment. His country had had experience of cases in which the sending State had appointed honorary consuls-general to towns where only an honorary consul had been serving before, and difficulties had arisen in connexion with seniority in the consular corps. The question was an important one, especially where honorary consuls were concerned; while the United Kingdom representative had rightly pointed out that the matter was primarily one for the sending State to decide, the receiving State must be able to refuse its consent. He proposed that the Italian amendment should be combined with the joint Brazilian and Venezuelan amendment and that it should also apply to paragraph 3 of article 4.

8. Mr. ABDELMAGID (United Arab Republic) considered that, since paragraph 2 referred exclusively to the seat of the consulate and the consular district, a reference to the rank of a consulate would be out of place there, though of course the two States should agree on the question of rank, if only out of respect for the principle of reciprocity. The original Brazilian amendment was in effect only a drafting change, and did not differ essentially from the Law Commission's text. The wording now proposed by the Venezuelan delegation, however, seemed to affect the principle involved, since it implied that the sending State should first establish the seat of the consulate and the consular district and should then submit its decision to the receiving State for approval. In any case, he considered that the Commission's text should be retained wherever possible.

9. Mr. D'ESTEFANO PISANI (Cuba) observed that the fact that article 1 (Definitions) had not yet been discussed would continue to cause difficulties throughout the debate, since the word " consulate " covered many types of office. It might be best to refer the Italian amendment to the drafting committee.

10. Mr. de MENTHON (France) agreed with the Venezuelan representative that the words " by mutual agreement " were unduly rigid, particularly in view of paragraph 2 of the commentary on article 4. The joint Brazilian and Venezuelan amendment seemed closer to the spirit of that commentary than was the text of the paragraph itself. His delegation considered the Italian amendment to be valuable and supported the proposal by the representative of the Federal Republic of Germany that it should be combined with the Brazilian and Venuzuelan amendment.

11. Miss ROESAD (Indonesia) considered that the joint amendment, as worded by the Venezuelan representative, departed from the principle set out in paragraph 1, namely that the consent of the receiving State was essential for the establishment of a consulate. Her delegation could not vote for that amendment.

The Italian amendment (A.CONF.25/C.1/L.42) was adopted by 27 votes to 12, with 23 abstentions.

12. The CHAIRMAN put to the vote the joint Brazilian and Venezuelan amendment, pointing out that the Italian amendment just adopted by the Committee would be incorporated in it.

The joint Brazilian and Venezuelan amendment was adopted by 32 votes to 16, with 15 abstentions.

Paragraph 2, as amended, was adopted.

Paragraph 3

13. The CHAIRMAN announced that no amendments to paragraph 3 had been submitted and drew attention to the proposal by the representative of the Federal Republic of Germany that the Italian amendment to paragraph 2 should be incorporated in paragraph 3 also.

Paragraph 3 was adopted with that amendment.

Paragraphs 4 and 5

14. The CHAIRMAN pointed out that amendments to paragraphs 4 and 5 had been submitted by the delegations of Japan (A/CONF.25/C.1/L.47), the United King-

dom (A/CONF.25/C.1/L.50) and Spain and the Republic of Viet-Nam (A/CONF.25/C.1/L.52).

15. Mr. HEPPEL (United Kingdom), introducing his delegation's amendment, explained that the deletion of paragraph 4 had been proposed because the text contained no substance which was not already covered by paragraph 1. The United Kingdom amendment to paragraph 5 contained no substantial change, but expressed more clearly the provision that offices away from the seat of the consulate could not be established without the prior consent of the receiving State. Similar amendments had been submitted by other delegations, and it might be possible to agree on a single text.

16. Mr. von HAEFTEN (Federal Republic of Germany) supported the United Kingdom amendment to paragraph 5, but said he would prefer paragraph 4 to be retained even though it might not be absolutely necessary. Paragraph 5 referred to the establishment of branch offices set up by the same authority as the main consulate, whereas paragraph 4 referred to the establishment of vice-consulates or consular agencies by a consulate-general or consulate. Difficulties might arise if that difference were not stressed.

17. Mr. SILVEIRA-BARRIOS (Venezuela) supported the proposal to delete paragraph 4. Although the reason for including the paragraph was clearly stated in paragraph 6 of the commentary on article 4, the Venezuelan delegation did not believe that the number of countries whose municipal law sanctioned the practice in question was large enough to justify its standardization. He proposed that paragraph 5 should also be deleted because the case it dealt with also came under the municipal law of the receiving State.

18. Mr. PALIERAKIS (Greece) said he could support the United Kingdom amendment to paragraph 5, but he considered that paragraph 4 should be retained, since the two paragraphs dealt with completely different cases.

19. Mr. WU (China) drew attention to an anomaly in the drafting of the article. Paragraph 5 contained the phrase " without the prior express consent of the receiving State ", whereas paragraphs 1, 3 and 4, which dealt with more important matters, referred merely to " the consent of the receiving State ". In his delegation's opinion, the word " prior " should be inserted in paragraphs 1, 3 and 4.

20. Mr. KRISHNA RAO (India) thought that perhaps the delegations which had proposed the deletion of paragraph 4 had not taken the Commission's reasons for including the paragraph sufficiently into account. His delegation did not object to combining the provisions of paragraphs 4 and 5 in a single paragraph, but it did consider that the procedure for opening a vice-consulate or consular agency should be mentioned in the text.

21. Mr. de MENTHON (France) endorsed the Indian representative's remarks. His country had a particular interest in retaining paragraph 4, since it had some 500 consular agencies throughout the world. He could, however, support the United Kingdom amendment to paragraph 5.

22. Mr. BARTOŠ (Yugoslavia) agreed with the Indian and French representatives. The International Law Commission had separated paragraphs 4 and 5 in order to eliminate a controversy over the practice whereby a consul or consul-general was authorized by the exequatur itself to open a vice-consulate or consular agency, without necessarily requesting the permission of the receiving State. Most of the members of the Commission had spoken against that practice, and regarded it as regional, not universal. The purpose of paragraph 4, as drafted, was to deny the right of a consulate-general or a consulate to open a vice-consulate or consular agency without the consent of the receiving State.

23. Mr. FUJIYAMA (Japan) said that his delegation had proposed the deletion of paragraph 4 precisely because it believed that the government of the sending State alone had the authority to open vice-consulates and consular agencies and because it could not agree that consulates-general or consulates also had such authority.

24. Since the intention of his delegation's amendment to paragraph 5 coincided with the United Kingdom amendment to that paragraph, he withdrew his amendment in favour of that submitted by the United Kingdom.

25. Mr. ENDEMANN (South Africa) said that there seemed to be some confusion between the term " consulate " as used in the generic sense, and the term " consulate " referring to a specific type of mission. It was obvious that the term was used in the generic sense in paragraph 1. Although the Committee had not yet dealt with the article on definitions, he wished to point out that, according to the Commission's definition, the word " consulate " covered four classes of mission. The article on definitions did not specify by whom those missions were opened, and if, in the practice of some countries, vice-consulates and consular agencies could be opened by a consulate-general, that was not necessarily the concern of the receiving State. The essential point was that the establishment of such an office, whatever it might be called, was covered by paragraph 1. Hence, paragraph 4 was redundant.

26. On the other hand, the branch offices of a main consulate referred to in paragraph 5 were in a different class. The consent of the receiving State must be obtained if such a branch office were to be established at a locality away from the seat of the main office. The United Kingdom amendment, which clarified that provision, was therefore important.

27. Mr. CAMERON (United States of America) agreed with the speakers who had stressed the substantive difference between paragraphs 4 and 5. While there was some merit in the South African representative's contention that the establishment of the offices referred to in paragraph 4 might be made subject to the consent provided for in paragraph 1, the commentary on the article gave perfectly clear reasons for the inclusion of both paragraph 1 and paragraph 4. He therefore thought that the substance of paragraph 4 should be retained, although paragraphs 4 and 5 might be combined along the lines proposed in the amendment by Spain and the Republic of Viet-Nam.

28. Mr. WESTRUP (Sweden) said he was in favour of deleting paragraph 4 because it was redundant. His delegation could accept the United Kingdom amendment to paragraph 5.

29. Mr. BARTOŠ (Yugoslavia) pointed out that, in referring to the establishment of vice-consulates and consular agencies, a distinction should be made between districts which were, and districts which were not, covered by the jurisdiction of consulates-general or consulates.

30. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said he was in favour of retaining paragraph 4 as it stood.

31. Mr. SILVEIRA-BARRIOS (Venezuela) reiterated his statement that the States which authorized consulates-general and consuls to open vice-consulates or consular agencies were in the minority. Paragraph 4 should be deleted.

32. Mr. de ERICE y O'SHEA (Spain) said that the purpose of the amendment which his delegation had submitted jointly with that of the Republic of Viet-Nam was to prevent the proliferation of consular branch offices in outlying localities on the pretext of authorization given to consulates-general and consulates. It was in the interests of all States to include in the convention a clause that would prevent any abuse of the principle laid down in paragraph 1.

33. Mr. MARTINS (Portugal) pointed out to the Spanish representative that the necessary safeguards were provided in paragraph 1, since the term " consulates " included all types of consular missions. The Commission's text of paragraph 5 also seemed to provide all the safeguards required.

34. He suggested that the word " seats " should be used instead of " localities ".

35. Mr. HEPPEL (United Kingdom) thought that the misgivings expressed concerning the deletion of paragraph 4 were exaggerated. Although the consular commission might allow a consul-general or a consul to appoint vice-consuls or consular agents, it would not enable him to establish vice-consulates or consular agencies without the consent provided for in paragraph 1.

36. The CHAIRMAN put to the vote the United Kingdom amendment (A/CONF.25/C.1/L.50) proposing the deletion of paragraph 4.

The amendment was rejected by 43 votes to 17, with 5 abstentions.

37. The CHAIRMAN said that, having decided to retain paragraph 4, the Committee would next have to consider amendments to the text of that paragraph. The only amendment to paragraph 4 was the proposal by Spain and the Republic of Viet-Nam (L.52) to combine it with paragraph 5.

38. Mr. von HAEFTEN (Federal Republic of Germany) thought that that amendment might be a satisfactory compromise solution.

39. Mr. de ERICE y O'SHEA (Spain), speaking on behalf of the two sponsors of the amendment, said that, in order to take into account the ideas contained in the amendments to paragraph 5 submitted by the United Kingdom (L.50) and Japan (L.47), the joint amendment would be re-worded as fellows: " The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consulate but outside the seat thereof." He hoped that that would facilitate the work of the Committee; but the sponsors were quite willing to leave the final wording to the drafting committee.

40. Mr. GUNEWARDENE (Ceylon), speaking on a point of order, said that the joint amendment could only be treated as a proposal to replace paragraph 5, since the Committee had already decided to retain paragraph 4.

41. Mr. KRISHNA RAO (India), while agreeing with the representative of Ceylon, pointed out that there were no amendments to paragraph 4, which had been approved *in toto*. The joint amendment should deal only with paragraph 5.

42. The CHAIRMAN said that the joint amendment, as revised, no longer contained any reference to the opening of a vice-consulate or a consular agency in another place in the consular district; he therefore ruled that it did not constitute an amendment to paragraph 4, but only to paragraph 5.

43. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) supported the Chairman's ruling.

44. Mr. KEVIN (Australia) said that, as he understood it, the Committee had voted in favour of retaining the principle of paragraph 4.

45. Mr. PALIERAKIS (Greece) also supported the Chairman's ruling. The Committee had already reached a decision on paragraph 4; it was now called upon only to consider paragraph 5 and the amendments thereto.

46. Mr. PETRŽELKA (Czechoslovakia) agreed with representatives of Byelorussia and Greece. If the joint amendment were treated as an amendment to both paragraphs 4 and 5, its adoption would mean going back on the Committee's decision to retain paragraph 4. Reconsideration of that decision would require a two-thirds majority vote.

47. The CHAIRMAN reiterated his ruling that the revised joint amendment related exclusively to paragraph 5. Since the Committee had no amendments to paragraph 4 before it, he would assume, if there were no objection, that paragraph 4 was adopted as it stood.

It was so agreed.

48. The CHAIRMAN put to the vote the Venezuelan oral proposal to delete paragraph 5.

The proposal was rejected by 61 votes to 1, with 4 abstentions.

49. Mr. HEPPEL (United Kingdom) withdrew the United Kingdom amendment (L.50) in favour of the

revised amendment by Spain and the Republic of Viet-Nam (L.52).

50. Mr. DONATO (Lebanon), speaking on a point of order, said that the opening line of the joint amendment should be amended to read: " Replace paragraph 5 by the following: "

51. The CHAIRMAN said that that change was consequential upon his earlier ruling that the revised joint amendment did not apply to paragraph 4.

52. He invited the Committee to vote upon the joint proposal by Spain and the Republic of Viet-Nam to replace paragraph 5 by the revised text read out by the Spanish representative.

The revised proposal was adopted by 36 votes to 20, with 13 abstentions.

53. The CHAIRMAN invited the Committee to consider the proposal by Greece (A/CONF.25/C.1/L.49) to add a new paragraph 6 to article 4.

54. Mr. PALIERAKIS (Greece), introducing his delegation's amendment, said that it was intended to fill a gap in article 4. A consul very often needed to exercise his functions outside his consular district; the amendment would cover that contingency. As far as the substance was concerned, it conformed with the general rule laid down in article 4 by specifying that the exercise of consular functions outside the consular district required the consent of the receiving State.

55. Mr. EL-SABAH EL-SALEM (Kuwait) supported the Greek proposal. He noted that the International Law Commission's earlier draft had contained a provision on the subject;[1] its omission from the final text was a matter for regret. His delegation wished to suggest, however, that the term " consul " used in the proposed text should be replaced by " consular official " or any similar term which the drafting committee might prefer.

56. Mr. von HAEFTEN (Federal Republic of Germany) also supported the Greek proposal, which was in line with existing practice. In order to exercise his functions outside his consular district, a consular official required at least the tacit consent of the receiving State.

57. Mr. FUJIYAMA (Japan) said that his delegation's proposal for a new article (L.48) was intended to serve the same purpose as the Greek proposal; the two proposals should therefore be discussed together. His delegation was anxious that the idea contained in both proposals should be included in the Convention; the question whether it was embodied in a separate article or not was secondary.

58. Mr. ABDELMAGID (United Arab Republic) supported the Greek amendment, which embodied a very useful idea.

59. Mr. KRISHNA RAO (India) said that the Greek amendment was couched in negative terms. The intention was probably to provide that a consul might exercise his functions outside the consular district only with the consent of the receiving State. The second sentence of the Japanese amendment (L.48) for the addition of a new article might serve as a basis for discussing that point.

60. The CHAIRMAN said that it would be appropriate, in the light of the discussion, for the Committee to consider the proposals by Greece and Japan together.

61. Mr. HEPPEL (United Kingdom) said that his delegation supported the idea contained in both proposals. It preferred, however, the language used in the second sentence of the Japanese proposal because it was positive rather than negative; moreover, the Japanese proposal covered the question of tacit consent, to which the representative of the Federal Republic of Germany had drawn attention.

62. Mr. ENDEMANN (South Africa) supported the idea contained in both proposals. He thought, however, that it would be unfortunate to introduce that idea into article 4, which dealt with the establishment of a consulate; it belonged more properly to articles 6 and 7, which dealt with the exercise of consular functions. For those reasons, his delegation favoured a new article on the lines of the Japanese proposal, but placed after article 5.

63. Mr. MARTINS (Portugal) agreed with the South African representative regarding the position of the proposed new provision. He, too, preferred the positive formulation of the Japanese text to the negative one of the Greek proposal; but he suggested that the first sentence should be shortened to read: " Consular functions are performed within the consular district . . ."

64. Mr. LEE (Canada) urged that the express consent of the receiving State should be required for the performance by a consular official of consular functions outside his district. The reason for excluding the possibility of mere tacit consent was that the receiving State must retain a strict control over the area in which a consular official performed his functions. The commission of appointment usually specified the consular district, and the exequatur often laid down the limits within which its holder could exercise his functions; it was most important that any change should be subject to the express consent of the receiving State.

65. Accordingly, he suggested that the proposed new provision should be drafted on the following lines: " A consular official may, with the express consent of the receiving State, exercise his functions outside his consular district."

66. Mr. BOUZIRI (Tunisia) suggested that, in view of the doubts which had been expressed as to the appropriate place for the new provision, the discussion on the two proposals should be deferred.

67. Mr. KRISHNA RAO (India) noted that there was considerable support for the inclusion in the convention of a provision on the lines proposed by Greece and Japan. The Committee might therefore accept the prin-

[1] *Yearbook of the International Law Commission, 1960*, vol. II (United Nations publication, sales No. 60.V.1, vol. II), p. 33.

ciple of the proposed new provision and refer the question of its position in the convention to the drafting committee.

68. Mr. N'DIAYE (Mali) agreed with the previous speaker and urged that the Committee should not defer its decision on the principle.

69. Mr. MARAMBIO (Chile) suggested that the two proposals should be combined and that a new provision on the following lines should be adopted as paragraph 6 of article 4: " The consul may, in certain cases, exercise his functions outside his consular district with the consent of the receiving State."

70. Mr. DADZIE (Ghana) supported the text proposed by the representative of Canada, which avoided the negative form of the Greek proposal. Both the Greek and the Chilean proposals used the term " consul "; in fact, consular functions were not exercised by consuls only, but also by other consular officials and it was therefore necessary to use a broader term.

71. While his delegation favoured the text proposed by the Canadian representative, it thought that the formulation of the final text could well be left to the drafting committee.

72. Mr. USTOR (Hungary) urged that the Committee should first decide whether the idea contained in the proposals by Greece and Japan should be introduced into article 4 or be the subject of a new article. He himself thought it would be out of place in article 4 (Establishment of a consulate).

73. The CHAIRMAN pointed out that the Japanese proposal called for a new article; hence the procedural question raised by the Hungarian representative related only to the Greek proposal. He invited the Committee to decide whether the Greek proposal should be treated as an amendment to article 4 or not.

The Committee decided by 46 votes to 15, with 2 abstentions, that the Greek proposal (A/CONF.25/C.1/L.49) should not be treated as an amendment to article 4.

Article 4, as amended, was adopted.

74. The CHAIRMAN said that, in accordance with the decision just taken, the Greek proposal would be treated as a new provision. It would be discussed together with the Japanese and other related proposals at the next meeting.

75. Mr. WU (China) recalled his suggestion that the word " prior ", used in paragraph 5 of article 4, should be inserted in paragraphs 1, 3 and 4 of that article. He thought that suggestion should be referred to the drafting committee.

76. The CHAIRMAN said that, as the word proposed raised a question of substance, he could not refer the matter to the drafting committee.

The meeting rose at 6 p.m.

SIXTH MEETING

Friday, 8 March 1963, at 11 a.m.

Chairman: Mr. SILVEIRA-BARRIOS (Venezuela)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Proposed new article (Exercise of consular functions outside the consular district)

1. The CHAIRMAN recalled that the Committee had decided at its fifth meeting to examine the Greek amendment (L.49) at the same time as the Japanese proposal (L.48) to insert a new article between articles 4 and 5. Those proposals had been withdrawn in favour of the joint proposal by Canada, Chile, Cuba, Ghana, Greece and Japan (A/CONF.25/C.1/L.68). Since he understood that the fate of the joint proposal was bound up with article 38, to be examined by the Second Committee, it would perhaps be better to wait till the Second Committee had come to a decision on article 38 before discussing it.

2. Mr. LEE (Canada) said that he did not agree. The joint proposal was a synthesis of points brought up in the previous day's debate and it was logical that the discussion of the proposal should immediately follow the debate. Moreover, the joint proposal was based on principles which the Committee seemed to have accepted. It did not run counter to article 38 and was not connected with it.

3. Mr. PALIERAKIS (Greece) hoped that the joint proposal would be examined without further delay as it had no connexion with article 38.

4. Mr. DADZIE (Ghana) introduced the joint proposal and said that its sponsors left it to the drafting committee to decide where the new article should be inserted. In substance the joint proposal would allow a consular official posted to a certain consular district to exercise his functions outside that district when circumstances required it, subject to the express consent of the receiving State.

5. Mr. GUNEWARDENE (Ceylon) supported the Canadian representative and said that he was in favour of the principle of the joint proposal. It was for the drafting committee to decide where the new article should be placed.

6. Mr. CONTRERAS CHAVEZ (El Salvador) said that the International Law Commission had been careful not to deal with the question of the exercise of consular functions outside the consular district, which gave rise to a delicate question of law. The Conference would do well to follow the same prudent course as the International Law Commission and to omit that point from the convention. Article 4, paragraph 3, adopted the day before, would provide an adequate solution for any questions that might arise.

7. Mr. USTOR (Hungary) said that it was a pity that the order for the study of proposals suggested by the Chairman had not been adhered to. The new article was closely connected with article 38, and it seemed premature to discuss it already. It dealt with consular functions and should not be discussed before article 5. However, since the Committee seemed to have decided otherwise, he would state the position of his delegation.

8. Firstly, for reasons already given, the proposed new article should be placed not between articles 4 and 5, but between articles 5 and 6. Again, it should have a title, which might read: " Exercise of consular functions outside the consular district ". Lastly, the text of the proposal should be recast as follows: " Consular functions may, upon notification to, and in the absence of objections from, the receiving State, be performed outside the consular district."

9. In his view, those modifications constituted an amendment to the joint proposal.

10. Mr. de ERICE y O'SHEA (Spain), speaking on a point of order, said that the Hungarian proposal could not be regarded as an amendment to the joint proposal as it was entirely different. It provided, in effect, that consular functions could be exercised outside the consular district so long as the receiving State did not raise objection, whereas according to the joint proposal the express consent of the receiving State was necessary. The Hungarian text should therefore be regarded as a separate proposal.

11. Mr. SOLHEIM (Norway) said that the joint proposal filled an obvious gap in the International Law Commission's draft. The text of article 4, paragraph 2, implied that consular officials were not authorized to exercise their functions outside their consular district, and that interpretation was confirmed by paragraph 3 of the International Law Commission's commentary on that article.

12. The purpose of the joint proposal was to allow consular officials, including heads of posts, to exercise their functions outside the consular district. Two cases might arise: either the consular official might foresee some time ahead the necessity of spending some time outside his district, in which case the consulate would have time to request the express consent of the receiving State, or he might receive an urgent call to go outside the consular district, in which case it should be enough that the receiving State raised no objection. Could not the two cases be provided for in the draft convention ?

13. Mr. von HAEFTEN (Federal Republic of Germany) said that account should be taken of special circumstances that might arise, for example a shipwreck or an air crash, which required the immediate presence of a consular official. In such cases, the consulate would not have time to notify the receiving State of the departure of its official and to wait till it knew that the receiving State raised no objection. The Hungarian proposal was not satisfactory on that point.

14. With regard to the joint proposal, the German delegation suggested amending it by deleting the word " express ", which would allow a consulate, in case of emergency, to request the consent of the receiving State by telephone.

15. Mr. DONATO (Lebanon) said that the joint proposal was wholly beneficial as it took account of special circumstances without requiring the receiving State to give its consent.

16. Mr. de ERICE y O'SHEA (Spain), on a point of order, pointed out that the English and Spanish versions of the Hungarian proposal did not coincide: the English text said " in the absence of objections from the receiving State " whereas the Spanish version read " con el consentimiento del Estado de residencia " [with the consent of the receiving State], which was quite different. The Spanish version should be rectified to bring it into harmony with the original version.

17. Mr. BERGENSTRAHLE (Sweden) said that he could accept the Hungarian proposal if its author would agree that the text of the proposal should begin with the words: " In special circumstances . . ."

18. Mr. BOUZIRI (Tunisia) said that he was not satisfied with the joint proposal. Its most serious defect was that it spoke of consular officials instead of consular functions, the term adopted in the preceding articles. It also had the defect of speaking of " special circumstances ", which was too vague an expression and added nothing to the text. It was for the receiving State to judge whether existing circumstances required the exercise of consular functions outside the consular district.

19. With regard to the Hungarian proposal, it would be acceptable if its author would agree to the following wording: " Consular functions may, with the consent of the receiving State, be performed outside the consular district."

20. Mr. USTOR (Hungary) said that the Tunisian representative's suggestion constituted a compromise between the two proposals before the Committee. He therefore accepted the text proposed by Tunisia, which could be regarded as a joint proposal.

21. Mr. de MENTHON (France) remarked that the insertion of an additional article was necessary only to provide for exceptional circumstances, such as a shipwreck or an air crash. But in such cases, as the Norwegian and German representatives had pointed out, the express consent of the receiving State could not always be obtained in time. The consular official should be able to perform his functions very rapidly. That was why the amendment submitted by the Federal Republic of Germany seemed necessary. In an urgent case, one should be able to assume the consent of the receiving State.

22. He did not, however, see what purpose would be served by the Hungarian or Tunisian amendments since in the absence of special circumstances the receiving State would have time to give its consent.

23. Mr. RABASA (Mexico) said that the principle of agreement between the two States concerned was essential. That was why he was not in favour of the Hungarian proposal, which replaced the word " consent " by the words " notification " and " absence of objec-

tions ". But the modification proposed by Tunisia seemed well advised. He also preferred the term " consular functions " rather than " consular officials ". He was therefore inclined to accept the text of the joint porposal (L.68) modified in accordance with the Tunisian amendment. That would uphold the essential principle of mutual consent. He was also in favour of retaining the phrase " in special circumstances ", as the derogation from the normal practice should be quite exceptional.

24. He requested that his proposal, intended to harmonize the texts of the joint proposal (L.68) and the Hungarian-Tunisian proposal, should be regarded as a separate amendment, which would read: " In special circumstances and with the consent of the receiving State, consular functions may be exercised outside the consular district concerned."

25. Mr. EL-SABAH EL-SALEM (Kuwait) said that Tunisia's efforts at reconciliation would be crowned with success if the sponsors of proposal L.68 would accept the joint proposal of Hungary and Tunisia. The difference between the two texts was slight for it concerned only one term: the first text spoke of " a consular official ", and the second of " consular functions ". The Committee had expressed its preference for the second formula. It should therefore be possible to reconcile the two texts.

26. Mr. MARAMBIO (Chile), speaking on behalf of the sponsors of the joint proposal (L.68), insisted that the expression " a consular official " should be retained in the text. It was, in fact, not the functions, but the consular official, who left the consular district. On the other hand, he accepted the deletion of the word " express ". The text would then read: " A consular official may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district."

27. The CHAIRMAN pointed out that, since the word " express " had been deleted, the amendment of the Federal Republic of Germany was no longer applicable.

28. Mr. BARUNI (Libya) agreed with the remarks of the Tunisian representative on the Hungarian amendment.

29. Mr. BOUZIRI (Tunisia) said that he saw no objection to accepting the expression " in special circumstances " proposed by the representative of Mexico.

30. Mr. USTOR (Hungary) said that his delegation did not oppose the insertion of the words " in special circumstances "; it therefore accepted the text proposed by the representative of Mexico except for the word " concerned ", which seemed unnecessary.

31. The CHAIRMAN observed that the Committee now had before it a joint proposal by Hungary, Tunisia and Mexico, in addition to the earlier joint proposal in document A/CONF.25/C.1/L.68.

32. Mr. BARUNI (Libya) said that he unreservedly supported the proposal by Hungary, Tunisia and Mexico.

33. Mr. ZEILINGER (Costa Rica) expressed the opinion that the proposal should not be discussed in connexion with article 4, but in connexion with article 5, which dealt with consular functions. Nevertheless, if the Chairman insisted that it should be examined in the current meeting, the delegation of Costa Rica would support the last proposal of Tunisia with the modification proposed by Chile, which would improve the text.

34. Mr. WU (China) said that the difference between the two texts was now very slight and was merely a matter of drafting. He preferred the proposal in document L.68, provided the word " express " were deleted.

35. Mr. MARTINS (Portugal) said that he preferred the proposal by Hungary, Mexico and Tunisia.

36. Mr. HEPPEL (United Kingdom) said he was prepared to support the joint proposal (L.68). The final phrase should be changed, however, to read: " outside the district of the consular official concerned ".

37. Mr. PETRŽELKA (Czechoslovakia) stated that the only difference between the two texts lay in the wording of the first line: the one contained the formula " consular functions " and the other " consular official ". The second formula seemed to be contrary to practice. It implied that the consent of the receiving State would be necessary not only in so far as the consulate was concerned, but also as regarded every consular official, which was impossible. He would therefore vote for the proposal by Hungary, Tunisia and Mexico.

38. Mr. von HAEFTEN (Federal Republic of Germany) said that he had no serious objections to either text, but he preferred the joint proposal (L.68). It would in practice be important to know which consular official would exercise his functions outside the consular district in exceptional circumstances.

39. Mr. de ERICE y O'SHEA (Spain) thought it should be possible to arrive at a single text. The principle of the consent of the receiving State was expressed in both proposals. It remained to decide which of the two formulae: " consular functions " or " consular officials " was preferable. He regarded the two terms as equivalent. He asked the authors of the two proposals to reach agreement on this question of terminology.

40. Mr. RABASA (Mexico) said that the texts of the joint proposal (L.68) and of the proposal by Hungary, Mexico and Tunisia were absolutely incompatible. He recalled the discussions at the 4th meeting on the formulae " consular functions " and " consular official " in connexion with article 3. They could unquestionably not be regarded as equivalent. The Committee had pronounced in favour of the formula " consular functions ", which had been retained in the text of article 3. He was not prompted by a lack of conciliatory spirit but by a concern for logic; it had been in an endeavour to reach a compromise that the Mexican delegation had submitted its proposal.

41. Mr. ABDELMAGID (United Arab Republic) said he would vote for the joint proposal of Hungary, Tunisia and Mexico. But he would prefer to replace the formula " In special circumstances " by " In case of emergency " so as to emphasize the exceptional character of the circumstances referred to.

42. The CHAIRMAN said he regarded that suggestion as a sub-amendment to the proposal by Mexico, Tunisia and Hungary.

43. Mr. GUNEWARDENE (Ceylon) said that he did not see any important difference between the two joint proposals. It seemed to him to be a matter of form of which the drafting committee would be the best judge. The same applied to the order of the articles. He requested therefore that both proposals should be sent to the drafting committee.

44. The CHAIRMAN said that, as it was a question of substance, he could not take up the suggestion of the representative of Ceylon.

45. Mr. SOLHEIM (Norway) said he would vote for the proposal by Hungary, Tunisia and Mexico without accepting the modification of the final phrase proposed by the United Kingdom.

46. Mr. RUDA (Argentina), speaking on a point of order, moved the closure of the debate under rule 26 of the rules of procedure.

47. The CHAIRMAN noted that no members desired to speak on the motion and put the closure of the debate to the vote.

The motion to close the debate was adopted by 59 votes to nil, with one abstention.

48. Mr. ABDELMAGID (United Arab Republic) said that, in order to facilitate the work of the Committee, his delegation withdrew its amendment.

49. The CHAIRMAN invited the Committee to vote on the joint proposal (A/CONF.25/C.1/L.68) from which the word " express " had been deleted.

50. Mr. RABASA (Mexico), speaking on a point of order, said that, under rule 41 of the rules of procedure, the proposal by Hungary, Mexico and Tunisia constituted an amendment to the original proposal (L.68) and should therefore be voted on first.

51. The CHAIRMAN said that he regarded the proposal of Hungary, Mexico and Tunisia as a separate proposal from that of the other countries which, as it had been submitted first, should be voted on first.

52. He put the joint proposal (A/CONF.25/C.1/L.68) to the vote.

The proposal was adopted by 31 votes to 30, with 9 abstentions.

53. The CHAIRMAN stated that, as the joint proposal L.68 had been adopted, there was no necessity to put the proposal of Hungary, Mexico and Tunisia to the vote.

The meeting rose at 1.15 p.m.

SEVENTH MEETING

Friday, 8 March 1963, at 3.15 p.m.

Chairman: Mr. SILVEIRA-BARRIOS (Venezuela)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 5 (Consular functions)

1. The CHAIRMAN drew attention to the fact that, in the various stages of the work on the article dealing with consular functions, there had been a division of opinion, both among the members of the International Law Commission and among the governments, concerning the choice between a general definition and an enumerative definition.

2. For the final draft adopted at its thirteenth session, the International Law Commission had decided in favour of the non-exhaustive enumeration of consular functions set out in article 5 of the draft.

3. The Committee had before it no less than twenty amendments to article 5,[1] most of which related to the various sub-paragraphs of the enumerative definition. In order to facilitate the work, he proposed that the choice between a general definition and an enumeration be discussed first; if the Committee decided in favour of a general definition, many of the amendments submitted need not be discussed.

4. Mr. BARTOŠ (Yugoslavia) observed that, out of the twenty amendments submitted, only the joint amendment by Canada and the Netherlands (L.39) changed the whole system of article 5 by replacing the enumeration of consular functions by a general definition. The Austrian amendment (L.26) also replaced the whole of article 5 by a new text. It did not, however, depart from the system on which the International Law Commission's draft was based, but divided the various functions enumerated into two categories: general functions and specific functions.

5. The eighteen amendments which called for changes in the various sub-paragraphs of article 5 or the addition of new paragraphs raised some fifty different specific issues. The Committee was thus presented with a formidable task and it was necessary to consider the best method of work. He suggested that the Committee should begin by considering the general amendments to article 5. If, as he hoped, it decided in favour of a

[1] The following amendments had been submitted by the date of the meeting: Hungary, A/CONF.25/C.1/L.14; Ukrainian Soviet Socialist Republic, A/CONF.25/C.1/L.15; Switzerland, A/CONF.25/C.1/L.16; Venezuela, A/CONF.25/C.1/L.20; South Africa, A/CONF/25/C.1/L.25; Austria, A/CONF.25/C.1/L.26; France, A/CONF.25/C.1/L.32; Czechoslovakia, Hungary and Romania, A/CONF.25/C.1/L.33; Czechoslovakia, A/CONF.25/C.1/L.34; India, A/CONF.25/C.1/L.37; Cambodia, A/CONF.25/C.1/L.38; Canada and the Netherlands, A/CONF.25/C.1/L.39; Italy, A/CONF.25/C.1/L.43; Spain, A/CONF.25/C.1/L.45; Indonesia, A/CONF.25/C.1/L.51; Mexico, A/CONF.25/C.1/L.53; Japan, A/CONF.25/C.1/L.54; Australia, A/CONF.25/C.1/L.61; Norway, A/CONF.25/C.1/L.63; United States of America, A/CONF.25/C.1/L.69.

definition on the lines proposed by the International Law Commission, it could then deal with the detailed amendments, taking each sub-paragraph and the amendments thereto separately.

6. He suggested that a synoptic table of the detailed amendments should be prepared by the secretariat. In that connexion, he was glad to note the presence at the Conference, as an expert, of Mr. Žourek, the eminent special rapporteur on consular relations, who had served on the International Law Commission for so many years; the secretariat could draw upon his unrivalled experience in preparing the proposed table, which he believed would be of great assistance to the Committee in its work.

7. Mr. RUEGGER (Switzerland) paid a tribute to the valuable services rendered by Mr. Žourek over a number of years as special rapporteur of the International Law Commission on consular relations. His delegation had always thought that the Committee should avail itself of the presence of that eminent jurist to obtain information on the considerations which had led the International Law Commission to propose some formulae rather than others, and was convinced that Mr. Žourek would paint a full and objective picture of the views — the divergent views, perhaps — which had been put forward in the Commission.

8. Referring to the draft of article 5, he wished to stress the fact that it was the consistent policy of his delegation — a policy which Swiss delegations had followed at all previous conferences of plenipotentiaries on the codification of international law — not to submit any amendment to the texts so carefully prepared by the International Law Commission, unless an amendmend was rendered desirable by some overriding interest.

9. His delegation had submitted an amendment to the opening sentence of article 5 (L.16); but as a result of the Committee's decision at the previous meeting to introduce a new article on the exercise of consular functions outside the consular district, the words " which must be exercised within the limits of the consular district," were redundant and had been deleted from that amendment. His delegation still believed that the proper place for the provision in question was article 5, but since the Committee had decided to embody it in a new article, he would naturally not press the point and would support the new article. The Swiss amendment was thus limited in effect to the insertion of the words " in so far as the law of the receiving State does not provide otherwise ". The purpose of the Swiss amendment was to provide an essential saving clause which would make it unnecessary for the Committee to discuss a great many details.

10. The Swiss amendment was consistent with existing customary international law, which reserved the necessary right of the State. The fact that the receiving State could impose such restrictions did not mean, however, that it would not be useful to give an enumeration of consular functions in the future convention. Quite the reverse: such an enumeration would be extremely useful to States which had no consular regulations specifying consular functions.

11. Unless a clause on the lines proposed by his delegation were adopted, the Committee might be faced with difficulties in regard to many of the functions enumerated in article 5. For instance, in sub-paragraph (*f*) it was stated that a consul could act " as notary and civil registrar "; in fact, not all States allowed foreign consuls to exercise those functions and it would therefore be necessary to specify that they could only be exercised in so far as the law of the receiving State did not provide otherwise. Again, sub-paragraph (*h*) referred to safeguarding the interests of minors; there, too, it would be necessary to provide for respect of the law of the receiving State, for in some countries the law on the protection of minors did not provide for intervention on the part of foreign consular officials.

12. He emphasized the fact that, generally speaking, it was not the purpose of the Swiss amendment to encourage restrictive legislation on consular functions by the receiving State. Indeed, his delegation was only too anxious not to detract from existing international custom, both general and local, in regard to consular relations.

13. Mr. LEE (Canada) said that the suggestion put forward by the Yugoslav delegation would be acceptable to his delegation in the event of the Committee not deciding to adopt a general definition. However, his delegation, together with that of the Netherlands, had proposed (L.39) a general definition of consular functions to replace the detailed formulation set out in article 5.

14. A general definition of consular functions would be preferable to a detailed list, especially as all delegations would naturally have many suggestions to make regarding any detailed enumeration of functions. Such an exercise might well prove so time-consuming as to affect the successful conclusion of the conference. Moreover, the main purpose of the draft was to regulate the privileges and immunities of consular officials and not to describe the functions to be performed by them.

15. The joint amendment (L.39) drew a distinction between those general functions that were so universal and inherent in the consular position that they were not subject to the laws of the receiving State, and other functions that might be exercised by consuls. It was preferable for the main consular functions of protection of the rights and interests of the sending State and of its nationals to be stated as general principles of international law, not subject to the laws of the receiving State.

16. The purpose of the amendment was to promote development of the recognition of the basic functions of consular officials as general principles of international law and to ensure that they were not prevented from exercising their essential functions by restrictive national laws. However, because many of the other functions of a consul were closely linked with the relevant municipal laws of the receiving State, they should be declared generally subject to such laws; that was true, for example, of functions relating to minors, estates and service of judicial documents.

17. The object of paragraph 2 of the joint amendment was simply to make clear that the nationals of the sending State could not claim a right to consular protection by virtue of paragraph 1. The relations between the sending State and its nationals with regard to consular protection belonged exclusively to the competence of the sending State.

18. Mr. N'DIAYE (Mali) proposed that article 5 be amended by inserting the following words at the end of sub-paragraph (*a*): " and ensuring that the sending State and its nationals enjoy fully all the rights, prerogatives and advantages which the law and custom of the receiving State accord to aliens generally." [2]

19. Paragraph (*a*) as it stood specified the consular function of protecting in the receiving State the interests of the sending State and of its nationals. That function could he held to include that of ensuring that the sending State and its nationals enjoyed such rights as were granted to them by the law and custom of the receiving State. It was, however, preferable to include a specific provision on the subject, so as to rule out any interpretation which might be place in doubt the right of a consul to take action to enable his nationals to exercise their legal rights.

20. In order to show that the words proposed were not superfluous, he cited the terms of a recent consular convention between France and Italy, which specified that consuls were empowered to protect their nationals ant to safeguard their rights; the use of that wording indicated that the protection of nationals and the safeguarding of their rights had not been considered synonymous.

21. Mr. MARTINS (Portugal) said that he was in favour of retaining the text of article 5 as drafted by the International Law Commission; too many detailed amendments to that text might detract from its clarity.

22. Several of the amendments proposed were based on the idea of subordinating the exercise of consular functions to the consent of the receiving State. His delegation was opposed to those amendments. It would serve no useful purpose to specify in a multilateral convention the right of consuls to exercise certain functions, if that right could be nullified by the law of the receiving State. Article 5 was one of the most important in the draft.

23. Consular functions should be extended to include, as stated in paragraph 26 of the commentary to article 5, other functions not prohibited by the laws and regulations of the receiving State. Portuguese law was particularly liberal in the matter; it permitted foreign consuls to exercise all the functions specified in article 5, and many others as well.

24. His delegation would oppose all amendments to article 5, except those designed to enlarge the scope of consular functions, such as the amendments submitted by Spain (L.45) and Mexico (L.53).

[2] This amendment was subsequently circulated as document A/CONF.25/C.1/L.73.

25. Mr. KIRCHSCHLAEGER (Austria), introducing the Austrian amendment (L.26), said that it was intended to serve two purposes: first, to change the arrangement of article 5, and secondly to make some alterations and additions to the various sub-paragraphs. In accordance with the Chairman's proposal, he would deal only with the first aspect of his amendment at that stage.

26. The work on the article on consular functions had been marked by a division of opinion regarding the choice between a general definition and a detailed enumeration. The amendment submitted by Canada and the Netherlands (L.39) represented the general type of definition. The Austrian delegation felt, for its part, that that type of definition had a number of negative aspects. In the first place, the Conference was called upon, by virtue of article 13 of the United Nations Charter, to codify the international law of consular relations. It would not be performing that duty if it merely adopted a definition of consular functions which referred back to international law and to the laws of the receiving State. Moreover, the provisions of article 5 would have an effect on other provisions of the draft, in particular article 43, which provided for immunity of members of a consulate from the jurisdiction of the receiving State " in respect of acts performed in the exercise of consular functions ". It was of the greatest importance to determine which were the consular functions to which such immunity applied. In particular, the courts of the receiving State should be able to ascertain those functions from an international convention. That was especially important in a country such as Austria, which had no internal legislation on consular functions. For those reasons, his delegation was opposed to the amendment submitted by Canada and the Netherlands (L.39).

27. Referring to the Austrian amendment (L.26), he pointed out that the various functions enumerated in sub-paragraphs (*a*) to (*l*) of article 5 were not all of the same character. An examination of the functions specified in sub-paragraphs (*d*) to (*l*) showed that they were only an implementation of those listed in sub-paragraphs (*a*), (*b*) and (*c*). His delegation had therefore proposed that the three main consular functions specified in sub-paragraphs (*a*), (*b*) and (*c*) of the draft should form paragraph 1 of article 5. That arrangement would be similar to the one adopted for diplomatic functions in article 3 of the 1961 Vienna Convention. A new paragraph 2 would then state that, in the exercise of those main functions, consular officials could, in particular, perform any of the acts listed in the other sub-paragraphs.

28. He urged the Committee to concentrate its discussion on the system to be adopted for article 5, in order to decide whether it wished to adopt a general definition as proposed by Canada and the Netherlands (L.39), the arrangement of the Austrian amendment (L.26), or that of the International Law Commission's draft.

29. Mr. KRISHNA RAO (India) pointed out that the text of article 5 drafted by the International Law Commission was a satisfactory compromise between two extreme views: that which would restrict the consular

functions specified to a bare minimum; and that which favoured an exhaustive enumeration of consular functions.

30. It was, in fact, difficult to enumerate consular functions exhaustively, since they were defined by international law, national laws and consular instructions. The International Law Commission had devoted no less than eleven meetings to the discussion of the matter and the present conference should not repeat that discussion. Any attempt to do so would unduly prolong its work.

31. His delegation considered that article 5 was eminently suitable for inclusion in a multilateral convention on consular relations. In the first place, it laid down a fairly objective rule of international law on consular functions, to serve as a framework within which the sending State could give general instructions to its consuls. It had the further advantage that the enumeration it contained was not exhaustive, and would therefore not have a restrictive effect. There was nothing to prevent the sending State from entrusting its consul with any other functions which could be exercised without breaking the law of the receiving State. Lastly, by virtue of article 71 of the draft, the provisions of article 5 would not affect any consular conventions in force which made provision for other consular functions.

32. In the discussions of the International Law Commission, some members had pointed out that a general definition of consular functions would be of little practical value. The example of the Vienna Convention on Diplomatic Relations could not be followed because the functions of consuls were much less general than those of diplomatic agents. He thought that governments were far more likely to accept a detailed enumeration of consular functions than a general definition, which might give rise to difficulties of interpretation. All recent consular conventions defined consular functions in detail.

33. For those reasons, his delegation was opposed to the proposal by Canada and the Netherlands (L.39), paragraph 1 of which had the drawback of leaving many points undecided. As to paragraph 2 of that proposal, he was at a loss to understand its purpose; the question of the relations between the sending State and its own nationals had no place in a multilateral convention.

34. In the event of the Committee rejecting the idea of a general definition and retaining the International Law Commission's draft of article 5, as he hoped it would, his delegation would support the suggestion of the Yugoslav delegation that a synoptic table be drawn up of the amendments to the various paragraphs.

35. The CHAIRMAN said that the Committee should first decide whether it preferred a general definition or an enumeration on the lines of draft article 5. He invited representatives to speak on that question, before discussing the detailed amendments.

36. Mr. von HAEFTEN (Federal Republic of Germany) urged that the Committee should take the text proposed by Canada and the Netherlands (L.39) as the basis for its discussion. It was almost impossible to enumerate all consular functions. Any catalogue, however good — and that drawn up by the International Law Commission was excellent — could never be exhaustive. An enumeration would have the great disadvantage of having an inevitably restrictive effect. The authorities of the receiving State would have a tendency to maintain that, if a foreign consul exercised any functions other than those enumerated in the list, he was exceeding his powers. For those reasons, his delegation preferred a general definition of consular functions. The definition proposed by Canada and the Netherlands had the merit of setting forth the principal functions of consuls: to protect the rights and interests of the sending State and its nationals and to give assistance to those nationals in accordance with international law. The second sentence of paragraph 1 of the proposal covered also the other functions that a consul might exercise under international agreements or that had been entrusted to him by the sending State the exercise of which was compatible with the laws of the receiving State.

37. For those reasons, his delegation favoured that joint amendment (L.39). If that amendment were not accepted, his delegation would favour the Austrian amendment (L.26) in preference to article 5 as drafted by the International Law Commission.

38. Mr. MARAMBIO (Chile) also supported the amendment proposed by Canada and the Netherlands (L.39). It was practically impossible to make a complete enumeration of the consular functions. Any attempt to draw up a detailed list involved the danger of leaving gaps and would thus do more harm than good. For those reasons, his delegation supported the formulation in the joint amendment (L.39) which contained all the necessary elements of a satisfactory definition of consular functions; it laid down that those functions were to protect the rights and interests of the sending State and its nationals and to give assistance to those nationals in accordance with international law. It stated further that consuls could exercise other functions specified in the relevant international agreements or entrusted to them by the sending State, provided that their exercise was compatible with the laws of the receiving State.

39. Mr. BARTOŠ (Yugoslavia) said that he would confine his remarks to the choice between a general definition and the enumeration contained in article 5 as drawn up by the International Law Commission. The Commission's text contained an element of progressive development of international law. Certain functions attributed to consuls in the course of centuries had long been universally recognized; other functions had developed more recently.

40. Certain States wished to restrict consuls to such narrow traditional duties as giving protection and assistance to nationals of the sending State. The exercise of other functions, it was suggested, was possible only under a treaty or a specific authorization of the receiving State.

41. In illustration, he drew attention to the functions specified in sub-paragraph (*c*) of " Ascertaining conditions and developments in the economic, commercial,

cultural and scientific life of the receiving State, reporting thereon to the government of the sending State . . ." That function did not come under the heading of protecting, helping and assisting nationals, but it had come to be generally recognized in international practice. The International Law Commission, by embodying that provision in its draft, had consolidated a gain in the progressive development of international law.

42. Another example could be found in sub-paragraph (*l*), which set forth certain consular functions relating to shipping. The International Law Commission had added a reference to the settlement of disputes between the master, the officers and seamen as far as that might be authorized by the law of the sending State; under than text, it was not necessary for the consul to have any previous authorization from the receiving State. That provision also represented an element of progressive development of international law.

43. The Committee was thus faced with the choice between two methods of approach. The International Law Commission's method made for the progressive development of international law in the interest of friendly relations between States, whereas the joint amendment (L.39) would put consular functions back where they were at the end of the eighteenth century, by stipulating that a treaty provision or a specific authorization on the part of the receiving State was necessary to perform any function other than that of protecting the rights and interests of nationals and giving them assistance.

44. The International Law Commission had not overlooked the question of international agreements in force between the sending State and the receiving State; it had pointed out in paragraph 25 of its commentary to article 5 that consuls could exercise the functions entrusted to them by such agreements. Similarly, paragraph 26 of the commentary stated that consuls might also perform other functions entrusted to them by the sending State, provided that the performance thereof was not prohibited by the State of residence.

45. His delegation would strongly oppose the proposal by Canada and the Netherlands (L.39).

46. Mr. SHARP (New Zealand) favoured the trend represented by the joint amendment submitted by Canada and the Netherlands (L.39). The Committee's business would be materially speeded up if it first discussed and voted upon the joint amendment. If that proposal were approved, it would be unnecessary for the Committee to consider many other amendments which had been submitted to article 5.

47. Mr. de MENTHON (France) said that the question whether article 5 should consist of a general definition or of a detailed enumeration had given rise to long discussion in the International Law Commission itself. Indeed, paragraph 4 of the commentary stated that the majority of the governments which had sent in comments on the Commission's draft had expressed a preference for the general definition. The French delegation was also in favour of that solution, since detailed enumeration would entail more drawbacks than advantages. Despite the use of the words " more especially ", the enumeration might lead to equivocal situations in which consular functions might actually be restricted, since States would be offered an opportunity to refuse to allow consuls to exercise functions not mentioned in the Convention. The French delegation's views had been strengthened further by the large number of amendments that had been submitted to the article. It would therefore vote in favour of the Canadian and Netherlands amendment (L.39) and hoped that priority would be given to a vote on that amendment.

48. Mr. WARNOCK (Ireland) supported the New Zealand representative's suggestion that the preliminary decision for which the Chairman had asked should be taken as soon as possible. His delegation was in favour of a general article as in the Canadian and Netherlands amendment, mainly because it was very difficult to draw up an exhaustive list. If, however, the majority of the Committee decided in favour of an enumerative article, the Irish delegation would support the Commission's text, in the belief that the Conference should keep as closely as possible to that draft. Its approach to any amendments to the Commission's text was one of extreme caution.

49. Mr. D'ESTEFANO PISANI (Cuba) said that his delegation could not accept the proposal to substitute a general article for the Commission's enumeration of essential functions. In article 3 of the Vienna Convention on Diplomatic Relations, five principal diplomatic functions were enumerated; it was perfectly understandable that consular functions, which were more complex than diplomatic functions, should be enumerated in greater detail. Moreover, as the Yugoslav representative had pointed out, the progressive development of international law would be delayed by the adoption of a general definition. The Cuban delegation could therefore not vote in favour of either the Canadian and Netherlands amendment or the Swiss amendment (L.16), since it could not agree that the law of the receiving State was involved in the definition of consular functions.

50. Mr. HUBEE (Netherlands) said that, although it was true that the majority of the International Law Commission had opted in favour of the enumerative system, as expressed in the Commission's text of article 5, yet the decision had not been unanimous. The various arguments which might be traced in the Commission's report showed that a valid defence could be found for both theses. The Netherlands delegation itself had hesitated before deciding in favour of a general definition. Its decision had been swayed by the fact that the majority of the governments which had sent in comments on the articles had been in favour of a general definition as in article 3 of the Vienna Convention on Diplomatic Relations. Secondly, the solution would facilitate the Committee's work by avoiding controversial discussions in the First Committee, in the drafting committee and in the plenary conference. Of the large number of contradictory amendments, many would not even obtain a simple majority, while others would fail to obtain a two-thirds majority in the plenary conference, and the resulting text was hardly likely to be satisfactory to

anyone. It was much easier to agree on a general outline than on the many practical details of an enumeration. Thirdly, an enumeration was undesirable because no international instrument could lay down functions to be performed by all consuls; the provisions might be too narrow for some countries and too broad for others. Fourthly, it should be borne in mind that consular functions entailed the competence of the sending State to exercise certain powers in the receiving State and, in view of the usually jealous defence of the rights of the receiving State, undue precision of the definition would make it difficult to establish amicable consular relations among States.

51. His delegation had therefore decided in favour of a general definition, in the belief that details could be settled more satisfactorily in bilateral agreements.

52. Mr. MAMELI (Italy) expressed his delegation's conviction that the Commission's text should be retained wherever possible. As the Yugoslav representative had pointed out, a general definition could be dangerous. If the Committee decided to discuss the amendments in detail, the Italian delegation would support the Yugoslav proposal that a synoptic table of amendments should be drawn up. Finally, he suggested that the words " more especially " in the first line of draft article 5 should be replaced by " *inter alia* ".

53. Mr. OSIECKI (Poland) said he could not support the Canadian and Netherlands amendment, which would destroy the very essence of article 5. The article as drafted by the International Law Commission represented a set of precise instructions on the basis of which future consuls could perform their duties, whereas a general definition would give rise to many difficulties of interpretation. His delegation considered that article 3 of the Vienna Convention on Diplomatic Relations was insufficiently detailed and should therefore not be used as a precedent. The task of the Conference was to create a homogeneous and progressive consular law and thus to promote the development of friendly international relations.

54. Mr. ABDELMAGID (United Arab Republic) recalled that the Canadian and Netherlands representatives had invoked the time factor as an argument in favour of the system advocated in their amendment. Members of the Committee were, of course, fully aware that the adoption of the Canadian and Netherlands amendment would save a considerable amount of time; they were also aware, however, that they were dealing with what was perhaps the most important article of the Convention. The fact that so many amendments had been submitted to the Commission's draft indicated that the Committee was generally in favour of adopting the Commission's approach. Moreover, the enumeration was not exhaustive and could be supplemented during the Conference. His delegation could also support the Swiss amendment (L.16), which should dispel a number of misgivings and enable some delegations to withdraw similar amendments.

55. Mr. JAYANAMA (Thailand) said that his country's experience as a receiving State led it to support the International Law Commission's draft of article 5, since the absence of enumeration of functions was likely to lead to controversies over interpretation. Accordingly, his delegation believed that the Commission's draft, supplemented by the Indian amendment (L.37), which should suffice to allay all doubts concerning loopholes in the text, should be taken as a basis for the Committee's discussions.

56. Mr. DADZIE (Ghana) said it should be borne in mind that the text of all the draft articles was the result of some eight years of conscientious and devoted work by distinguished jurists. His delegation could not easily dismiss such long research and consideration, and was therefore in favour of using the Commission's text as a basis. Moreover, it agreed with the Indian representative that the Commission's text of article 5 was a fair compromise between an exhaustive list and a general definition. The opening words showed that the enumeration was not meant to be exhaustive, but merely gave some examples of the most important consular functions. It was a fact that existing international law on consular functions was confused and that consular functions were not defined in the legislation of most countries. The Conference would be failing in its duty if it were to leave the subject in that stage of confusion, since the purpose of international conventions was to obviate existing confusions in the law. The question was whether the Committee agreed with the examples enumerated by the International Law Commission. It should discuss the amendments to the Commission's text on the basis of the synoptic table proposed by the Yugoslav representative.

57. Mr. GUNEWARDENE (Ceylon) said that, if the Committee's aim was vagueness and simplicity, the Canadian and Netherlands amendment would fully meet that objective; if the time factor was the most important, then the general definition could be made even simpler. If, however, the purpose of the Conference was to render the maximum assistance to the countries of the world, the problem should be faced fairly and squarely. The fact that it was impossible to specify all consular functions did not mean that the most important ones should not be enumerated. The list in the Commission's text was not exhaustive, but there were certain consular functions which must be defined and could not be left vague forever. The custom and usage of the older nations had been invoked, but if those nations wished to help other countries, they should specify the important consular functions. It was not enough to refer to differences of opinion in the International Law Commission, since the majority of that body had opted for the enumerative system.

58. Mr. PETRŽELKA (Czechoslovakia) agreed with the speakers who had advocated adhering to the Commission's draft. His delegation believed that a general definition could settle nothing, but might create confusion and controversy among States. The argument that an enumerative article could not be exhaustive was unconvincing, since the Commission did not claim that the list covered all possible consular functions. The purpose of the Conference was not merely to save

time, but to codify international law and to render the maximum assistance to all States. He hoped that the question of principle could be settled as quickly as possible and supported the Yugoslav representative's proposal that a synoptic table of the various amendments be drawn up.

59. Mr. RUSSELL (United Kingdom) said that his delegation, like that of the Netherlands, had hesitated before concluding that the best course was to adopt an article along the lines of the Canadian and Netherlands amendment. In reply to the Yugoslav representative, he wished to say that the United Kingdom was fully aware of the progressive development of consular functions in the last century or so, and particularly in recent years. The bilateral consular conventions which the United Kingdom had concluded in the past ten to fifteen years dealt with consular functions in considerable detail. It was precisely because that sector of international law and practice was developing so rapidly that the United Kingdom had hesitated to support the Commission's draft of article 5, in the belief that the adoption of that text would hinder rather than help further development.

60. Although he could agree with some of the arguments advanced by the Indian representative, he was unable to agree on two important points. In the first place, his delegation did not believe that a general definition tended towards vagueness, while a detailed enumeration tended towards precision. No enumeration could be exhaustive; it could only be a multiplication of specific examples and, as such, would lead to vagueness rather than precision. Secondly, the United Kingdom delegation considered that the second paragraph of the Canadian and Netherlands amendment was valuable. Similar provisions were contained in a number of bilateral conventions and, although the effect of the multilateral convention that would emerge from the Conference would be to place obligations on individual States, it was important to make it clear that the relationship between the sending State and its nationals was a matter for decision by the sending State.

61. If the Committee decided to reject the Canadian and Netherlands amendment (L.39), the United Kingdom delegation would be inclined to favour the text considered by the Commission at its twelfth session,[3] which was in many respects more satisfactory than the draft article before the Committee.

62. His delegation could not support the Austrian amendment (L.26).

63. Mr. Wu (China) said that the Canadian and Netherlands amendment should be discussed first, since it was the furthest removed from the original text of all the amendments before the Committee.

64. Mr. REZKALLAH (Algeria) considered that the Commission's text of article 5 should be satisfactory to everyone, since it would allow consular functions to be either limited or extended. Neither the Canadian and Netherlands amendment nor the Austrian amendment met the needs of new States, which had to base their consular systems on international law, and not on well-developed national usage. The consuls of those new States should know what their functions were to be, without the restriction of bilateral conventions or of the laws of the receiving State. He had not been convinced by references to article 3 of the Vienna Convention on Diplomatic Relations, since there was a basic difference between consular functions and diplomatic functions. His delegation would support the Commission's text, which provided a basis on which every State was free to restrict or expand the functions of its consuls.

65. Mr. BOUZIRI (Tunisia) said that his delegation was in favour of the system adopted by the International Law Commission, which represented progressive development of international law. Moreover, since the functions enumerated in the Commission's text were actually performed by the consuls of many countries, the article could be regarded as a work of codification. The system proposed by the Canadian and Netherlands delegations was not only anachronistic, but was not in fact as general as its advocates claimed, since the amendment stated specifically that the principal functions exercised by consuls were to protect the rights and interests of the sending State and its nationals and to give assistance to the nationals of the sending State. A really general text should contain no mention of specific functions. In any case, although protection had been an important consular function in the past, other functions had since become even more important.

66. It should be borne in mind that the Commission had never claimed to have enumerated all consular functions in its article; the words " more especially " implied that other functions existed. Moreover, exactly the same had been done by the Conference on Diplomatic Intercourse and Immunities, and he had been surprised to hear article 3 of the Vienna Convention cited in support of the system of general definition. Article 3 of the Vienna Convention contained an enumeration of the five most important diplomatic functions; if the Vienna Conference of 1961 had wished to confine itself to a general definition, it would have included only paragraph *(a)* or *(e)* of the article.

67. Mr. ANIONWU (Nigeria) said that he was considering the question from the viewpoint of a new country. He agreed with the representative of Ceylon that the Commission's text of article 5 contained a useful list on which a new country could base the functions to be performed by its consular officials. He had also been interested by the Yugoslav representative's remarks concerning the Committee's task of codifying consular law, but he believed that that objective could be achieved without enumerating consular functions in detail. Moreover, he doubted whether the process whereby countries learnt from the experience of others really constituted progressive development of international law. Since the countries with the greatest experience in consular affairs could not agree on whether a specific or general system should be applied, a new country might prefer not to have consular functions enumerated, but to follow examples simply by accepting what suited

[3] See *Yearbook of the International Law Commission, 1960*, vol. II (United Nations publication, sales No. 60.V.1, vol. II), p. 33.

it and rejecting what did not. His delegation was therefore in favour of the Canadian and Netherlands amendment. In addition, he drew attention to draft article 38 (Communication with the authorities of the receiving State) and asked whether the Commission's intention in drafting that article had been that it should apply only to the functions enumerated in article 5. If the Commission's article 5 were retained as it stood, another article would have to be drafted to cover communication in the exercise of functions not listed in article 5.

The meeting rose at 6.10 p.m.

EIGHTH MEETING

Monday, 11 March 1963, at 10.40 a.m.

Chairman : Mr. BARNES (Liberia)

Observance of the twenty-fifth anniversary of the Anschluss

1. The CHAIRMAN said he was sure that the Committee would wish to take note of the Austrian Government's observance of the twenty-fifth anniversary of the Anschluss.

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 5 (Consular functions) (*continued*)

2. The CHAIRMAN invited the Committee to continue consideration of the question of principle whether article 5 should be drafted in a short general form, along the lines proposed by the Canadian and Netherlands delegations in their amendment (L.39),[1] or whether it should consist of a non-exhaustive enumeration of consular functions — the method used by the International Law Commission. When the delegations remaining on his list of speakers had delivered their statements, he proposed to put the question of principle to the vote. If the decision was in favour of a short, general article, the Committee would proceed to discuss the Canadian and Netherlands text, with any amendments thereto; if it was in favour of an enumeration, the Commission's proposal and the amendments thereto would be discussed. Although the vote would be on the question of principle only, and would not relate to any specific proposal before the Committee, it would have the effect of eliminating consideration, either of the Commission's draft and amendments thereto, or of the Canadian and Netherlands proposal and relevant amendments.

3. Mr. SOLHEIM (Norway) observed that the Commission's draft was the result of years of work and deliberation and that its provisions had undergone continuous development. Moreover, in considering and reconsidering the articles, the Commission had at various stages submitted the texts to States Members of the United Nations for comment and had studied the articles on the basis of the comments received.

4. Article 5 had given the Commission more work than any other, and for a while it had hesitated between a detailed enumeration of consular functions and a short formula defining them. It had concluded that neither alternative was fully satisfactory and had evolved a system comprising a general definition which could include an explanation of the most important consular functions. The Committee was now faced with an amendment, submitted by the Canadian and Netherlands delegations, which introduced a technical formula to define consular functions, despite the fact that the International Law Commission had decided against that method at an early stage of its work.

5. As the result of the submission of that amendment, the impression had been given during the debate that the choice lay between a general and a detailed definition. But that was not the case; the choice was, in fact, between a general definition containing specific examples of consular functions and a definition which, while purporting to be general, was really no definition at all. If the Canadian and Netherlands amendment were adopted, countries resorting to the convention for guidance on consular functions would search in vain, and would find only an empty formula, containing absolutely no indication of the many and various existing consular functions. The Commission's draft of the article provided the minimum information required to give the reader an idea of what the convention was about, what a consul could do and why he was such an important official that over seventy articles on his work were necessary. If a provision on the lines of the Canadian and Netherlands amendments were adopted, the entire convention would be reduced to an empty framework.

6. Mr. USTOR (Hungary) said that article 5 was the very cornerstone of the convention. In view of the wide variety of consular functions, it had obviously been difficult for the Commission to produce an enumeration, and the reasons underlying the Canadian and Netherlands amendment were to some extent understandable. Nevertheless, his delegation was strongly opposed to that amendment and urged the Committee to abide by the text finally recommended by the Commission.

7. The Conference's task of agreeing on a text in accordance with the rules of international law might be difficult in view of the presence of so many States with widely different national regulations on the subject, but the value of such a text depended on the depth of agreement reached. If the text adopted consisted of vague commonplaces and general platitudes, the standards set would be very low and the value of the convention would be correspondingly reduced. While it might be true that the adoption of very detailed regulations would not be practicable at such a large conference, the highest common factor — which was much higher

[1] For the list of the amendments originally submitted to the article, see seventh meeting, footnote to paragraph 3. Subsequently, in addition to the amendment (A/CONF.25/C.1/L.73) introduced by Mali during the seventh meeting, the following amendments had been submitted: Yugoslavia, A/CONF.25/C.1/L.72; Greece, A/CONF.25/C.1/L.80.

than that proposed in the Canadian and Netherlands amendment — must be adopted. Unless the greatest possible measure of agreement were exploited, the Conference would not be fulfilling its responsibilities towards the States that were not represented, towards new States and, in fact, towards succeeding generations. It would therefore be advisable not to depart too far from the Commission's draft.

8. In view of the long history of the article in the Commission's deliberations, he proposed that Mr. Žourek, the Commission's special rapporteur on consular relations, should give the background of the article to the Committee and explain the reasons for the adoption of the Commission's text.

9. Mr. CAMERON (United States of America) associated himself with those who advocated a short form for article 5. He could not agree that consular functions could be performed without the permission of the authorities of the receiving State, any more than he could support the theory that all consular functions should be performed in accordance with the laws of the receiving State. He was sure that if the principle of the short form of article were adopted, the Canadian and Netherlands delegations would accept minor changes to their text, in order to accommodate the views of other countries.

10. His delegation's chief difficulty in accepting the Commission's text was that, as it stood, the article went beyond strictly consular functions, by introducing the transactional representation of individuals by consular officials. Although there had been considerable activity along those lines, that function was based on former practice included in some obsolete treaties, mainly in view of the shortcomings of communications systems in bygone years. When the absence of communications had been liable to entail months of delay, consuls had been empowered to act on behalf of nationals of the sending State, but the intention had not been to allow consuls to replace owners, claimants or heirs with whom it was now possible to establish communication. In 1906, when the United States Consular Service had been put on a career basis, consuls had been prohibited from acting as attorneys; the United States had since modernized consular functions, both in conventions on the subject which it had negotiated with other States and in its own legislation.

11. His delegation would be lacking in candour if it failed to point out that conferring transactional powers on consuls would make the convention unacceptable to the United States Government. Moreover, if the Canadian and Netherlands amendment were rejected and a much longer draft were adopted, the list of items would continue to grow, so that the views of all delegations could be accommodated. If the question of principle were decided in favour of the Commission's draft, his delegation hoped that its amendment to that text (L.69) would be acceptable to the Committee.

12. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said that, since article 5 was one of the most important in the draft convention, his delegation understood the serious and careful approach to it taken by many delegations.

13. The advocates of a general definition based their views on the difficulty of providing an exhaustive definition. They pointed out that consular functions were many and various and covered a wide range of subjects, and alleged that it was therefore difficult to enumerate such functions exhaustively. But their misgivings were not confirmed by practice. Moreover, the amendments submitted to the Commission's draft did not introduce any additional functions; that led to the conclusion that the Commission's draft indeed covered the main functions of consular officials.

14. Some representatives had asserted that an enumeration of consular functions could lead to confusion; but if an enumeration could lead to confusion, a general definition could only lead to a situation in which the convention would provide no guidance for consuls. The advocates of the general formula were following the line of least resistance by urging the adoption of a general definition, in the hope that all the amendments to the Commission's draft would thus automatically be disregarded and that there would be no need to discuss them further. The easy way out was, of course, always tempting, but was not always correct. The general formula would be of no practical use, but would serve as grounds for various disputes among States and would hamper the practical activities of consulates, particularly for countries which were as yet only beginning to establish consular relations. Furthermore, the main consular functions were enumerated in a number of recent conventions, and it would be unforgivable to abandon that principle in a multilateral instrument which should serve as a guiding instrument for consular relations between States. The object of the Conference was to codify consular law and to encourage the progressive development of consular functions. Those functions were now very much broader than they had been in the past. Consuls were now called upon to develop friendly relations between States, as was rightly said in the Czechoslovak, Hungarian and Romanian joint amendment (L.33). The Yugoslav delegation had very properly stated in its amendment (L.72) that consular functions likewise comprised functions to be performed under international agreements between the States concerned and functions entrusted to the consul by the sending State.

15. The USSR delegation would vote against the principle of a general definition and in favour of the system recommended by the International Law Commission. With regard to his delegation's attitude towards the substantive amendments to various sub-paragraphs of the article, it reserved the right to express its views when those amendments were discussed.

16. Mr. CABRERA-MACIA (Mexico) drew attention to paragraph 9 of General Assemby resolution 1685 (XVI), which referred the International Law Commission's draft to the Conference as the basis for its consideration of the question of consular relations, and to rule 29 of the rules of procedure, adopted unanimously at the second plenary meeting, which provided that the Commission's draft articles should constitute the basic proposal for discussion by the Conference. Any proposal

tending to restrict consideration of the Commission's draft articles was thus contrary to the will of the General Assembly and of the plenary conference, and was therefore out of order. Hence, the Committee should consider article 5 as drafted by the Commission, and not an incomplete definition of consular functions.

17. On the other hand, all delegations were free to make any proposals they wished within that framework. In the belief that the Canadian and Netherlands amendment would be rejected by the Committee, the Mexican delegation wished to propose a procedure in four stages for the consideration of article 5. First, a vote would be taken on the Canadian and Netherlands amendment, as a radical proposal to replace the Commission's article 5. When that proposal had been rejected, the Committee would proceed to consider the Commission's draft article. Then a separate vote would be taken on each paragraph of the Commission's article, with the amendments thereto. Finally, a vote would be taken on the whole text, as amended.

18. Mr. FUJIYAMA (Japan) observed that, while it was essential to adopt an article that would be acceptable to as many delegations as possible, the Committee's work must be expedited. His delegation believed that the general form proposed in the Canadian and Netherlands amendment was the more advisable in view of the controversy concerning the Commission's draft, but if the majority preferred to base its work on that draft his delegation reserved the right to press its amendment (L.54) to the Commission's text.

19. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) observed that, in addition to the two possible solutions of a general definition and a specific enumeration, there was also a third, represented by article 4 of the draft submitted to the Commission in 1960.[2] That compromise solution consisted of a brief and simple general text, followed by a list of specific cases shorter than the one now proposed by the Commission.

20. His delegation believed it was difficult to avoid a general definition entirely, although such a text by itself might indeed lead to conflicting interpretations. On the other hand, the Commission's present text of the article, consisting only of a list of examples without a general definition, gave rise to difficulties in respect of cases not enumerated in the article. His delegation therefore believed that the Commission's text should be taken as a basis, but that the enumeration should be preceded by a brief general definition on the lines of the Swiss amendment (L.16), to provide general criteria for deciding on the exercice of certain consular functions. Finally, in considering the examples to be included, it should be borne in mind that the role of the Conference was not only to codify existing rules, but to promote the progressive development of international law.

21. Mr. PALIERAKIS (Greece) observed that most of the speakers had admitted the quasi-impossibility of drawing up an exhaustive enumeration of consular functions. Even the eminent jurists of the International Law Commission had done so by including the words " more especially " in the opening sentence of article 5. The Greek delegation was therefore in favour of a general definition of consular functions.

22. There was clearly a group of functions governed by international law; it comprised functions relating to protection of and assistance to nationals of the sending State and to vessels and aircraft of that State. Another group of functions, also covered by the general definition, could be performed only if the legislation of the receiving State was not opposed to their exercise; it included acting as notary and civil registrar, safeguarding the interests of minors and persons lacking full capacity, and serving judical documents or executing letters rogatory. All the examples in the Commission's text fell into one or the other of those two groups; for instance, the functions specified in sub-paragraphs (*a*), (*e*) and (*l*) were in the first group, while these specified in sub-paragraphs (*b*), (*c*), (*d*), (*f*), (*j*) and (*k*) were in the second. The enumeration could thus be reduced to a general definition.

23. Mr. CHAVEZ VELASCO (El Salvador) said that the large number of amendments submitted to the Commission's text showed the difficulty of agreeing on questions so closely linked to the municipal law of the receiving State. Even with the incorporation of those amendments, the Commission's text would be incomplete and imperfect. His delegation was therefore in favour of a general and more flexible definition.

24. Mr. RAHMAN (Federation of Malaya) considered it necessary to adhere as closely as possible to the Commission's text. As the representative of a small and young nation, he could assure the advocates of the general definition that such nations understood their motives and reasons, but could not agree with them. Some decades ago, when the number of independent States had been much smaller than it was now, there had been no serious challenge to the interpretation of consular functions in accordance with the customs of the long-established States; but the world atmosphere had greatly changed and a new approach must be found to meet the needs of the many emerging countries which did not have the same advantages and traditions as older ones. Ambiguity and vagueness no longer had any value, and the aim of the conference should be precision and clarity. If the conference accepted the views set out in the Canadian and Netherlands amendment (L.39), it might be faced with the same failure as The Hague Codification Conference of 1930, when agreement had been reached on only a few minor points and the text adopted had been ratified by very few States.

25. Moreover, the Committee should be mindful of the provisions of Article 14 of the Charter, in pursuance of which the International Law Commission, with its special statute, had been set up, and which laid down as one of the tasks of the General Assembly that of encouraging the progressive development of international law and its codification. In view of these considerations, the Malayan delegation would support the Commission's draft of article 5.

[2] *Yearbook of the International Law Commission, 1960*, vol. II (United Nations publication, sales No. 60.V.1, vol. II), p. 33.

26. Mr. RUDA (Argentina) did not consider that the two possibilities before the Committee were quite as contradictory as they appeared. The question was whether the enumeration of functions should be more or less detailed, for both the Commission's draft and the Canadian and Netherlands amendment were, in fact, enumerative. The Argentine delegation did not consider that a general enumeration was particularly valuable, because consular officials had certain specific functions; on the other hand, an unduly detailed enumeration might raise difficulties in view of the wide differences in national legislation on the subject. Accordingly, the compromise solution was to specify the more important normal functions of consuls, particularly those governed by modern international law, providing, of course, that they must not conflict with the legislation of the receiving State. That was the Committee's duty in the matter of codifying consular law; it would not be fulfilled by adopting the Canadian and Netherlands amendment, which failed to enumerate the normal functions of consuls.

27. Mr. MARTINS (Portugal) said he would vote for the Commission's text with some minor amendments. His delegation was in favour of an enumeration of consular functions because, for the first time in history, the principles governing one of the oldest international institutions were to be codified. For centuries there had been no definitions or precise rules on the subject, and the Conference was called upon to fill those gaps at a most interesting point in the history of consular relations.

28. A number of far-reaching developments had taken place since the Second World War. Diplomatic missions had replaced consulates in many capital cities, and the range of consular functions had been considerably increased by the intensification of cultural, technical and scientific exchanges, tourism and air travel. All the new problems raised could not be solved in the traditional manner; old formulae could not determine whether the export of an atomic reactor, a visit by a symphony orchestra or the descent of a satellite in the territory of a foreign country were matters for consular officials or diplomatic agents to deal with. Furthermore, there was a strong tendency in modern times to assimilate consular functions to diplomatic functions.

29. The Conference should therefore avoid general and imprecise formulations which would not cover modern problems. Not only the many consular conventions concluded since the Second World War, but even older intra-European and European-Latin American conventions, prompted by such events as the opening of the Suez Canal, the improvement of communications and increased industrialization, contained provisions which were much more comprehensive than those proposed in the Canadian and Netherlands amendment. In fairness to the advocates of that amendment, it must be said that the countries concerned had themselves subscribed to much broader instruments. The Conference was responsible for drafting a convention which would improve international relations; caution and wisdom must therefore be exercised with a view to introducing elements of the future into the present.

30. The CHAIRMAN suggested that, in pursuance of the Hungarian representative's request and in accordance with rule 34 of the rules of procedure, Mr. Žourek, special rapporteur of the International Law Commission on consular relations, should be invited to explain the circumstances in which the Commission had adopted its present text of article 5.

It was so agreed.

31. Mr. ŽOUREK (expert) thanked the Chairman for the opportunity afforded him of giving a brief history of the origin of the provisions of article 5 and of explaining the reasons which had led the International Law Commission to adopt the approach it had.

32. From the outset of its work on consular relations — i.e., from its tenth session, in 1958 — the International Law Commission had been faced with the problem of whether to include in its draft a definition of consular relations. The Commission had been almost unanimous in its conclusion that such a definition was necessary and that without it the draft would be of little practical use.

33. Having thus agreed on the need for a definition of consular functions, the Commission had found itself faced with very much the same problem as the present Committee — namely, whether to adopt a definition couched in general terms or to attempt a detailed enumeration of consular functions.

34. In the initial stages of the discussion, there had been some support for a very general definition of the type embodied in the 1958 draft on diplomatic intercourse and immunities. The Commission, however, had soon realized that the analogy with diplomatic relations was not valid, because of the essential differences existing between the position of consuls and that of diplomatic agents and because of the great difference between consular functions and diplomatic functions. The head of a diplomatic mission represented the sending State in its relations with the receiving State; his functions were of a general character and included the consular functions themselves. It was therefore possible to define diplomatic functions in general terms. The position of consuls, on the other hand, was altogether different. A consul's powers were much more limited than those of a diplomatic agent, though they were extremely varied: a consul did not represent the sending State for the whole range of its relations with the receiving State.

35. Certain consular functions were based on customary international law and had been established for centuries. Others, however, had emerged in more recent times. It was clear to the International Law Commission that the exercise of those consular functions which were based on customary international law could under no circumstances be prevented by the receiving State. With respect to other functions, however, the position was that a consul could exercise them if they were entrusted to him by the sending State and if their exercise was not forbidden by the authorities of the receiving State.

36. In view of the great variety of consular functions and in view also of the legal basis for their exercise, the Commission had realized that it was impossible to define

those functions in general terms. Accordingly, from an early stage in its work, the Commission had sought an intermediate solution and had endeavoured to formulate a definition which would be neither too general nor too detailed. It had invited him, as special rapporteur, to prepare two variants for the article dealing with consular functions. The first variant was to be a general definition and the second an enumeration. Accordingly, he had prepared (1) a general definition and (2) a non-exhaustive enumeration along the lines of that contained in his 1957 report.[3]

37. At its twelfth session, in 1960, the Commission had discussed the two variants and had decided to submit to governments for their comments two different definitions of consular functions. The first, embodied in article 4, paragraph 1, of the 1960 draft, had contained a general definition followed by a non-exhaustive enumeration of six of the main functions exercised by consuls. The second definition, a broad enumeration of consular functions, had been included in the commentary on the article so as to give governments an opportunity to comment upon it as well.

38. Most of the nineteen governments which had sent in comments had expressed themselves in favour of the definition embodied in the 1960 draft. However, several of them had urged that that definition should be supplemented by the inclusion of further examples.

39. Taking those comments into consideration, the International Law Commission, at its thirteenth session, in 1961, had adopted the text of article 5 which was now under discussion. That text represented an intermediate solution between two extreme views. It had been accepted unanimously by the Commission, which included jurists representing the main legal systems of the world.

40. The text adopted by the Commission took a similar form to that adopted by the 1961 Vienna Conference as article 3 of the Convention on Diplomatic Relations. He recalled that the enumeration contained in that article was not exhaustive, as shown by its opening words: "The functions of a diplomatic mission consist, *inter alia*, in: ..."

41. The text of article 5 had the advantage of setting forth clearly the essential functions of consuls and thus dispelling doubts and misgivings which had arisen with regard to those functions among writers on international law. The Commission had been impressed by the consideration that a definition couched in very general terms would have little practical value because it would lead to different interpretations and even to disputes. It had also been guided by the consideration that the article on consular functions must as far as possible reflect the present state of international law, which had undergone considerable development in recent years.

42. The type of definition adopted by the Commission was consistent with current state practice. A number of consular conventions in force contained enumerations of consular functions which were much more detailed than that in article 5.

[3] *Yearbook of the International Law Commission, 1957*, vol. II (United Nations publication, sales No. 1957.V.5, vol. II), p. 91.

43. In adopting article 5, the Commission had rejected the view, which had sometimes been put forward in the past, that the exercise of all consular functions was dependent upon the consent of the receiving State — a view which would be tantamount to a denial of the existence of consular relations. There were, of course, certain consular functions which could only be exercised provided that they did not conflict with the law of the receiving State. For example, a consul could not solemnize a marriage if the law of the receiving State did not permit consuls to act as registrars. Similarly, a consul could not execute letters rogatory otherwise than by virtue of an international agreement or with the consent of the receiving State.

44. However, the exercise of such consular functions as protecting the interests of the sending State and of its nationals, promoting and furthering the development of friendly relations between the two States concerned, ascertaining conditions in the receiving State, issuing passports, assisting nationals and safeguarding their rights in estates, could not be prevented by the receiving State. Nevertheless, in carrying out those functions, a consul had the duty, expressed in article 66 of the draft, to respect the laws and regulations of the receiving State. The provisions of article 66 provided a sufficient safeguard for the receiving State. It should be remembered that consuls, unlike diplomatic agents, were subject to the jurisdiction of the receiving State. If, therefore, they violated its laws and regulations, the receiving State was in a position to enforce observance. There would thus be no difficulty in ensuring that, when a consul exercised one of the functions recognized by international law as a consular function, he would observe the relevant legislative provisions of the receiving State. For example, if a consul were called upon to represent the interests of one of his nationals who was absent, he would naturally have to observe such rules of the local law of procedure as the obligation to retain a lawyer.

45. In conclusion, he stressed that article 5 was one of the most important porvisions of the whole draft. Its text could no doubt be improved and supplemented in the light of the experience of governments, but he urged the Committee to weigh its decision carefully before departing from a formula which represented several years of work by the International Law Commission.

46. The CHAIRMAN thanked Mr. Žourek for his valuable contribution to the discussion.

47. Mr. PUREVJAL (Mongolia) said that his delegation would vote in favour of the presentation adopted by the International Law Commission for article 5 and against the very limited and narrow form of definition put forward in the amendment by Canada and the Netherlands (L.39).

48. The CHAIRMAN invited the Committee to vote on the question whether it preferred a short general definition of consular functions or not.

49. Mr. DADZIE (Ghana) said that, since the Committee had the International Law Commission's draft

before it, the question put to it should relate to that draft. He suggested that the Committee be invited to vote on whether it agreed to discuss the Commission's draft or not.

50. The CHAIRMAN pointed out that, since a number of amendments had been submitted to the draft, that form of submission of the question could lead to some confusion.

51. Mr. GUNEWARDENE (Ceylon) proposed that the vote on the question of principle should be deferred until the next meeting.

That proposal was adopted by 34 votes to 29, with 7 abstentions.

Article 6
(Exercise of consular functions in a third State)

52. The CHAIRMAN invited the Committee to consider article 6.

53. Mr. MAMELI (Italy) proposed the deletion of the word " express " from the final proviso " unless there is express objection by one of the States concerned ".

54. Mr. SOLHEIM (Norway) opposed that amendment.

55. Mr. KRISHNA RAO (India) also opposed the amendment. The word " express " had been used advisedly, as it had in the corresponding provision of the Vienna Convention on Diplomatic Relations. If the sending State wished to entrust a consulate established in a particular State with the exercise of functions in a third State, it should take some positive step in that direction; it was accordingly appropriate to provide that any objection by one of the States concerned should take an explicit form.

56. Mr. CAMERON (United States of America) said that he had no objection to the Italian amendment.

57. Mr. von HAEFTEN (Federal Republic of Germany) supported the Italian amendment. Any objection on the part of one of the States concerned would normally take the form of an express objection; however, it was useful to make provision for such an objection to be made informally.

58. Mr. SHARP (New Zealand) opposed the Italian amendment. New Zealand was a small country and it depended on the good offices of the United Kingdom for the conduct of its consular affairs in places where it had no consular representation. New Zealand consulates, moreover, also acted for an even smaller country — Western Samoa. For those reasons, his delegation preferred the text of article 6 as proposed by the International Law Commission. The deletion of the word " express " would detract from the flexibility of that text.

The Italian amendment was rejected by 48 votes to 16, with 6 abstentions.

Article 6 was approved unanimously.

Article 7 (Exercise of consular functions on behalf of a third State)

59. Mr. HEPPEL (United Kingdom) introduced the United Kingdom amendment (A/CONF.25/C.1/L.62) to article 7. By replacing the formula " With the prior consent of the receiving State " by the proviso " Unless the receiving State objects ", the United Kingdom amendment introduced a great degree of informality into arrangements such as those to which the New Zealand representative had referred in connexion with article 6. It was the experience of the United Kingdom that the type of arrangement by which one State could regularly perform consular work on behalf of another was usually adopted informally. There was no record of any receiving State making any objection to such an arrangement.

60. The exceedingly rigid provisions of the International Law Commission's text could lead to unnecessary difficulties. In particular, that text subordinated the exercise of consular functions on behalf of a third State to an agreement between it and the sending State. That suggested that, in order to carry out arrangements of the type he had mentioned, there must be a formal international agreement of the kind generally registered by member States with the United Nations. The United Kingdom amendment had the advantage of not implying the need for any such formal agreement.

61. He stressed that his delegation's amendment would reserve the absolute right of the receiving State to object to the exercise of consular functions on its territory.

62. Mr. ANIONWU (Nigeria) expressed his delegation's gratitude to the United Kingdom delegation for submitting its amendment (L.62) and recalled the reasons given by the New Zealand representative in favour of flexibility, in connexion with article 6. The matter under discussion was an important one to new States. It was necessary to deal with a situation in which a consular matter arose without the prior knowledge of the third State concerned. There was an understanding among the Commonwealth countries that in situations of that kind the United Kingdom would attend to such consular matters where there was no consular representative of the Commonwealth country concerned. That practice among Commonwealth countries had come to be generally recognized and had not given rise to any difficulties.

63. Mr. von HAEFTEN (Federal Republic of Germany) supported the United Kingdom amendment, but proposed, as a sub-amendment, that the additional words " upon notification " be inserted after the words " the sending State may ". It was necessary at least to inform the receiving State, in order to ascertain whether it had any objection to the exercise of such functions.

64. Mr. HEPPEL (United Kingdom) said that he had no objection to the idea that the receiving State should be informed. He stressed the fact, however, that the need to which the previous speaker had referred did not arise where one Commonwealth country had already

been performing consular work on behalf of another; the receiving State concerned would already be informed of that situation.

65. Mr. SOLHEIM (Norway) supported the United Kingdom amendment, which would serve the interests of small States very well. He was against the proposed sub-amendment because introducing the idea of notification would detract from the flexibility of the text.

66. Mr. PALIERAKIS (Greece) said that he was in favour of retaining article 7 as it stood. If the United Kingdom proposal were accepted, the Committee would be departing from the principle laid down in article 4, paragraph 1, that a consulate could only be establish with the consent of the receiving State. The fears expressed that the International Law Commission's text might prove too rigid were unfounded. The words " an agreement between the sending State and the third State " did not necessarily mean a written agreement.

67. Mr. BOUZIRI (Tunisia) opposed the United Kingdom amendment, which would reopen issues already settled by the Committee when it had adopted articles 2 and 4. The system proposed in the United Kingdom amendment would make it possible for the third State concerned to establish consular relations with the receiving State without the mutual consent provided for in article 2. He failed to see any reason why the third State should be treated more leniently in that respect than the sending State itself. The sub-amendment proposed by the representative of the Federal Republic of Germany showed that that representative realized the difficulties inherent in the United Kingdom proposal; unfortunately, the sub-amendment did not remove those difficulties.

68. Mr. DADZIE (Ghana) supported the United Kingdom amendment. He saw no need to specify in article 7 the manner in which the third State and the sending State must arrive at the arrangement whereby the latter took care of the consular affairs of the former. The opening words of the United Kingdom amendment " Unless the receiving State objects " clearly implied that the receiving State would be informed.

69. Mr. LEE (Canada) said that he was in favour of the United Kingdom amendment, with the proposed sub-amendment. His delegation's concern was to safeguard the arrangements whereby the United Kingdom had been performing consular functions on behalf of Canada for many years in a great many countries. If article 7 were adopted unchanged, Canada would have to enter into formal agreements in respect of all those arrangements. In that connexion, he drew attention to the terms of article 71 which safeguarded existing conventions and international agreements; that article did not cover existing informal arrangements such as those in which his government was interested.

70. Mr. KHLESTOV (Union of Soviet Socialist Republics) thought the United Kingdom amendment acceptable; it was an improvement on the text of article 7. His delegation did not support the sub-amendment, however, which would not add to the merits of the text in any way.

71. Mr. MARTINS (Portugal) stressed the fact that nothing could be done on the territory of the receiving State without its consent. That State would have to recognize the validity of the acts of the consul on behalf of a third State. As for existing situations, he felt that they were covered, because consent to the exercise of consular relations on behalf of third States had already been given.

72. Mr. SHARP (New Zealand) said that the arguments he had put forward in connexion with article 6 applied with even greater force to article 7. It was very important that existing informal arrangements should be preserved; for that reason, his delegation supported the United Kingdom amendment without the sub-amendment by the Federal Republic of Germany. He hoped that if article 7 were retained, the existing Commonwealth arrangements would be preserved without the requirement of a special notification, since in cases where one Commonwealth country already acted on behalf of another country, the consent of the receiving State could be assumed.

73. Mr. TÜREL (Turkey) endorsed the remarks of the Greek representative in favour of retaining article 7 as drafted by the International Law Commission.

74. Mr. BARTOŠ (Yugoslavia) expressed his delegation's willingness to accept the United Kingdom amendment provided its sponsor accepted the sub-amendment proposed by the representative of the Federal Republic of Germany. It was at least necessary for the receiving State to be informed that the consul would be acting for a third State, so that the authorities of the receiving State could ascertain whether the consul was duly authorized to act in the specific case concerned. He feared that, unless such notification were required, complete anarchy would result.

75. As to the Commonwealth practice, it had already been recognized by States. For example, in Yugoslavia, the United Kingdom Ambassador took care of the interests of all the member countries of the Commonwealth which did not have representation of their own.

76. Mr. HUBEE (Netherlands) drew attention to the co-operation within Benelux, which might at some future date also cover consular representation. He supported the United Kingdom amendment, with the sub-amendment by the Federal Republic of Germany.

77. He had not been convinced by the arguments put forward by the Tunisian representative. If, after notification, no objection were made by the receiving State, that State would have given its tacit consent and the terms of articles 2 and 4 would have been complied with.

78. Mr. D'ESTEFANO PISANI (Cuba) found the terms of article 7 somewhat rigid and formalistic. That article laid down two conditions for the exercise of consular relations on behalf of a third State: first, the prior consent of the receiving State, and, second, an agreement between the sending State and the third State. The United Kingdom formulation was more flexible and more in keeping with existing practice; it would serve to solve problems which arose in practice and would facilitate relations between States. The pro-

viso " Unless the receiving State objects " made adequate provision for the consent of the receiving State, and the United Kingdom proposal was therefore consistent with both the letter and the spirit of articles 2 and 4.

79. He felt that a distinction should be drawn between the case of two States which had direct consular relations, covered by article 2, and the case dealt with in article 7. In the latter case, the third State did not have consular relations with the receiving State and could only solve the practical problems involved through a State which did entertain consular relations with the receiving State concerned.

80. Miss ROESAD (Indonesia) expressed his support for the Commission's draft of article 7. Requirement of the prior consent of the receiving State would give that State enough time to notify its own authorities that consular relations would be exercised by the consulate on behalf of the third State. It would also give the receiving State time to decide whether it wished to allow the consulate so to act.

81. Mr. KRISHNA RAO (India) endorsed the Greek representative's reasons for opposing the United Kingdom amendment. He suggested, however, that the words " and by virtue of an agreement by the sending State and a third State " be deleted from article 7. That was necessary because the nature of the arrangements between the third State and the sending State was not relevant to the matter dealt with in article 7. Requirement of the prior consent of the receiving State should be retained, however, for the sake of consistency with article 2, which laid down that the establishment of consular relations between States took place by mutual consent.

82. Mr. WESTRUP (Sweden) said that his delegation could support the United Kingdom amendment with the sub-amendment proposed by the delegation of the Federal Republic of Germany. It could also support the formulation suggested by the representative of India.

83. Mr. ABDELMAGID (United Arab Republic) supported the United Kingdom amendment, with the proposed sub-amendment. In the United Arab Republic, United Kingdom consulates conducted consular affairs on behalf of New Zealand. When a new country was added to the Commonwealth, United Kingdom consulates also acted on behalf of that country. In a situation of that type, the least that could be asked was that the Ministry for Foreign Affairs of the United Arab Republic should be informed of the name of the new country on behalf of which the United Kingdom consulates were to act.

84. From a purely legal point of view, the arguments put forward by the representatives of Greece and Tunisia were correct, but he thought that an unduly legalistic approach should not be adopted in the matter and that the United Kingdom amendment, with the sub-amendment, should be accepted as conforming with existing practice.

85. Mr. ENDEMANN (South Africa) supported the United Kingdom amendment, with the sub-amendment. He thought it would be possible to cover arrangements between Commonwealth countries by referring to " an understanding " rather than " an agreement " between the sending State and the third State.

86. Mr. de ERICE y O'SHEA (Spain) supported the Indian suggestion. It was essential to require the consent of the sending State; the least that that State could ask was a notification to its Ministry for Foreign Affairs. He stressed that the future convention would not be applied at the level of embassies and governments; it would be applied by consulates in their relations with local authorities. It was therefore necessary that the Ministry of Foreign Affairs of the receiving State should be informed, so that it could in its turn inform the local authorities concerned that the consulate would exercise consular functions on behalf of a third State. The formulation suggested by the Indian representative should serve to preserve existing Commonwealth arrangements and he urged the United Kingdom representative to accept that suggestion.

The meeting rose at 1.30 p.m.

NINTH MEETING

Monday, 11 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 7 (Exercise of consular functions on behalf of a third State) (*continued*)

1. Mr. KRISHNA RAO (India) read out an oral amendment, submitted by his delegation jointly with that of Greece, for changing article 7 to read: " A consulate may exercise in the receiving State consular functions of behalf of a third State with the express consent of the receiving State."

2. The CHAIRMAN announced that the United Kingdom amendment (A/CONF.25/C.1/L.62) had been withdrawn. He drew attention to another amendment, submitted jointly by the United Kingdom and the Federal Republic of Germany (A/CONF.25/C.1/L.79). Since the latter was the furthest removed from the original proposal, it would be put to the vote first.

3. Mr. PETRŽELKA (Czechoslovakia) said that he would vote for the amendment submitted jointly by the United Kingdom and the Federal Republic of Germany; if that amendment should not be adopted, he would vote for the oral amendment submitted by India provided that its sponsor consented to omit the word " express ".

4. The CHAIRMAN put to the vote the amendment (L.79) submitted jointly by the United Kingdom and the Federal Republic of Germany.

The amendment was adopted by 25 votes to 19, with 21 abstentions.

5. The CHAIRMAN said that, in view of that decision, there was no need to put the oral Indian amendment to the vote.

Article 5 (Consular functions) *(continued)*[1]

6. Mr. SILVEIRA-BARRIOS (Venezuela) said that he supported a general definition of consular functions.

7. The CHAIRMAN said that the list of speakers on the preliminary question of principle concerning article 5 was closed, and invited the Committee to decide whether article 5 should consist of a general definition of consular functions.

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

The United States of America, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: United States of America, Australia, Belgium, Brazil, Canada, Chile, China, El Salvador, Federal Republic of Germany, Finland, France, Greece, Ireland, Israel, Laos, Luxembourg, Netherlands, New Zealand, Peru, Republic of Korea, Rwanda, South Africa, Spain, Sweden, Turkey, United Kingdom of Great Britain and Northern Ireland.

Against: Upper Volta, Venezuela, Yugoslavia, Algeria, Austria, Bulgaria, Byrlorussian Soviet Socialist Republic, Ceylon, Congo (Brazzaville), Costa Rica, Cuba, Czechoslovakia, Denmark, Ethiopia, Federation of Malaya, Ghana, Guinea, Hungary, India, Indonesia, Iran, Italy, Liberia, Libya, Liechtenstein, Mali, Mexico, Mongolia, Morocco, Norway, Philippines, Poland, Portugal, Romania, Saudi Arabia, Sierra Leone, Switzerland, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic.

Abstaining: Republic of Viet-Nam, Argentina, Cambodia, Colombia, Congo (Leopoldville), Holy See, Japan, Nigeria.

The principle of a general definition of consular functions was rejected by 42 votes to 26, with 8 abstentions.

8. Mr. RUDA (Argentina) explained that he had abstained from voting because he favoured an intermediary solution, in which a list would have been given of the many functions normally exercised by consulates.

9. Mr. MAMELI (Italy) said that the oral amendment submitted by his delegation at the 7th meeting [2] related to the International Law Commission's text and not to the amendment submitted jointly by the delegations of Canada and the Netherlands (L.39).

10. The CHAIRMAN suggested that the Committee should consider all the amendments to article 5 which had been submitted instead of taking each sub-paragraph separately.

11. Mr. BARTOŠ (Yugoslavia) said that such a procedure would only lead to confusion on account of the large number of amendments proposed to article 5 Each sub-paragraph should be considered separately together with the relevant amendments.

12. Mr. von HAEFTEN (Federal Republic of Germany) suggested that the Committee take as a basis for discussion the synoptic table of amendments to article 5 (A/CONF.25/C.1/L.77) prepared by the Secretariat.

13. Mr. CAMERON (United States of America) said that it would be better to consider article 5 sub-paragraph by sub-paragraph and to defer voting on the sub-paragraphs until the Committee had finished its discussion of the article.

14. Mr. de MENTHON (France), supported by Mr. RABASA (Mexico), Mr. MABAMBIO (Chile), Mr. DADZIE (Ghana), Mr. GUNEWARDENE (Ceylon) and Mr. MAHOUATA (Congo, Brazzaville), proposed that the Commission should vote successively on the individual sub-paragraphs.

15. Mr. CAMERON (United States of America) said that he would not press his proposal, but thought that the Commission should take only a provisional decision on each sub-paragraph.

Introductory sentence

16. The CHAIRMAN drew attention to three amendments relating to the introductory sentence by Switzerland (L.16), Austria (L.26) and Norway (L.63).

17. Mr. BINDSCHEDLER (Switzerland) said that the Swiss delegation would withdraw its amendment to the introductory sentence, and would support the amendments to sub-paragraphs (*f*), (*g*) and (*i*). Many States prohibited the exercise of the functions mentioned in those sub-paragraphs.

18. Mr. SILVEIRA-BARRIOS (Venezuela) said that the Austrian amendment (L.26) did not affect either the Spanish or the French text.

19. Mr. KIRCHSCHLAEGER (Austria) explained that the purpose of his delegation's amendment was to replace the words " more especially " in the English text by the words " *inter alia* ", which were used in article 3 of the Vienna Convention on Diplomatic Relations, 1961.

20. Mr. HEPPEL (United Kingdom) agreed with the representative of Austria. He pointed out that in the 1961 Convention the expression " *inter alia* " in the English text corresponded to the work " notamment " in the French text. He thought, moreover, that the word " ordinarily " should be inserted in the introductory sentence.

21. Mr. PALIERAKIS (Greece) likewise supported the Austrian amendment.

22. Mr. de ERICE y O'SHEA (Spain), while supporting the Austrian delegation's amendments, nevertheless pointed out that the French word " notamment " did not quite correspond to the expression " *inter alia* ", which should rather be translated by " entre autres " in French,

[1] For a list of the amendments submitted, see seventh meeting, footnote to paragraph 3, and eighth meeting, footnote to paragraph 2.

[2] See the summary record of the seventh meeting, para. 52.

and " among others " in English; " notamment " would correspond rather to " more especially ".

23. Mr. SILVEIRA-BARRIOS (Venezuela) said that the Austrian amendment would introduce into the convention on consular relations the formula used in the English text of the Convention on Diplomatic Relations; but that formula did not appear in either the Spanish or the French text. It might give rise to difficulties if different expressions were used in two versions of one and the same text. For that reason, he did not see why the text should contain an expression which had been accepted for the English but not for the Spanish text of the 1961 Convention.

24. Mr. SOLHEIM (Norway) pointed out that his delegation's amendment (L.63) was indentical with the Austrian amendment. The arguments in favour of that amendment had already been explained by other delegations. The proposed change was an exceedingly small one, but he thought it would improve the text.

25. He considered that it would be unnecessary to insert the word " ordinarily " in the text, since certain functions mentioned in sub-paragraph 1 of the International Law Commission's draft — for instance, assistance to vessels, ships and aircraft — were not exercised in all consular districts.

26. Mr. RABASA (Mexico) supported the views of the representative of Venezuela. The word " principalmente ", which was used in the Convention on Diplomatic Relations, should be retained in the Spanish text.

27. Mr. RUDA (Argentina) agreed. In 1961, the Spanish-speaking countries had chosen the word " principalmente " in its true meaning, to indicate the most important functions. " Principalmente " and " *inter alia* " did not have the same meaning in Spanish. The Committee should follow the precedent of 1961. He would therefore vote in favour of the original text of the International Law Commission.

28. Mr. PETRŽELKA (Czechoslovakia) opposed the addition of the word " ordinarily " as proposed by the United Kingdom representative. That word had a restrictive meaning and would not permit the subsequent development of consular functions. Actually, only a drafting point was involved, which should be referred to the drafting committee.

29. Mr. MAMELI (Italy) agreed with the Spanish representative. The Austrian amendment was almost identical with the Italian oral amendment. Nevertheless, he was willing to co-operate by accepting either of these expressions; the two ideas were not contradictory.

30. Mr. de MENTHON (France) said that he would prefer the word " notamment " in the French text, as it already appeared in the Convention on Diplomatic Relations, and was in keeping with a detailed list such as that contained in article 5.

31. Mr. von HAEFTEN (Federal Republic of Germany) said that the Austrian amendment affected only the English text, not the French or the Spanish. The Norwegian amendment merely involved a question of drafting. He agreed with the representative of Czechoslovakia, and proposed that the Austrian and Norwegian amendments should be referred to the drafting committee.

32. Miss ROESAD (Indonesia) said that " *inter alia* " had a different meaning from " more especially "; her delegation would prefer the former of the two expressions. In any case, she did not think the question came within the scope of the drafting committee.

33. Mr. KEVIN (Australia) supported the United Kingdom proposal for inserting the word " ordinarily " in the draft.

34. The CHAIRMAN put to the vote the Austrian amendment (A/CONF.25/C.1/L.26) substituting the words " *inter alia* in " for the words " more especially of ".

The amendment was adopted by 43 votes to 7, with 10 abstentions.

35. The CHAIRMAN put to the vote the oral amendment submitted by the United Kingdom, inserting the word " ordinarily " in the introductory sentence.

The amendment was rejected by 30 votes to 5, with 28 abstentions.

Sub-paragraph (a)

36. Mr. ENDEMANN (South Africa) introduced his delegation's amendment (L.25) adding at the end of sub-paragraph (*a*) the words: " . . . and in a manner compatible with the laws of the receiving State ". That provision in no way meant that the laws of the receiving State could prevent consuls from protecting the interests of the sending State and of its nationals. The object was to determine how the protection would be secured, in conformity with the laws of the receiving State. The clause appeared to be in line with current practice.

37. Mr. FUJIYAMA (Japan) said that his delegation proposed the deletion of the words " both individuals and bodies corporate " (L.54) — which incidentally did not appear in the Convention on Diplomatic Relations — because it seemed obvious that " nationals " included both individuals and bodies corporate. It would be better to follow the language of the 1961 Convention in order to avoid any difficulty concerning the interpretation of two analogous articles in two closely related conventions.

38. Mr. BARTOŠ (Yugoslavia) said he was prepared to agree that the idea of " ensuring " should be added to that of " protecting ", and was in sympathy with the amendment submitted by Mali (L.73).

39. So far as the other amendments were concerned, he said that, while not formally opposed to them, he could not support them. Referring to the Japanese amendment he said that the meaning of the words " both individuals and bodies corporate " had been debated in the International Law Commission; it would be better to retain the Commission's text. Nor could he accept the amendments submitted by South Africa (L.25) and Indonesia (L.51), which were too restrictive. Consuls

were bound by international law to respect municipal law. He feared that the need to determine what was compatible with municipal law might give rise to much controversy. The Venezuelan amendment (L.20) seemed quite satisfactory, but it would be better to mention both " watching over " and " protecting ".

40. He thought it might perhaps be best to leave the text of the draft unaltered.

41. Mr. PALIERAKIS (Greece) said that his delegation proposed (L.80) that at the end of sub-paragraph (*a*) the words " or by bilateral agreements between the sending State and the State of residence " should be added, for there might be agreements concerning that question, and they should not be ignored.[3]

42. Mr. TSYBA (Ukrainian Soviet Socialist Republic), referring to the Venezuelan amendment (L.20), said he preferred the term " protecting ", which seemed to define the consular functions in a more concrete manner. The consul was concerned with defending interests which were threatened. The appropriate word would be " protecting " or " defending ". He was willing to support the amendment by Mali (L.73).

43. Mr. WESTRUP (Sweden), referring to the Japanese amendment (L.54), said that in 1961 the Swedish delegation had asked if the word " nationals " included individuals and bodies corporate. It had been told that that was the case. Nevertheless, it was better to be specific and to retain the text of the International Law Commission.

44. Mr. de MENTHON (France), referring to the Venezuelan amendment, said he saw no objection to the addition of the words " watching over " if the idea of " protecting " was maintained.

45. With regard to the amendment submitted by South Africa (L.25), he preferred the International Law Commission's text. The idea expressed in that amendment was embodied in article 66 of the draft, which dealt with respect for the laws and regulations of the receiving State. Referring the Indonesian amendment (L.51), he said he would prefer the original text to stand as drafted. He agreed with the representative of Yugoslavia that the result of the Indonesian amendment would be to limit the exercise of consular functions. He agreed with the remarks of the representative of Sweden concerning the Japanese amendment (L.54); it would be better to retain the words " both individuals and bodies corporate " in order to avoid any ambiguity. On the other hand, he saw no objection to adopting the idea contained in the Mali amendment (L.73), which should be in addition to the essential idea of protection.

46. Mr. ANIONWU (Nigeria) said that the Venezuelan, Indonesian and Japanese amendments (L.20, L.51 and L.54) scarcely altered the meaning of the text. With regard to the Venezuelan amendment, he thought that " watching over " would have a rather negative meaning. On the other hand, he was willing to support the other two amendments.

[3] This amendment was not pressed to a vote.

47. The amendments submitted by South Africa and Mali were apparently mutually contradictory. He was not in favour of the South African amendment, for its adoption might give rise to serious difficulties; nationals of the sending State might find themselves obliged to conform to practices to which they were unaccustomed. On the other hand, he was willing to support the Mali amendment.

48. Mr. ABDELMAGID (United Arab Republic) said that he saw no objection to adding the idea of " watching over " to that of " protecting ", but that would be rather a matter for the drafting committee. He would support the Indonesian amendment (L.51). Admittedly, article 66 embodied the same idea, as the representative of France had pointed out, but it dealt with respect for the laws and regulations of the receiving State on the part of honorary consular officials. The representative of France should have referred to article 55, which corresponded to article 41 of the Convention on Diplomatic Relations. He regretted that he could not endorse the Japanese amendment (L.54). He was, however, in favour of the Mali amendment (L.73). In connexion with the Greek amendment (L.80), he pointed out that international law included bilateral conventions.

49. Mr. von HAEFTEN (Federal Republic of Germany) said thet the idea of " protecting " was not implied in the term " watching over ". Furthermore, the latter expression had been translated in two different ways. In the Venezuelan amendment (L.20), the Spanish word " velar " was translated by " watching over ", whereas in the Mali amendment (L.73) the French word " veiller " was translated by " ensuring ". That point would have to be settled by the drafting committee.

50. The Indonesian amendment (L.51) tended to deprive the provision of its meaning: if the laws of the receiving State prevented consular officials from exercising their functions, they could do nothing further. The South African amendment (L.25) appeared to be safer. In connexion with the Japanese amendment (L.54), he said it would be advisable to retain the words " both individuals and bodies corporate ", in order to avoid any misunderstanding.

51. Mr. KRISHNA RAO (India) agreed with the representative of the Federal Republic of Germany that the idea of " protecting " included the idea of " watching over ". " Protecting " could therefore not be replaced by " watching over ", which was a weaker expression. The Indonesian amendment (L.51) seemed preferable to the South African amendment (L.25). He could not support the Japanese amendment (L.54), as it conflicted with paragraph 8 of the International Law Commission's commentary on article 5.

52. Mr. BARUNI (Libya) said he could not accept the South African amendment (L.25). Unfortunately, discrimination for reasons of colour was still practised in the world. What would happen if a consul in a region where such discrimination was applied found that local laws forbade him to protect coloured persons ?

53. The Indonesian amendment (L.51) also seemed to impose a restriction on the exercise of the consul's

functions. On the other hand, he was inclined to support the Mali amendment (L.73).

54. The CHAIRMAN asked the Venezuelan representative to give his opinion on the choice between the words " protecting " and " watching over ".

55. Mr. SILVEIRA-BARRIOS (Venezuela) agreed with the Indian representative that the idea of " protecting " included that of " watching over ". As the problem was one of secondary importance, he would withdraw the amendment.

56. Miss ROESAD (Indonesia) thanked the delegations which had supported the Indonesian amendment (L.51) and for the benefit of these delegations which regarded the amendment as restrictive stated that it corresponded with what was said in paragraph 7 of the International Law Commission's commentary on article 5 — viz., that the consul's right to intervene on behalf of the nationals of the sending State did not authorize him to interfere in the internal affairs of the receiving State. It was right that the principle of non-interference should be mentioned expressly so that, in his eagerness to protect the interests of nationals of the sending State, the consul would not resort to methods at variance with the law and usage of the receiving State.

57. Mr. DADZIE (Ghana) said he would not support the South African amendment (L.25), for the articles under discussion already specified too often that they were subject to the laws of the receiving State. In Africa, that phrase had a familiar meaning. It was well known that South Africa would not accept a convention unless it were in conformity with the laws of the receiving State.

58. He would vote against the Japanese amendment (L.54), since he thought that the retention of the words " individuals and bodies corporate " helped to make the text clear.

59. Mr. SHARP (New Zealand) said that none of the amendments seemed acceptable to him. In his opinion, too much emphasis was being placed on the laws of the receiving State instead of on international law. With regard to the amendment by Mali (L.73), he said that the duty of a consul in protecting a national of the sending State accused of a crime or offence was to see that he was treated like a national of the receiving State; he would therefore vote against the amendment because it placed emphasis on special treatment for foreigners.

60. Mr. ENDEMANN (South Africa), speaking on a point of order, said that the Committee was hardly competent to deal with questions concerning the policy followed by certain governments. In particular, he protested against certain expressions used by the Ghanaian representative.

Mr. N'DIAYE (Mali) explained that his delegation's amendment had been occasioned by the experience of a number of young States; in their future international relations, those States would need the maximum guarantees — in the clearest possible terms — which were in no way superfluous. The very general term " protecting " seemed inadequate. Logically, moreover, if that word was sufficient in itself, sub-paragraphs (*g*) and (*h*) would also be superfluous. He therefore urged the Committee to adopt the amendment.

62. Mr. CHIN (Republic of Korea) said that for article 5, sub-paragraph (*a*), he preferred the text adopted by the International Law Commission. With particular reference to the Mali amendment, he thought that the word " protecting " was adequate.

63. Mr. WU (China) said that from a legal point of view the Japanese amendment (L.54) was reasonable: in Chinese law, the term " nationals " covered both individuals and bodies corporate. The words which the Japanese delegation proposed to delete were therefore superfluous, but he had no objection to their retention, which was apparently desired by a number of delegations.

64. Mr. BANGOURA (Guinea) said that, for the reasons given by the Libyan representative, he could not support the South African amendment. Nor could he vote for the Japanese amendment. On the other hand, he would support the amendment by Mali, for the reasons which had been very cogently put forward by the representative of that country. Many young States had to establish relations with older States and they had to be able to ensure proper protection for their nationals who went to work in more highly developed countries.

65. Mr. SILVEIRA-BARRIOS (Venezuela) said he would not vote for the Japanese amendment (L.54). He was favourably disposed to the Malian amendment, but thought it should be in stronger terms.

66. Mr. ENDEMANN (South Africa) announced the withdrawal of his delegation's amendment (L.25).

67. The CHAIRMAN said that, after the withdrawal of the Venezuelan and South African amendments, three amendments remained to be voted on: those of Indonesia (L.51), Japan (L.54) and Mali (L.73).

The Indonesian amendment was rejected by 48 votes to 10, with 8 abstentions.

The Japanese amendment was rejected by 62 votes to 1, with 2 abstentions.

68. Mr. HEPPEL (United Kingdom) said that he would vote against the amendment by Mali because it tended to introduce into the article in question the principle of the most-favoured-nation clause, which did not appear anywhere else in the Convention.

The Malian amendment was rejected by 35 votes to 12, with 20 abstentions.

69. The CHAIRMAN put to the vote article 5, sub-paragraph (*a*), as drafted by the International Law Commission.

Article 5, sub-paragraph (a), as drafted by the International Law Commission, was adopted by 60 votes to none, with 1 abstention.

70. Mr. DADZIE (Ghana) said that his delegation had voted in favour of the amendment by Mali, since it offered the best means of ensuring adequate protection for the nationals of the sending State. It was not a question of the most-favoured-nation clause, but simply an application of the principle that all aliens should be treated on an equal basis, which was not the case everywhere.

Sub-paragraph (b)

71. Mr. CRISTESCU (Romania), introducing the amendment submitted jointly by Czechoslovakia, Hungary and Romania (L.33), explained that, in proposing the addition of the words " Developing friendly relations " in sub-paragraph (*b*), the sponsors wished to write into the future convention on consular relations a principle which was already stated in article 3 of the Vienna Convention on Diplomatic Relations. While admittedly the work of consulates was more limited than that of diplomatic missions, yet consular officials should strive to promote the development of friendly relations between the sending State and the receiving State, which was the principal objective of the Charter of the United Nations and of international law in general. International law, which recognized the need to develop friendly relations between States, likewise applied in the consular field. Such a principle of international law should be observed by all bodies representing the State or its interests abroad, whether they were diplomatic missions or consulates.

72. Current developments in consular relations required that consulates should not be limited to typically administrative functions but should become important factors in strengthening interstate relations. The amendment was in conformity both with the provisions of the United Nations Charter and with resolutions 1686 (XVI) and 1815 (XVII) on the codification of the principles of international law concerning friendly relations and co-operation among States, which had been unanimously adopted by the General Assembly.

73. The need to include that provision was all the greater since it would be stipulated in article 3 of the future convention that consular functions were exercised by consulates and also by diplomatic missions — a clause which was likewise to be found in the Convention on Diplomatic Relations. Accordingly, it seemed desirable to establish a parallel on that point between the two conventions.

74. The precedents mentioned and also the current developments in international law were in favour of mentioning such a consular function in the convention. It was both advisable and necessary in order to strengthen the part played by the consulates in international relations.

75. Mr. TSYBA (Ukrainian Soviet Socialist Republic) supported that amendment.

76. Mr. MARTINS (Portugal) said that his delegation would vote for the joint amendment (L.33).

77. Mr. von HAEFTEN (Federal Republic of Germany) said that to his regret he would not be able to support the joint amendment. The formula in question rightly appeared in the Convention on Diplomatic Relations, but would be superfluous in the future convention on consular relations, because of the difference in character between the diplomatic and consular services. Moreover, such a formula might incite certain consular officials to interfere in the internal affairs of receiving States, which was certainly not the intention of the members of the Committee.

78. Mr. ANIONWU (Nigeria) said that he thought that sub-paragraph (*b*) as drafted by the International Law Commission sufficiently stressed the necessity of promoting friendly relations between the sending State and the receiving State. The amendment was therefore superfluous.

79. Mr. KRISHNA RAO (India) supported the amendment but asked how the new version of the paragraph should be drafted; perhaps it would be enough to insert the words " and other friendly relations " after the words " cultural and scientific ".

80. Mr. JELENIK (Hungary) said that the development of friendly relations between sending and receiving States was unquestionably a consular function and should be mentioned expressly in the convention. In practice, consuls often had the opportunity of coming into contact with the common people and with the authorities of the receiving State and to act in the sense desired. Everyone recognized the need to develop friendly relations between countries; the amendment simply set forth the principle.

81. Mr. BARTOŠ (Yugoslavia) said that the joint amendment was very necessary since it affirmed the principle of friendship between nations and was in perfect harmony with the Charter. He therefore supported the amendment, though he had some doubts about its actual drafting. Perhaps the Committee might adopt the principle of the amendment and leave it to the drafting committee to work out the text. The suggestion of the Indian representative seemed to point the way to the best solution.

The meeting rose at 6.15 p.m.

TENTH MEETING

Tuesday, 12 March 1963, at 10.45 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 5 (Consular functions) (*continued*)

Sub-paragraph (b) (continued)

1. The CHAIRMAN invited the Committee to continue its discussion of article 5, sub-paragraph (*b*), and the amendment thereto (A/CONF.25/C.1/L.33).

2. Mr. DADZIE (Ghana) recalled that, in its resolution 1686 (XVI), the General Assembly had decided to

include in its agenda the consideration of the principles of international law concerning friendly relations and co-operation among States; the subject had been discussed at the seventeenth session, and would remain before subsequent sessions of the General Assembly. It was particularly significant that the decision to place that item on the agenda had been adopted unanimously by the General Assembly after a discussion on the proposal to study the principles of peaceful co-existence. He saw no reason to confine the development of friendly relations to any particular field of international activity, and he therefore supported the proposal (L.33) to include a reference to the matter in the article on consular functions. That proposal was fully in line with the aims pursued by the General Assembly, and it had been submitted at a time when the subject of friendly relations among States was uppermost in the minds of delegations.

3. He shared some of the doubts expressed at the ninth meeting by the Indian representative regarding the placing of the words proposed, and thought that the Indian suggestion was acceptable.

4. Mr. BOUZIRI (Tunisia) said there were no valid grounds for objecting to the amendment, which stated a well-known fact. The inclusion of the words proposed would introduce a human touch into what was otherwise a somewhat austere text. The fact that diplomatic missions were concerned with the promotion of friendly relations between States should be no obstacle to consulates also promoting such friendly relations. A consulate was called upon to supplement the action of a diplomatic mission, or to act instead of such a mission where none existed.

5. A reference to the duty to develop friendly relations between the sending State and the receiving State would serve to balance the provisions of sub-paragraph (*a*), which referred to protecting the interests of the sending State and its nationals. The protection of certain interests inevitably had a somewhat negative implication, for protection meant protection against something. The positive element in the reference to the development of friendly relations would serve to offset that implication.

6. Mr. N'DIAYE (Mali) also supported the joint amendment. Certain countries were unable to maintain both diplomatic missions and consulates, and it was necessary to permit the consulates of those countries to fill the gap where no embassy or legation existed. Another practical argument in favour of the amendment was that a consul was the obvious correspondent of his diplomatic mission and should therefore be able to help that mission in its endeavours to develop friendly relations between the two States concerned. He supported the drafting suggestion made by the Indian representative.

7. Mr. CHIN (Republic of Korea) appreciated the spirit in which the amendment had been proposed, but regretted that he could not support it. It was true that consuls contributed, by their activities in the promotion of trade and other relations, to the development of friendly relations between the sending State and the receiving State. But the purpose of article 5 was to enumerate the specific functions of consuls, and the words proposed would be out of place there.

8. Mr. ABDELMAGID (United Arab Republic) strongly supported the amendment. He thought that the Indian suggestion regarding the placing of the words proposed should be referred to the drafting committee.

9. Mr. KEVIN (Australia) said that, while he saw some merit in the Indian suggestion, he opposed the amendment, which followed the trend of assimilating consuls to diplomatic agents.

10. Mr. DEGEFU (Ethiopia) thought it illogical to place the words proposed at the beginning of sub-paragraph (*b*). By promoting trade and furthering the development of economic, cultural and scientific relations, as provided in that sub-paragraph, consuls would already be acting to develop friendly relations among the States concerned.

11. If, however, the Committee decided to adopt the amendment, his delegation proposed that " i.e. " should be inserted, so that the sub-paragraph would read: " Developing friendly relations — i.e., promoting trade and furthering the development . . ."

12. Mr. CAMERON (United States of America) drew attention to the proposal for a preamble (L.71) submitted by Ceylon, Ghana, India, Indonesia and the United Arab Republic, which included a reference to the promotion of friendly relations among nations, and pointed out that the preamble to the 1961 Vienna Convention on Diplomatic Relations contained an identical reference. His delegation considered that the words introduced by the amendment were more appropriate to the preamble of the future convention.

13. Mr. MAHOUATA (Congo, Brazzaville) said he had no objection to the idea contained in the amendment being introduced into sub-paragraph (*b*).

14. Mr. PETRŽELKA (Czechoslovakia) thanked those delegations which had spoken in support of the joint amendment of which his delegation was one of the sponsors. The proposal was based on Article 1 (2) of the Charter, which laid down as one of the most important purposes of the United Nations that of developing friendly relations among nations. He pointed out that article 3, paragraph 1 (*c*), of the Vienna Convention on Diplomatic Relations specified that the functions of a diplomatic mission consisted, *inter alia*, in " promoting friendly relations between the sending State and the receiving State . . ." Similar wording was to be found in many consular conventions, and it was clearly not beyond the scope of consular functions to further friendly relations. Consulates were growing in importance in international affairs and they could not be restricted to the limited function of protecting the interests of the sending State and its nationals.

15. Since, by virtue of article 3, paragraph 1 (*e*), of the Vienna Convention on Diplomatic Relations, it was the duty of the consular section of a diplomatic mission to promote friendly relations between the receiving

State and the sending State, it would be most illogical if a consulate were not allowed to perform the same important function.

16. Many States could not afford to maintain both diplomatic missions and consulates at important centres, and the consulate was often the only means of promoting friendly relations between the States concerned. He believed that the amendment, with its specific reference to the duty of developing friendly relations, would also serve to allay the fears expressed in some quarters that consuls might interfere in the internal affairs of the receiving State.

17. The fact that the preamble to the future convention on consular relations would, as his delegation hoped, contain a reference to the promotion of friendly relations among nations, should not preclude the adoption of the proposed amendment to sub-paragraph (*b*). In the 1961 Vienna Convention on Diplomatic Relations, such a reference had been included both in the preamble and in article 3, which specified the functions of a diplomatic mission.

18. As to the Indian suggestion, he thought that the position of the proposed words could be left to the drafting committee.

19. Mr. KESSLER (Poland) pointed out that, under draft article 68, consular functions could be exercised by diplomatic missions. Since, by virtue of article 3 of the Vienna Convention on Diplomatic Relations, it was the function of a diplomatic mission to promote friendly relations between the sending State and the receiving State, it followed that the consular section of a diplomatic mission would perform that function. For the sake of consistency, it was therefore essential to provide that a consulate also had the function of promoting friendly relations.

20. Because of his many contacts with persons from all walks of life, a consul was in a better position to develop friendly relations than a diplomatic agent, who moved in a rather restricted circle. His delegation considered the Convention on Diplomatic Relations and that on consular relations should be homogeneous and interconnected, and that both should specify the duty to promote friendly relations among the States concerned.

21. He urged the adoption of the amendment, the arguments against which were of a purely formal character. It introduced the postulate of friendly relations among nations irrespective of their different economic systems and political philosophies — a postulate which constituted one of the main principles of contemporary international law and was becoming deeply rooted in the consciences of both lawyers and law-makers all over the world.

22. Mr. BREWER (Liberia) supported the amendment for the reasons advanced by the representatives of Ghana, Tunisia and Romania.

23. Mr. WESTRUP (Sweden) said that he was not convinced by the arguments put forward in support of the amendment. The International Law Commission, by not including any reference to the development of friendly relations in article 5, had wished to mark one of the main differences between the functions of the diplomatic service and those of the consular service. It was obvious that not only all diplomatic agents and consular officials, but also private citizens abroad, had a duty to behave in such a manner as to promote friendly relations with foreign countries. It was also true that a consul occasionally took specific action to that end, such as opening exhibitions or arranging for visits by distinguished persons; but that type of activity was already covered by the reference in sub-paragraph (*b*) to the development of cultural relations. The duty to develop friendly relations was in fact implicit in all the activities of a consul, but any explicit reference to that duty should be confined to diplomatic agents.

24. His delegation was concerned at the tendency, reflected in the amendment, to equate the functions of diplomatic agents and consuls; that tendency was not a corollary of the merging of the diplomatic and consular services by certain countries for purposes of internal administration.

25. Mr. WU (China) emphasized that the development of friendly relations between States was a political task and as such came within the province of diplomatic missions. That did not mean that persons other than diplomatic agents could not do anything to develop friendly relations, but a consul had only a collateral duty to do so; it was not his main task.

26. The many provisions contained in article 5 clearly showed that consulates were overburdened with duties. The proper functions of a consulate were already so extensive that few countries were in a position to maintain consulates large enough to perform them all. He urged the Committee not to charge consuls with an additional duty which came within the realm of diplomatic functions.

27. Lastly, he pointed out that adoption of the amendment could mean that the receiving State would have in its territory not one, but several diplomatic missions of the same sending State.

28. For those reasons, his delegation would vote against the amendment (L.33).

29. Mr. BINDSCHEDLER (Switzerland) said that although his delegation was naturally in favour of the development of friendly relations among States, it could not vote for the amendment. Switzerland was not a member of the United Nations, so that the Charter was to his country, legally speaking, *res inter alios acta*; but it was a basic aim of Swiss foreign policy to promote friendly relations among States. On legal grounds, however, his delegation could not support the amendment.

30. In the first place, the words which it was proposed to insert in sub-paragraph (*b*) constitued a political clause; they referred to the general — i.e., political — relations between States, a matter which did not fall within the province of consulates. A consul was not a representative of the government of his country; it was for governments and their diplomatic missions to develop friendly relations among States. The references

which had been made to Article 1 of the Charter clearly showed the political character of the subject under discussion. His delegation did not believe that international law could be strengthened by the mere repetition of certain principles in every international instrument, regardless of whether they were out of place.

31. The adoption of the amendment would also involve certain dangers. It was the duty of a consul to defend the interests of nationals of the sending State; but a provision requiring him to develop friendly relations between the two States concerned could be arbitrarily interpreted, by the authorities of the receiving State, as restricting his normal function of protecting a national. Owing to its unduly vague and elastic terms, the proposed provision could thus be prejudicial to good relations between States and run counter to its authors' purpose.

32. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the development of friendly relations between States should be one of the foremost duties of consuls. The opponents of the amendment were not helping the progress of international law; in fact, they were attempting to put the clock back.

33. He had been surprised to hear the representative of the Federal Republic of Germany oppose the amendment at the previous meeting. His opposition was in direct conflict with his country's acceptance of the terms of the consular convention between the Union of Soviet Socialist Republics and the Fedetal Republic of Germany, concluded on 25 April 1958.[1] Under that convention, it was one of the functions of consular missions to develop friendly relations between the two States concerned. Other consular conventions entered into by his country contained similar provisions.

34. His delegation unreservedly supported the amendment for the reasons already stated by a number of other delegations.

35. Mr. GHEORGHIEV (Bulgaria) endorsed the many cogent reasons given by other speakers for supporting the amendment.

36. Mr. de ERICE y O'SHEA (Spain) said there was no disagreement on the substance of the matter. The difficulties which had arisen related to the formulation of the principle and the question where the provision should be inserted. He suggested that sub-paragraph (*b*) be re-worded as follows: " Promoting trade and furthering the development of economic, cultural, scientific and all other friendly relations between the sending State and the receiving State in accordance with the provisions of the present convention."

37. In placing the reference to other friendly relations immediately after rather than before the words " Promoting trade . . ." he was taking up the suggestion made by the Indian representative at the previous meeting. He had added the proviso "in accordance with the provisions of the present convention " in the hope that it would allay the concern expressed by the delegations of the United States of America and Switzerland.

[1] United Nations, *Treaty Series*, vol. 338, p. 74

38. Mr. HEPPEL (United Kingdom), speaking from his experience as a consular officer, said that, while consuls did have something to do with maintaining friendly relations, it could not be said that one of their principal functions was to develop friendly relations between the sending State and the receiving State. The International Law Commission had not included that function in its draft and had been quite right not to do so; for although it was a purpose of the United Nations to develop friendly relations and a diplomatic function to promote them, a consul was not an envoy of one State to another, and his function could not be described in the wording of the joint amendment. The suggestions of the Indian and Spanish delegations might be acceptable, and the drafting committee could settle the matter; but the United Kingdom delegation was strongly opposed to adopting the text of the joint amendment as it stood.

39. With regard to the argument that some States which had few diplomatic missions were obliged to rely on consular officials to carry out diplomatic functions, he drew attention to article 17 of the draft, which made ample provision for the performance of diplomatic acts by the head of a consular post.

40. The CHAIRMAN invited the Committee to vote on the question of principle involved in the joint amendment. If agreement were reached on the principle, the amendment would be referred to the drafting committee, together with the oral sub-amendments proposed during debate.

At the request of the representative of the Byelorussian Soviet Socialist Republic, a vote was taken by roll call.

Brazil, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Cuba, Czechoslovakia, Ethiopia, Ghana, Guinea, Hungary, India, Kuwait, Liberia, Libya, Mali, Mexico, Monaco, Mongolia, Morocco, Panama, Poland, Portugal, Romania, Spain, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Albania, Algeria, Argentina.

Against: Brazil, Chile, China, Federal Republic of Germany, Italy, Japan, Liechtenstein, Luxembourg, Netherlands, New Zealand, Nigeria, Norway, Republic of Korea, South Africa, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Australia, Belgium.

Abstaining: Cambodia, Canada, Congo (Brazzaville), Federation of Malaya, Finland, France, Greece, Holy See, Indonesia, Iran, Ireland, Israel, Peru, Republic of Viet-Nam, Rwanda, Thailand, Austria.

The principle contained in the Czechoslovak, Hungarian and Romanian amendment (A/CONF./25/C.1/L.33) was adopted by 31 votes to 22, with 17 abstentions.

41. The CHAIRMAN invited the Committee to vote on the substantive part of the Spanish oral amendment, consisting in the addition of the words " in accordance

with the provisions of the present convention " at the end of sub-paragraph (*b*).

The amendment was adopted by 23 votes to 16, with 28 abstentions. Sub-paragraph (b) of article 5, as amended, was adopted, subject to re-wording by the drafting committee.

Sub-paragraph (c)

42. The CHAIRMAN drew the Committee's attention to the fact that the addition of the words " by all lawful means " after " Ascertaining " in sub-paragraph (*c*) was proposed in the amendments submitted by Hungary (L.14), Austria (L.26), India (L.37), Japan (L.54) and Greece (L.80). The Greek delegation also proposed adding the words " and without committing the sending State " after the words " by all lawful means ".

43. Mr. KIRCHSCHLAEGER (Austria), introducing his delegation's amendment to sub-paragraph (*c*), observed that, in international law as in municipal law, no functions could be exercised except by lawful means. For that reason, the Austrian delegation had opposed a similar amendment submitted by Mexico and Ceylon to article 3 of the draft convention on diplomatic relations. Nevertheless, the amendment had been adopted, and the words included in the 1961 Convention. If the present conference did not follow the Vienna Convention in that matter, it would cause difficulties for persons who would subsequently have to interpret both conventions; they would not understand why diplomatic agents had to exercise their functions by lawful means, while consular functions could be exercised without that restriction.

44. Mr. MARTINS (Portugal) said that his delegation was in favour of the Commission's text. The introduction of the proposed restrictive phrase would mean, *contrario sensu*, that other consular functions might be exercised by unlawful means.

45. Mr. BARTOŠ (Yugoslavia) said that it would be quite wrong to replace the word " Ascertaining " by " Studying ", as proposed in the Spanish amendment to sub-paragraph (*c*) (L.45). A consul's function was to ascertain conditions on the spot, and not to study them in the abstract.

46. Mr. de ERICE y O'SHEA (Spain) withdrew his delegation's amendment, which had been intended to apply to the Spanish text only.

47. Mr. DADZIE (Ghana) said he had no objection to the insertion of the phrase " by all lawful means " in the sub-paragraph, although it was already implicit in the text.

48. The CHAIRMAN put to the vote the proposal to insert the words " by all lawful means " after " Ascertaining " in sub-paragraph (*c*).

The proposal was adopted by 52 votes to 3, with 13 abstentions.

49. Mr. PALIERAKIS (Greece) said that his delegation's reason for proposing the addition of the words " and without committing the sending State " could best be illustrated by an example. If a consul applied to the competent authority of the receiving State for information on some particularly confidential economic or scientific subject, the method of application would certainly be lawful, but the authorities might be unable to give the information. In such cases, the Convention should not be invoked as a pretext for obtaining classified information. It might be argued that the information referred to in sub-paragraph (*c*) was not of a confidential nature, but his delegation thought it would be wise to clarify the question.

50. Mr. BARTOŠ (Yugoslavia) said that he could not support the Greek amendment, because it was contrary to a principle of the United Nations which prohibited the denial of access to information by lawful means and which also frowned on the practice of giving misleading information. Indeed, the receiving State must be committed to supplying consular officials with any information which they were entitled to obtain by lawful means; it must be presumed that the officials of the receiving State were acting in good faith.

The Greek amendment was rejected by 46 votes to 2, with 16 abstentions. Sub-paragraph (c), as amended, was adopted unanimously.

Proposed new paragraph 2

51. The CHAIRMAN invited the Committee to consider the part of the Austrian amendment (L.26) which added an introductory sentence to a new paragraph 2 of article 5.

52. Mr. KIRCHSCHLAEGER (Austria) said that, in his delegation's opinion, the Committee's decisions on sub-paragraphs (*a*), (*b*) and (*c*) had in fact constituted a decision on the main functions of consular officers. An examination of the functions listed in sub-paragraphs (*d*) to (*l*) of the Commission's draft showed that those functions were in fact an implementation of the main consular functions. The Austrian delegation had tried to express that idea by separating article 5 into two paragraphs, one stating the three main functions and the other describing how they might he fulfilled.

53. Mr. von HAEFTEN (Federal Republic of Germany) said he could support the arrangement proposed in the Austrian amendment, which differentiated between three general provisions and a number of special functions. The amendment would help future readers to understand the arrangement not only of article 5, but of the convention as a whole.

54. Mr. KEVIN (Australia) observed that, according to the synoptic table drawn up by the Secretariat (L.77), various delegations had proposed adding the words " subject to the laws of the receiving State " to most of the sub-paragraphs to be included in the proposed new paragraph 2. It might therefore be advisable to insert that phrase in the introductory sentence in order to avoid repetition.

55. Mr. SOLHEIM (Norway) said that, although there were many proposals to insert references to the laws of the receiving State, it would be seen that there were only two references to those laws in the Commis-

sion's draft — namely, in sub-paragraphs (*i*) and (*j*). The Commission had carefully selected the special cases in which such references were necessary, and the Conference would be failing in its task if it introduced a general reference to the laws of the receiving State covering all the sub-paragraphs. Moreover, such a far-reaching proposal should have been submitted in writing at an early stage, in order that the Committee might discuss a provision which would affect the whole article, especially in view of the long debate that had been held on the principle of the Canadian and Netherlands proposal (L.39). The Committee's decision to reject the principle of that proposal had marked its wish to promote the progressive development of international law by enumerating functions which were generally accepted under international law, and not those governed by the laws of the receiving State.

56. Mr. KEVIN (Australia) said that he would withdraw his proposal, which he had made solely in the interests of better drafting. He had no strong views on the matter.

57. Mr. WU (China) supported the Austrian amendment, which reflected the original intention of the International Law Commission to combine a general statement with a detailed enumeration and which provided a logical and orderly arrangement of article 5.

58. Mr. MARTINS (Portugal) observed that the Austrian proposal departed radically from the classical enumeration in the Commission's draft. His delegation did not consider that innovation to be justified, since it would lead to confusion. It was not quite accurate to say that the functions enumerated in sub-paragraphs (*a*), (*b*) and (*c*) of the draft were the essential ones on which the others depended. In fact, the functions enumerated in sub-paragraphs (*d*) and (*l*) could all be related to sub-paragraph (*a*), and not to sub-paragraphs (*b*) and (*c*). In those circumstances, it would be wiser to retain the Commission's text.

59. Mr. PALIERAKIS (Greece) said that the Austrian proposal was acceptable to his delegation.

60. Mr. MARAMBIO (Chile) also supported the Austrian proposal and agreed with the sponsor that the essential consular functions were stated in sub-paragraphs (*a*), (*b*) and (*c*), while the functions set forth in (*d*) to (*l*) were consequential upon those main functions. The proposal would serve to harmonize the two conflicting views on the arrangement of article 5.

61. Mr. DEGEFU (Ethiopia), Mr. SILVEIRO-BARRIOS (Venezuela), Mr. NGUYEN QUOC DINH (Republic of Viet-Nam), Mr. HUBEE (Netherlands) and Mr. CASAS MANRIQUE (Colombia) supported the Austrian proposal as a compromise between the two divergent trends in the Committee's views on the article on consular functions.

62. Mr. BARUNI (Libya) recalled the Committee's decision to adopt the system of the Commission's draft of article 5. The Austrian amendment was a departure from that principle. The Libyan delegation was in favour of adhering to the Commission's text.

63. Mr. WESTRUP (Sweden) said that his delegation had opposed the enumerative system, but now that that system had been adopted, it saw great merit in the Austrian proposal, which brought order into what had threatened to become an endlessly detailed enumeration. On the other hand, he had been impressed by the Norwegian representative's arguments and, although he found the Austrian proposal acceptable in principle, he suggested that it might be better to decide upon the contents of all the sub-paragraphs before voting on the Austrian proposal.

64. Mr. USTOR (Hungary) supported the Swedish representative's suggestion.

65. Mr. VAN HEERSWIJNGHELS (Belgium) and Mr. RUDA (Argentina) said they could support the Austrian proposal in principle, but agreed that the procedure suggested by the Swedish representative would be the most practical.

66. The CHAIRMAN suggested that the procedure proposed by the Swedish representative should be followed.

It was so agreed.[2]

Sub-paragraph (d)

67. The CHAIRMAN announced that the only amendment proposed to sub-paragraph (*d*) was the Spanish proposal (L.45) to add the words " whenever necessary " after the words " appropriate documents ".

68. Mr. BREWER (Liberia) said that, although part of sub-paragraph (*d*) was contrary to his country's laws, his delegation had not thought fit to submit an amendment, because it did not wish to impose its national views on the majority, which had more experience in consular matters. Another reason why his delegation had not proposed an amendment was that, although the sub-paragraph dealt with a consular function, it was also partly concerned with the relationship between the sending State and its nationals, and no international convention could purport to regulate the affairs of any State. The sending State should be free to have its own regulations concerning the issue of passports and other travel documents to its nationals.

69. The Liberian delegation could support the Spanish amendment, provided that the words " whenever necessary " were placed before the words " and visas ". In Liberia, the Secretary of State was primarily responsible for the issue of passports and travel documents, and consular representatives could issue such documents only in cases of emergency. Even then, the documents were issued for very short periods, to allow Liberian travellers time to obtain a passport or other travel document from Liberia. The Spanish amendment introduced a qualification in that respect and the Liberian delegation could support it if the additional words were placed before the words " and visas ".

[2] The Austrian proposed was discussed at the thirteenth meeting, and referred to the drafting committee.

70. Mr. CAMERON (United States of America) observed that the purpose of the Spanish amendment seemed to be to make sure that sub-paragraph (*d*) imposed no obligation on the consul of a sending State to issue visas to persons wishing to travel to the sending State. His delegation was convinced, however, that, when the Convention had been ratified, that obligation could not be imposed on consuls, and that the amendment was therefore unnecessary.

71. Mr. USTOR (Hungary) endorsed the United States representative's comments.

72. The CHAIRMAN said that, in the light of the United States representative's explanation, there seemed to be no need for the Liberian representative to press his proposal.

The Spanish amendment (A/CONF.25/C.1/L.45) was rejected by 56 votes to 2, with 7 abstentions.

The International Law Commission's draft of sub-paragraph (d) was adopted by 63 votes to none, with 3 abstentions.

The meeting rose at 1.15 p.m.

ELEVENTH MEETING

Tuesday, 12 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 5 (Consular functions) (*continued*)

Sub-paragraph (e)

1. The CHAIRMAN drew attention to two amendments to sub-paragraph (*e*) submitted respectively by Spain (A/CONF.25/C.1/L.45) and by Greece (A/CONF.25/C.1/L.80).

2. Mr. TORROBA (Spain) said that workers and emigrants needed the protection and assistance of consulates more than other nationals of the sending State, as they were often in an unfavourable position with respect to the laws of the receiving State in the matter of employment and social protection. Accordingly they should be specifically mentioned, and that was the object of the Spanish amendment.

3. Mr. PALIERAKIS (Greece) withdrew his delegation's amendment to sub-paragraph (*e*).

4. Mr. KRISHNA RAO (India) said that in English the words "helping" and "assisting" used in sub-paragraph (*e*) had exactly the same meaning and hence were pleonastic. One of these words would be enough and the Indian delegation preferred the word "assisting".

5. The Spanish amendment (L.45) might open the door to the listing of numerous classes of nationals who should receive assistance from consulates. He would therefore vote against the amendment.

6. Mr. MARAMBIO (Chile) supported the Spanish delegation's amendment, which was constructive. For the most part, emigrants lived under poor economic and moral conditions and were often ignorant of the laws of the host country and of their legitimate rights under the labour legislation. The Spanish amendment was therefore fully justified.

7. Mr. BARTOŠ (Yugoslavia) said that his country, though not a country of immigration, was concerned about the circumstances of migrant workers and their protection in the host countries — all the more because it was very often impossible for consulates to intervene on their behalf, as their efforts were regarded by the receiving State as interference in its domestic affairs. The Spanish amendment was therefore justified, although its concluding words made the intervention of consulates subject to the consent of the receiving State, a qualification which might render the clause ineffectual.

8. Mr. RUDA (Argentina) said that Argentina, as a country of immigration, was particularly interested in the Spanish amendment. However, the Argentine delegation would vote against the amendment as its text was not satisfactory. It suggested that it was the responsibility of consulates to protect workers and emigrants, whereas they should really be protected by the laws and authorities of the country of immigration.

9. Mr. MIRANDA e SILVA (Brazil) and Mr. SILVEIRA-BARRIOS (Venezuela) said they would vote against the Spanish amendment for the reasons given by the Argentine representative.

10. Mr. PETRŽELKA (Czechoslovakia) said that he hesitated to support the Spanish amendment which, though based on excellent principles, applied only to one particular legal system. The purpose of the future convention was to codify rules of law common to all systems.

11. Mr. PEREZ HERNANDEZ (Spain), replying to the Argentine representative's remarks, admitted that the text of his delegation's amendment was perhaps not perfect; but the principle was sound. Besides, the idea behind the Spanish amendment was that consuls should protect workers and migrants through contacts with the competent authorities of the receiving State and in full agreement with those authorities.

12. Mr. MAMELI (Italy) expressed full support for the Spanish amendment, which was particularly suited to prevailing circumstances.

13. Mr. N'DIAYE (Mali) said that he would vote for the Spanish amendment because it reflected the same concern as that underlying his own delegation's amendment (L.73) to article 5, sub-paragraph (*a*).

14. Mr. PALIERAKIS (Greece) and Mr. EL KOHEN (Morocco) expressed support for the Spanish amendment.

15. The CHAIRMAN put to the vote the Spanish amendment (A/CONF.25/C.1/L.45) to article 5, sub-paragraph (*e*).

The amendment was rejected by 37 votes to 13, with 18 abstentions.

16. The CHAIRMAN stated that the Indian delegation's oral amendment deleting the words " helping and " in sub-paragraph (*e*) was a purely drafting amendment and would be referred to the drafting committee. He put to the vote sub-paragraph (*e*) as drafted by the International Law Commission.

Sub-paragraph (e) was adopted by 63 votes to none, with 1 abstention.

Sub-paragraph (f)

17. The CHAIRMAN drew attention to the amendments submitted by Cambodia (L.38), Mexico (L.53) and the United States (L.69), and four amendments with the same purport submitted respectively by Venezuela (L.20), South Africa (L.25), Austria (L.26) and Australia (L.61). If the Committee approved the principle underlying the four amendments last mentioned, the drafting committee might be instructed to harmonize their texts.

18. Mr. PLANG (Cambodia), introducing his delegation's amendment (L.38), said that in the Sixth Committee of the General Assembly, the Cambodian delegation had pointed out that in some countries, including Cambodia, deeds were drawn up, attested and received for deposit by mayors, provincial governors and notaries. To entrust that function to consuls would deprive those authorities of the legitimate income derived from the fees payable on such deeds. The functions of an administrative nature mentioned in sub-paragraph (*f*) were not defined, and that omission might lead consuls to exceed their competence. The expression " capacities of a similar kind " used in sub-paragraph (*f*) would cover all the administrative functions not referred to in the subsequent paragraphs.

19. Mr. de MENTHON (France) said that, at the 8th meeting, Mr. Žourek, the International Law Commission's Special Rapporteur, had spoken of the distinction drawn by the Commission between consular functions based on customary law, which could not be forbidden by the receiving State, and other functions.[1] The functions defined in sub-paragraph (*f*) belonged to the first category. Accordingly, the French delegation could not accept any amendment that restricted the exercise of those functions. On the other hand, it was not opposed to the Mexican amendment (L.53).

20. Mr. SILVEIRA-BARRIOS (Venezuela), introducing his delegation's amendment (L.20), said that the exercise of consular functions contravening the laws of the receiving State, particularly those concerning public policy, marriage, etc., was inadmissible. The Venezuelan amendment was similar to that of Australia (L.61), with the difference that in the Australian amendment the qualifying clause was placed at the beginning of the paragraph.

21. Mr. RABASA (Mexico) said that the International Law Commission which had prepared the draft was composed of eminent jurists who had studied at length the problems posed by the exercise of consular functions. Hence, the Committee should not lightly depart from the original draft. The sole object of the amendment submitted by Mexico to sub-paragraph (*f*) was to specify more precisely the functions mentioned in that paragraph, by making a distinction between the functions of notary, civil registrar and similar capacities and functions of an administrative nature, without affecting the structure of the original draft. The amendment could be aptly supplemented by the insertion of the restrictive clause contained in the Venezuelan and Austrian amendments (L.20 and L.26).

22. Mr. CAMERON (United States of America) explained that the purpose of his delegation's amendment (L.69) was to replace sub-paragraph (*f*) in the original draft by a new provision which modified the scope of the paragraph and set forth clearly the notarial functions which could be performed by consuls. The International Law Commission's commentary on article 5 showed that the rules applied to the functions of the consul when acting as notary or civil registrar varied from one State to another.

23. In addition, it should be stated clearly that the services rendered by consuls to nationals of the sending State should be for use outside the territory of the receiving State. The United States proposal constituted, therefore, a compromise for the benefit of delegations which hesitated to accept sub-paragraph (*f*) without knowing exactly what functions were meant.

24. He had no objection to the amendments which specified that the exercise of the consul's functions mentioned in sub-paragraph (*f*) should be permissible under the laws of the receiving State. The purpose of his own delegation's amendment was to state unequivocally what those functions were.

25. Miss WILLIAMS (Australia) said that under the laws of some of the States of Australia consular officials were not empowered to act as administrators of estates or to represent persons lacking full capacity. That was why the Australian delegation had proposed its amendment (L.61).

26. Mr. von HAEFTEN (Federal Republic of Germany) said that it was self-evident that acts performed by consuls were subject to the law of the receiving State. For example, in the case of the disposition of the estate of a national of the sending State, the question whether the will received by the consul was valid in the receiving State would be decided by the courts and according to the law of the receiving State.

27. He opposed the Cambodian amendment (L.38) under which a consul could never act as notary in the receiving State. The law of the receiving State was decisive in such matters. The Cambodian amendment also deleted all reference to the " administrative functions " of consuls; but surely a consul had numerous administrative functions: in the matter of social security and pensions, for example, he drew up certificates, and that was an administrative function. It was not possible to define the administrative functions in detail, for they might vary according to the laws of receiving States. On the other hand, he was prepared to accept the provisos proposed by Austria (L.26) and South Africa (L.25).

[1] See the summary record of the eighth meeting, para. 35.

28. Mr. MAMELI (Italy) said that, for the reasons given by the French representative, the Italian delegation would prefer the Committee to adopt the text prepared by the International Law Commission without change.

29. He could not vote in favour of the Mexican amendment, because in some legal systems consuls were not allowed to perform certain functions of civil registrars, for example to solemnize marriages.

30. Mr. BINDSCHEDLER (Switzerland) said that he agreed with the position of the Venezuelan delegation and would vote for its amendment (L.20). Sub-paragraph (*f*) mentioned some consular functions which were not allowed by all States and which therefore did not form part of general customary law. If sub-paragraph (*f*) was adopted as it stood, the effect would to be introduce new rules of international law which would not be accepted by all States. Moreover, paragraph 12 of the International Law Commission's commentary on article 5 stated very clearly that a consul could exercise his functions only if so authorized by the law of the receiving State. That principle should be spelt out in the text of the convention itself. Swiss law, for example, did not empower foreign consuls to solemnize marriage; the marriage must take place before the competent Swiss authorities; otherwise, it was null and void under Swiss law.

31. He was prepared to support the Venezuelan amendment (L.20) and the amendments submitted by South Africa (L.25), Austria (L.26) and Australia (L.61).

32. Mr. FUJIYAMA (Japan) associated himself with the arguments of the preceding speakers. The International Law Commission's text which spoke of consuls performing " certain functions of an administrative nature " was not clear, nor was the expression " civil registrar ". The text proposed by the United States (L.69) was more precise and he was prepared to support it.

33. Mr. PALIERAKIS (Greece) said that he supported the Mexican amendment (L.53) and the Venezuelan amendment (L.20), which expressed the same idea more concisely, and those of Austria (L.26), South Africa (L.25) and Australia (L.61). Certain consular functions could not always be performed by consuls, a fact which was expressly recognized by the International Law Commission in its commentary, and more particularly in sub-paragraph (11) (*c*), which contained a qualifying phrase concerning deeds relating to immovable property situated in the receiving State. The same applied to certain activities of consuls as civil registrars, such as the solemnization of marriages. He considered that the idea should be expressly reflected in the body of article 5, sub-paragraph (*f*).

34. Mr. HEPPEL (United Kingdom) said that he likewise thought that the provisions of sub-paragraph (*f*) should be qualified in the manner proposed by the Venezuelan, South African, Austrian and Australian amendments. He would not, however, go as far as the Cambodian delegation, though he admitted the force of its arguments. The United Kingdom recognized the right of foreign consuls to perform certain notarial functions, but that right was limited. On the other hand, he was not satisfied with the formulae proposed in the Mexican and United States amendments. It would be better if sub-paragraph (*f*) contained only a brief reference to the laws of the receiving State which regulated consular law in the matter.

35. Mr. de CASTRO (Philippines) said that he could not agree with the Cambodian amendment deleting the word " notary ", though he too found the meaning of the words " certain functions of an administrative nature " somewhat obscure. It was hard to see what were the limits of those functions. He supported the delegations which proposed that the paragraph should refer to the laws of the receiving State. The Anglo-American notarial system was currently in force in the Philippines; but his country had also had experience of the Roman law system under Spanish rule. He thought that a fuller enumeration of the notarial functions exercisable by consuls would be preferable. Accordingly, he would vote for the amendment proposed by the United States (L.69).

36. Mr. ENDEMANN (South Africa) said that the notarial deeds executed by consuls were generally designed for use in the sending State. The United States and Mexican amendments said so expressly. It was, however, possible that the laws of the receiving State might be more liberal and authorize certain consular officials to execute notarial deeds that might be recognized as valid in the courts of the receiving State. The South African amendment (L.25) took account of that possibility.

37. In connexion with the second part of his delegation's amendment, he referred to paragraphs 11 and 12 of the International Law Commission's commentary. Paragraph 12 stated specifically that the consul performed the functions of registrar in accordance with the laws of the sending State, but also in accordance with the laws of the receiving State. That applied, for example, to marriages, which the consul could solemnize only if authorized to do so by the law of the receiving State.

38. Mr. ABDELMAGID (United Arab Republic) said that sub-paragraphs (*f*), (*g*) and (*h*) of article 5 were concerned with questions of private international law. The rule to be applied was that the form of the act was governed by the local law: *locus regit actum*. That was why the International Law Commission had made it clear in paragraphs 11, 12 and 13 of its commentary that a consul could only perform the functions in question in accordance with the laws of the receiving State. His delegation was therefore inclined to accept the Austrian amendment (L.26) and the other amendments in the same sense.

39. Mr. MARTINS (Portugal) said that the great majority of the delegations seemed favourably disposed to the proviso proposed by Venezuela (L.20). Portuguese law recognized the right of consuls to act as notaries and registrars, provided that they did not exceed the limits set by the local law. In the case of deeds designed

for use exclusively in the sending State, all deeds executed by consuls were valid. He would therefore support the Mexican proposal (L.53).

40. Mr. BOUZIRI (Tunisia) said that he would have difficulty in accepting sub-paragraph (*f*) as drafted by the International Law Commission, and he would therefore vote in favour of the amendments which qualified that sub-paragraph. The Venezuelan amendment was preferable to the others, both in form and in substance.

41. Mr. DJOKOTO (Ghana) said that he was more and more convinced that sub-paragraph (*f*) as drafted by the International Law Commission was complete and satisfactory. He could not approve the United States amendment (L.69) as its list of consular functions was not exhaustive and might give rise to difficulties. Nor could he support the Venezuelan, South African or Austrian amendments; the restrictive attitude which they reflected should give place to a more progressive and liberal one. The exercise of consular functions should not be hampered.

42. Mr. SHARP (New Zealand) said that he saw no objection to the text of the International Law Commission; but, as the accompanying commentary indicated, certain consular functions could only be performed if they were compatible with the laws of the receiving State. Among the amendments submitted, he would prefer that of South Africa. The United States amendment was attractive, in that it was at the same time general and detailed, and yet clear; but he was not sure that it covered certain notarial functions performed abroad by New Zealand consuls.

43. Mr. PETRŽELKA (Czechoslovakia) said that he preferred the text prepared by the International Law Commission. He entirely shared the opinion of the Ghanaian representative and deplored all the amendments which tended to restrict the original text. The convention should be considered as a whole; it was not necessary to refer to the laws of the receiving State in every article. He was therefore opposed to all the amendments, and in particular to that submitted by the United States (L.69) which, moreover, would be hard to deal with under rule 41 of the rules of procedure.

44. Mr. TSHIMBALANGA (Congo, Leopoldville) said he would support the Venezuelan amendment (L.20), which he preferred to the Australian amendment (L.61) because it was less restrictive.

45. Mr. USTOR (Hungary) said that, while a consul could not contravene the laws of the receiving State and could not perform certain acts reserved to the authorities of that State, such as the solemnization of marriages, that in no way meant that all the activities of consuls had to conform to the laws of the receiving State. If, for example, the law of the receiving State forbade divorce and two nationals of the sending State asked the consul to attest certain documents relating to a divorce, the consul could give the attestation. The receiving State was not concerned in such a case, and the consul could perform those functions without infringing the law of the receiving State. The International Law Commission's text was perfectly clear, and he considered that the amendments which tended to restrict the activities of consuls were unnecessary.

46. Mr. RUDA (Argentina) said that the deeds executed by a consul in the exercise of his notarial functions could be divided into three categories: first, deeds which could be validly executed in the receiving State; second, those which could be executed in the territory of the receiving State, but whose validity was not admitted by local law; and thirdly, deeds designed for use in the sending State. Consuls should unquestionably be in a position to execute the last-mentioned deeds.

47. With regard to the functions of the consul as registrar and to his administrative functions, he said that everything depended on the law of the receiving State. The legal system in Roman-law countries might in some cases be at variance with that of the sending State.

48. Accordingly, he would vote for the first part of the Mexican amendment (L.53) and for the Venezuelan (L.20), South African (L.25) and Australian (L.61) amendments.

49. Mr. TÜREL (Turkey) supported the Venezuelan amendment (L.20), but opposed the Cambodian amendment (L.38).

50. Mr. KIRCHSCHLAEGER (Austria) said that he would vote for the most exhaustive and most detailed draft, that is to say that of Mexico (L.53) or of the United States (L.69), provided that the reference to the laws of the receiving State were accepted.

51. Mr. HUBEE (Netherlands) said that it would be preferable to settle the question through bilateral agreements. Nevertheless, he was prepared to accept, though without enthusiasm, the text proposed by the International Law Commission. He would also vote for the amendments referring to the municipal law of the receiving State.

52. It would be for the drafting committee to choose between the two formulae proposed, on the one hand by Venezuela (L.20), South Africa (L.25) and Austria (L.26) and, on the other hand, by Australia (L.61). The French translation of the Australian amendment seemed to call for express authorization by the law of the receiving State, which struck him as excessive. With regard to the United States amendment (L.69), he did not think he could vote for a text so far removed from that of the International Law Commission, which had been drawn up by experts. Perhaps the United States delegation would be prepared to withdraw its proposal if the other amendments were adopted, so that agreement could be reached on a single formula.

53. Mr. ZEILINGER (Costa Rica) said that while he found the International Law Commission's text of sub-paragraph (*f*) satisfactory, he nevertheless approved the Venezuelan amendment (L.20).

54. Mr. RABASA (Mexico) said that, in view of the preceding statements, certain points should be made clear. The text adopted by the International Law Com-

mission was admittedly excellent but, like every legal text, it could be interpreted in different ways; accordingly, it should be supplemented by a provision specifying that, when acting as notary or civil registrar, the consul's competence derived from the sending State and that his acts, though performed in the territory of the receiving State, produced their effect in that of the sending State. He added that the Venezuelan amendment very aptly supplemented his own delegation's amendment and he was prepared to incorporate it in that amendment.

55. Mr. ENDEMANN (South Africa) said that the Venezuelan amendment (L.20) did not differ materially from the first part of the South African amendment (L.25). To simplify the discussion, his delegation would therefore withdraw the first part of its amendment in favour of the Venezuelan amendment.

56. Mr. PLANG (Cambodia) withdrew his delegation's amendment (L.38) and announced his intention of supporting the Mexican amendment.

57. The CHAIRMAN said that the United States proposal (L.69) concerning sub-paragraph (*f*) was really not an amendment within the meaning of rule 41 of the rules of procedure, but rather a proposal within the meaning of rule 42. Under the last-mentioned rule, it could not be put to the vote until a vote had been taken on the original text, possibly as modified by any amendments that might be adopted.

58. Mr. CAMERON (United States of America) said that, in a desire to co-operate and to lighten the Committee's work, he would withdraw his delegation's proposal (L.69). He hoped that the delegations of Venezuela, Austria and Australia would agree that the drafting committee should be empowered to prepare the final text of sub-paragraph (*f*).

59. The CHAIRMAN noted that there were still four amendments before the Committee: those of Venezuela (L.20), Austria (L.26), Mexico (L.53) and Australia (L.61).

60. Mr. KEVIN (Australia) said that his delegation would withdraw its amendment (L.61).

61. Mr. de ERICE y O'SHEA (Spain), speaking on a point of order, said that the Mexican and Venezuelan amendments could not be combined, because their objects were altogether different.

62. Mr. RABASA (Mexico) said that the amendments, while differing in their objectives, were nevertheless quite compatible and could therefore be combined without difficulty.

63. The CHAIRMAN said that if the Committee adopted the Mexican amendment, embodying that of Venezuela, it would *ipso facto* be rejecting the Austrian amendment and the second part of the South African amendment which, unlike the first part, had not been withdrawn by the South African delegation.

64. Mr. KEVIN (Australia) said he was perfectly willing to withdraw his delegation's amendment in favour of the Venezuelan amendment, but not in favour of the Mexican amendment. He did not approve of the Venezuelan amendment being embodied in that of Mexico. That being so, he wished to maintain his own delegation's amendment.

65. After a procedural discussion, in which Mr. SILVEIRA-BARRIOS (Venezuela), Mr. BOUZIRI (Tunisia), Mr. PALIERAKIS (Greece), Mr. PETRŽELKA (Czechoslovakia), Mr. RABASA (Mexico), Mr. BARTOŠ (Yugoslavia) and Mr. KRISHNA RAO (India) participated, about the question whether the rejection of the combined Mexican and Venezuelan amendments would preclude a separate vote later on the Venezuelan amendment, the CHAIRMAN announced that he would first put to the vote the Mexican amendment (L.53) in its original form, and then the Venezuelan amendment (L.20).

66. In the absence of objections he put to the vote the amendment submitted by Mexico.

The Mexican amendment (A/CONF.25/C.1/L.53) was rejected by 45 votes to 10, with 14 abstentions.

67. Mr. HEPPEL (United Kingdom), speaking on a point of order, said that the phrase which was to be added under the Venezuelan amendment should be preceded by a comma. Without a comma, the meaning of the paragraph would be altered.

68. Mr. SILVEIRA-BARRIOS (Venezuela) agreed.

69. Mr. von HAEFTEN (Federal Republic of Germany) asked if the Australian delegation maintained its amendment, which was the one he preferred.

70. Mr. KEVIN (Australia) replied in the affirmative.

71. The CHAIRMAN put the Venezuelan amendment to the vote.

The Venezuelan amendment (A/CONF.25/C.1/L.20) was adopted by 28 votes to 26, with 12 abstentions.

72. The CHAIRMAN, in announcing the result of the vote, said that the decision implied the rejection of the amendments submitted by Austria (L.26), Australia (L.61) and South Africa (L.25).

The second part of the South African amendment (A/CONF.25/C.1/L.25) was rejected by 37 votes to 8, with 21 abstentions.

73. The CHAIRMAN put to the vote sub-paragraph (*f*) of article 5, which, as amended by the Venezuelan proposal, now read: "(*f*) Acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided always that there is nothing contrary thereto in the laws of the receiving State".

Sub-paragraph (f) as so amended was adopted by 62 votes to none, with 6 abstentions.

74. Mr. BARTOŠ (Yugoslavia), said that he had voted against the Mexican amendment because he did not approve the wording from the technical standpoint.

Sub-paragraph (g)

75. The CHAIRMAN invited debate on sub-paragraph (*g*), together with the relevant amendments (L.14, L.54, L.61, L.69, and L.80).

76. Mr. JELENIK (Hungary), introducing his delegation's amendment (L.14), stated that its purpose was not to add anything new to the text of the International Law Commission, but merely to supplement it.

77. Mr. CAMERON (United States of America), introducing his delegation's amendment (L.69), said that consular functions were divided into two categories; those performed on behalf of governments, and those concerning the private interests of nationals of the sending State. The activities referred to in paragraph (*g*) came under the second heading and were especially important. It was the Conference's responsibility, in formulating the Convention, to recognize previously accepted consular functions, and also to refrain from formulating new rules which would unduly interfere with the domestic affairs of the receiving State. Many States would be concerned if a consul could be authorized to act under sub-paragraph (*g*), for instance, in a fiduciary or representative capacity without the customary authorization, such as a power of attorney, from a non-resident party in interest, or when not qualified by training or not suitably bonded under local law. In each of those cases the interests of the foreign national of the sending State, whether non-resident or minor, as the case might be, could suffer from being inadequately protected. Those and other matters were customarily, and should continue to be, handled by consuls only in the discretion of the local judicial authorities and if permissible under the law of the receiving State. The reference to the law of the receiving State was natural, for the acts in question would be performed in the territory of that State. He urged that serious consideration be given to the implications if the provisions were not amended to take into consideration the domestic law of the receiving State when dealing with matters which primarily affected the interests of nationals of the sending State.

78. Mr. PALIERAKIS (Greece), referring to his delegation's amendment (L.80), said that the capacity to represent persons who were absent or who were not *sui juris* should be expressly mentioned among the consular functions. The amendments submitted by Hungary and the United States were acceptable to the Greek delegation. Nevertheless, he suggested that the United States delegation should consider substituting the words " if there is nothing contrary thereto in " for the words " if permissible under " in its amendment.

79. Mr. HUBEE (Netherlands) drew attention to a discrepancy between the English and French texts of the Australian amendment (L.61). Whereas the English read " So far as the laws of the receiving State do not otherwise provide ", the corresponding French text was " Pour autant que la législation de l'Etat de résidence le permet ". The English text was acceptable to the Netherlands delegation; the French was not.

80. Mr. KRISHNA RAO (India) said the addition proposed by Hungary (L.14) was superfluous. The co-operation in question came within the scope of the establishment of friendly relations. The Japanese (L.54) and Australian (L.61) amendments appeared to be based on the same principle, of which the Indian delegation approved. If they were adopted, the United States amendment would *ipso facto* be disposed of.

81. Mr. von HAEFTEN (Federal Republic of Germany) said he understood that the first part of the Japanese amendment, namely the deletion of the words " both individuals and bodies corporate ", had been withdrawn. He hoped, however, that the reverse was true of the second part, which his delegation would support.

82. The CHAIRMAN confirmed that the second part of the Japanese amendment was still before the Committee.

83. Mr. WESTRUP (Sweden) said he had not been convinced by the arguments in favour of the various amendments to sub-paragraph (*g*). He preferred the text adopted by the International Law Commission. Moreover, the points raised had undoubtedly occurred to the Commission.

84. Mr. MARESCA (Italy) also thought that the draft submitted by the International Law Commission was best, and that there was no need to change it.

85. Mr. DJOKOTO (Ghana) said that the text of the International Law Commission was fully adequate. He had no objection to the amendment by Hungary, although he held no strong views on the matter.

86. Mr. KEVIN (Australia) agreed with the Netherlands representative that the English and French texts of the Australian amendment differed. The original English version was correct.[2]

87. The CHAIRMAN noted that the Japanese and Australian amendments were identical in substance. He suggested that the Committee might vote on both of them simultaneously and leave it to the drafting committee to draw up the final text.

88. Mr. JELENIK (Hungary) said he would not press for a vote on his delegation's amendment.

The United States amendment (A/CONF.25/C.1/L.69) was rejected by 26 votes to 15, with 19 abstentions.

The amendment by Greece (A/CONF.25/C.1/L.80) was rejected by 26 votes to 2, with 29 abstentions.

89. The CHAIRMAN put to the vote the principle of the amendments submitted by Japan and Australia.

The principle of the Japanese and Australian amendments (A/CONF.25/C.1/L.54 and L.61) was adopted by 34 votes to 16, with 10 abstentions.

90. The CHAIRMAN put sub-paragraph (*g*) as amended to the vote.

Paragraph (g), as amended, was adopted by 57 votes to none, with 5 abstentions.

The meeting rose at 6.30 p.m.

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[2] A revised version of the French text was subsequently issued.

TWELFTH MEETING

Wednesday, 13 March 1963, at 10.40 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 5 (Consular functions) (*continued*)

Sub-paragraph (h)

1. The CHAIRMAN drew attention to the amendments to sub-paragraph (*h*) submitted by Venezuela (L.20), Japan (L.54), Australia (L.61), the United States (L.69) and Greece (L.80).

2. Mr. PALIERAKIS (Gerece) withdrew his delegation's amendments to sub-paragraphs (*h*), (*i*) and (*l*) in favour of the United States amendments to those sub-paragraphs.

3. Mr. CAMERON (United States of America) reiterated his delegation's view that consular functions could be divided into two main categories; those in which the consul acted on behalf of the sending State in a govermental capacity, in such matters as the issue of passports and visas, and those in which he acted on behalf of nationals of the sending State, in his capacity as a national of that State, and not as a governmental agent. In his delegation's opinion, the second category of functions must be made subject to the laws of the receiving State.

4. The debate on sub-paragraph (*g*) at the preceding meeting had shown that the Committee preferred other texts to the United States formulation; nevertheless, his delegation would not withdraw its amendment, though it could accept any text which provided that functions exercised by a consular official as an agent for the nationals of the sending State must be performed in accordance with the laws of the receiving State.

5. The CHAIRMAN suggested that the Committee's work might be expedited by a decision of principle on whether the functions referred to in sub-paragraph (*h*) should be made subject to the law of the receiving State.

6. Mr. BARTOŠ (Yugoslavia) said that that procedure could have been followed if the United States representative had withdrawn his delegation's amendment to sub-paragraph (*h*). But that amendment differed fundamentally from the other three submitted in that it introduced the discretion of the appropriate judicial authorities. That being the case, the substance of the matter would have to be dealt with by a vote in the Committee.

7. Miss ROESAD (Indonesia) thought that a decision such as that suggested by the Chairman would indeed expedite the debate, since all the amendments to sub-paragraph (*h*) had the identical purpose of limiting the consular function concerned to what was permissible under the law of the receiving State. If her delegation's proposal (L.51) to insert that limitation in sub-paragraph (*a*) had been adopted, there would have been no need to submit separate amendments inserting it in all the succeeding sub-paragraphs. Her delegation would support the introduction of the provision into sub-paragraph (*h*), but it preferred the wording of the Venezuelan amendment (L.20).

8. Mr. KEVIN (Australia) said he would withdraw his delegation's amendment (L.61) in favour of the Japanese amendment (L.54), but suggested that the words " in accordance with the law of the receiving State " should be placed at the beginning of the sub-paragraph.

9. Mr. FUJIYAMA (Japan) accepted the Australian representative's suggestion.

10. Mr. WESTRUP (Sweden) doubted the desirability of including references to the law of the receiving State in one sub-paragraph after another. Although it might be correct to discuss the principle in connexion with each sub-paragraph, the Committee might decide, when it came to consider the new arrangement proposed in the Austrian amendment (L.26), to introduce a general formula along the lines suggested by the Australian representative at the tenth meeting.[1]

11. Mr. ABDELMAGID (United Arab Republic) thought the Committee seemed to be agreed that the law of the receiving State must govern the functions specified in all the succeeding sub-paragraphs. The debate on that point could therefore be closed forthwith. He doubted whether the United States amendment to sub-paragraph (*h*) really introduced a completely new idea by mentioning the discretion of the appropriate judicial authorities.

12. Mr. HEPPEL (United Kingdom) said his delegation was in favour of the principle of making consular functions subject to the law of the receiving State and could support the wording of the United States amendment. Purely as a drafting point, he suggested that the word " other " might be inserted before the word " persons ", in the text of sub-paragraph (*h*), since minors were persons lacking full capacity.

13. Mr. RUEGGER (Switzerland) said that, with regard to sub-paragraph (*h*), his delegation maintained the view that the law of the receiving State must be respected. He therefore agreed with the suggestion put forward in the Venezuelan and Japanese amendments and could accept the United States proposal in the special case of minors and persons lacking full capacity. He could not agree with the Yugoslav representative that the reference to the consent of the judicial authorities was unwarranted, particularly in view of the Swiss Government's comment on sub-paragraph (*h*), to the effect that a consular official was not qualified to submit nominations to the court for the office of guardian or trustee and that, at most, he might recommend such persons to the judge. He had cited that example merely to show that the consular functions referred to in sub-paragraph (*h*) could be exercised only within the limits permitted by local jurisdiction.

14. Mr. SOLHEIM (Norway) said his delegation deplored the trend which the debate was taking. The

[1] Para. 54.

International Law Commission had studied the article on consular functions for a very long time and had deemed it necessary to include references to the law of the receiving State in only three special cases. The phrase was now being introduced into nearly all the sub-paragraphs of the article. That was tantamount to implying that the Commission had not understood what it was doing; the Committee should take account of the fact that the Commission had refrained from including the references because it had found them unnecessary and because safeguards were provided in other articles. Moreover, as a last resort, countries whose legislation conflicted with the convention could make reservations to it. The course that the Committee seemed to be taking, far from being progressive development of international law, was merely a codification of national law. Delegations would do well to consider their positions carefully before distorting the outcome of all the work that the Commission had done on the article.

15. Mr. DADZIE (Ghana) said that, while his delegation was not generally in favour of making consular functions subject to the law of the receiving State, it considered that course justified in the case of sub-paragraph (*h*), owing to the wide variety of national laws on guardianship and trusteeship. He could therefore vote for the Venezuelan and Japanese amendments, but he could not support the reference to the discretion of the appropriate judicial authorities in the United States amendment.

16. Mr. PALIERAKIS (Greece) said he would vote for the United States amendment.

17. Mr. MARTINS (Portugal) endorsed the views expressed by the Norwegian representative. The Commission's text was a finely balanced compromise between conflicting views representing widely different legal systems. The Committee should not destroy that balance, but should keep as closely as possible to the Commission's text.

The United States amendment to sub-paragraph (h) (A/CONF.25/C.1/L.69) was rejected by 26 votes to 16 with 21 abstentions.

The Venezuelan amendment to sub-paragraph (h) (A/CONF.25/C.1/L.20) was adopted by 19 votes to 10 with 31 abstentions.

18. The CHAIRMAN said that, under rule 41 of the rules of procedure, it was unnecessary for the Committee to vote on the Japanese amendment (L.54).

Sub-paragraph (h), as amended, was adopted by 56 votes to 1 with 7 abstentions.

Sub-paragraph (i)

19. The CHAIRMAN drew attention to the amendments to sub-paragraph (*i*) submitted by the delegations of Italy (L.43), Australia (L.61) and the United States of America (L.69).

20. Mr. MAMELI (Italy) said that his delegation had submitted its amendment because, although Italian law provided that a consul could act on behalf of an absent national of the sending State, his delegation believed that the inclusion of reasons other than absence would broaden the function unduly.

21. Mr. KEVIN (Australia) said that his delegation had submitted its amendment because consuls did not have an unqualified right of appearance before Australian courts.

22. Mr. BARTOŠ (Yugoslavia) said that the Australian and United States amendments reflected the approach of countries of immigration, which was fundamentally different from that of countries of emigration. The laws of countries of immigration tended to restrict the right of heirs and other interested persons after their return to their country of origin, to claim in court the rights they had acquired in the country of immigration through employment in that country. If that right were subject to the discretion of the appropriate judicial authorities, the very principle of the right and duty of consular officials to protect the rights of nationals of the sending State would be destroyed. After long discussion, the Commission had specifically decided not to make sub-paragraph (*i*) subject to the law of the receiving State, because the legislation of many countries granted only a very short stay of proceedings for absent foreign nationals to secure their representation. Since the question was essentially one of principle and of justice, of protecting rights acquired by virtue of work done, his delegation would support the Commission's text.

23. Mr. de ERICE y O'SHEA (Spain) said that, although his delegation supported the general principle of making consular functions subject to the law of the receiving State, it considered that the words " and other authorities " in sub-paragraph (*i*) would give the receiving State undue freedom to subject those functions to the decisions of local authorities, which might even hamper the consul in acting on behalf of nationals of the sending State. His delegation could, however, support the United States proposal to include a reference to the discretion of the appropriate judicial authorities.

24. Mr. de MENTHON (France) said he could not support the Italian amendment (L.43) because there might be reasons other than the absence of the national of the sending State which would make consular representation necessary, such as the incapacity of the national owing to an accident, or his ignorance of the language of the receiving State. He also endorsed the reasons of principle that the Yugoslav representative had invoked in favour of retaining the Commission's text.

25. Mr. KRISHNA RAO (India) said he understood the underlying motives of the Australian amendment (L.61) but wished to point out that the word " representing " did not necessarily mean that the consul would appear personally before the courts and other authorities of the receiving State. Since it was obvious that representation would in many cases be through members of the legal profession, it was not advisable to qualify the provision by the words " so far as the laws of the receiving State do not otherwise provide ". In the light of that interpretation of the word " representing ", the use of the word " appearing " in the United States amendment

seemed dangerous, since it implied personal appearance of the consul in court. His delegation was therefore in favour of the Commission's text.

26. Mr. KEVIN (Australia) assured the Yugoslav representative that no one in his country was denied access to the courts or the right of representation in legal proceeedings.

27. Mr. OSIECKI (Poland) said that the effect of the United States amendment would be to restrict the competence of consular officials in the matter of representation. It should be borne in mind that the Commission's text also imposed certain limitations on the right of consuls to represent nationals of the sending State; those limitations were fully adequate to protect the rights of the receiving State. Moreover, the Polish delegation could see no reason to contest the principle of individual representation by a consular official. It could not vote for any of the amendments to the Commission's text.

28. Mr. BALTEI (Romania) considered that the United States amendment was not conducive to securing the right of a consular official to represent the interests of the sending State and of its nationals. To subordinate the representation of the rights and interests of the sending State and of its nationals to the discretion of the courts of the receiving State would clearly be to interfere with the performance of the primary function of a consul as defined in article 5, sub-paragraph (*a*), of the International Law Commission's draft; in fact, the amendment conflicted with the provisions of that sub-paragraph.

29. Mr. SHARP (New Zealand), replying to the Yugoslav representative, said that in New Zealand, which was a country of immigration, every immigrant had the same right of access to courts and of free legal assistance as did New Zealand nationals. Moreover, the interests of immigrants were not prejudiced because consular officials had no special status for appearing personally in court. He was not sure whether the Indian representative's assertion that the sub-paragraph did not necessarily imply personal appearance by the consul in court was quite accurate. In any case, his delegation would support the Australian and United States amendments.

30. Mr. WARNOCK (Ireland) said that the possibility of a consul appearing in person before a court or pleading a case would raise difficulties for his delegation. Of course, a consul could represent a national of the sending State through counsel, and had complete freedom of choice in respect of the legal assistance he might seek in doing so.

31. Mr. CAMERON (United States of America) said that his delegation had submitted its amendment to sub-paragraph (*i*) for the same reasons as its amendments to sub-paragraphs (*g*) and (*h*).

32. Mr. HEPPEL (United Kingdom) agreed with the Irish representative that the opening words of sub-paragraph (*i*) implied the right of a consul to audience before the courts. He could not agree with the Indian suggestion that there was no implication of personal appearance. The point could be clarified by inserting the words " in connexion with proceedings " after the words " sending State " and it might then be unnecessary to impose the wider restriction of the Australian amendment. If the Committee could not accept that solution the United Kingdom delegation would vote in favour of the Australian amendment; it would suggest, however, that the words " and regulations " be inserted after the word " laws " in that amendment, because limitation of the right of appearance before the courts to persons exercising the legal profession was not always provided for in statutory law.

33. Mr. MARTINS (Portugal) said he could not accept the Italian or the Australian amendment, because of their restrictive effect. His delegation had originally seen some merit in the United States amendment, but on reflection it had come to the conclusion that the United States delegation's fears concerning the Commission's text of sub-paragraph (*i*) were groundless. The proviso that measures for the preservation of the rights and interests of nationals of the sending State must be obtained " in accordance with the law of the receiving State " should also satisfy the United Kingdom delegation. Moreover, making representation subject to the law of the receiving State meant that the consul must be well versed in the law of that State, which was not always the case. He therefore supported the Commission's draft of the paragraph.

34. Mr. REZKALLAH (Algeria) said he could support the Commission's draft, because it safeguarded the vitally important right of a consul to represent nationals of the sending State.

35. Mr. DADZIE (Ghana) also preferred the Commission's draft of sub-paragraph (*i*). With regard to the United Kingdom delegation's anxiety concerning the right of audience, it was clear that in some cases neither the national of the sending State nor the consular official representing him would need the services of a member of the legal profession. It was for the consul to decide, according to the nature of the case, whether legal assistance would be required. He endorsed the views expressed by the French representative and was unable to support the Italian amendment.

36. Mr. ANIONWU (Nigeria) fully supported the Commission's draft of sub-paragraph (*i*). He could not share the concern that some representatives had expressed with regard to personal appearance by consular officials before courts. In many cases, counsel would have to appear on behalf of the national of the sending State, but someone had to brief counsel; that would be the function of the consul.

37. Mr. TÜREL (Turkey) said that his delegation supported the principle of consular representative before courts and other authorities and would support the Australian amendment.

38. Mr. PALIERAKIS (Greece) said that his delegation was, in principle, opposed to sub-paragraph (*i*), in so far as that provision imposed upon the consul a duty to represent nationals of the sending State who

were absent. In practically all legal transactions between nationals of the two States concerned, the national of the sending State would be absent. It would be going too far to suggest that the consul would be failing in his duty if he did not take steps to protect the rights and interests of all such nationals of the sending State. In the majority of cases the consul would be quite unaware of the existence of the transaction and of the circumstances giving rise to the need for provisional measures to preserve the rights and interests of the person concerned.

39. For those reasons, his delegation would support the United States amendment (L.69) which did not provide for a duty to represent but, on the contrary, conferred upon the consul the right of " appearing on behalf of " his nationals. The right thus specified was a right conferred upon the consul himself, which he was therefore free to exercise or not; there was no suggestion in the amendment, as there was in the Commission's draft, that the consul might incur a liability vis-à-vis his national if he failed to take appropriate action. His delegation also supported the Italian amendment (L. 43) deleting the words " or any other reason ".

40. Mr. SILVEIRA-BARRIOS (Venezuela) said that his delegation was in favour of retaining the Commission's draft as it stood and would not vote for any of the amendments submitted. The provisions of sub-paragraph (*i*) only empowered the consul to apply for provisional measures to preserve the rights and interests of his nationals; they did not empower him to take all forms of legal action and proceedings.

41. Mr. D'ESTEFANO PISANI (Cuba) opposed the United States amendment, which would reduce the role of the consul in the defence of nationals of the sending State to almost nothing.

42. Mr. ENDEMANN (South Africa) pointed out that in his country only lawyers could represent parties in proceedings in court; hence a consul could not appear in court to defend an absent national. His delegation would therefore support the amendments proposed by Australia and the United States of America, and also the oral amendment submitted by the United Kingdom delegation.

43. Mr. von HAEFTEN (Federal Republic of Germany) pointed out that, under German law, a party could appear in person in some of the lower courts; in all other courts, it was necessary to retain a lawyer. Accordingly, by virtue of the words " in accordance with the law of the receiving State ", the consul would have to retain a lawyer in those courts.

44. Mr. KEVIN (Australia) withdrew his amendment (L.61) and proposed that the opening words of sub-paragraph (*i*) be amended to read: " subject to the procedures obtaining in the receiving State, representing or arranging for appropriate representation for nationals of the sending State . . ."

45. Mr. TSHIMBALANGA (Congo, Leopoldville) drew attention to article 55, paragraph 1, of the draft which required consuls to respect the laws and regulations of the receiving State and asked whether that text did not also apply to provisions such as those in sub-paragraph (*i*). For his part, he supported the Commission's draft.

46. The CHAIRMAN said article 55 had been submitted to the Second Committee, so that no decision on whether it apmlied to the provisions of article 5 could be taken in the First Committee.

47. Mr. KRISHNA RAO (India) noted that there was general agreement on the question of substance: the consul's powers of representation were governed by the rules and regulations of the receiving State. If any doubt remained on that point, he would be prepared to support the United Kingdom verbal amendment, which made it quite clear.

48. Mr. CHIN (Republic of Korea) shared the views expressed by the representative of the Federal Republic of Germany and advocated retaining the draft as it stood. Apart from the limitations already included in the text, the consul's right of representation was also limited in time: it ceased as soon as the person concerned was able to assume the defence of his rights and interests.

49. Mr. RABASA (Mexico) found the provisions of sub-paragraph (*i*) absolutely innocuous. He drew attention to the explanations given in paragraph 16 of the commentary on article 5 — in particular, the fact that in no case was the consul empowered to dispose of the rights of the person he represented.

50. Miss ROESAD (Indonesia) said that her delegation had supported the proposals to include a reference to the laws of the receiving State in other sub-paragraphs. Sub-paragraph (*i*), however, already contained such a reference, and she could not support the amendments to it.

51. Mr. LEE (Canada) said it was not accurate to state, in connexion with sub-paragraph (*i*), as was done in paragraph 16 of the commentary on article 5, that " The right of representation, as is stressed in the text, must be exercised in accordance with the laws and regulations of the receiving State." The words " in accordance with the law of the receiving State " qualified the words " for the purpose of obtaining . . . provisional measures ". The right of representation as such was expressed by the opening words of the sub-paragraph and was not subject to that qualification. In those circumstances, his delegation could not support sub-paragraph (*i*) without the introduction of a proviso such as the one suggested by the Australian representative.

52. Mr. BANGOURA (Guinea) said that he found the text of sub-paragraph (*i*) perfectly clear and explicit. He supported it for the reasons given by the representatives of Yugoslavia, France and Algeria.

53. Mr. HEPPEL (United Kingdom) agreed with the Canadian representative that the effect of sub-paragraph (*i*) was not that described in the commentary. The words " in accordance with the law of a receiving State " did not qualify the activity of representing nationals, but only the purpose of that activity. Conse-

quently, his delegation was not satisfied with the text as it stood. A further complication was that there was a discrepancy between the French and English texts. The French text used the verb " demander " where the English text spoke of " obtaining . . . provisional measures ".

54. He found the new formulation of the Australian amendment acceptable and withdrew his own oral amendment.

55. Mr. CAMERON (United States of America) said he would withdraw his amendment in favour of the Australian amendment, if the latter could be altered to read: " Subject to the practices and procedures obtaining in the receiving State . . ."

56. Mr. KEVIN (Australia) accepted that wording.

57. The CHAIRMAN noted the withdrawal of the United States amendment (L.69) and put the Australian amendment, as re-worded, to the vote.

The Australian amendment was adopted by 27 votes to 24, with 13 abstentions.

58. The CHAIRMAN put to the vote the Italian proposal (L.43) to delete the words " or any other reason ".

The Italian proposal was rejected by 55 votes to 4, with 6 abstentions.

Sub-paragraph (i), as amended, was adopted by 57 votes to 1, with 5 abstentions.

59. Mr. BARTOŠ (Yugoslavia) said that he had voted against the adoption of the paragraph because, as amended, it ran counter to the principle which had guided the International Law Commission — namely, that it was an international duty of States to give aliens an opportunity of defending their rights.

Sub-paragraph (j)

60. The CHAIRMAN invited the Committee to consider sub-paragraph (j) and the amendments thereto by Hungary (L.14), the Ukrainian Soviet Socialist Republic (L.15), Austria (L.26), France (L.32), Czechoslovakia (L.34) and Japan (L.54).

61. Mr. FUJIYAMA (Japan), introducing his amendment (L.54) replacing the words " executing letters rogatory " by the words " taking depositions ", said that the term " letters rogatory " was generally used when one court requested another court to carry out certain procedural steps. The expression was not currently used in connexion with consuls; hence the proposed alteration.

62. Mr. HERNDL (Austria) introduced his delegation's amendment (L.26) inserting the words " in civil and commercial matters " to qualify the function of serving judicial documents or executing matters rogatory. The words proposed would exclude judgements in criminal cases. There was always a measure of duress implied in the service of criminal judgements, and any action of that kind by consuls would be at variance with the principle of the exclusive competence of the State in criminal matters with regard to its own territory.

63. Mr. JELENIK (Hungary) introduced his delegation's amendment (L.14) adding the sentence " the consul, however, is entitled to serve judicial documents without duress on the nationals of the sending State ". That provision had been taken from article 6 of The Hague Convention of 17 July 1905 relating to civil procedure, to which reference was made in paragraph 18 of the commentary to article 5. His country, like many others, was a party to The Hague Convention of 1905 and he thought an amendment based on the provisions of that convention should receive wide support.

64. Mr. de MENTHON (France) said that his delegation's amendment (L.32) had two purposes: first, to replace the term " serving " by the broader expression " transmitting "; secondly, to make the wording broad enough to cover not only judicial, but also extra-judicial documents. He was thinking, in particular, of documents relating to such matters as the conveyance of property and sharing of estates, drawn up before a notary public rather than a judicial officer.

65. Referring to the Ukrainian proposal (L.15) to confine the function of consuls to serving documents on nationals of the sending State, he pointed out that such a restriction might not be in the best interests of either of the two States concerned. A lawsuit might be initiated in the sending State against a national of the receiving State, in consequence of an event which had occurred at a time when he was on a visit in the sending State, and it would be in his interests to be informed as soon as possible that proceedings had been instituted against him; the fact that the consul was empowered to transmit the necessary papers would enable him to have early knowledge of the proceedings and take the necessary steps to protect his interests.

66. Mr. TSYBA (Ukrainian Soviet Socialist Republic) explained that his delegation's amendment (L.15) limiting the powers of the consul to serving documents on nationals of the sending State, was based on a provision included in The Hague Convention of 17 July 1905 relating to civil procedure and in a great many bilateral agreements, such as the 1935 Consular Convention between the United States of America and the Union of Soviet Socialist Republics. The amendment was thus in line with international practice and with existing bilateral conventions. Moreover, it would safeguard the sovereignty of the receiving State, which would be violated if a foreign consul were allowed to serve judicial documents on one of its nationals.

67. Lastly, he drew attention to the use of the term " ressortissant " in the French translation of his amendment instead of the more appropriate word " citoyen ".

68. The CHAIRMAN said that if the amendment were adopted, the drafting committee would take the Ukrainian representative's comment concerning the French text into account.

69. Mr. BARTOŠ (Yugoslavia) opposed the Japanese amendment. The expression " executing letters rogatory " was used in The Hague Convention of 1905 and was broader than the expression " taking depositions "; it

also covered such other steps as, for instance, an examination by experts [expertise].

70. As to the Austrian amendment (L.26), he agreed with its purpose, which was to exclude the service of documents in criminal cases. That purpose, however, would not be adequately served by introducing the words " In civil and commercial matters ". A great many matters coming under the heading of family law, which were traditionally regarded in most countries as questions of civil law, were at present governed in certain countries by provisions of public law. Many matters which under, say, German or Austrian law, were regarded as questions of commercial law were at present, even in some capitalist countries, considered as belonging to administrative law. The International Law Commission had therefore been well advised not to confine the operation of sub-paragraph (*j*) to civil and commercial matters. He suggested that the purpose of the Austrian amendment could be achieved by introducing at the beginning of the paragraph some such proviso as " Except in criminal matters . . ."

71. Referring to the French amendment, he explained that the International Law Commission had used the term " serving " [signifier] to denote a document normally served by a process server [acte d'huissier]. The term " to transmit " was wider in scope and more in keeping with the purpose of the convention.

72. The French and Czechoslovak amendments (L.32 and L.34) were intended to cover not only the service of documents which were of a purely legal character, but also documents which did not emanate from a court of law. For example, under German law, many decisions in family matters were taken by administrative authorities. His delegation favoured those amendments in principle. It also accepted the Hungarian amendment (L.14).

73. As to the Ukrainian amendment (L.15), his delegation would support it, but did not wish to exclude the possibility of a consul transmitting a judicial document to a person who was not a national of the sending State, in cases where the authorities of the receiving State did not object. Such a possibility would be useful in cases of urgency.

The meeting rose at 1.10 p.m.

THIRTEENTH MEETING

Wednesday, 13 March 1963, at 3.5 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 5 (Consular functions)

Sub-paragraph (*j*) (continued) [1]

1. Mr. PALIERAKIS (Greece) endorsed the Yugoslav representative's remarks at the twelfth meeting concerning the service of judicial documents and their transmission to persons other than nationals of the sending State. He supported the French proposal (L.32) concerning the service of extra-judicial documents, but opposed the Austrian amendment (L.26) limiting the service of judicial documents to civil and commercial matters.

2. Mr. KOCMAN (Czechoslovakia) said that the purpose of his delegation's amendment (L.34) was to extend the scope of the provisions of sub-paragraph (*j*). If, however, the Committee approved the French amendment (L.32) which was based on the same idea, he would not press his delegation's amendment. He supported the Hungarian amendment (L.14), for consuls should be free to serve judicial documents on nationals of the sending State. He would vote for the Ukrainian amendment (L.15), but against the Austrian (L.26) and Japanese (L.54) amendments, which tended to impose limits on important consular functions.

3. Mr. CAMERON (United States of America) said that he supported the International Law Commission's text, which might perhaps be improved by the Japanese amendment (L.54).

4. Mr. RUDA (Argentina) supported the International Law Commission's text, provided that the expression " in any other manner compatible with the law of the receiving State " was interpreted to mean that, if no convention was in force, consuls could serve judicial documents only if the receiving State did not object.

5. Mr. ABDELMAGID (United Arab Republic) said that the International Law Commission's text was a satisfactory statement of the existing practice; but some of the amendments submitted should be approved, for example the French (L.32) and Czechoslovak (L.34) amendments which improved the text, and the Austrian amendment (L.26), which was in conformity with the general rules of law. The Austrian amendment would, however, be improved if the words " in civil and commercial matters " were replaced by the words " in non-criminal matters ". The Ukrainian amendment (L.15) was acceptable, although consuls could, in fact, serve judicial documents on any persons other than nationals of the receiving State. The Hungarian amendment (L.14) was entirely acceptable to his delegation.

6. Mr. PUREVJAL (Mongolia) supported the Hungarian (L.14) and Ukrainian (L.15) amendments, which clarified sub-paragraph (*j*). He could not, however, support the Austrian amendment (L.26), which was too restrictive, nor the Japanese amendment (L.54), which was based on a confusion of terms.

7. Mr. MARTINS (Portugal) supported the French amendment (L.32) replacing the word " Serving " by the word " Transmitting ". For the remainder of the sub-paragraph, he preferred the text of the International Law Commission.

8. Mr. USTOR (Hungary) said that, under the sub-paragraph as originally drafted, consuls could only serve judicial documents or execute letters rogatory if conventions in force so permitted or, in the absence of such conventions, if the mode of service was compatible with

[1] For a list of the amendments to article 5, sub-paragraph (*j*), see twelfth meeting, para. 60.

the law of the receiving State. The qualifying Austrian amendment (L.26) was therefore unnecessary.

9. He supported the French and Czechoslovak amendments, but could not accept the Japanese amendment since the execution of letters rogatory and the taking of depositions were two entirely different things.

10. Mr. TSYBA (Ukrainian Soviet Socialist Republic) withdrew his amendment (L.15). He would support the Hungarian proposal, which mentioned nationals of the sending State.

11. Mr. DJOKOTO (Ghana) said that he supported the French amendment, which improved the text. He opposed the Austrian and Japanese amendments, which restricted the scope of the sub-paragraph.

The Austrian amendment (A/CONF.25/C.1/L.26) was rejected by 25 votes to 6, with 27 abstentions.

The Hungarian amendment (A/CONF.25/C.1/L.14) was rejected by 21 votes to 15, with 23 abstentions.

The French amendment (A/CONF.25/C.1/L.32) was adopted by 43 votes to 6, with 14 abstentions.

12. Mr. FUJIYAMA (Japan) withdrew his amendment (L.54).

13. The CHAIRMAN said that, as a result of the adoption of the French amendment, there was no need for a vote on the Czechoslovak amendment (L.34). He put sub-paragraph (*j*), as amended, to the vote.

Sub-paragraph (j), as amended, was adopted by 61 votes to 1, with 1 abstention.

14. Mr. HEPPEL (United Kingdom) explained that he had voted for the French amendment although he was not sure that the word " transmit " was equivalent to the technical term " serve ".

15. Mr. von HAEFTEN (Federal Republic of Germany) said that he felt the same doubts as the United Kingdom representative but that, on reflection, he had voted for the amendment because he thought that the act of transmitting covered that of serving.

16. Mr. SHARP (New Zealand) said he had voted against the French amendment because he was very doubtful whether the word " transmitting " meant the same as " serving ".

17. Mr. PALIERAKIS (Greece) and Mr. SOLHEIM (Norway) said they had voted for the French amendment for the same reasons as the representative of the Federal Republic of Germany.

Sub-paragraph (k)

18. The CHAIRMAN pointed out that amendments to sub-paragraph (*k*) had been submitted by Venezuela (L.20), Austria (L.26), Cambodia (L.38) and Japan (L.54).

19. Mr. ULLMANN (Austria), introducing his delegation's amendment (L.26), said that the rules governing the nationality of a sea-going vessel were laid down in article 5 of the Geneva Convention on the High Seas, 1958. As Austria had not ratified that convention, his delegation thought that sub-paragraph (*k*) should specify the sea-going vessels over which consulates could exercise rights of supervision and inspection.

20. Mr. SILVEIRA-BARRIOS (Venezuela) said that his delegation's amendment (L.20) completely changed the sense of the paragraph, since it provided that rights of supervision and inspection on sea-going vessels and inland craft should be exercised pursuant to the law of the receving State, not of the sending State.

21. Mr. FUJIYAMA (Japan) explained that the purpose of his delegation's amendment (L.54) was to enable consulates to exercise rights of supervision in respect of seamen having the nationality of the sending State in cases such as that of a chartered vessel, even if such vessel belonged to a foreign State.

22. Mr. PLANG (Cambodia) said that his delegation's amendment (L.38) was designed to broaden the rights of supervision and inspection exercised by consulates.

23. Mr. BARTOŠ (Yugoslavia) said he was unable to accept any of the four amendments submitted to sub-paragraph (*k*) since all of them conflicted with the international law of the sea. The right of inspection introduced by the Cambodian amendment, for example, only applied to warships and was not within the competence of consuls. The Japanese amendment would eliminate the exercise of the rights of supervision and inspection on vessels used for inland navigation, which was of great importance for inland navigation in the countries of Europe. The Yugoslav delegation therefore supported the International Law Commission's text.

The Venezuelan amendment (A/CONF.25/C.1/L.20) was rejected by 50 votes to 3, with 8 abstentions.

The Japanese amendment (A/CONF.25/C.1/L.54) was rejected by 48 votes to 2, with 9 abstentions.

The Austrian amendment (A/CONF.25/C.1/L.26) was rejected by 33 votes to 9, with 20 abstentions.

The Cambodian amendment (A/CONF.25/C.1/L.38) was rejected by 48 votes to 1, with 12 abstentions.

24. The CHAIRMAN said that since all the amendments to sub-paragraph (*k*) had been rejected, it remained for the Committee to vote on the sub-paragraph as drafted by the International Law Commission.

Sub-paragraph (k) as drafted by the International Law Commission was approved by 62 votes to 1, with 1 abstention.

Sub-paragraph (l)

25. The CHAIRMAN invited the Committee to consider sub-paragraph (*l*), to which amendments had been submitted by Austria (L.26), Cambodia (L.38), Italy (L.43), Japan (L.54), Norway (L.63) and the United States (L.69).[2]

[2] The amendment by Greece (L.80) had been withdrawn (see the summary record of the twelfth meeting, para. 2).

26. Mr. HERNDL (Austria) said that the consular functions defined in sub-paragraph (*l*) were very important, but those functions should be exercised without prejudice to the relevant powers of the receiving State. That was the consideration underlying Austria's amendment (L.26).

27. Mr. PLANG (Cambodia) said that the functions listed in sub-paragraph (*l*) were within the competence of the sending State. The qualifying clause which appeared at the end of the paragraph was therefore superfluous and could be deleted. That was the sense of the amendment (L.38) submitted by the Cambodian delegation.

28. Mr. CAMERON (United States of America) said that in the United States, as in many other maritime states, the superior right of the administrative or judicial authorities of the receiving State to take cognizance of crimes or offences which disturbed the peace of the port and to enforce the laws of the receiving State applicable to vessels of any State within its waters had long been recognized. The proposed amendment would continue that practice.

29. The words " of any kind " were too broad. The consul in such instances had normally been authorized to act only with respect to disputes occurring on board before the vessel entered the waters of the receiving State, and with respect to matters of internal administration while within those waters, concerning which there would be no reason for the receiving State to interfere. In the absence of the proposed amendment, controversy might develop as to who would be entitled to settle labour disputes or similar matters involving the vessel while in the waters of the receiving State.

30. Mr. FUJIYAMA (Japan) withdrew his delegation's amendment (L.54).

31. Mr. de ERICE y O'SHEA (Spain) supported the Austrian amendment (L.26).

32. Mr MAMELI (Italy), introducing his delegation's amendment (L.43), said that it was important to distinguish, as the International Law Commission had done, between consular functions authorized by municipal law and those not so authorized; the authorities of the receiving State should be able to satisfy themselves that the functions exercised by consuls were provided for in the laws of the sending State. The restrictive clause at the end of sub-paragraph (*l*) was therefore inappropriate and the Italian amendment proposed the deletion of that clause.

33. Mr. SOLHEIM (Norway) said that the word " necessary ", in the first line of sub-paragraph (*l*) was superfluous, for it was for consuls to decide if they should extend assistance to the vessels and aircraft mentioned in sub-paragraph (*k*).

34. Mr. von HAEFTEN (Federal Republic of Germany) supported the Austrian amendment (L.26).

35. Mr. KRISHNA RAO (India), referring to the provisions of articles 5 and 10 of the Geneva Convention on the High Seas, said it would be preferable to adopt sub-paragraph (*l*) as drafted by the International Law Commission.

36. Mr. WESTRUP (Sweden) supported the Norwegian amendment (L.63). The word " necessary " was pointless and open to misinterpretation.

37. Mr. PALIERAKIS (Greece) supported the Norwegian amendment (L.63). He thought it would be desirable to insert a reference to the powers of the receiving State, as proposed in the Austrian amendment (L.26). With regard to the Italian amendment (L.43), he agreed that the phrase " in so far as this may be authorized by the law of the sending State " might give rise to misunderstanding. He also accepted the amendment proposed by the United States (L.69).

38. Mr. HERNDL (Austria) explained that his delegation's amendment was in no way intended to impair the competence of consuls; its object was to state expressly that the receiving State also had the right to conduct investigations.

39. Mr. RUDA (Argentina) said that, for the purposes of the sub-paragraph under discussion, incidents occurring during the voyage, before a vessel entered territorial waters, and questions relating to the internal administration of vessels, which were outside the jurisdiction of the receiving State, should be distinguished from offences liable to lead to a breach of the peace in harbour, which were within the jurisdiction of the authorities of the receiving State. He thought that the International Law Commission's text took account of all those points and he saw no need to modify it.

40. Mr. HEPPEL (United Kingdom) said he was unable to support the Cambodian amendment (L.38). He agreed with the Norwegian delegation that the word " necessary " could be deleted. Both the Austrian (L.26) and United States (L.69) amendments providing for reference to the law of the receiving State deserved consideration, and of the two he preferred the Austrian amendment by reason of its form.

41. Mr. CAMERON (United States of America) said that he was prepared to modify his delegation's amendment and to support the formula proposed by the Austrian delegation. In his opinion, it was possible to harmonize the two amendments, and he proposed that they should be referred to the drafting committee.

42. Mr. MAMELI (Italy) withdrew his delegation's amendment (L.43) and announced that he would support the Austrian amendment (L.26).

43. Mr. HERNDL (Austria) said that the Austrian amendment was not intended to subordinate to the laws of the receiving State the functions which a consul would exercise under the sub-paragraph in question.

44. Mr. WU (China) said that he would gladly support the amendment submitted by the United States, but he thought that the formula " to the extent consistent with the laws of the receiving State " could be placed at the beginning of the sentence. It would thus qualify the entire sub-paragraph.

45. Mr. D'ESTEFANO PISANI (Cuba) agreed with the Argentine representative's remarks on the Austrian amendment (L.26) and said that he would vote for the International Law Commission's text.

46. Mr. SILVEIRA-BARRIOS (Venezuela) associated himself with the Cuban representative's statement and added that in Spanish the words " buque " and " barco " were absolutely synonymous. He hoped that the drafting committee would take account of that remark in preparing the final Spanish text.

47. Mr. PLANG (Cambodia) withdrew his amendment (L.38).

48. Mr. TSHIMBALANGA (Congo, Leopoldville) said that he also was prepared to support the International Law Commission's text, but proposed that it should be improved by deleting the phrase " in so far as this many be authorized by the law of the sending State ", which merely affirmed an idea already implicit in the text.

49. The CHAIRMAN said that he would treat the proposal of the representative of Congo (Leopoldville) as an oral amendment.

50. Mr. EL KOHEN (Morocco) said that he found it hard to understand the United States representative's proposal to harmonize his amendment (L.69) with that of Austria (L.26). The formulations used in the two amendments were not equivalent. The Austrian amendment accorded to consuls a special right of intervention, whereas the United States amendment simply limited his competence. He asked whether the two amendments would be voted on separately.

51. The CHAIRMAN stated that the two amendments would be voted on separately.

52. Mr. von HAEFTEN (Federal Republic of Germany) supported the oral proposal by the representative of the Congo (Leopoldville) which simply restored the amendment withdrawn by the Italian delegation (L.43).

53. Mr. HUBEE (Netherlands) said that he would vote for the Congolese amendment. He also favoured the Austrian amendment (L.26), but found it difficult to harmonize it with the United States amendment, since there was a considerable difference between them. He did not think that the drafting committee could solve the difficulty.

54. Mr. DJOKOTO (Ghana) said that the phrase " in so far as this many be authorized by the law of the sending State " was quite unnecessary; in any case, the question was purely one of drafting.

55. Mr. PALIERAKIS (Greece) disagreed: it was a question of substance.

56. Mr. TSHIMBALANGA (Congo, Leopoldville) said that both form and substance were involved. If the phrase was retained, the effect would be to require the express authorization of the receiving State; if it was deleted, that authorization would no longer be necessary.

57. Mr. CAMERON (United States of America) said that he did not believe that the Austrian and United States amendments differed in substance; he regarded them as identical. However, as a number of delegations preferred the form of the Austrian amendment, he had decided to withdraw his delegation's amendment.

The Austrian amendment (A/CONF.25/C.1/L.26) was adopted by 31 votes to 14, with 16 abstentions.

The Norwegian amendment (A/CONF.25/C.1/L.63) was adopted by 36 votes to 3, with 23 abstentions.

The oral amendment submitted by the Congo (Leopoldville) was rejected by 19 votes to 18, with 23 abstentions.

58. Mr. TSHIMBALANGA (Congo, Leopoldville) asked for a recount, as he thought there might have been a mistake.

59. The CHAIRMAN said that a recount was not possible, because it would involve another vote on the same proposal, which would be contrary to rule 33 of the rules of procedure. The representative of the Congo (Leopoldville) could ask for the reconsideration of its proposal, but that would require a two-thirds majority.

60. Mr. TSHIMBALANGA (Congo, Leopoldville) explained that he was not asking for another vote on his amendment; he was merely asking for a recount of the votes.

61. Mr. COLOT (Belgium), Mr. PALIERAKIS (Greece) and Mr. TÜREL (Turkey) said that they shared the view of the representative of the Congo (Leopoldville).

62. Mr. de ERICE y O'SHEA (Spain), Miss ROESAD (Indonesia) and Mr. KRISHNA RAO (India) referred to rules 33 and 46 of the rules of procedure and said that they could not agree to a recount.

63. The CHAIRMAN decided, under rule 33 of the rules of procedure, to put to the vote the reconsideration of the oral amendment submitted by the Congo (Leopoldville).

The result of the vote was 19 in favour and 26 against, with 3 abstentions. The motion for the reconsideration of the oral amendment was rejected.

64. The CHAIRMAN put to the vote sub-paragraph (*l*) of article 5, as amended.

Sub-paragraph (l), as amended, was adopted by 59 votes to none, with 5 abstentions.

65. Mr. SOLHEIM (Norway) pointed out that the words " and to their crews ", in sub-paragraph (*l*), implied that the consular functions in question extended to all the members of the crew, whatever their nationality.

66. Mr. HUBEE (Netherlands) said that sub-paragraph (*l*), and more particularly the phrase " in so far as this may be authorized by the law of the sending State " could not be construed *a contrario*. All the functions enumerated in article 5 were naturally subject to the authorization of the sending State. Consular

officials of the Netherlands, for example, were not empowered to exercise all the functions mentioned in article 5.

New sub-paragraph proposed by Austria

67. Mr. HUBINGER (Austria) said that the substance of the Austrian proposal (L.26) had already been embodied in the Special Rapporteur's 1957 draft. The proposal had a practical purpose. It concerned, among other things, the payment of pensions in respect of which a life certificate had to be produced. The beneficiary, however, might need his pension urgently, and the consul should accordingly be empowered to receive the pensions and pay them to the persons concerned.

68. Mr. de ERICE y O'SHEA (Spain) said that he shared the view of the Austrian delegation with regard to the new sub-paragraphs (*j*) and (*k*) proposed in document L.26. He proposed that the first part of sub-paragraph (*j*) in that proposal, the meaning of which was somewhat obscure in the Spanish version, should be referred to the drafting committee.

69. Mr. de MENTHON (France) regretted that he was unable to accept the Austrian amendment. In the first place, the proposed additions would burden the catalogue of consular functions in article 5; moreover, the cases contemplated were covered by the additional sub-paragraphs proposed by India (L.37) and Yugoslavia (L.72). Secondly, the adoption of the new sub-paragraphs proposed by Austria might give rise to some problems for France. Under French social legislation, a beneficiary could delegate his rights to a third person; but, as yet, consuls had not been held to be empowered to receive pensions or other benefits without having to produce a power of attorney. Bilateral agreements with various countries provided for methods of paying benefits which did not call for action by consuls.

70. Mr. von HAEFTEN (Federal Republic of Germany) said that, while he had no objection to the substance of the Austrian proposal, he thought that it would be better not to insert the proposed sub-paragraph (*k*) in the list of consular functions, which could not cover everything. Furthermore, the functions in question in the new clause were governed by the municipal law of both the receiving State and the sending State. It was therefore preferable to close the list of the various functions. Besides, the amendments submitted by India (L.37) and Yugoslavia (L.72) covered, among many others, all the cases dealt with in the Austrian proposal.

71. Mr. MARAMBIO (Chile) said that he was in favour of including the new sub-paragraphs proposed by Austria and thought they should be referred to the drafting committee.

72. Mr. BARTOŠ (Yugoslavia) said that the functions in question were referred to in paragraph (13) (*d*) and (*e*) of the International Law Commission's commentary and were part of a consul's normal duties. It was only right that consuls should have authority to protect the nationals of the sending country, more particularly in the matter of social security. He would therefore vote for the new sub-paragraphs (*j*) and (*k*) proposed by Austria.

73. Mr. HEPPEL (United Kingdom) agreed with the representatives of France and the Federal Republic of Germany. Matters of detail were involved, but they were important. They could be settled by bilateral agreements without any need to specify such functions in the convention. The best course would be to insert a new sub-paragraph providing for the exercise of such functions, but not itemizing them.

74. Mr. WESTRUP (Sweden) said that, notwithstanding his interest in matters of social security, he agreed with the representatives of France, the Federal Republic of Germany and the United Kingdom that there was no need to burden the list contained in article 5 by inserting provisions concerning matters of detail.

75. Mr. RUDA (Argentina) said he was in sympathy with the motives underlying the Austrian amendment. The proposed clauses did not, however, refer to matters which were among a consul's essential functions, and he was therefore unable to support the amendment.

76. Mr. BARUNI (Libya) said he could not vote for the Austrian amendment as it stood. With regard to sub-paragraph (*j*) he said that, in Libya, for instance, a consul could only transmit funds from abroad through the local authorities; and in many countries it was unlawful to transfer sums of money to anyone without the express permission of the local authorities.

77. Mr. HERNDL (Austria) thanked the delegations which had expressed support for his delegation's amendment. In view of the difficulties it had created in the Committee, however, he had decided to withdraw it. He thought that such cases might be covered by the more general provisions proposed by India and Yugoslavia.

New sub-paragraph proposed by India and Yugoslavia

78. The CHAIRMAN drew attention to the amendment submitted jointly by India and Yugoslavia (A/CONF.25/C.1/L.100).

79. Mr. KRISHNA RAO (India) explained that the joint amendment superseded the earlier amendments submitted by India (L.37) and Yugoslavia (L.72). The underlying idea was that only essential functions should be explicity listed, and that the others should be dealt with in a general clause which would be added to the list. Some latitude should be allowed, for consular functions might vary according to time and place. Furthermore, judicial decisions in various countries had recognized in principle that consular functions were not restricted to those specifically cited in international instruments. The joint amendment was fully in conformity with the considerations in paragraphs 24 to 26 of the International Law Commission's commentary to article 5.

80. Mr. JAYANAMA (Thailand) said that, while he was in favour of a general clause in addition to the list of consular functions, he thought it superfluous to mention in the amendment international agreements between the sending State and the receiving State, since there could be no doubt that the provisions of such

agreements would apply. Besides, article 71 of the draft expressly stated that the provisions of the convention would not affect international agreements in force as between the States parties to them.

81. Mr. ABDELMAGID (United Arab Republic) supported the joint Indian and Yugoslav amendment which was, he considered, in complete harmony with the text of article 5 as a whole.

82. Mr. KESSLER (Poland) thought it would be advisable to insert in paragraph 5 a provision supplementing the catalogue of the principal consular functions, and he accordingly endorsed the substance of the joint amendment. Nevertheless, the words " and to which no objection is taken by the receiving State " might serve as a pretext, in certain circumstances, for unduly restricting consular activities by giving the subordinate authorities of the receiving State the possibility of opposing the exercise of consular functions. He therefore asked that the passage in question should be put to the vote separately.

83. Mr. MIRANDA e SILVA (Brazil) approved the substance of the joint amendment. To lighten the Committee's work and that of the drafting committee, he proposed that the new paragraph should follow the text of paragraph 26 of the International Law Commission's commentary on article 5, subject to the substitution of the words " consular officials " for the word " consuls ".

84. Mr. de ERICE y O'SHEA (Spain) supported the joint Indian and Yugoslav amendment. As he had said before, it would be dangerous to try to draw up an exhaustive list of consular functions. The sponsors of the amendment might perhaps accept the suggestion of the representative of Poland for deleting the words " and to which no objection is taken by the receiving State "; the words " which are not prohibited by the laws and regulations of the receiving State " were surely adequate.

85. Mt. HUBEE (Netherlands) said he would vote in favour of the joint amendment. He would likewise vote for the retention of the passage " and to which no objection is taken by the receiving State ", if it was put to the vote separately.

86. Mr. DADZIE (Ghana) supported the substance of the joint amendment. So far as the wording was concerned, however, he thought that the word " or " should be substituted for the word " and " after the words " receiving State ".

87. Mr. USTOR (Hungary), supporting the joint amendment, said it was in line with the International Law Commission's text and with paragraphs 24 to 26 of the commentary to article 5. The commentary showed that consular functions could be divided into three categories: those arising out of the principles of international law, those specified in international agreements, and those which could be vested in consular officials of the sending State, subject to the right of the receiving State to prohibit the exercise of certain activities.

88. Those safeguards were sufficient for the receiving State. He therefore thought that in that respect the amendment went perhaps too far. If a separate vote were taken on the words " and to which no objection is taken by the receiving State ", the Hungarian delegation would vote for their deletion.

89. Mr. ANIONWU (Nigeria) said that the addition of a general clause to article 5 would dispel his delegation's doubts with regard to article 38 of the draft, which dealt with communication between consular officials and the authorities of the receiving State. He would therefore vote in favour of the joint amendment, provided that the words " and to which no objection is taken by the receiving State " were deleted.

90. Mr. de MENTON (France) approved the substance of the joint amendment. At first glance, however, the passage " which are not prohibited by the laws and regulations of the receiving State " and the passage " and to which no objection is taken by the receiving State " seemed repetitious. He suggested that the language of the original Yugoslav amendment (L.72) " provided that the exercise of these functions is not prohibited by the law of the receiving State " might be preferable.

91. Mr. von HAEFTEN (Federal Republic of Germany) supported the joint amendment, but could not accept the French representative's suggestion. He attached some importance to the words " and to which no objection is taken by the receiving State ". Some activities not expressly mentioned in the earlier paragraphs of article 5 and not expressly forbidden by the law of the receiving State might nevertheless be regarded as undesirable by the authorities of that State. If the words in question were deleted, the receiving State would have no option but to enact laws and regulations on the matter, which might annoy the sending State. Accordingly, he thought that the words in question should stand.

92. Mr. MARAMBIO (Chile) supported the Brazilian proposal that the Committee should follow the language of paragraph 26 of the International Law Commission's commentary to article 5, without the words " or the authorities ".

93. Mr. WESTRUP (Sweden) agreed with the representative of the Federal Republic of Germany that the words " and to which no objection is taken by the receiving State " should stand. He would vote for the joint amendment without any deletion.

94. Mr. PALIERAKIS (Greece) said that the joint amendment was most interesting. The wording, however, was repetitious. The words " which are not prohibited by the laws and regulations of the receiving State " should be omitted, for the receiving State would automatically put a stop to any activities which were prohibited by its laws and regulations.

95. Mr. HEPPEL (United Kingdom) said that he shared the opinion of those representatives who had spoken in favour of the joint amendment and in favour of retaining the words " and to which no objection is taken by the receiving State ". Provision should be made concerning possible objections not based on laws and regulations. From the point of view of drafting, he

agreed with the representative of Ghana that in the new sub-paragraph the word " or " should be substituted for the word " and "

96. The CHAIRMAN announced that the sponsors of the amendment agreed to substitute " or " for " and ".

97. Mr. MIRANDA e SILVA (Brazil) said that, although he approved the substance of the Indian and Yugoslav amendment, he still preferred the language of paragraph 26 of the International Law Commission's commentary, slightly amended to read: " Consular officials may also perform other functions which are entrusted to them by the sending State, provided that the performance of these functions is not prohibited by the laws of the receiving State."

98. Mr. TSHIMBALANGA (Congo, Leopoldville) agreed with the representative of France and other speakers that the words " and to which no objection is taken by the receiving State " to some extent duplicated the words " which are not prohibited by the laws and regulations of the receiving State ". He asked for explanations.

99. Mr. BARTOŠ (Yugoslavia) replied that the reference to objection on the part of the receiving State and the passage " which are not prohibited by the laws and regulations " of that State were not pleonastic. That had been recognized by the International Law Commission itself in the proviso at the end of paragraph 26 of its commentary. In other words, the Commission drew a distinction between prohibition of certain acts on grounds of law and prohibition on political grounds, between unlawful activities and undesirable activities.

100. The speakers who had quoted paragraph 26 of the International Law Commission's commentary appeared to have overlooked paragraph 25. The joint Indian and Yugoslav amendment merely repeated those two paragraphs as a whole, but in a rather condensed and simplified form.

101. Furthermore, in drafting article 5, the International Law Commission had considered whether States should be free to conclude bilateral agreements departing from the provisions of the multilateral convention, and it had decided that they should. That was the principle underlying the concluding phrase of the joint amendment.

102. Apart from the replacement, already approved, of the word " and " by the word " or ", other drafting improvements might be desirable, in particular the replacement of the words " referred to " by the words " provided for ".

103. Mr. TSHIMBALANGA (Congo, Leopoldville) said that, to emphasize the political aspect referred to by the Yugoslav representative, the words " or to which no objection is taken by the receiving State " should perhaps be replaced by the words " or to which no objection is taken by the authorities of the receiving State ".

104. Mr. JAYANAMA (Thailand) agreed with the opinions expressed by the Brazilian and Chilean representatives.

105. Mr. SOLHEIM (Norway) supported the request for a separate vote on the passage " or to which no objection is taken by the receiving State ". He would vote for the joint amendment, but against that passage. The express terms of the law should be paramount; if the passage in question were retained, it might invite arbitrary decisions by central or local authorities of the receiving State —which would be most undesirable.

106. The CHAIRMAN said that under rule 42 of the rules of procedure the joint amendment (L.100) (the word " and " being replaced by " or "), would be put to the vote first. The Committee would then, depending on circumstances, vote on the oral amendment submitted by the representatives of Brazil and Chile, which incorporated the text of paragraph 26 of the International Law Commission's commentary on article 5 (without the words " or the authorities "). As requested, he put to a separate vote the words " or to which no objection is taken by the receiving State " in the joint amendment.

The Committee decided by 35 votes to 15, with 7 abstentions, to retain the words " or to which no objection is taken by the receiving State ".

The joint amendment of India and Yugoslavia (A/CONF.25/C.1/L.100) was approved by 46 votes to 5, with 12 abstentions.

107. Mr. TSHIMBALANGA (Congo, Leopoldville), referring to the last statement by the Yugoslav representative, asked whether, in the text just adopted, the words " referred to " had been replaced by the words " provided for ".

108. The CHAIRMAN stated that the text approved was that appearing in document A/CONF.25/C.1/L.100, apart from the replacement of the word " and " by the word " or ". The drafting committee could in any case make any stylistic changes it thought desirable.

Proposal to alter the structure of article 5

109. Mr. KIRCHSCHLAEGER (Austria) said that although, as a result of the joint amendment just adopted, the Austrian amendment (L.26) modifying the structure of the article had perhaps to some extent lost its points, he wished to maintain that proposal.

110. Mr. HEPPEL (United Kingdom) approved the Austrian amendment and suggested that the order of the sub-paragraphs in article 5 might be slightly changed and that they might be regrouped into paragraphs.

111. Mr. USTOR (Hungary) said that the approval of the joint amendment had unquestionably altered the position and that it was doubtful whether the Austrian amendment were still relevant. In view of the considerable divergence between the Austrian amendment and the International Law Commission's text, it would perhaps be better, before coming to a decision, to ask the opinion of the special rapporteur of the International Law Commission. The Hungarian delegation did not wish to have to vote before considering the matter further.

112. Mr. WESTRUP (Sweden) warmly supported the United Kingdom representative's idea of regrouping the

various consular functions into separate paragraphs according to their character. The diversity of the formulae used in the different sub-paragraphs might make the task a little difficult, but from a logical point of view the effort seemed worth while.

113. Mr. BOUZIRI (Tunisia) proposed the adjournment of the debate on the Austrian amendment, particularly since it would be desirable to consult the former special rapporteur and to consider the Swedish representative's suggestion.

114. Mr. PALIERAKIS (Greece) proposed that the drafting committee should be instructed to study the Austrian amendment and the Swedish representative's suggestion.

115. Mr. RAHMAN (Federation of Malaya) supported the Greek representative's proposal.

116. The CHAIRMAN said that, if there were no objection, he would adopt the solution proposed by the representatives of Greece and the Federation of Malaya.

117. He put to the vote article 5, as amended, without prejudice to any drafting changes which might be made by the drafting committee.

Article 5, as amended, was approved by 59 votes to none, with 1 abstention.

118. Mr. HEPPEL (United Kingdom) drew attention to the memorandum of the United Nations' High Commissioner for Refugees (A/CONF.25/L.6). That memorandum, which referred particularly to article 5, subparagraph (*a*), and to article 36 of the draft articles on consular relations, took into account the case of persons who did not wish or could not have recourse to the protection of consular officials of their country of origin. A very important point was involved which should be dealt with either in a separate article or in an additional clause to one of the existing articles. The United Kingdom delegation, which had not submitted an amendment on that point in connexion with article 5, intended to submit an appropriate text later.[3]

The meeting rose at 6.50 p.m.

[3] A joint proposal (A/CONF.25/C.1/L.124) was submitted at the twenty-fourth meeting.

FOURTEENTH MEETING

Thursday, 14 March 1963, at 10.40 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 8 (Appointment and admission of heads of consular posts)

1. The CHAIRMAN invited the Committee to consider article 8 and the joint amendment thereto by Brazil, Canada, Ceylon, the United Kingdom and the United States of America (A/CONF.25/C.1/L.74).[1]

2. Mr. LEE (Canada), introducing the joint amendment replacing the words " heads of consular posts " by the words " consular officials ", said that throughout the draft far too much emphasis was placed on the legal status of heads of consular posts as compared with consular officials in general. The head of a consular post was not in the same position with respect to the other officers as the head of a diplomatic mission. The members of a diplomatic mission derived their status from the fact that the head of the mission was formally accredited to the receiving State. The position of consular officials was completely different: they derived their status — and accordingly their privileges and immunities — individually and separately from their respective commissions of appointment. Consular officials were also individually and separately recognized and admitted by the government of the receiving State.

3. It was at present as important as ever for the receiving State to retain strict control over the consuls exercising their functions in its territory. Canada, as a comparatively small country, acted more often as a receiving State than as a sending State, and found it essential to continue to exercise the right to request a *curriculum vitae* for every foreign consular official before he came to serve on Canadian territory.

4. He stressed the important difference, from the point of view of security control, between diplomatic agents who performed their duties in the capital of the country and consular officials who worked outside the capital.

5. Mr. HEPPEL (United Kingdom), speaking as one of the sponsors of the joint amendment, said that it involved an important change in the structure of an otherwise excellently drafted set of articles. There was no real analogy between the head of a consular post and the head of a diplomatic mission. An ambassador, as the representative of the head of his State, was entitled to a special status, and the privileges of his staff derived from his special position. The position of consular officials was quite different. It was of course true that where several of them served on the staff of the same consulate the senior consular official would act as the head of the consular post, but that was purely a matter of internal administration and did not confer any special quality upon the head of post. It was significant that the eighth edition of Oppenheim's *International Law*, published in 1955, made no mention of the head of a consular post possessing any quality different from that of other consular officials.

6. He saw no reason for the statement in paragraph 7 of the commentary on article 11, that " The grant of the exequatur to a consul appointed as head of a consular post covers *ipso jure* the members of the consular staff working under his orders and responsibility. It is therefore not necessary for consular officials who are not heads of post to present consular commissions and obtain an exequatur." Nor was there any justification for the statement in paragraph 7 of the commentary on

[1] The Japanese amendment (A/CONF.25/.C1/L.55) had been withdrawn.

article 19 that " the principle that only the head of consular post needs an exequatur or a provisional admission to enter upon his functions " was " well established in practice ".

7. The United Kingdom and many other countries followed a distinctly different practice. The principle referred to had no foundation in customary international law; it was an innovation introduced from diplomatic practice. Reference to the collection of bilateral consular treaties prepared by the Secretariat would show that all the older treaties, and most of the more recent ones, required all consular officials to obtain an exequatur. Of the consular conventions included in that collection, the earliest to exempt subordinate consular officials from the requirement of an exequatur had been the 1955 Consular Convention between France and Sweden. However, the majority of consular conventions signed since 1955 required an express admission in respect of consular officials.

8. Since the existing rule of international law was that an exequatur or some other form of authorization was required for a consular official to exercise his functions, the adoption of article 8 as drafted by the International Law Commission would introduce a major change of principle into consular law.

9. At the 5th meeting, his delegation had proposed the deletion of paragraph 4 from article 4 on the ground that its content was already covered by paragraph 1 of the same article. But the Committee had not shared that view and had preferred to state explicitly that the consent of the receiving State was also required if a consulate-general or a consulate desired to open a vice-consulate or an agency in a locality other than that in which it was itself established. The Committee had taken that course because of its anxiety to prevent a proliferation of consular posts. It was in the same spirit that his delegation proposed that it should not be possible for a sending State to increase, without any formality, the staff of consular officials in a consulate. It was all the more important to prevent increases in consular staff being made regardless of the receiving State because such staff were likely to be not in the capital, where the activities of diplomatic missions were part of the daily life of the authorities of the receiving State, but in more remote parts of the country, where control was particularly necessary.

10. He noted that article 19, paragraph 2, provided that " The sending State may, if such is required by its law, request the receiving State to grant the exequatur to a consular official . . . who is not the head of post." That provision did not fully meet the requirements of countries like the United Kingdom; it would enable them to satisfy their laws when acting as sending States, but would be of no assistance to them as receiving States.

11. Mr. BARTOŠ (Yugoslavia) pointed out that, in its discussions on article 8, the International Law Commission had gone very fully into the question and had ascertained that the practice referred to by the United Kingdom representative as a general one was, in fact, largely confined to the British Commonwealth countries and the United States of America. There were even some departures from that practice in the case of the United Kingdom, as shown by the 1951 Consular Convention between the United Kingdom and France,[2] which allowed subordinate consuls to exercise their functions and enjoy their immunities without prior notification to the receiving State, unless the latter objected.

12. The rule embodied by the International Law Commission in article 8 reflected the general practice of States. It also tended to facilitate consular relations. In the countries where an exequatur was required for all consular officials, it was not uncommon to have to wait as long as eight months or a year before permission could be obtained to dispatch a vice-consul to a consulate; thus the consulate had to be closed if the consul in charge was ill or absent for any reason, even if it included one or perhaps several persons with the rank of consular official.

13. Other articles of the draft afforded sufficient safeguards to the receiving State. In particular, article 23 made it possible for the receiving State to declare unacceptable any member of a consular staff, and not merely the head of consular post.

14. Mr. MIRANDA e SILVA (Brazil) said that his delegation had joined in sponsoring the joint amendment because, under Brazilian law, all consular officials were required to obtain an exequatur. He believed that that requirement facilitated consular relations: for example, in the event of the death or absence of the head of post, it was possible for another consular official, who already held an exequatur, to replace him immediately.

15. Mr. KNEPPELHOUT (Netherlands) supported the joint amendment. His delegation would prefer article 8 to refer not only to heads of consular posts, but to all consular officials, none of whom could act as such without being appointed by the sending State and being admitted to the exercise of their functions by the receiving State.

16. Mr. SILVEIRA-BARRIOS (Venezuela) also supported the joint amendment, which would help to ensure the proper exercise of consular functions.

17. Mr. PETRŽELKA (Czechoslovakia) opposed the joint amendment, because it disrupted the basic structure of the draft unanimously adopted by the International Law Commission. The principle adopted by the Commission made for the progressive development of international law. It was also in line with article 3, which provided that consular functions were exercised by consulates. The Committee, when it had adopted article 3, had agreed to consider the consulate as a unity; it was therefore with considerable misgivings that his delegation saw that unity being challenged by the amendment. Although he did not wish to raise a procedural issue at that stage, he emphasized that if the Committee adopted the joint amendment to article 8 it would be acting inconsistently with its earlier decision to approve article 3.

18. Mr. KEVIN (Australia), supporting the joint amendment, said that consuls were admitted individually

[2] United Nations, *Treaty Series*, vol. 330, p. 146.

to the exercise of their functions, so that there was no real analogy with diplomatic missions.

19. Mr. von HAEFTEN (Federal Republic of Germany) said that he had at first been inclined to favour the joint amendment. On reflection, however, he had come to the conclusion that it was too complicated a procedure to require formal appointment and admission for every consular official.

20. If it appeared appropriate at a later stage in the discussion, his delegation would submit an amendment to the effect that the name and rank of a consular official must be notified to the receiving State before the arrival of the official in its territory, and that the receiving State could refuse admission.

21. Mr. DADZIE (Ghana) appreciated the reasons underlying the joint amendment, but feared that it might lead to abuses. He had in mind, especially, the consular officials of small States which already had great difficulty in staffing their diplomatic and consular missions. He also thought that the joint amendment would set an unhappy precedent with regard to diplomatic missions. The requirement of the " agrément " was imposed only upon the ambassador and not upon other diplomatic agents sent to work under him.

22. When the joint amendment was put to the vote his delegation would abstain.

23. Mr. BOUZIRI (Tunisia) opposed the joint amendment; it went too far by comparison with what had been accepted for members of diplomatic missions. He recalled that at the 1961 Conference there had been a discussion on the question whether the sending State should have complete freedom to appoint subordinate diplomatic agents. He had favoured the introduction of certain safeguards for the receiving State, but the Conference had decided otherwise and the 1961 Vienna Convention had been adopted without any limitations on that freedom, except for article 7, which provided that " In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval."

24. The joint amendment would make it necessary for all consular officials to obtain authorization from the receiving State before they could exercise their functions. That requirement might raise no problem for large countries, but it would create insurmountable difficulties for the smaller ones, and might even hinder the conduct of consular relations.

25. He appreciated the spirit in which the representative of the Federal Republic of Germany had made his suggestion. The formula suggested would reduce the difficulty to some extent, but would not remove it altogether, since it would be necessary to await a reply from the receiving State before the consular officer could be dispatched.

26. Mr. de MENTHON (France) agreed with the representative of Tunisia. He regretted that he could not support the joint amendment, which was not consistent with the practice followed by the French Government or with the provisions of consular conventions to which it was a party.

27. Mr. OSIECKI (Poland) opposed the joint amendment, which like similar amendments to articles 10 and 11, would impose on all consular officials the obligation to obtain an exequatur from the receiving State. That obligation was contrary to the principle laid down in article 19, paragraph 1, that the sending State might freely appoint the members of the consular staff. The amendment would be a retrograde step, for contemporary practice was much more favourable to consulates.

28. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) drew attention to the provisions of article 1 (Definitions). Paragraph 1 (*c*) of that article defined the head of consular post as " any person in charge of a consulate " and paragraph 1 (*d*) defined a consular official as " any person, including the head of post, entrusted with the exercise of consular functions in a consulate ". It was clear from those definitions that there was a material difference between the head of post and other consular officials, so that the requirements imposed on the head of post were not necessarily applicable to consular officials generally. Proposals similar to the joint amendment had been made at various times during the discussion of the draft articles, but had always been rejected.

29. Mr. USTOR (Hungary) said that the point under discussion was one of the fundamental issues of the whole draft. The requirement of a separate commission and exequatur for every consular official was a rather antiquated practice to which the United Kingdom and some other countries still adhered. His country, and a great many others, did not follow that practice, and he saw no reason to reintroduce a cumbersome system which was considered obsolete in many parts of the world.

30. He urged the Committee not to depart from the system adopted by the International Law Commission, but to accept the arguments put forward by other speakers, in particular the representative of Yugoslavia, who was himself an eminent member of the Commission. The provisions of the draft constituted a compromise which could satisfy countries that followed the United Kingdom system. Article 19, paragraph 2, would enable those countries to obtain an exequatur for their consular officials in order to comply with their national law; even more important were the provisions of article 24, under which the appointment of all members of the consulate, and not merely of the head of post, had to be notified to the receiving State. Those provisions afforded ample safeguards for the receiving State.

31. Mr. RABASA (Mexico) said that, as a general rule, his delegation supported the provisions drafted by the International Law Commission. In the case of article 8, however, it supported the joint amendment, which would fill a gap in the draft. It was true that the Committee had approved an objective rule in article 3 — namely, that " consular functions are exercised by consulates ". The provisions of article 8, however, applied not to the consulate, but to consular officials. That article was therefore one of the cases in which a subjective rule would have to be laid down.

32. It seemed to him illogical to reject the proposition contained in the amendment. In the event of such rejec-

tion, the Committee would be suggesting that consular officials other than the head of post were neither appointed by the sending State nor admitted to the exercise of their functions by the receiving State.

33. He pointed out that, if the joint amendment were adopted, the title of the article should also be amended.

34. Mr. KONZHOUKOV (Union of Soviet Socialist Republics) said that his delegation could not support the joint amendment, which departed from the principle on which many of the provisions of the draft were based. The Committee had already approved article 3, which stated that consular functions were exercised by consulates. It would be altogether inconsistent with that decision to replace the words " heads of consular post " by the words " consular officials " in article 8. His delegation had nothing further to add to the excellent arguments advanced by other speakers against the joint amendment.

35. Mr. SHARP (New Zealand) supported the joint amendment for the reasons given by its sponsors. New Zealand practice was for all consular officials to hold commissions issued by the Head of State, which were presented for the issue of an exequatur. Judging by the number of consular commissions presented in New Zealand for the purpose of obtaining an exequatur, he could safely say that the practice was not confined to the Commonwealth countries and the United States.

36. Consuls and vice-consuls had always held a certain status in their own right and it was therefore appropriate to broaden the provisions of article 8 so as to cover all consular officials and not merely heads of post.

37. He agreed with the United Kingdom representative that the provisions of article 19 did not meet the purpose of the joint amendment: they afforded no protection whatsoever to the receiving State.

38. Mr. PALIERAKIS (Greece) supported the joint amendment. The reasons for requiring the head of post to be appointed by the sending State and admitted to the exercise of his functions by the receiving State also applied to other consular officials. Another argument in favour of the joint amendment was that it was better to learn of any objection to a consular official before, rather than after he arrived in the territory of the receiving State. His delegation favoured the suggestion put forward by the representative of the Federal Republic of Germany.

39. Mr. N'DIAYE (Mali) agreed with the views expressed by the representatives of Ghana, Tunisia and, in particular, Yugoslavia. He saw no reason to introduce into consular relations an idea which had not been embodied in the Convention on Diplomatic Relations, which were more important.

40. Mr. KRISHNA RAO (India) pointed out that the joint amendment represented a traditional practice, while the text drawn up by the International Law Commission represented the progressive development of international law, particularly in recent times. In that connexion, he drew attention to the recent practice in the United States of America and cited the United States *Regulations* (102.535 (*b*)):

" In countries where no document is issued a consular officer may enter upon his duties when notice of his recognition is either published in the official gazette or otherwise made known in accordance with the custom of the country." [3]

41. He also cited the case of *Moracchini* v. *Moracchini* in which the New York Supreme Court (New York County) had stated that recognition of a consul by the executive branch would be sufficient even in the absence of the exequatur.[4] That decision reflected the tendency to relax the requirement of consular commissions and exequaturs.

42. The United Kingdom also seemed to be relaxing that requirement. Under the provisions of article 4 (3) of the Consular Convention between the United Kingdom and France signed at Paris on 31 December 1951 [5] a consul appointed as head of a post was, pending receipt of an exequatur, provisionally entitled to exercise his functions and to enjoy the benefits accorded by the Convention unless the receiving State objected. Moreover, by virtue of the provisions of article 4 (4) of the same consular convention, a subordinate consul or consular agent was even allowed to perform his functions and enjoy the benefits in question " without prior notification " to the receiving State, unless the latter objected.

43. In the light of that trend, his delegation fully agreed with the International Law Commission's conclusion that article 8 should refer only to heads of consular posts and that the grant of the exequatur to the head of post covered *ipso jure* the members of the consular staff working under his orders and responsibility.

44. Mr. CAMERON (United States of America), speaking as one of the sponsors of the joint amendment, said that it was extremely important to a great many countries, including his own. Every delegation should make an effort to adopt amendments required by other delegations, even if those amendments were not necessary in order to conform to their own domestic practice.

45. Notwithstanding the passage in the United States regulations quoted by the previous speaker, it was the practice of his country to require separate recognition of every consular officer by the receiving State whenever possible. It was also the United States practice to grant separate recognition to all consular officers.

46. His delegation was not impressed by the argument sometimes advanced that a text should be accepted because it was the result of protracted work by the International Law Commission. He had the greatest respect for the members of the Commission, but he could not help noticing that some of the representatives who used that argument did not refrain from proposing amendments to the Commission's draft whenever they thought fit. He urged all delegations to consider each amendment on its own merits.

47. Nor could he see any force in the argument that, under the terms of the joint amendment, cumbersome

[3] Quoted by Luke T. Lee in his book *Consular Law and Practice*, London, Stevens & Sons Ltd., 1961, p. 29.

[4] *Ibid.*, p. 30.

[5] United Nations, *Treaty Series*, vol. 330, p. 152.

formalities would be imposed upon consular officials. According to the provisions of article 11, paragraph 1, any authorization to exercise consular functions, whatever its form, constituted an exequatur. In some countries, such authorization was given merely by issuing an identity card. Hence the joint amendment would not make it necessary to issue formal documents to all consular officials.

The joint amendment (A/CONF.25/C.1/L.74) was rejected by 38 votes to 25, with 9 abstentions.

Article 8 was adopted by 54 votes to 5, with 10 abstentions.

48. Mr. BREWER (Liberia) said that he had voted in favour of the joint amendment because it was consistent with the practice followed by his country. All the consular officials of Liberia held consular commissions.

Article 9 (Classes of heads of consular posts)

49. The CHAIRMAN drew attention to the amendment to article 9, paragraph 1, submitted by Switzerland (A/CONF.25/C.1/L.93) and to the South African amendment to paragraph 2 of that article (A/CONF.25/C.1/L.81).

50. Mr. REBSAMEN (Switzerland), introducing his delegation's amendment, said that the question of classes of consular representation, and particularly of heads of post, was of great importance to Switzerland. Under article 1, paragraph 1 (*a*), and article 9 of the draft, the four classes proposed were consulates-general, consulates, vice-consulates or consular agencies headed respectively by consuls-general, consuls, vice-consuls and consular agents. The Swiss delegation did not consider that arrangement satisfactory.

51. In the first place, it hardly seemed necessary to provide for four classes of consular representation. According to the importance which the sending State attributed to a consular post, it could confine itself to a choice between a consulate-general, a consulate and a vice-consulate. There was little reason to regard a consular agency as a consular post properly so-called, since it was difficult to distinguish it from a vice-consulate. If consular agencies were omitted from the list of regular consular posts, the structure of the convention would be simplified and the institution of the consular agency would not be given a status which it had never acquired in a number of States.

52. Secondly, in order to perform all the tasks which a government entrusted to its consular service, heads of consular posts and heads of diplomatic missions exercising consular functions could have recourse not only to their colleagues of the consular service, but also to persons who were in a position to assist them without being state officials. Those persons might not reside at the place where their superintending consulate was situated, might have no specific consular district and might have no consular commission or exequatur, but only a simple admission from the competent authority of the receiving State. Moreover, such persons usually carried out only a limited range of duties compared with those of the consul. Generally speaking, they acted on behalf of a consular official and represented him before the local authorities in certain circumstances. It was understood that the type of function they exercised was determined by agreement with the receiving State. That class of persons, who fulfilled certain official functions only on behalf of and at the instructions of a head of consular post, was the only one which Switzerland recognized under the name of consular agents. Some of them exercised their activities only in a specific consular district, others were not entitled to carry out all the consular functions listed in article 5, while yet others had certain specific tasks to perform. The institution was mentioned in article 4, paragraph 4, which stated specifically that consular agencies could be opened by consulates-general or consulates. It therefore seemed obvious that such a consular agent could not *stricto sensu* act as head of a consular post and that he had a special legal status.

53. Consular agents did not necessarily have the nationality of the State on behalf of which they were acting and were never career officials; they might therefore be assimilated to honorary consuls, although they would not necessarily enjoy the privileges and immunities provided for that class of heads of post. Generally speaking, they might be assimilated to honorary consuls in respect of the use of national emblems and of the inviolability of archives and documents relating to consular matters.

54. Switzerland had found the institution of consular agencies extremely useful in its relations with about thirty States. It had been able to send some seventy-five unofficial repersentatives to places where it would have been difficult to send consuls, and those consular agents had helped to establish and maintain friendly relations. The institution, as defined by Swiss law, might be used by other States which as yet had few consular officials; it had advantages not only for the sending State, but also for the receiving State.

55. His delegation would be interested to learn under what conditions other States had set up consular agencies, with a view to deciding how the institution should be developed. Meanwhile, it suggested that a new article be inserted between articles 67 and 68, providing that every State was free to decide whether it would establish or accept consular agencies, and that the conditions in which a consular agency could exercise its functions and the privileges and immunities to be enjoyed by consular agents should be determined by agreement between the sending State and the receiving State.[6] Article 1 (Definitions) should be amended accordingly.

56. The Swiss amendment was in no way intended to suppress consular agencies or consular agents. On the contrary, its aim was to clear the way for a specific regulation of the question of consular agencies, flexible enough to be acceptable to most countries. The Commission's text closed the door to any discussion of the institution, and its adoption would compel certain countries, including his own, to confer a different status on consular agencies, thus depriving those countries of

[6] A proposal to this effect (A/CONF.25/C.1/L.102/Rev.1) was subsequently submitted by Switzerland, and was adopted by the Committee at its twenty-eighth meeting.

an extremely useful means of conducting consular relations. On the other hand, if the Swiss amendment were accepted, the Committee would be free to give a wider definition of consular agencies and to adopt a general article on that institution, to the benefit of a number of countries. In any case, adoption of his delegation's amendment would in no way prejudge the final solution of the problem.

57. Mr. ENDEMANN (South Africa), introducing his delegation's amendment (L.81), observed that the Commission's text of article 9, paragraph 2, implied that all the States signatories to the convention had to fix the designation of consular officials. His delegation had submitted its amendment in order to clarify, in the text of the article itself, the point implied in paragraph 7 of the commentary — namely, that it was for the sending State and the receiving State to settle the matter between them. Since the question was one of wording, the Committee might agree to refer it to the drafting committee.

58. Mr. TSYBA (Ukrainian Soviet Socialist Republic) observed that the fact that consular agents could not be heads of post under Swiss law did not mean that they could not have that status under the law of other countries. In accordance with article 2, paragraph 1, there was nothing to prevent Switzerland from making any provisions it wished in bilateral conventions, and no State was obliged to maintain all four classes of heads of consular posts. His delegation could not support the Swiss amendment.

59. Mr. MAMELI (Italy) said he could not vote for the Swiss amendment, because Italy used the services of a number of consular agents and found them very valuable. For many States, the question of establishing consular agencies was an economic matter, and their whole system would be upset by the adoption of the Swiss amendment.

60. Mr. de MENTHON (France) said that, under the consular conventions concluded by France and in its legislation on the subject, consular agents were appointed by consuls-general and consuls, and were issued with letters patent. A consular agent had no district and was under the jurisdiction of the consul who had appointed him. He was usually a national of the receiving State and exercised a gainful private occupation. He therefore agreed with the Swiss representative that consular agents might be assimilated to honorary consuls in some respects. He would support the Swiss amendment and had no objection to the South African amendment.

61. Mr. von HAEFTEN (Federal Republic of Germany) said he could vote for the Swiss amendment. He could also support the South African amendment, but he submitted that a question of substance was involved in that proposal. The list of designations of consular officials was extremely long, and it was important for the States concerned to reach agreement on it.

62. Mr. SILVEIRA-BARRIOS (Venezuela) said he would vote for the Swiss amendment, because his country had appointed no consular agents since 1948. Of course, adoption of that amendment would not prevent countries which used consular agencies from maintaining the institution.

63. Mr. BARTOŠ (Yugoslavia) agreed with the representative of the Federal Republic of Germany that the South African amendment was substantive rather than formal; the Yugoslav delegation would vote in favour of it because it clarified paragraph 2.

64. He could not vote for the Swiss amendment, however. His country used the institution of consular agencies for consular representation proper. It established consular agencies in certain countries of immigration where Yugoslav nationals resided. The agents concerned were consular officials with a definite status and were acknowledged to be heads of post. Although they were not issued with an exequatur, they were admitted to their functions by the competent authorities of the receiving State. Under Yugoslav law and under the law of some other countries, consular agents were career officials, and could not always be assimilated to honorary consuls. Even if they could be thus assimilated, the draft contained no article on honorary heads of post; the general articles on consuls also applied to all categories of honorary consuls, apart from the exceptions expressly stated in the International Law Commission's draft — for instance, in article 57. His delegation, unlike the Swiss delegation, believed that the status of consular agents should be determined for every agent and for every State, even if no State was obliged to send or accept consular agents.

65. He saw no foundation for the argument that consular agents could not be heads of post because they were appointed by a consul-general or a consul. A vice-consul quite often not only served under but was appointed by a consul-general, and could be regarded as a head of post. The position was therefore the same for a consular agent too.

66. Finally, if the status of consular agents were to be settled by bilateral agreement only, and not by a multilateral convention, the position of those agents vis-à-vis a third State would be extremely precarious. Adoption of the Commission's text would eliminate that difficulty.

67. Mr. de ERICE y O'SHEA (Spain) supported both amendments.

68. Mr. HERNDL (Austria) said his delegation had been inclined to support the Commission's text, despite its doubts concerning the admissibility of consular agents acting as heads of post. Indeed, it had submitted an amendment to article 11 (L.27) providing for the replacement of the formal exequatur by an informal admission by the receiving State in the case of consular agents. Nevertheless, he had been convinced by the Swiss representative's arguments and would support the Swiss amendment, in the belief that it would not mean that States could not agree on a bilateral basis to set up consular agencies. He agreed with the views expressed by the representative of the Federal Republic of Germany and would support the South African amendment.

69. Mr. RUDA (Argentina) supported the South African amendment, which clarified the Commission's

text. He would also vote for the Swiss amendment and agreed with the Swiss suggestion that a special article on consular agents should be inserted.

70. Mr. WU (China) said he would vote for the Swiss amendment, because in his country a vice-consul was the lowest official in the consular hierarchy who could be appointed as head of post. He would also support the South African amendment.

71. Mr. MARTINS (Portugal) supported the Swiss amendment. In practice, the range of functions exercised by consular agents was so different from those performed by the other three classes listed that it could not be claimed that such agents could act as heads of post.

72. Mr. DEGEFU (Ethiopia) fully supported the Swiss amendment, because his country's consular regulations admitted only the first three classes of the Commission's enumeration of heads of consular posts. He did not object to the idea of inserting provisions on the institution of consular agents somewhere in the convention, provided that the consent of the receiving State was required for their admission.

73. Mr. DADZIE (Ghana) supported the Swiss amendment. There could be no agent without a principal and, since in article 9 the principal was the head of post, an agent could not be a head of post in his own right. The amendment to paragraph 2 removed an ambiguity from the Commission's text, and should be referred to the drafting committee; he could not agree with the representatives of the Federal Republic of Germany and Yugoslavia that any point of substance was involved.

74. Mr. TSHIMBALANGA (Congo, Leopoldville) said he would vote for the Commission's text. In newly independent countries, a consular agent was often a consular attaché or a probationer consul, serving temporarily in a consulate-general or a consulate pending his appointment as vice-consul. Such a consular agent might become a head of post before he became a vice-consul.

75. Mr. N'DIAYE (Mali) said his delegation would also vote for the Commission's text. The official at the head of a consular agency might carry out all consular functions on his own responsibility, and all the provisions applicable to a head of consular post should also apply to him. Moreover, it was stated in paragraph 2 of the commentary that the enumeration of four classes in no way meant that States accepting it were bound in practice to have all four classes. Under the Swiss amendment States would not be obliged to admit consular agents as heads of posts, but certain new States might find it necessary to appoint consular agents in that capacity. He would therefore vote against that amendment.

76. Mr. WESTRUP (Sweden) said he would vote for the Swiss and South African amendments.

77. Mr. EL KOHEN (Morocco) said he would vote for the Swiss amendment; it was not desirable to allow consular agents to be appointed heads of post, since they were usually not career officials, but exercised both public and private functions.

78. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that, although his country did not appoint consular agents, a multilateral convention should include that class of official, because some countries appointed them as heads of post. He would vote in favour of the Commission's text; the South African amendment to paragraph 2 should be referred to the drafting committee.

79. Mr. HEPPEL (United Kingdom) agreed that the Commission's text should be retained. Although his country seldom appointed consular agents, it did employ some, and it was laid down in its consular instructions that the four classes enumerated in article 9 existed and that the officials concerned were in charge of the posts. He also agreed that the South African amendment should be referred to the drafting committee.

80. Mr. DADZIE (Ghana) asked the Swiss representative to explain whether the object of his amendment was that no consular agents should be appointed, or merely that a consular agent could not be a head of post.

81. Mr. REBSAMEN (Switzerland) said that his delegation's amendment was in no way intended to eliminate the institution of consular agents who were heads of posts; its sole purpose was to make it clear that consular agents might not also be heads of posts. The amendment would enable the question of the status of consular agents to be settled to the satisfaction of all countries.

The Swiss amendment (A/CONF.25/C.1/L.93) was rejected by 29 votes to 26 with 10 abstentions.

82. The CHAIRMAN said that the South African amendment (L.81) would be referred to the drafting committee.

Subject to re-wording by the drafting committee in the light of the South African amendment (A/CONF.25/C.1/L.81), article 9 was adopted by 56 votes to 1, with 8 abstentions.

The meeting rose at 1.20 p.m.

FIFTEENTH MEETING

Thursday, 14 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 10 (The consular commission)

1. The CHAIRMAN invited debate on article 10 of the International Law Commission's draft and on the relevant amendments.[1]

[1] The following amendments had been submitted: Brazil, A/CONF.25/C.1/L.64; Brazil, Canada, Ceylon, United Kingdom, United States of America, A/CONF.25/C.1/L.75; Italy, A/CONF.25/C.1/L.83, Venezuela, A/CONF.25/C.1/L.87.

2. Mr. SILVEIRA-BARRIOS (Venezuela) introduced his delegation's amendments (L.87) to article 10. The first of the amendments would delete the words " as a general rule " in paragraph 1. That qualification was inadvisable, for the consular commission or similar instrument should in all cases show the full name of the head of post, his category and class, the consular district, and the seat of the consulate. That rule should admit of no exception. The second of the Venezuelan amendments would delete the words " or other appropriate channel " in paragraph 2. The practice was that the consular commission or similar instrument was communicated through the diplomatic channel to the government of the receiving State, and there was no reason to abandon that practice. Thirdly, his delegation proposed that at the end of paragraph 3 a sentence should be added to the effect that the notice mentioned in that paragraph should contain the same particulars as the commission.

3. Mr. MIRANDA e SILVA (Brazil) said that his delegation's amendment (L.64) was identical with the first of the Venezuelan amendments. He agreed with the representative of Venezuela that the particulars specified in paragraph 1 should in all cases be contained in the consular commission or similar instrument, and that the rule should be adhered to. His delegation could not, however, accept the second of the Venezuelan amendments, because the sending State should be free to communicate the consular commission to the receiving State by channels other than the diplomatic channel. If the notice referred to in paragraph 3 was treated on the same footing as the consular commission, then the third of the Venezuelan amendments was a consequential change and as such acceptable to the Brazilian delegation.

4. Mr. MAMELI (Italy) introduced his delegation's amendments (L.83). The first would delete paragraph 3, which might be considered as disparaging to the head of the consular post. Next, his delegation proposed to add a paragraph to article 10 that was in keeping with the practice followed in many countries, including Italy, of issuing the commission not only to the head of the consular post, but also to all consular officials. The amendment was in keeping with the provisions of paragraph 2 of article 19 (Appointment of the consular staff).

5. The Italian delegation accepted the first and second Venezuelan amendments (L.87), but not the third, which it considered unnecessary. His delegation would support the Brazilian amendment (L.64).

6. Mr. HEPPEL (United Kingdom) said that the sponsors of the joint amendment (L.75) withdrew the amendment relating to paragraph 1. The amendment to paragraph 2 related purely to form, and could be referred to the drafting committee. The United Kingdom delegation could accept the first of the Italian amendments (L.83), and also the first of the Venezuelan amendments (L.87). It was unable to accept the second Venezuelan amendment, for if the sending State did not entertain diplomatic relations with the receiving State, it would have to communicate the consular commission by some means other than the diplomatic channel.

7. Mr. von HAEFTEN (Federal Republic of Germany) said he accepted the Brazilian and Venezuelan amendment deleting the words " as a general rule " in their present context in paragraph 1, but suggested that they should be inserted further on, so that they would apply solely to the consular district. The end of the sentence would then read: ". . . showing the full name of the head of post, his category and class, the seat of the consulate and, as a general rule, the consular district."

8. The second Venezuelan amendment was acceptable to his delegation, for the diplomatic channel was the only one through which the sending State could communicate the consular commission or similar instrument to the receving State. The third of the Venezuelan amendments was likewise acceptable. His delegation could not agree to the deletion of paragraph 3 as proposed by the Italian delegation; on the other hand it approved the additional paragraph proposed in the second Italian amendment.

9. Mr. SHU (China) supported the Brazilian amendment (L.64), which was identical with the first of the Venezuelan amendments (L.87); he also supported the third of the Venezuelan amendments. The notice in question should logically contain the same particulars as the consular commission. On the other hand, his delegation could not accept the second of the Venezuelan amendments. Sometimes the sending State and the receiving State entertained consular relations only. Accordingly, it should be open to the sending State to communicate the consular commission to the receiving State by some means other than the diplomatic channel. Nor could his delegation vote for the first of the Italian amendments (L.83), for paragraph 3 of article 10 reflected the practice followed by a number of States. That paragraph should therefore be retained, with the additional sentence proposed by Venezuela in its third amendment. The second of the joint amendments (L.75) should be referred to the drafting committee.

10. Mr. PALIERAKIS (Greece) supported the Brazilian amendment and the first of the Venezuelan amendments (L.87) with the oral sub-amendment by the Federal Republic of Germany. His delegation could not, however, accept the Venezuelan proposal for omitting in paragraph 2 the words " or other appropriate channel ", for the reasons explained by the representatives of Brazil, the United Kingdom and China. The third of the Venezuelan amendments was acceptable, as was the second Italian amendment (L.83).

11. Mr. TORROBA (Spain) agreed that the second part of the joint amendment (L.75) should be referred to the drafting committee. His delegation accepted the first of the Venezuelan amendments (L.87), because it considered that the particulars specified in paragraph 1 of article 10 should always be contained in the consular commission. The second of the Venezuelan amendments was not acceptable. He approved the addition to paragraph 3 of the sentence proposed in the third Venezuelan amendment. His delegation would accept the additional paragraph proposed by Italy (L.83), but opposed the deletion of paragraph 3.

12. Mr, WARNCOK (Ireland), referring to the Venezuelan amendments, said it was essential that the consular commission should contain all the particulars specified in paragraph 1. He was therefore not opposed to the first of the amendments proposed by Venezuela. He could not accept the second amendment for the reasons given by previous speakers. He failed to see the advantage of the third of Venezuela's amendments, but would oppose the proposal.

13. Mr. DONOWAKI (Japan) said he could not support the proposals to delete the words " as a general rule " in paragraph 1. In some countries, including his own, consular districts were subject to frequent change and the sending State could not be expected to specify the consular district in the consular commission in advance. His delegation opposed the deletion of paragraph 3 as proposed by Italy, but approved the additional paragraph proposed in the second of the Italian delegation's amendments.

14. Mr. TÜREL (Turkey) supported the Brazilian amendment and the first of the Venezuelan amendments. With regard to the Venezuelan amendment, he considered that the words " or other appropriate channel " should stand, for the reasons already given by several delegations. He approved the Italian proposal for deleting paragraph 3, but, if that proposal were not adopted, he would vote for the additional sentence proposed in the third of the Venezuelan amendments.

15. Mr. DJOKOTO (Ghana) said that he would vote for the part of the joint amendment relating to paragraph 2; but he did not see the point of the Venezuelan proposal for deleting from that paragraph the words " or other appropriate channel ", and he would vote against that amendment.

16. Mr. ABDELMAGID (United Arab Republic) said that he did not see the point of deleting the words " as a general rule " from paragraph 1, as proposed by Brazil and Venezuela. Article 10 did not state a mandatory rule; it was declaratory, and the words in question should therefore be retained. For the same reason, there was no need to delete the words " or other appropriate channel " in paragraph 2. On the other hand, he accepted the third of the Venezuelan amendments as well as the joint amendment to paragraph 2. He could accept the second Italian amendment, but he was opposed to the deletion of paragraph 3.

17. Mr. BINDSCHEDLER (Switzerland) said he was opposed to the deletion of paragraph 3 proposed by Italy as it would restrict consular functions. On the other hand, he approved the amendments proposed by Venezuela, which laid down rules of international law.

18. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) expressed support for the second of the Italian amendments as reflecting a practice which was not mentioned in article 10. The new paragraph proposed by Italy was flexible and did not lay down any absolute rule. However, he wished to propose that the Italian amendment should read: " At the request of the receiving State or if it is the practice of the sending State . . ." He was unable to support the first of the Italian amendments and would vote for the retention of paragraph 3. Similarly, he opposed the deletion of the words " as a general rule " in paragraph 1 and the deletion of the words " or other appropriate channel " in paragraph 2. But he would vote for the additional sentence proposed by Venezuela in paragraph 3 of the article, and for the joint amendment to paragraph 2.

19. Mr. N'DIAYE (Mali) said that he would vote for the deletion of the words " as a general rule " in paragraph 1 and for the additional sentence proposed by Venezuela in paragraph 3. But he opposed the deletion of the words " or other appropriate channel " in paragraph 2, for the reasons given by a number of delegations, and he could not support the new paragraph which Italy proposed to add to article 10.

20. Mr. GANA (Tunisia) said that the words " or other appropriate channel " should remain in paragraph 2, for they would enable the sending State — if diplomatic relations were severed but consular relations maintained between the two States — to transmit the consular commission to the government of the receiving State.

The first Venezuelan amendment (A/CONF.25/C.1/L.87) and the Brazilian amendment (A/CONF.25/C.1/L.64) were rejected by 35 votes to 22, with 5 abstentions.[2]

The oral amendment of the Federal Republic of Germany was rejected by 25 votes to 21, with 4 abstentions.

The second Venezuelan amendment (A/CONF.25/C.1/L.87) was rejected by 49 votes to 8, with 4 abstentions.

The first Italian amendment (A/CONF.25/C.1/L.83) was rejected by 49 votes to 5, with 7 abstentions.

The third Venezuelan amendment (A/CONF.25/C.1/L.87) was adopted by 27 votes to 19, with 14 abstentions.

21. The CHAIRMAN put to the vote the sub-amendment submitted orally by the Republic of Viet-Nam to the second Italian amendment.

The sub-amendment was rejected by 20 votes to 3, with 38 abstentions.

The second Italian amendment (A/CONF.25/C.1/L.83) was rejected by 26 votes to 21, with 15 abstentions.

Article 10, as amended, was adopted unanimously.

Article 11 (The exequatur)

22. The CHAIRMAN drew attention to the amendments relating to article 11.[3]

23. Mr. DONAWAKI (Japan) explained that his delegation's text (L.56) for paragraph 1 of article 11 amalgamated and supplemented the two paragraphs in the International Law Commission's draft. The rela-

[2] The Venezuelan and Brazilian amendments were both to the same effect.

[3] The following amendments had been submitted: Austria, A/CONF.25/C.1/L.27; Japan, A/CONF.25/C.1/L.56; Brazil, Canada, Ceylon, United Kingdom, United States of America, A/CONF.25/C.1/L.76; Argentina, A/CONF.25/C.1/L.91, India, A/CONF.25/C.1/L.101.

tionship between the consular commission and the exequatur was not mentioned in the International Law Commission's text, but the practice was to grant the exequatur as soon as possible after the presentation of the consular commission. The Japanese text on that point was based on a large number of bilateral consular conventions.

24. The second part of the amendment, relating to the refusal to grant an exequatur, was connected with article 23, paragraph 3. The receiving State could refuse to accept a consular official before his arrival; but once he had been allowed to arrive and to present his consular commission he should not be refused an exequatur without good reason. That was quite different from a refusal of agrément as envisaged in article 4, paragraph 2, of the Vienna Convention on Diplomatic Relations. The receiving State had the right to refuse the exequatur but it should have good reasons for doing so, and those reasons should be communicated to the sending State.

25. Mr. KRISHNA RAO (India) said that the amendment (L.101) submitted by his delegation was identical with the Argentine amendment (L.91), and hence the two could be treated as a single amendment. In 1927, the League of Nations Committee of Experts for the Progressive Codification of International Law had admitted that a State could refuse to receive a consul without having to communicate to the sending State the reasons for its refusal. The existing draft said nothing on that point; but in his commentary on a previous draft, the special rapporteur had also indicated that the receiving State was not obliged to give the reasons for its refusal.[4] Some older authorities maintained the contrary. But general practice showed that conventions specifying that the reasons for refusal should be given were exceptional. That being so, the rule given in the new paragraph proposed by his delegation reflected the existing international law. The amendment, furthermore, was not inconsistent with paragraphs 8 and 9 of the International Law Commission's commentary on article 11. The purpose of the amendment was to avoid any cause for dispute or friction between the States concerned. The text for paragraph 2 proposed by Japan seemed to conflict with international practice and with the International Law Commission's commentary.

26. Mr. RUDA (Argentina) said that he fully endorsed the Indian representative's statements.

27. Mr. WOLTE (Austria), introducing his delegation's amendment (L.27), said that the expression " consular agents " had a number of meanings. Usually, consular agents were not heads of post, but were under the authority of a consul or of a diplomatic mission. The consular commission of a consular agent was not necessarily signed by the Head of State, as was that of a head of post. Accordingly, a more informal mode of admission than the formal exequatur should be provided in the case of consular agents.

[4] See *Yearbook of the International Law Commission, 1957*, vol. II (United Nations publication, Sales No. 57.V.5, vol. II), p. 89.

28. Mr. TORROBA (Spain), while approving the amendment submitted by India and Argentina, thought that the proposed paragraph should not be inserted at the end of article 11, but after paragraph 3 of article 23, which dealt with the withdrawal of the exequatur and with persons deemed unacceptable.

29. Mr. BARTOŠ (Yugoslavia) said that the amendment proposed by India and Argentina was in conformity with the trend of general practice, but in the International Law Commission three different opinions had been voiced. Some members had taken the view that the receiving State should give the reasons for its refusal. Others had thought that the sending State could request the receiving State for the reasons for its refusal, but the latter was not obliged to furnish them. The majority had held that it was unneccessary to mention the matter and that, furthermore, it would be wrong to give more safeguards to consuls than were given to heads of diplomatic missions under the Vienna Convention of 1961.

30. The Yugoslav delegation was prepared to support the Indian and Argentine proposals. It was also inclined to support the Austrian amendment (L.27); hence it could not accept the Japanese proposal (L.56).

31. Mr. ABDELMAGID (United Arab Republic) said he would gladly support the text of article 11 as amended by India and Argentina. The Japanese amendment (L.56) seemed somewhat illogical. The Austrian amendment (L.27) would simplify the formalities of admission of consular agents, and was consistent with article 9 (Classes of heads of consular post).

32. Mr. EL KOHEN (Morocco) said he was unable to support the Japanese amendment (L.56), which would introduce an element of rigidity into the text of article 11. Moreover, under the paragraph 2 proposed by Japan the receiving States reason for refusing an exequatur should be communicated to the sending State. It was, of course, undesirable that the receiving State should refuse an exequatur; but if it were obliged to give reasons for its refusal, that might create an additional cause of friction between the two States. The formula adopted by the International Law Commission seemed therefore the wisest.

33. Mr. BINDSCHEDLER (Switzerland) said that the Japanese amendment (L.56) and the joint amendment (L.76) differed materially from the International Law Commission's text in that, in addition to the exequatur, they mentioned other forms of authorization. It should be remembered that in article 11, the word exequatur was used in a generic sense, covering all forms of authorization. The amendments were therefore superfluous.

34. On the other hand, the amendment proposed by both India and Argentina seemed excellent and completely consistent with international practice and with the interests of States.

35. Mr. PALIERAKIS (Greece) expressed his support for the Austrian amendment (L.57) and for the amendment proposed by India and Argentina. He also agreed with the Spanish representative's remark concerning the

context in which the proposed new paragraph should be inserted, but thought that that question should be referred to the drafting committee.

36. Mr. HEPPEL (United Kingdom) said that the object of the amendment submitted jointly by Brazil, Canada, Ceylon, the United States and the United Kingdom (L.76) — which had been withdrawn by its sponsors — had been the same as that of the Japanese amendment (L.56). In his opinion, the words "exequatur or other authorization" should appear in the body of the article. The word "exequatur" should not be allowed to lose its precise sense: the exequatur was a formal instrument by which the receiving State granted definitive admission to a head of post and accorded him the right to exercise his functions. The United Kingdom delegation would support paragraph 1 of the Japanese amendment (L.56), which it thought constructive. It was right to stress the connexion between the presentation of the consular commission and the delivery of the exequatur. But it could not accept paragraph 2 as proposed by Japan and preferred the Indian and Argentine proposal, according to which the receiving State might, but was not bound to, communicate to the sending State the reasons for its refusal. Perhaps the two paragraphs of the Japanese delegation's amendment, which seemed somewhat contradictory, could be harmonized. In any case, he proposed that the last sentence of the Japanese amendment should be put to the vote separately. He found it hard to see the point of the Austrian amendment (L.57).

37. Mr. SHU (China) said that the Conference was expected to codify the rules of positive law concerning consular relations. Practice regarding the question whether reasons should be given for the refusal of an exequatur was varied and inconsistent. Hence, the future convention should preferably not contain any express provision on that point, either one way or the other. He approved article 11 as drafted by the International Law Commission.

38. Mr. TSYBA (Ukrainian Soviet Socialist Republic) supported the Argentine and Indian proposal.

39. Mr. DJOKOTO (Ghana) supported the Indian amendment, for it might be embarrassing for a State to have to communicate its reasons for refusing an exequatur. In such cases, silence was golden.

40. Mr. N'DIAYE (Mali) said he could not approve paragraph 1 as proposed by Japan, and still less paragraph 2 because in practical operation it would embarrass the receiving State and could give rise to disputes with the sending State. He much preferred the International Law Commission' s ext, but he would vote in favour of the Argentine andtIndian proposal.

41. Mr. SILVEIRA-BARRIOS (Yugoslavia) approved the Argentine and Indian proposal, which reflected generally accepted principles of international law. On the other hand, he thought the Austrian amendment unnecessary.

42. Mr. von HAEFTEN (Federal Republic of Germany) supported the Argentine and Indian proposal, with a preference for the Indian amendment which explicitly provided for a form of authorization other than the exequatur.

43. Mr. GANA (Tunisia) thought that any provision referring to the refusal of the exequatur should appear not in article 11, but in article 23, which dealt with the withdrawal of the exequatur. In any case, he could not support the Argentine and Indian amendment and he thought that the International Law Commission's text was the best.

44. Mr. PETRŽELKA (Czechoslovakia) supported the Argentine and Indian proposal, but pointed out that comparison with paragraph 1 of the International Law Commission's commentary on article 11 made it clear that the Commission intended the exequatur to constitute definitive admission, whereas other forms of authorization were not necessarily definitive. His delegation would be prepared to support the Austrian amendment on the understanding that the expression "consular agents" included heads of consular posts; in the context, the expression "consular agents" seemed inconsistent with the intention of draft article 11 under which the exequatur would be granted only to heads of post, the consulate being regarded as an indivisible whole.

45. Mr. USTOR (Hungary) said that his delegation's position with regard to the Austrian amendment was the same as that of the Czechoslovak representative.

46. Mr. WESTRUP (Sweden) said that his delegation could scarcely support an amendment which expressly relieved the receiving State of the duty to furnish its reasons for refusing an exequatur. The absence of such an obligation was based on the principle of the sovereignty of States and it was unnecessary to state it expressly in the convention — more particularly since such a provision might possibly be used as an argument in support of the contention that in other cases such an obligation existed. It was better not to include a provision on the point one way or the other.

47. Mr. TSHIMBALANGA (Congo, Leopoldville) said that, while the receiving State was not obliged to communicate to the sending State its reasons for refusing the exequatur, it was always free to do so. The duty to give reasons for a refusal might jeopardize friendly relations between the two States concerned. His delegation would therefore vote in favour of the Argentine amendment.

48. Mr. de ERICE y O'SHEA (Spain) said that his delegation would vote in favour of the Austrian amendment.

49. Mr. de MENTHON (France) said he had no objection to the Argentine and Indian proposal. He was doubtful about the Austrian amendment since, in paragraph 3 of its commentary on article 11, the International Law Commission had catalogued the different forms of exequatur, some of which — such as an endorsement on the consular commission and, more particularly, notification by diplomatic channels — were hardly of a formal nature.

50. Mr. CHIN (Republic of Korea) approved the principle underlying the Argentine and Indian proposal

but doubted the advisability of inserting the clause in question. Though he had no serious objections to the Austrian amendment, he preferred the text as adopted by the International Law Commission.

51. Mr. DONOWAKI (Japan) announced the withdrawal of the second sentence of paragraph 2 of his delegation's amendment (L.56). He suggested that the Indian and Argentine proposals should be regarded as constituting a joint amendment which, if adopted, should be referred to the drafting committee; the latter would then draw up the definitive text and decide whether the new paragraph should be added to article 11 or to article 23.

52. The CHAIRMAN agreed with the Japanese representative's suggestion and put to the vote simultaneously the Argentine and Indian amendments.

The Argentine and Indian amendments (A/CONF.25/C.1/L.91 and L.101) were adopted by 49 votes to 3, with 9 abstentions.

The Austrian amendment (A/CONF.25/C.1/L.27) was rejected by 21 votes to 13, with 26 abstentions.

The Japanese amendment (A/CONF.25/C.1/L.56), as modified, was rejected by 37 votes to 8, with 17 abstentions.

Article 11, as amended, was adopted by 60 votes to 1, with 2 abstentions.

The meeting rose at 5.45 p.m.

SIXTEENTH MEETING

Friday, 15 March 1963, at 10.40 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 12 (Formalities of appointment and admission)

1. The CHAIRMAN drew attention to the amendments to article 12 submitted by the delegations of Brazil (A/CONF.25/C.1/L.65) and Italy (A/CONF.25/C.1/L.84).

2. Mr. MIRANDA e SILVA (Brazil) said that his delegation had submitted its amendment in the belief that the wording proposed was simpler and more practical than the original draft.

3. Mr. MAMELI (Italy), introducing his delegation's amendment, expressed the view that other consular officials besides heads of post should be subject to the formalities of appointment and admission referred to in the article, because the sovereign rights of States were involved.

4. Miss ROESAD (Indonesia) said she would vote for the Brazilian amendment.

The Brazilian amendment (A/CONF.25/C.1/L.65) was adopted by 17 votes to 15, with 23 abstentions.

5. Mr. de ERICE y O'SHEA (Spain), speaking on a point of order, observed that the Italian amendment was closely connected with the provisions of article 1 (Definitions) and would be affected by the Committee's ultimate decision on that article.

6. Mr. USTOR (Hungary), pointing out that the Italian amendment was contrary to the decision the Committee had taken on article 8, suggested that the Italian delegation might consider withdrawing it.

7. Mr. HEPPEL (United Kingdom) said that he did not consider that the Committee's decision on article 8 was in conflict with the Italian amendment. In any case, it was for the Italian delegation to decide whether it wished to maintain its proposal.

8. Mr. MAMELI (Italy) said his delegation would maintain its amendment, since the question of the sovereign rights of States was involved.

The Italian amendment (A/CONF.25/C.1/L.48) was rejected by 26 votes to 21, with 14 abstentions.

Article 12, as amended, was adopted by 56 votes to none, with 1 abstention.

Article 13 (Provisional admission)

9. The CHAIRMAN drew attention to the amendments to article 13 submitted by the delegations of Belgium (A/CONF.25/C.1/L.11), Spain (A/CONF.25/C.1/L.60), Italy (A/CONF.25/C.1/L.85), Venezuela (A/CONF.25/C.1/L.88) and Nigeria (A/CONF.25/C.1/L.103).

10. Mr. de ERICE y O'SHEA (Spain) said that the first part of his delegation's amendment was intended to make it clear that consular functions could be exercised on a provisional basis after the consular commission or similar instrument had been presented. His delegation was of the opinion that a consul could not exercise his functions before the commission had been presented.

11. Since his delegation's second amendment was practically the same as the Belgian amendment (L.11), he would withdraw it in favour of that text. The purpose of the Venezuelan amendment (L.88) was quite clear, and the Spanish delegation agreed that the period of provisional admission should not be unlimited. Consuls exercising their functions on a provisional basis could labour under two very serious disadvantages. First, if for some reason the exequatur was not subsequently delivered, all the consul's activities might be nullified, thus causing inconvenience to many people. Secondly, delivery of the exequatur might be used as a means of coercion. He would, however, suggest to the Venezuelan representative that the time-limit should be extended to a period not exceeding twelve months.

12. Mr. ANIONWU (Nigeria) said that his delegation had proposed the deletion of the article (L.103), although it had fully considered the reasons given by the Commission for its inclusion. It was certainly the universal practice to allow a consul holding a commission to enter upon his functions before the exequatur was delivered, but the effect of the article would be to

provide for two authorizations; even if a consul held a commission, he could not enter upon his functions until he had been formally authorized to do so, and then, after that authorization had been given, final admission was required in the form of an exequatur.

13. As the Spanish representative had pointed out, the sending State might unexpectedly be told, after a consul had been exercising his functions for a considerable time, that his appointment was not approved. Consequently, the article was not calculated to promote friendly relations among States. His delegation was, of course, in favour of allowing consuls to exercise their functions on a provisional basis, but did not believe that the two stages required by article 13 provided the best means of doing so.

14. Mr. MAMELI (Italy) said that the purpose of his delegation's amendment (L.85) was to stress once again the sovereign and discretionary rights of the receiving State. Nevertheless, since that notion had not been accepted by the Committee in connexion with article 12, he would withdraw the amendment, while reserving the right to introduce it at some more appropriate place in the convention.

15. Mr. VRANKEN (Belgium) said that his delegation had submitted its amendment (L.11) in order to make it clear that a consul had certain obligations as well as rights in connexion with provisional admission.

16. Mr. BARTOŠ (Yugoslavia) said he would vote for the Spanish and Belgian amendments, because they both improved the text within the framework of the system proposed by the Commission. He would vote against the Nigerian amendment, which was contrary to universal practice.

17. Some technical and political difficulties might arise in connexion with the delivery of the exequatur. Thus, for example, if the Queen of England was absent from the country, consuls entering upon their functions at that time were provisionally admitted by the Foreign Office, pending Her Majesty's signature of the exequatur. That was a technical problem, but strained relations between the sending State and the receiving State might also make it necessary for consuls to exercise their functions on a provisional basis. For example, the Yugoslav Consul-General in New York, who had served in that city for seven years, had had no proper exequatur for the first five years, though he had been admitted by the United States authorities on a provisional basis. Similarly, the Yugoslav Consul-General at Zurich had remained without an exequatur for two years. Hence he could not support the Venezuelan proposal to limit the period of provisional admission. He added that there could be no question of the invalidity of whatever acts were performed by a consul during the period of the provisional exercise of his functions; those acts were certainly not void. On the other hand, it could be argued that acts performed by the consul after the withdrawal of the exequatur or after the withdrawal of provisional admission were void.

18. Article 13 reflected a universal practice in international relations, and his delegation would therefore support the Commission's text as amended by the Spanish and Belgian delegations.

19. Mr. von HAEFTEN (Federal Republic of Germany) supported the Belgian amendment.

20. Mr. KRISHNA RAO (India) said he could not support the Nigerian amendment, since article 13 represented progressive development of international law. He would vote for the Belgian amendment, which clarified the text; but he believed that the idea of the Spanish amendment was already covered by previous articles, in particular article 10. He did not consider it advisable to prescribe a time limit for provisional admission, as proposed by the Venezuelan delegation; that point could be settled by bilateral agreement.

21. Mr. DADZIE (Ghana) agreed with the Indian representative that the point of the Spanish amendment was covered elsewhere in the draft. It was self-evident that the head of a consular post would be admitted on a provisional basis by the receiving State when the consular commission or other instrument was presented. The time-limit proposed in the Venezuelan amendment was not in the spirit of progressive development of international law. His delegation considered that the deletion of the whole article, as proposed by Nigeria, would introduce confusion. The receiving State must signify its approval of provisional admission in some specific way; the purpose of the article was to avoid unnecessary delay in cases where it took some time to obtain the exequatur.

22. His delegation would support the Belgian amendment.

23. Mr. TSHIMBALANGA (Congo, Leopoldville) considered the wording of the Belgian amendment preferable to the Commission's text because it made the provisions of the convention applicable to the head of a consular post during the period of provisional admission.

24. Mr. MUÑOZ MORATORIO (Uruguay) said his delegation would vote for the Belgian amendment, because it gave States wider freedom with regard to the procedure for provisional admission. On the other hand, he would vote against the Spanish amendment, because, if the consular commission had to be presented before the temporary admission was granted, the services rendered by the consulate might be seriously interrupted if, as sometimes happened for purely administrative reasons, the dispatch of the consular commission were delayed; that would be a very real hindrance. Nor could he support the Venezuelan proposal: the automatic withdrawal of the provisional admission of the head of the post to the exercise of his functions as a result of failure on the part of the receiving State to issue the exequatur within six months might be tantamount to non-recognition.

25. Mr. PALIERAKIS (Greece) said he would vote for the Belgian and Spanish amendments. The Spanish amendment clarified the obvious fact that a consul could not exercise his functions before presenting a commission.

26. Mr. SILVEIRA-BARRIOS (Venezuela) said that the purpose of his delegation's proposal to limit provisional admission to six months was to meet two situations which arose in Venezuela. In the first place, his country recognized consuls without actually receiving the commission, on the basis of information received through diplomatic channels that a commission would ultimately be presented. Secondly, provisional recognition was also granted when the commission was received, pending preparation of the exequatur. Experience had shown, however, that a number of diplomatic missions failed to issue consular commissions for their officials, who exercised their functions for years in an irregular manner. He could agree to extend the proposed time-limit in accordance with the Spanish representative's suggestion, but maintained that the principle of a time-limit should be introduced.

27. Mr. ANIONWU (Nigeria) reiterated his delegation's recognition of provisional admission as a current international practice. His doubts concerning the wisdom of including article 13 had been prompted by the difficulties that formulation of the principle might create. In view of the explanations given by the Yugoslav representative, however, the Nigerian delegation would withdraw its amendment.

28. Mr. DONOWAKI (Japan) said he would support the Spanish amendment because the fact that the consular commission should be presented before the exequatur was delivered should be clearly stated in the convention. He would abstain from voting on the Venezuelan amendment, however, because it was difficult to specify the period within which the exequatur should be delivered.

29. Mr. DADZIE (Ghana) observed that the situation referred to by the Venezuelan representative was quite different from that envisaged in article 13, in which the consular commission had already been presented, and the exequatur was being awaited; for in the latter case, the onus of completing the procedure was on the receiving State, whereas the Venezuelan representative had referred to the provisional establishment of a consulate on the basis of a promise by the sending State that a consular commission would be presented. It seemed reasonable to impose a time-limit for the presentation of the commission, but not for the issue of the exequatur.

30. Mr. ENDEMANN (South Africa) observed that a number of practical issues were involved. The Ghanaian representative had rightly pointed out that the situation dealt with in article 13 was one in which the sending State had already presented the consular commission. The practice of provisional recognition before presentation of the commission was fairly general; in modern times, consuls were often transferred from one post to another by air, and their ministries of foreign affairs were often obliged to send the commission after them. An impossible situation would be created if consuls thus transferred could not exercise their functions or be recognized on a provisional basis until the commission arrived. When the receiving State admitted a consul without a commission, the onus was on the sending State not to delay the commission too long. A time-limit of six months after provisional recognition for the delivery of a commission would certainly simplify that particular situation.

31. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said that, while he sympathized with the amendments by the Spanish and Venezuelan delegations, he could not support either of them, since he did not think that in the case in point the sovereignty of the receiving State was impaired. His delegation would vote for the Belgian amendment because it improved the wording of the Commission's draft.

32. Mr. BARTOŠ (Yugoslavia) said that the Ghanaian representative's remarks had led him to change his mind about the advisability of adopting the Spanish amendment. There were obvious technical and practical reasons for allowing consular officials to exercise their functions pending the arrival of the consular commission.

33. Mr. de MENTHON (France) supported the Belgian amendment. He regretted, however, that he could not support either the Spanish or the Venezuelan amendment. It was his experience that commissions were often issued with very great delay; it would be unfortunate if a consul were not to be admitted on a provisional basis to the exercise of his functions until he had presented his consular commission.

34. Mr. PALIERAKIS (Greece) supported the Spanish amendment. Until the consular commission had been presented, the receiving State was not in a position to know the full name of the head of post, his category and class, the consular district and the seat of the consulate. Those particulars were essential for provisional admission, and according to article 10, paragraph 1, they were to be given in the consular commission.

35. Mr. PRATT (Israel) supported the Belgian and Spanish amendments, which improved the draft by clarifying the effect of the provisions of article 13. With regard to the Venezuelan amendment, he thought it would not be altogether appropriate in article 13; it seemed more relevant to the provisions of article 10.

36. Mr. RABASA (Mexico) supported the Belgian amendment. It would be preferable to state that the provisions of the Convention applied to the head of the consular post admitted on a provisional basis; what was more accurate than saying that he was admitted " to the benefit of the present articles ". The words introduced by the Spanish amendment were not necessary in article 13. It was already laid down in article 10, paragraph 2, that the sending State must communicate the consular commission to the receiving State. He could not support the Venezuelan amendment either. The receiving State could suspend provisional admission at any time, for example, by refusing to grant an exequatur.

37. Mr. MARTINS (Portugal) advocated retaining article 13 as drafted by the International Law Commission, subject only to the Belgian amendment, which

improved the text. He was not in favour of imposing a time-limit to the provisional exercise of consular functions. If such a rule had existed in the past, he, for one, would never have been able to exercise his functions; he had never been in a position to present his consular commission within the proposed time-limit.

38. The CHAIRMAN put to the vote the first Spanish amendment (A/CONF.25/C.1/L.60), the second having been withdrawn.

The first Spanish amendment was rejected by 40 votes to 17, with 8 abstentions.

39. The CHAIRMAN put to the vote the Venezuelan amendment (A/CONF.25/C.1/L.88) as revised by the Spanish sub-amendment replacing the words " six months " by the words " twelve months ".

The amendment was rejected by 46 votes to 6, with 16 abstentions.

The Belgian amendment (A/CONF.25/C.1/L.11) was adopted by 61 votes to 1, with 2 abstentions.

Article 13, as amended, was adopted unanimously.

Article 14 (Obligation to notify the authorities of the consular district)

40. The CHAIRMAN invited the Committee to consider article 14 and the amendments thereto.[1]

41. Mr. ABDELMAGID (United Arab Republic) proposed, as a matter of drafting, that the words " the present articles " at the end of article 14 should replaced by the words " the present convention ".

42. The CHAIRMAN said that, if there was no objection, that proposal would be referred to the drafting committee.

It was so agreed.

43. Mr. MAMELI (Italy) withdrew his amendment (L.86), but reserved his delegation's right to reintroduce it in connexion with another article.

44. Mr. KRISHNA RAO (India) introduced his amendment (L.107), the main effect of which was to delete the provision that the receiving State must notify the competent authorities of the consular district of the admission of a head of consular post. The right of the consul to exercise his functions was not dependent on any notification to the local authorities.

45. The text, as drafted by the International Law Commission, seemed to imply that in the event of some delay in the notification in question, the consul, as soon as he obtained his exequatur, would himself advise the local authorities and exhibit the exequatur. The notification by the central authorities of the receiving State to the competent authorities of the consular district was a matter of internal administration for the receiving State, and there was no need to refer to it in a multilateral convention.

[1] The following amendments had been submitted: Italy, A/CONF.25/C.1/L.86; Hungary and the Ukrainian Soviet Socialist Republic, A/CONF.25/C.1/L.94; India, A/CONF.25/C.1/L.107; South Africa, A/CONF.25/C.1/L.122.

46. His delegation supported the amendment jointly submitted by Hungary and the Ukrainian SSR.

47. Mr. USTOR (Hungary), introducing the joint amendment (L.94), said that it had been the clear intention of the International Law Commission that the provisions of article 14 should apply both to provisional admission (article 13) and to definitive admission (article 11). He thought it desirable, however, to make that point clear to all readers of the future convention, some of whom would not be experts at interpreting international agreements.

48. Mr. ENDEMANN (South Africa) said that the main object of his delegation's amendment (L.122) was to replace the word " immediately " by the words " as soon as possible ". In many countries, the method of notifying the competent local authorities was through the official gazette, which might be published only once a week or even once a fortnight, so that in order to make the notification " immediately ", as provided in the draft article, the government of the receiving State would have to send individual letters to numerous local authorities. His delegation considered that the proposed change was reasonable.

49. Mr. WU (China) supported the Indian amendment. Notification of the local authorities was a purely domestic matter; any failure in such notification was a matter for the receiving State and not for the sending State.

50. Mr. ABDELMAGID (United Arab Republic) said that he was opposed to the Indian amendment, which would replace the requirement of immediate notification by a more general and weaker formula requiring " necessary measures " to be " taken without undue delay ". Nor could his delegation support the South African amendment, which would also weaken the text. He would be prepared to accept the joint amendment (L.94), however, which merely introduced a clarification.

51. Mr. DADZIE (Ghana) considered the Indian amendment very wise; the question of notifying the local authorities was a matter with which neither the sending State nor its consulate were concerned. The text of article 14 as it stood could have the effect of holding up the work of a consulate until the local authorities had been informed of the admission of the consul to the exercise of his functions.

52. Mr. TSYBA (Ukrainian SSR) said that the joint amendment submitted by his delegation and that of Hungary was intended to introduce into the text of article 14 a clarification given by the International Law Commission in paragraph 1 of its commentary on the article. His delegation regretted that it was unable to support the Indian amendment.

53. Mr. von HAEFTEN (Federal Republic of Germany) supported the Indian text, which he considered to be better drafted than that of the International Law Commission. However, his delegation would like to see the words " as soon as possible " (proposed by South Africa) instead of " without undue delay "; that would make the provision rather stronger, without going as far as far the original expression " immediately ".

54. Mr. BARTOŠ (Yugoslavia) opposed both the South African and the Indian amendments. It was essential to require an immediate notification by the receiving State to the competent authorities of the consular district; otherwise the local authorities might deny all knowledge of the consul having been admitted to the exercise of his functions. If he turned to the central authorities, he might then be told that they were unaware of the reasons for the ignorance of the local authorities. The provisions of article 14 did not impose any great burden on the receiving State. All that the central authorities were required to do was to send out a circular to the competent local authorities or insert a notice in the official gazette.

55. For those reasons, his delegation favoured the original text with the joint amendment (L.94), which was in the spirit of the Commission's draft.

56. Mr. KRISHNA RAO (India) said that in order to meet the objections which had been made to his proposal, he would delete the word " undue "; it would then provide that the necessary measures were to be taken " without delay ".

57. Mr. EL KOHEN (Morocco) disagreed with the Indian representative's interpretation of article 14. That article, as drafted by the International Law Commission, merely provided that it was the duty of the receiving State to notify its local authorities; there was no suggestion that the legal status of the consul was in any way dependent upon such notification. His delegation preferred the original text of the article.

58. Mr. BREWER (Liberia) supported the joint amendment. The provisions of article 14 applied both to provisional admission (article 13) and to definitive admission (article 11).

59. Mr. PRATT (Israel) supported the joint amendment which filled a gap in the text. His delegation also favoured the Indian amendment, because it was more comprehensive than the original text; the reference to " necessary measures " would include measures going beyond mere notification of the local authorities. However, in order to meet the wishes of those delegations which considered that a reference to notification was necessary, he suggested that the following words " such as notification to the competent authorities of the consular district " might be added after the words " necessary measures ":

60. Mr. KRISHNA RAO (India) accepted that suggestion.

61. Mr. BARTOŠ (Yugoslavia) did not think that the proposed addition improved the Indian amendment; it made notification merely an example of a necessary measure, whereas it was in fact the most important of the measures to be taken by the receiving State.

62. Mr. DADZIE (Ghana) agreed that the proposed addition did not improve the text of the Indian amendment.

63. Mr. KRISHNA RAO (India) suggested that, in view of the difficulties created for some delegations by his acceptance of the sub-amendment suggested by Israel, it should be voted on separately.

64. Mr. PRATT (Israel) said that he had not made a formal proposal but merely a suggestion, which he would not press.

65. The CHAIRMAN said that, in the circumstances, he would put to the vote the Indian amendment as originally submitted, except for the deletion of the word " undue ".

The Indian amendment (A/CONF.25/C.1/L.107) was rejected by 26 votes to 17, with 22 abstentions.

The joint amendment (A/CONF.25/C.1/L.94) was adopted by 44 votes to 2, with 17 abstentions.

The South African amendment (A/CONF.25/C.1/L.122) was rejected by 33 votes to 15, with 17 abstentions.

Article 14, as a whole, as amended, was adopted by 63 votes to none, with 2 abstentions.

The meeting rose at 1.5 p.m.

SEVENTEENTH MEETING

Friday, 15 March 1963, at 3.10 p.m.

Chairman: Mr. SILVEIRA-BARRIOS (Venezuela)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 15 (Temporary exercise of the functions of head of a consular post)

1. The CHAIRMAN invited the Committee to consider article 15, together with the amendment relating to it.[1]

2. Mr. USTOR (Hungary) said that the joint amendment (L.95) submitted by Hungary and the Ukrainian SSR should be considered as a drafting amendment which might be referred to the drafting committee.

3. Mr. VRANKEN (Belgium) introduced his delegation's amendment (L.12) modifying all four paragraphs of article 15. Its purpose was to provide against any difficulties the smaller countries might experience in ensuring the temporary exercise of the functions of head of a consular post. The new text of paragraph 1 would reproduce the first sentence of the International Law Commission's paragraph 1, but the deletion of the last two sentences would enable the head of post himself to choose an acting head of post.

4. The aim of the new paragraph 2 was to put the acting head of post on the same footing as the titular head of post and make his appointment conditional, if necessary, on the consent of the receiving State.

[1] The following amendments had been submitted: Belgium, A/CONF.25/C.1/L.12; Hungary and the Ukrainian Soviet Socialist Republic, A/CONF.25/C.1/L.95; Canada, A/CONF.25/C.1/L.108; Italy, A/CONF.25/C.1/L.115; South Africa, A/CONF.25/C.1/L.123.

5. The sentence which the Belgian amendment proposed to add at the end of paragraph 3 provided that an acting head of post would not necessarily be granted the same facilities, privileges and immunities as the titular head of post. Lastly, the words which it was proposed to add to paragraph 4 would make the direction of a consulate by a member of the diplomatic staff conditional on the consent of the receiving State.

6. Mr. SICOTTE (Canada) considered that the temporary head should always be chosen from among the consular officials. If the sending State had no such officials available to assume those functions, it could only designate a consular employee to take charge of the current administrative affairs of the consular post. That was the object of the Canadian amendment (L.108) to paragraph 1.

7. Mr. MAMELI (Italy) said that his delegation, in submitting its amendment (L.115), had merely sought to co-ordinate and arrange the provisions of paragraph 2.

8. Mr. ENDEMANN (South Africa) pointed out that his delegation's amendment (L.123) to paragraph 2 was merely a matter of drafting to bring the paragraph into line with paragraph 2 of article 10, which stipulated that the sending State should communicate the commission issued to the head of a consular post to the government of the receiving State through the diplomatic channel. The sending State should take the same step with regard to the notification of the appointment of the acting head of post, save in cases where it did not have a diplomatic mission in the receiving State.

9. Mr. WESTRUP (Sweden) considered the Belgian amendment a constructive contribution to the work of the Conference. The words " In the exceptional cases " in paragraph 1 had been a source of some concern to the Swedish consular authorities, which feared that strict application of the provision might make it difficult to fill vacant posts. The Italian delegation had likewise felt the need to attenuate that provision, but its amendment to paragraph 1 did not suffice. The Belgian amendment would be a great improvement for the entire arrangement of article 15. The new text proposed by Belgium for paragraph 1 would leave the sending State full latitude in the choice of an acting head of post, but would not exclude a right of supervision on the part of the receiving State, thus maintaining a fair balance between the rights of one and the responsibilities of the other.

10. Mr. SHU (China) said that he would vote for article 15 as drafted by the International Law Commission, because the clause ". . . if the head of post is unable to carry out his functions " would also cover the absence of the head of post. The Chinese delegation had made the same reservation during the discussion of article 19 of the Vienna Convention on Diplomatic Relations, which contained a similar clause.

11. Miss ROESAD (Indonesia) said that, according to paragraph 2 of article 15, it was easier to designate an acting head of post than a titular head of post. The work and the responsibilities, however, were the same in each case. Again, if the acting head of post was chosen from among the members of the diplomatic staff, it was understandable that the consent of the receiving State should not be required; but if he was chosen from among the members of the administrative and technical staff consent was necessary.

12. The deletion of the last two sentences of paragraph 1, as proposed in the Belgian amendment (L.12), would leave the method of choosing the acting head of post in some doubt. Nevertheless, her delegation was in favour of the new text suggested in that amendment so far as paragraph 1 and paragraph 2 were concerned; but there seemed no need to add the sentence proposed in the Belgian amendment to paragraph 3. If the receiving State gave its consent to the designation of the acting head of post, there seemed no reason why it should not grant him all the facilities, privileges and immunities necessary for the exercise of his functions. Her delegation would not oppose the proposed addition to paragraph 4, and would vote for the amendment as a whole. It would vote against the joint amendment (L.95), and against the Italian amendment (L.115).

13. She doubted the advisability of the Canadian amendment (L.108) but would reserve judgement until she had heard the comments of the other delegations.

14. Mr. DAS GUPTA (India) considered the Belgian amendment (L.12) to paragraph 1 a great improvement, because the two sentences it was proposed to delete might involve the sending State in serious difficulties if the acting head of post were chosen from among the members of the administrative and technical staff, who might include nationals of the receiving State.

15. In practice the name of the acting head of post was always notified in advance. There was therefore no need for the last sentence in paragraph 2. In addition, the new draft of paragraph 2 as proposed by Belgium, and more especially the last sentence, was an improvement on the International Law Commission's draft. He was, however, unable to accept the proposed addition of a new sentence at the end of paragraph 3; the receiving State could not give its consent to the designation of the acting head of post and at the same time refuse to grant him the facilities necessary for the exercise of his functions. The Indian delegation would therefore prefer the International Law Commission's draft of paragraph 3. It could not accept the Belgian amendment to paragraph 4.

16. He was unable to support the joint amendment (L.95) to paragraph 1, since the members of a consulate often included nationals of the receiving State employed on administrative and technical work.

17. Mr. ABDELMAGID (United Arab Republic) said that he supported the new draft of paragraph 1 in the Belgian amendment because the choice of the acting head of post was solely the concern of the sending State. That applied to all the other amendments in connexion with that paragraph. For paragraph 2, however, he preferred the International Law Commission's draft.

18. Contrary to what the South African representative had said, the South African amendment to paragraph 2 was not merely a matter of drafting, since it did not oblige the sending State to notify the name of the acting head of post in advance to the Ministry for Foreign Affairs.

19. In the case of paragraph 3, his delegation suggested the following text: " The competent authorities shall offer assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present convention shall apply to him on the same basis as to the head of the consular post concerned."

20. His delegation did not see any need to add the phrase to paragraph 4 proposed by Belgium. Since the person concerned would be a member of the diplomatic staff, he would naturally continue to enjoy diplomatic privileges and immunities.

21. Mr. VRANKEN (Belgium) withdrew his amendment to paragraph 3 of article 15, and agreed to the wording proposed by the United Arab Republic for that paragraph.

22. The purpose of the Belgian amendment to paragraph 4 was to avoid the granting of diplomatic privileges and immunities to members of the diplomatic staff who were sent to the provinces as acting heads of posts. They were entitled only to consular privileges and immunities.

23. Mr. KNEPPELHOUT (Netherlands) thought that the new text for paragraph 1 submitted by Belgium was clearer than the International Law Commission's draft. It had the additional advantage of eliminating the list of methods of choosing the acting head of post, and left the sending State full latitute in that respect. Consequently, it dispelled the apprehensions of the smaller countries such as the Netherlands.

24. Miss WILLIAMS (Australia) supported the Canadian amendment (L.108), the wording of which was based on paragraph 2 of article 19 of the Vienna Convention on Diplomatic Relations.

25. Mr. von HAEFTEN (Federal Republic of Germany) said that he was satisfied with paragraph 1 as drafted by the International Law Commission, but saw no objection to adopting the change proposed in the Belgian amendment. He was in favour of the Belgian amendments to paragraphs 2 and 4. He would gladly have voted for the amendment to paragraph 3, and regretted its withdrawal. The text proposed by the United Arab Republic seemed to him better than the draft, but the drafting committee might improve it still further.

26. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said that he was unable to understand the objections to the joint amendment submitted by Hungary and the Ukrainian SSR (L.95) which, to his mind, was simply a drafting amendment, at least in so far as the Russian version was concerned, and should be referred to the drafting committee.

27. Mr. HEPPEL (United Kingdom) said that his government's views had already been made known in the written comments it had submitted to the United Nations in 1962. The sending State should be allowed full latitude in the appointment of an acting head of a consular post. Although the designation of an embassy chargé des affaires was, under article 19 (2) of the Vienna Convention, conditional on the consent of the receiving State, the United Kingdom delegation did not consider that the same rule necessarily applied to the designation of an acting head of a consular post. The position of an acting head of post was quite different from that of a temporary chargé d'affaires. The consulate might be situated in a remote area, and there might even be no administrative or technical staff available. For that reason, it ought to be possible to entrust such functions, for instance, to an ordinary national of the sending State residing in the town where the consulate was situated. It would in such circumstances be right and proper for the privileges and immunities enjoyed by an acting head of post to be subject to certain restrictions.

28. His delegation would therefore in general support the Belgian amendment (L.12). It considered the amendment excellent, because it solved the matter in two ways: it left the sending State complete freedom in its choice of an acting head of post, and it did not bind the receiving State necessarily to grant the person in question the same privileges and immunities as the titular head of post had himself enjoyed.

29. Although his delegation preferred the Belgian amendment in so far as paragraphs 1 and 4 were concerned, for the reasons already explained by other delegations, more particularly the South African and Italian, the United Kingdom delegation preferred the Italian amendment (L.115) to paragraph 2, except for one technical detail: it did not seem the correct procedure to instruct a head of consular post to enter into direct relations with the Ministry of Foreign Affairs. Nevertheless, there seemed no serious objection to voting for the Belgian amendment to paragraph 2.

30. His delegation regretted the withdrawal of the Belgian amendment to paragraph 3, which was fully in line with his delegation's point of view.

31. Mr. MIRANDA e SILVA (Brazil) said that the new principle expressed in paragraph 4 of the International Law Commission's draft was very valuable. It very often happened that a member of the diplomatic staff was temporarily entrusted with consular functions in the State to which he was accredited. It would be unjust to deprive him temporarily of his diplomatic privileges and immunities. The Belgian amendment to paragraph 4 made the enjoyment of those privileges and immunities subject to the consent of the receiving State and would remove the whole point of the original text of paragraph 4.

32. The CHAIRMAN announced that the Netherlands would sponsor and resubmit the amendment to paragraph 3 which had been withdrawn by the Belgian delegation.

33. Mr. TSHIMBALANGA (Congo, Leopoldville) said that the arguments presented by the Netherlands delegation regarding small countries held good also for

certain large countries which had recently achieved their independence and lacked qualified staff. His delegation would therefore support the Belgian amendment to paragraph 1. With regard to paragraph 4, he proposed that the words " if the receiving State gives its consent " in the Belgian amendment should be replaced by the words " if the receiving State does not object ".

34. For paragraph 3, he approved of the text suggested by the United Arab Republic, which he thought was clearer than that of the International Law Commission.

35. Mr. ENDEMANN (South Africa) said that he had intended to withdraw his delegation's amendment to paragraph 2 in favour of the Belgian amendment, but that having heard the remarks of various delegations he thought it might be possible to arrive at a compromise. With regard to paragraph 1 he approved the Canadian proposal. In his opinion, it would be wise to follow the practice of the Convention on Diplomatic Relations and put the administrative staff of consulates on the same footing as the administrative staff of embassies. To favour one group at the expense of the other would be contrary to the spirit of the two conventions. He asked the Canadian representative if it would not be possible to meet the wishes of the United Kingdom delegation by deleting the words " with the consent of the receiving State ".

36. He had no special preference for his own text for paragraph 2. The Belgian amendment seemed satisfactory, but he would prefer it if the concluding sentence, " the receiving State may make the admission of the acting head of post conditional on its consent ", were deleted. He was also inclined to accept the Belgian amendment to paragraph 3, now sponsored by the Netherlands delegation, and the Belgian amendment to paragraph 4.

37. Mr. de MENTHON (France) said that he supported unreservedly the text of paragraph 1 proposed by Belgium, which was clear and flexible and took into account the misgivings expressed by the authors of the other amendments. The representatives of Sweden, the United Arab Republic and the Netherlands had already produced arguments in its favour.

38. He was more doubtful about the Belgian proposal for paragraph 2. There might be cases in which it would not be possible to notify in advance the name of the temporary head of post. He preferred the formula " as a general rule ", which appeared in the International Law Commission's text and in the Italian amendment, or some equivalent expression.

39. In the case of paragraph 3, he supported the former Belgian amendment now sponsored by the Netherlands, and the verbal amendment of the United Arab Republic.

40. The Belgian amendment to paragraph 4 seemed to imply the necessity for formal consent. Like the Congolese representative, he preferred the phrase " if the receiving State does not object ". The question could perhaps be decided by the drafting committee.

41. Mr. CAMERON (United States of America) said that his delegation favoured the Canadian amendment for the reasons given when that text had been introduced. He approved the Belgian amendments to paragraphs 2 and 4, especially the latter. He saw no objection to including in the text a clear statement that a member of the diplomatic staff entrusted with consular functions should continue to enjoy diplomatic privileges and immunities, including fiscal immunities; but members of the diplomatic staff performing consular functions should be subject to the laws of the receiving State just like nationals of that State. He was sorry that that point had not been specified in any amendment.

42. Mr. DAS GUPTA (India) said that the Indian delegation could not accept the joint amendment because, though it had no objection to the text of paragraph 1 as drawn up by the International Law Commission, the Belgian version was more logical and more flexible and therefore better. The joint amendment submitted by Hungary and the Ukrainian SSR thus became unnecessary.

43. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) stated that his delegation's position diverged from that of the International Law Commission on one essential point. According to the Commission, the consent of the receiving State was not necessary when a temporary head of post was appointed, whereas, according to the terms of article 8, it was necessary when a titular head of post was appointed. But a temporary head of post had the same functions as the titular head of post and should therefore receive the same treatment.

44. The International Law Commission explained its attitude in paragraph 3 of its commentary; but paragraph 4 of the same commentary laid it down that the function of acting head of post might not, except by agreement between the States concerned, be prolonged for so long a period that the acting head would in fact become permanent head. The notion that something was " temporary " might introduce an element of uncertainty and give rise to disputes between the sending State and the receiving State. In these circumstances, the Viet-Nam delegation was inclined to support the Belgian amendment to paragraph 2. It was, of course, necessary that, to ensure the continuity of consular functions, the receiving State should give its reply immediately.

45. With regard to the remainder, his delegation approved the International Law Commission's text.

46. Mr. PALIERAKIS (Greece) approved the Belgian amendments to paragraphs 1, 2 and 4. With regard to paragraph 4, however, the Committee would do well to take into consideration the point made by the representative of Congo (Leopoldville). He regretted that the Belgian delegation had withdrawn its amendment to paragraph 3, but as that amendment had been reintroduced by the Netherlands delegation, the Greek delegation would support it likewise.

47. Mr. EL KOHEN (Morocco) said he was in favour of the Belgian amendments to paragraphs 1 and 2 since they tended to simplify the International Law Commission's text and would facilitate the work of

many countries. But he did not approve the Belgian amendment to paragraph 4, the adoption of which might give rise to difficulties and embarrass smaller countries that did not have the necessary diplomatic or consular staff.

48. Mr. TÜREL (Turkey) supported the Belgian amendments to paragraphs 1, 2 and 4. He found the second point of the Italian amendment interesting, but he preferred the Belgian amendment. His delegation would support the Netherlands amendment to paragraph 3.

49. Mr. N'DIAYE (Mali) approved the Belgian amendment to paragraph 1: its flexibility would meet the needs of the smaller countries. He also approved the Belgian amendment to paragraph 2, which took account of the difficulties which had been referred to, in particular, by the representative of the Republic of Viet-Nam. With regard to paragraph 3, he supported the verbal amendment submitted by the delegation of the United Arab Republic, which improved the International Law Commission's text without changing its substance. He approved the addition to paragraph 4 of the words proposed in the Belgian amendment, but would vote against all the other amendments to article 15.

50. Mr. DJOKOTO (Ghana) supported the Belgian amendment to paragraph 1 for the reasons which had already been given by other delegations, particularly that of Congo (Leopoldville). He preferred that amendment to the one submitted by Hungary and the Ukrainian SSR, which seemed too restrictive.

51. Mr. D'ESTEFANO PISANI (Cuba) approved the Belgian amendments to paragraph 1 and paragraph 2. The latter seemed preferable to the Italian amendment provided that the second sentence — which the Cuban delegation found too rigid — were deleted. He was, however, decidedly opposed to the amendment to paragraph 3 now sponsored by the Netherlands. He opposed the amendment to paragraph 4, on which the Brazilian representative's comments had been apposite. The Cuban delegation would vote for the International Law Commission's text for paragraphs 3 and 4.

52. Mr. RABASA (Mexico) said that he agreed with the delegations who had approved the Belgian amendments, as they were in harmony with the spirit of the International Law Commission's text, and improved on it both in form and in substance. The amendment to paragraph 1 had the advantage of not going into details and that to paragraph 2 had the advantage of insisting on prior notification and of safeguarding the rights of the receiving State.

53. With regard to the Netherlands amendment to paragraph 3, he thought that if a member of the diplomatic staff were called upon to replace a consular official, he should enjoy the rights, privileges and immunities provided for consular officials. The Mexican delegation was in favour of the amendment in the form in which it had originally been submitted by Belgium.

54. Mr. SOLHEIM (Norway) said that, in view of the difficulties encountered by small States who lacked a sufficiently numerous qualified staff, he was in favour of the Belgian amendment to paragraph 1. He also approved the amendment to paragraph 2, but he would prefer the last sentence to be deleted, and he asked the Chairman to consider the possibility of putting it to the vote separately.

55. The Norwegian delegation, however, could not support the Netherlands amendment to paragraph 3. A temporary head of post required the same facilities, privileges and immunities as a permanent head of post. He preferred the International Law Commission's text for paragraph 4, but he thought it might be possible, as a compromise, to modify the Belgian amendment in the manner suggested by the representative of Congo (Leopoldville), and to replace the words " gives its consent " by the words " does not object ".

56. Mr. USTOR (Hungary) agreed with the opinions expressed by the Norwegian representative. The second sentence of the Belgian amendment to paragraph 2 gave rise to difficulties and it would perhaps be best to delete it. The amendment to paragraph 4 seemed to run counter to paragraph 8 of the International Law Commission's commentary on article 15.

57. If the Belgian amendment were adopted, the joint Hungarian-Ukrainian amendment would be unnecessary. The purpose of that amendment was to bring the provisions of article 15 into line with those of article 1, which did not mention members of the administrative and technical staff. It was purely formal in character and could, if necessary, be sent to the drafting committee direct.

58. Mr. WESTRUP (Sweden) said that the Belgian amendments constituted a complete text and that he would vote for the original text (L.12) in its entirety, including the amendment to paragraph 3 now sponsored by the Netherlands delegation.

59. With regard to the amendment to paragraph 2, he supported the French suggestion that it would be desirable to incorporate in it certain elements from the Italian amendment. The amendment to paragraph 3 constituted a desirable and necessary counterpoise to the flexibility of the text proposed by Belgium to paragraph 1. The suggestion by the representative of Congo (Leopoldville) was interesting, and he hoped that it would be taken into account when the proposals were put to the vote.

60. Mr. BANGOURA (Guinea) said that he was in favour of the Belgian amendments to paragraphs 1 and 2. With regard to the amendment to paragraph 3, he preferred the proposal of the delegation of the United Arab Republic which would improve the International Law Commission's text. He agreed with the Norwegian representative that in paragraph 4 the words " gives its consent " might well be replaced by the words " does not object ".

61. Mr. VRANKEN (Belgium) said that, in a spirit of co-operation, he would accept the suggestions made by the representatives of France and of Congo (Leopoldville). He also accepted a modification of his amendment to paragraph 2 along the lines of the second part of the Italian amendment.

62. The CHAIRMAN said that he would put to the vote, paragraph by paragraph, the amendments to article 15 of the International Law Commission's draft. The verbal amendment of the United Arab Republic, which did not raise a question of substance, would be sent to the drafting committee direct.

The Belgian amendment to paragraph 1 (A/CONF.25/C.1/L.12) was adopted by 44 votes to 5, with 13 abstentions.

63. The CHAIRMAN said that, as a result of the adoption of the Belgian amendment, it would not be necessary to put to the vote the amendments to paragraph 1 by Hungary and the Ukrainian Soviet Socialist Republic (L.95), Canada (L.108) and Italy (L.115).

64. After a lengthy discussion on the wording of the Belgian amendment to paragraph 2, in which Mr. USTOR (Hungary), Mr. WESTRUP (Sweden), Mr. PALIERAKIS (Greece), Mr. de MENTHON (France), Mr. VRANKEN (Belgium), Mr. SOLHEIM (Norway), Miss ROESAD (Indonesia), Mr. KEVIN (Australia), Mr. BARTOŠ (Yugoslavia), Mr. MAMELI (Italy), Mr. ENDEMANN (South Africa), Mr. HEPPEL (United Kingdom), Mr. CHIN (Republic of Korea), Mr. DAS GUPTA (India) and Mr. RUDA (Argentina) took part, Mr. de ERICE y O'SHEA (Spain) observed that the first part of the Belgian amendment to paragraph 2, in the amended form accepted by its author, was identical with the International Law Commission's text, so that the first part of the amendment had ceased to exist. There remained the South African amendment (L.123); it would be best to vote first on that amendment and subsequently on the second part of the Belgian amendment to paragraph 2.

65. Mr. DAS GUPTA (India) agreed with the Spanish representative.

66. The CHAIRMAN put the South African amendment to the vote.

The South African amendment to paragraph 2 (A/CONF.25/C.1/L.123) was rejected by 36 votes to 8, with 11 abstentions.

67. The CHAIRMAN read out the revised text of the second part of the Belgian amendment to paragraph 2 as communicated to him by the Belgian representative: " The receiving State may make the admission as acting head of post of a person who is neither a diplomatic nor a consular official of the sending State in the receiving State upon its consent."

68. The text he had read out was very different from the original version of the amendment (L.12) and a new discussion should therefore be regarded as having begun. To avoid any confusion or misunderstanding, he asked the Belgian representative to submit his new text as a formal amendment; other delegations who desired to do so should submit sub-amendments to the new text under the same conditions, so that the Committee could discuss them at its next meeting.

The meeting rose at 6.25 p.m.

EIGHTEENTH MEETING

Monday, 18 March 1963, at 10.50 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 15 (Temporary exercise of the functions of head of a consular post) (*continued*)

1. The CHAIRMAN recalled that the Committee had adopted the Belgian amendment (L.12) to paragraph 1, but had not voted on the other amendments to this paragraph. The Committee had rejected the South African amendment (L.123) to paragraph 2. As the Italian amendment (L.115) had been withdrawn, there remained only the Belgian amendment to paragraph 2. A number of delegations had then submitted oral sub-amendments to the Belgian amendment, which altered its text to the extent of completely changing its sense. Thus it had not been possible to vote on the amendment. To avoid a repetition of that situation, he would request delegations to refrain, as far as possible, from submitting oral amendments and sub-amendments which substantially modified the original text and to adhere strictly to rule 30 of the rules of procedure; that rule did not exclude the discussion of amendments which had not been communicated to the secretariat, but left the decision to the Chairman.

2. The Belgian amendment to paragraph 2 read: " The name of the acting head of post shall be notified, either by the head of post or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by it. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic nor a consular official of the sending State in the receiving State conditional on its consent."

The amendment was adopted by 40 votes to 9, with 14 abstentions.

3. The CHAIRMAN said that the United Arab Republic had presented a verbal amendment to paragraph 3 which had been sent to the drafting committee. With regard to paragraph 3, therefore, the Committee had before it only the amendment which appeared in document A/CONF.25/C.1/L.12 submitted and then withdrawn by Belgium and reintroduced by the Netherlands.

The amendment was adopted by 25 votes to 24, with 12 abstentions.

4. The CHAIRMAN put to the vote the Belgian amendment to paragraph 4 of article 15.

The amendment was rejected by 32 votes to 26, with 8 abstentions.

5. Mr. TSHIMBALANGA (Congo, Leopoldville) said that his delegation had proposed a sub-amendment

[1] For the list of the amendments to article 15, see the summary record of the seventeenth meeting, footnote to para. 1.

to the Belgian amendment to paragraph 4, to read "... if the receiving State does not object thereto". Since the Belgian amendment had been rejected, there could be no objection to a vote on his sub-amendment since it had become an amendment to paragraph 4.

6. Mr. HEPPEL (United Kingdom) observed that paragraph 4 had not been exhaustively discussed. The Committee should decide whether a restrictive clause should be introduced into that paragraph. He supported the text proposed by the delegation of Congo (Leopoldville).

7. The CHAIRMAN put to the vote the oral amendment to paragraph 4 submitted by Congo (Leopoldville).

The amendment was adopted by 29 votes to 10, with 23 abstentions.

Article 15, as amended, was adopted by 53 votes to 2, with 9 abstentions.

8. Mr. BARTOŠ (Yugoslavia) explained that he had voted against article 15 because paragraph 3 as modified by the Belgian amendment was contrary to the principle that privileges and immunities were attached to the function and not to the person exercising it.

Article 16 (Precedence)

9. The CHAIRMAN invited discussion on article 16 and the amendments thereto by Italy (A/CONF.25/C.1/L.116), South Africa (A/CONF.25/C.1/L.127) and the Congo (Leopoldville) (A/CONF.25/C.1/L.133).

10. Mr. MAMELI (Italy) submitted his delegation's amendment, which introduced a necessary clarification into paragraph 3 since the consular commission was more often communicated than presented. It was in fact a formal amendment which could be sent to the drafting committee. The amendment to paragraph 4 had been prompted by the same considerations.

11. Mr. ENDEMANN (South Africa) observed that in paragraph 3 there was no need to made a distinction between the exequatur and provisional admission. The important thing was the date on which the head of a consular post was admitted to the exercise of his functions. The purpose of the South African amendment was to emphasize that point. The South African amendment to paragraph 4 was based on the same idea as the Italian amendment. If the Committee approved, the two texts could be sent to the drafting committee.

12. The South African amendment to paragraph 5 extended to career acting heads of posts the same provisions with regard to precedence as to career heads of posts. That would ensure that career heads of post always had precedence over honorary consuls. His delegation's amendment to paragraph 6 was based on the same idea.

13. Mr. TSHIMBALANGA (Congo, Leopoldville) introduced his delegation's amendment adding a new paragraph to article 16, which was a slightly modified version of article 16, paragraph 3, of the Vienna Convention on Diplomatic Relations.

14. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said that he did not understand the reason for the Italian amendment to paragraph 3. It was the practice to present the consular commission, not to send it. The effective date was that of presentation and not that of communication. The Ukrainian delegation would therefore vote against both the Italian amendments.

15. Paragraph 4 of article 16 was in accordance with established protocol according to which the order of precedence among acting heads of posts was governed by the class of the titular heads of post whom they replaced. The Ukrainian delegation would therefore vote for the International Law Commission's text.

16. Mr. MARTINS (Portugal) said that the question dealt with in article 16 was perhaps the least important but was certainly the most delicate. In general, the Portuguese delegation found the text of the article as drafted by the International Law Commission satisfactory, but it might be improved by the amendment of the Congo (Leopoldville), and by the Italian amendment to paragraph 4. He could not support the South African amendment to paragraph 4. According to that amendment, temporary heads of post replacing titular heads of post would rank before honorary consuls who were heads of post. Paragraph 4 of the draft might be considerably improved by deletion of the words: " in the class to which the heads of post whom they replace belong ". His delegation would vote in favour of the South African amendments to paragraphs 5 and 6.

17. Mr. HEPPEL (United Kingdom) agreed that the text of paragraph 4 as prepared by the International Law Commission was not satisfactory and was contrary to normal protocol. In his opinion the commentary on the article did not provide an adequate justification. Chargés d'affaires did not necessarily have precedence over envoys extraordinary and ministers plenipotentiary. The best course might be to follow the precedent of the 1961 Convention and to omit the question of the precedence of acting heads of post.

18. He agreed with the Portuguese representative that acting heads of consular posts ranked after all other heads of consular posts. With regard to precedence amongst acting heads of posts themselves, it would be best to follow current usage by which precedence was governed by the date of their admission to the exercise of their functions, as had been proposed in the Italian and South African amendments. His delegation saw no need to lay down a rule of precedence so far as acting heads of post were concerned and it would be prepared to support any proposal for the deletion of the paragraph. With regard to the amendment submitted by Congo (Leopoldville), he would need to know first of all whether the Holy See had in fact consular representatives. His impression was that it had only diplomatic representatives.

19. Mr. ENDEMANN (South Africa) said that he did not believe that the International Law Commission had really intended to give precedence to a vice-consul who was acting head of post of a consulate-general over a career consul who was a permanent head of post, but paragraph 4 certainly lent itself to that interpretation, and should therefore be amended. That was why

his delegation had submitted an amendment specifying that temporary heads of post should rank after all permanent heads of post belonging to the same class as themselves.

20. He thought there were certain objections to the solution in the International Law Commission's draft of the question of the precedence of acting heads of post amongst themselves. For instance, when a consul-general left his post, that post would remain vacant till a new head of post was appointed. As the post was vacant, the acting head of post would have no definite rank. The South African amendment would remove all difficulties of that sort.

21. Mr. USTOR (Hungary) hoped that the representative of Congo (Leopoldville) would clarify the purpose of his amendment. He also wished to learn what was the attitude of the Holy See to that amendment.

22. The CHAIRMAN said that the amendment submitted by the representative of Congo (Leopoldville) raised a number of questions concerning the possible appointment of consuls by the Holy See.

23. Mr. TORROBA (Spain) said that, although he was inclined to support the Congolese amendment, he wished to know the practical bearing of the proposal and whether the Holy See in fact possessed consular representatives. He agreed with the opinions of the Portuguese, United Kingdom and South African representatives on paragraph 4. It would be preferable to include paragraph 5 in chapter III (articles 57-67) dealing with honorary consular officials or even to delete it altogether.

24. The CHAIRMAN drew the Committee's attention to paragraph 4 of the International Law Commission's commentary, which gave the reason why paragraph 5 which had formerly been included in the section on honorary consuls had been transferred to article 16.

25. Mr. TSHIMBALANGA (Congo, Leopoldville) said that the Holy See had no consular representatives for the time being, but the possibility as regards the future was not excluded, and that was why he had submitted his amendment. He did not, however, press for its adoption by the Committee.

26. Mgr. PRIGIONE (Holy See) said that it was not impossible that the Holy See might appoint consular representatives in the future; nevertheless, he would ask the representative of Congo (Leopoldville) not to press his amendment.

27. Mr. TSHIMBALANGA (Congo, Leopoldville) withdrew his amendment (L.133).

28. Mr. FUJIYAMA (Japan) said that he fully shared the United Kingdom representative's opinion concerning article 16, and paragraph 4 in particular, and he wished to know if the United Kingdom delegation intended to submit a formal amendment to delete the paragraph. The Japanese delegation would be all the more inclined to support such a proposal since usage varied from country to country and it was difficult to lay down a rule on the question. His delegation also supported the South African amendment.

29. The CHAIRMAN asked the United Kingdom representative if his proposal should be regarded as a formal amendment to article 16.

30. Mr. HEPPEL (United Kingdom) said that he would like to hear the statements of the other delegations before taking a decision on the point. Some delegations would perhaps prefer to retain a text concerning the precedence of acting heads of post, but would be ready to support any proposal for the deletion of the article.

31. Mr. WU (China) said that he would gladly support the first Italian amendment. He thought that precedence should be governed by the date of the communication and not by the date of presentation of the consular commission.

32. The Chinese delegation agreed with the United Kingdom representative's opinion on paragraph 4. It was established practice that an acting consul-general could not rank before a titular head of post, any more than a chargé d'affaires could rank before a minister plenipotentiary. His delegation would therefore be inclined to support an amendment for the deletion of the paragraph.

33. Mr. KRISHNA RAO (India) said that he too found the existing text of paragraph 4 unsatisfactory. He agreed with the United Kingdom representative that the reasons given in paragraph 3 of the commentary were hardly convincing, and he pointed out that the Convention on Diplomatic Relations contained no corresponding provision.

34. Mr. DADZIE (Ghana) thought that the International Law Commission's text was acceptable, except in so far as paragraphs 4 and 5 were concerned. The wording of paragraph 4 was not clear, for it seemed to imply that junior officials could rank before their seniors. The Ghanaian delegation therefore supported the South African amendment, which seemed satisfactory, though its wording might be improved. He regretted his inability to support the Italian amendment (L.116) which added little to the original text. There was no need to retain paragraph 6 as drafted by the International Law Commission; the matter was too self-evident to need restatement. He would propose its deletion.

35. Mr. PALIERAKIS (Greece) said he was prepared to support the first Italian amendment and the second part of the South African amendment. Otherwise, he preferred the International Law Commission's text.

36. Mr. MAMELI (Italy) entirely agreed with the opinion expressed by the United Kingdom representative concerning paragraph 4.

37. Mr. SILVEIRA-BARRIOS (Venezuela) agreed with the views expressed by the Portuguese, Spanish and the United Kingdom representatives. He would support the deletion of paragraph 4.

38. The CHAIRMAN pointed out that, as there were no amendments to paragraphs 1 and 2 of article 16, he considered those paragraphs to have been adopted as drafted.

39. He put the Italian (L.116) and South African (L.127) amendments to paragraph 3 to the vote.

The Italian amendment was adopted by 30 votes to 29, with 5 abstentions.

The South African amendment was rejected by 35 votes to 19, with 11 abstentions.

40. Mr. HEPPEL (United Kingdom) said that he was prepared to accept the South African amendment to paragraph 4, but he would prefer it if in the first sentence the words " in the class in which they themselves belong " were deleted.

41. Mr. ENDEMANN (South Africa) accepted the United Kingdom representative's suggestion.

42. The CHAIRMAN put to the vote the South African amendment (L.127) to paragraph 4 with the verbal sub-amendment of the United Kingdom.

The amendment, as amended, was approved by 42 votes to 16, with 8 abstentions.

43. The CHAIRMAN said that, as a result of that decision, there was no need to vote on the Italian amendment (L.116). He put the South African amendments (L.127) to paragraphs 5 and 6 to the vote.

The South African amendment to paragraph 5 was rejected by 24 votes to 22, with 18 abstentions.

The South African amendment to paragraph 6 was rejected by 24 votes to 18, with 22 abstentions.

44. The CHAIRMAN invited the Committee to vote on the oral proposal by the representative of Ghana for the deletion of paragraph 6.

The Ghanaian proposal was rejected by 23 votes to 7, with 33 abstentions.

Article 16 as a whole, as amended, was adopted by 63 votes to none, with 1 abstention.

45. Mr. BREWER (Liberia) said that he had abstained because he did not see why a consul replacing a consul-general should not rank before a consul who was head of post.

Article 17 (Performance of diplomatic acts by the head of a consular post)

46. The CHAIRMAN said that the amendments to article 17 submitted by the Canadian and Indian delegations were identical and could be regarded as a joint proposal.[2]

47. Mr. KEVIN (Australia) submitted an oral amendment for the insertion in paragraph 1, after the words " the head ", of the words " or acting head ". He requested that his proposal should be considered together with the other amendments.

48. Mr. FUJIYAMA (Japan) introduced his delegation's amendment and said that it was sometimes indispensable that a consular official other than the head of a post should perform diplomatic acts. That was the purpose of the first part of his amendment. He thought the word " consulate " was more appropriate, since article 3 used it in stating that consular functions were exercised by consulates. The second point of his amendment was purely formal and he would not insist on it.

49. Mr. von HAEFTEN (Federal Republic of Germany) explained why his delegation had submitted a proposal to delete paragraph 1 of article 17. The paragraph confused diplomatic and consular functions, whereas there was a very sharp distinction between diplomatic functions, which were political in character, and consular functions, which consisted primarily in protecting the interests of nationals of the sending State and in promoting trade. Formerly, it was true, certain consuls had been entrusted with diplomatic missions, but the practice had fallen into disuse. If a State had no diplomatic representative, it could, with the consent of the receiving State, appoint a consul as chargé d'affaires.

50. The CHAIRMAN pointed out that the representatives of the Federal Republic of Germany (L.78) and of Venezuela (L.89) both proposed to delete paragraph 1 of article 17; he regarded the two proposals as a joint amendment.

51. Mr. KEVIN (Australia) said that his delegation's oral amendment was merely secondary; it was designed to fill a gap in the text.

52. Mr. SICOTTE (Canada) said that his delegation and the Indian delegation wished to submit the following revised text of paragraph 1 in place of their original amendments (L.109 and L.110): " In a State where the sending State has no diplomatic mission or where the sending State is not represented by a diplomatic mission of a third State, a consular official may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular official shall not confer upon him any right to diplomatic privileges and immunities."

53. Mr. MAMELI (Italy), explaining his delegation's amendment to paragraph 2, said that the issue was one of changing an already existing relationship between the sending State and the receiving State. His delegation therefore thought it preferable to state the two necessary formalities clearly: notification by the sending State, and consent by the receiving State.

54. Mr. ENDEMANN (South Africa) explained that the purpose of his amendment was to clarify the text and to avoid any misinterpretations.

55. Mr. HEPPEL (United Kingdom) said that his delegation's amendment, which referred solely to paragraph 2, was intended to ensure that consular officials who also represented their States in international organi-

[2] The following amendments had been submitted: Japan, A/CONF.25/C.1/L.57; Federal Republic of Germany, A/CONF.25/C.1/L.78; Venezuela, A/CONF.25/C.1/L.89; Canada, A/CONF.25/C.1/L.109; India, A/CONF.25/C.1/L.110; Italy, A/CONF.25/C.1/L.117; United Kingdom, A/CONF.25/C.1/L.125; South Africa, A/CONF.25/C.1/L.128.

zations should, when performing their consular functions, enjoy only the privileges and immunities of consular officials.

56. Mr. WESTRUP (Sweden) said that he would vote for the amendment of the Federal Republic of Germany for the deletion of paragraph 1 of article 17. The Swedish delegation had already expressed its government's concern at the Committee's tendency to assimilate diplomatic and consular functions and responsibilities. Like the delegation of the Federal Republic of Germany, the Swedish delegation thought that there were differences of substance which should be maintained. The fusion of the two services in the internal administration of a State should not entail the fusion of their functions. His delegation would also support the joint amendment by Canada and India.

The meeting rose at 1.10 p.m.

NINETEENTH MEETING

Monday, 18 March 1963, at 3.15 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 17 (Performance of diplomatic acts by the head of a consular post) (*continued*)

1. The CHAIRMAN invited the Committee to continue its discussion of article 17.[1] He recalled that the amendments submitted by Canada (L.109) and India (L.110) had been replaced by a joint amendment and that there was an oral amendment by Australia introducing the words " or acting head " after the word " head " in paragraph 1.

2. Mr. EL-SABAH EL-SALEM (Kuwait) supported the United Kingdom amendment (L.125) but suggested the insertion of the words " international or " before the words " intergovernmental organization ". Perhaps that suggestion could be referred to the drafting committee; its purpose was to repair an omission by the International Law Commission, which appeared to have considered that the term " intergovernmental organization " covered all international organizations of States.

3. Mr. KESSLER (Poland) opposed the proposals to delete article 17 in whole or in part. The provisions of that article were in keeping with customary international law and reflected the widespread practice of entrusting consuls with the performance of acts which normally formed part of the duties of diplomatic missions. That practice had been recognized in many bilateral conventions, as well as in the important multilateral convention regarding consular agents, signed at Havana on 20 February 1928. The provisions of article 17 would be particularly useful where consular relations constituted the only channel for intercourse between two States; they would be of great practical value to the smaller nations, which were unable to bear the heavy burden of maintaining a diplomatic mission in each capital city.

4. His delegation would support the joint amendment by Canada and India, if the word " consulate " could be substituted for " consular officials "; that proposal was in line with its support of the Japanese amendment (L.57). It whole-heartedly supported the United Kingdom amendment (L.125) which clarified and usefully supplemented the text.

5. Mr. KRISHNA RAO (India) said that the provisions of article 17 corresponded to an existing practice and filled a genuine need. He was thinking, in particular, of the case in which consular relations existed between two countries, but there was delay in establishing diplomatic relations.

6. From the point of view of legal theory, there appeared to be no valid objection to a consular official being authorized to perform diplomatic acts with the consent of the receiving State. The practice might not be universal, but there had not been any indication of a contrary practice. When the text of article 17 had been submitted to governments, there had been no real opposition to it; some governments had suggested its deletion, as being unnecessary; but they had not opposed the principle embodied in it.

7. The purpose of the Indian amendment, now combined with that of Canada, was to specify that a consul could perform diplomatic acts where the sending State was not diplomatically represented. Diplomatic representation could take two forms: the sending State could have its own diplomatic mission, or it could be represented by the diplomatic mission of a third State. In either of those two cases there was no need to empower a consular official to perform diplomatic acts. The amendment also incorporated in the text of the article the important statement contained in paragraph 6 of the commentary — namely, that the performance of diplomatic acts by a consular official did not confer upon him any right to diplomatic privileges and immunities.

8. Mr. SILVEIRA-BARRIOS (Venezuela), introducing his amendment (L.89) deleting article 17, said that Venezuela considered the exercise of diplomatic functions incompatible with that of consular functions. It therefore regarded the provisions of article 17 as contrary to international law. The same considerations applied to a consul's acting as representative of the sending State to an intergovernmental organization; that function would confer diplomatic privileges, to which a consul had no right.

9. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) supported the Japanese amendment (L.57) and the joint amendment proposed by Canada and India, which improved the text of paragraph 1. He had no objection to the Italian amendment (L.117), but thought that the idea of notifying the receiving State was covered by the requirement of that State's consent in paragraph 1.

[1] For list of amendments to article 17, see eighteenth meeting, footnote to para. 47.

His delegation was opposed to the deletion of any part of article 17; its provisions reflected a practice which was by no means uncommon, and would be particularly useful in places where the consul was the sole official representative of the sending State.

10. Mr. SHARP (New Zealand) said that he attached great importance to the provisions of article 17. New Zealand was a small nation with comparatively limited resources; in view of the emergence of so many new States it was anxious to increase its representation abroad, and the provisions of article 17 would prove very useful in that respect. His delegation was therefore opposed to the deletion of any part of the article. It supported the United Kingdom amendment to paragraph 2.

11. Mr. ABDELMAGID (United Arab Republic) thought it somewhat illogical to delete paragraph 1, as proposed in the amendment by the Federal Republic of Germany (L.78), without at the same time deleting paragraph 2, which expressed a very similar idea. The Venezuelan proposal to delete the whole article was more consistent. His delegation would nevertheless oppose both proposals.

12. He supported the joint amendment submitted by Canada and India and also the United Kingdom amendment, with the addition proposed by the representative of Kuwait. The Italian amendment was consistent with the generally accepted practice. At Geneva, for example, certain consuls were accredited as permanent representatives to the European Office of the United Nations; on being informed that they were so accredited, the United Nations duly notified the Swiss Government.

13. Mr. CAMERON (United States of America) said that he favoured the deletion of article 17; he accordingly supported the amendments submitted by the Federal Republic of Germany (L.78) and Venezuela (L.89). The United States Government had no objection to a consul being accredited to a diplomatic mission so long as he did not avail himself of his diplomatic immunities in connexion with his acts as a consul.

14. A similar problem could arise where a diplomat acted as consul. If, for example, a diplomat exercised the consular function of representing one of his nationals in estate or probate proceedings, it was important that he should subject himself to the jurisdiction of the competent courts of the receiving State.

15. In connexion with paragraph 2, he referred to the Headquarters Agreement between the United Nations and the United States of America, whereby his government had agreed to extend diplomatic privileges to the permanent representatives to the United Nations and their staff. A number of States with small delegations had found it necessary to accredit their consuls-general in New York to their permanent missions to the United Nations. In those cases, where hardship was involved, the United States Government had agreed to recognize a consul in a diplomatic capacity. Hence his delegation was not opposed in principle to the practice seemingly reflected in paragraph 2, but thought that the matter should be left entirely to the receiving State to decide.

16. If the proposals to delete paragraph 1 or the whole of article 17 were rejected, his delegation would vote in favour of the United Kingdom amendment, which expressed the generally accepted view regarding the extent to which the consular official concerned would be entitled to enjoy privileges and immunities.

17. Mr. SOLHEIM (Norway) said that he found the provisions of paragraph 1 useful both to the receiving State and to the sending State. They were consistent with a long and widespread practice and his delegation would therefore oppose their deletion. The interests of the receiving State were duly safeguarded by the proviso that its consent was required for the performance of diplomatic acts.

18. His delegation supported the joint proposal to broaden the scope of article 17 so as to include all consular officials and not merely heads of post. It also supported the United Kingdom amendment, which contained adequate regulations for the case envisaged in paragraph 2.

19. Mr. RUDA (Argentina) supported the Venezuelan proposal to delete article 17. That article dealt with the performance of diplomatic acts and was therefore out of place in a convention on consular relations.

20. As pointed out by the Brazilian representative at the sixteenth session of the General Assembly in 1961, the provisions of article 17 went further than the general practice; consuls should be permitted to perform diplomatic acts only in exceptional circumstances.[2] With regard to paragraph 2, although there had been a few cases of consuls acting as permanent representatives to international organizations, the status of a consular official was, in principle, incompatible with such representation.

21. If the Venezuelan amendment were rejected, his delegation would vote in favour of the greatest possible limitations on the possibility provided for in article 17.

22. Mr. PALIERAKIS (Greece) supported the Italian, United Kingdom and South African amendments, all of which would improve the text. His delegation was opposed to the deletion of the article 17, either in whole or in part. The provisions of paragraph 1, in particular, referred to an existing situation, concerning which it was necessary to lay down rules.

23. Mr. KIRSHSCHLAEGER (Austria) supported paragraph 1, as amended by India and Canada. Its provisions would be particularly valuable to small countries. Austria, for instance, had honorary consuls in a number of countries with which it maintained good relations, but in which it had no diplomatic mission.

24. His delegation had no strong views on paragraph 2, but considered that its contents concerned the law relating to international organizations, which the Conference was not called upon to codify. If it were decided to retain that paragraph, his delegation would support the United Kingdom amendment, but he sug-

[2] See *Official Records of the General Assembly, Sixteenth Session, Sixth Committee*, 702nd meeting, para. 33.

gested that the words " normally accorded " should be replaced by the words " accorded by customary international law or international agreement ". In most cases, the privileges and immunities of representatives to an international organization were laid down by the headquarters agreement signed between the organization concerned and the host State.

25. Mr. MUÑOZ MORATORIO (Uruguay) supported the proposal to delete article 17, the provisions of which were out of place in a convention on consular relations. His delegation agreed that it was desirable to formulate rules of international law on the performance of diplomatic acts by consuls, but the matter was not one for the present conference.

26. Mr. KOCMAN (Czechoslovakia) said that he fully shared the views of those delegations which had expressed themselves in favour of maintaining both paragraphs of article 17. The International Law Commissions had drawn attention, in paragraph 5 of its commentary, to the special position of a consul in a country where the sending State was not represented by a diplomatic mission and where he was the only official representative of his State.

27. He had not been convinced by the arguments put forward by the Federal Republic of Germany, to show that the provisions of paragraph 1 were superfluous. It was, of course, true that the sending State could establish a diplomatic mission in the receiving State, but in some cases it was more convient to use an existing consulate to perform diplomatic acts, and small countries often did so. He saw no reason for not incorporating that well-established practice in the convention. The provisions of article 17 in no way impaired the sovereign rights of the receiving State, since its consent was required before a consul could perform diplomatic acts.

28. With regard to the arguments put forward by the representative of Argentina, he pointed out that the International Law Commission, in drafting article 17, had taken the provisions of the 1961 Vienna Convention on Diplomatic Relations fully into account.

29. His delegation supported the various constructive proposals which had been made to improve the text. The Japanese proposal to refer to " a consulate " instead of " the head of consular post " was consistent with the form already adopted by the Committee for several articles of the draft. The second Japanese amendment and that submitted by South Africa could be referred to the drafting committee. His delegation supported the joint amendment, and the United Kingdom amendment to paragraph 2.

30. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said that he could see no valid reason for deleting any part of article 17; what it provided for, namely the right of a consul to perform diplomatic acts, was very important, particularly for the smaller countries, and his delegation was anxious that those provisions should be retained. He supported the Japanese proposal to replace the words " the head of consular post " by the words " a consulate ", and had no objection to referring the second Japanese amendment to the drafting committee. His delegation had no fundamental objection to the joint amendment.

31. Mr. D'ESTEFANO PISANI (Cuba) said that he was strongly in favour of retaining the provisions of article 17, which would facilitate the development of relations between peoples. Those provisions would be particularly useful to small States, without in any way injuring other States. Cuba could not afford to maintain diplomatic missions at the capitals of all the more than one hundred States with which it wished to maintain good relations in accordance with the principles of the United Nations Charter. Article 17 would make it possible to maintain friendly relations, including a limited measure of diplomatic relations, without establishing diplomatic missions; it would in no way impair the sovereignty of the receiving State, for the consent of that State would be required for a consul to be able to perform diplomatic acts.

32. His delegation considered that the United Kingdom amendment to paragraph 2 was useful.

33. Mr. DJOKOTO (Ghana) supported the joint amendment to paragraph 1 and the United Kingdom amendment to paragraph 2; both those proposals made for clarity and precision.

34. He saw no objection to making provision for special circumstances in which consular officials would be able to perform diplomatic functions within clearly defined limits. The deletion of paragraph 1 would be detrimental to the progressive development of international law and to the interests of small nations which did not have a wide choice of staff available for their foreign service.

35. Mr. EL KOHEN (Morocco) supported the joint amendment and the United Kingdom amendment, both of which improved the text. The provisions of the article reflected a contemporary development of consular relations; many small nations found it necessary to confer a dual capacity on their foreign-service officers.

36. Mr. TSHIMBALANGA (Congo, Leopoldville) said that he was in favour of retaining article 17, with the joint amendment and the United Kingdom amendment. The provisions of the article took into account the situation of the newly independent countries which faced a shortage of trained staff and financial difficulties in their representation abroad.

37. Mr. KRISHNA RAO (India) said that the sponsors of the joint amendment had no objection in principle to replacing the term " consular official " by " consulate". From the point of view of drafting, however, that change was difficult to make because their amendment referred to the status of the official concerned. He therefore suggested that the amendment should be put to the vote in the form in which it had been submitted, on the understanding that the drafting committee would consider the question of introducing the term " consulate ".

38. Another point which should be left to the drafting committee was the choice between the words " or " and " and " before the words " where the sending State is not represented by a diplomatic mission of a third State ". There was no disagreement as to the meaning

of the passage; its purpose was to make clear that article 17 would not apply in two cases: firstly, where the sending State had a diplomatic mission; and secondly, where the sending State was represented by the diplomatic mission of a third State.

39. Mr. CRISTESCU (Romania) opposed the proposals to delete article 17, either in whole or in part. Romania did not at the moment entrust its consulates with the performance of diplomatic acts, but he nevertheless supported the provisions of the article, which would be useful to a great many States, particularly newly independent States.

40. His delegation supported the first Japanese amendment, the joint amendment and the United Kingdom amendment.

41. Mr. N'DIAYE (Mali) opposed the proposals to delete article 17, which was necessary to countries not in a position to maintain both diplomatic missions and consulates in all capitals. The provisions of the article reflected a long-standing practice and were consistent with the current tendency in many countries to make the diplomatic and consular services interchangeable.

42. His delegation supported the joint amendment to paragraph 1 and the United Kingdom amendment to paragraph 2.

43. Mr. BANGOURA (Guinea) said he was also in favour of retaining article 17, with the joint amendment and the United Kingdom amendment.

44. Mr. VON HAEFTEN (Federal Republic of Germany) thanked those delegations which had supported his proposal to delete paragraph 1. He wished to emphasize the fact that the provisions of that paragraph were inconsistent with article 2 of the Vienna Convention on Diplomatic Relations, which laid down that the establishment of diplomatic relations between States took place by mutual consent. In the case envisaged in article 17, paragraph 1, the sending State could without difficulty appoint its consul as chargé d'affaires, once it had agreed with the receiving State on the establishment of diplomatic relations. Alternatively, it could arrange to be represented by its diplomatic mission in a neighbouring country. Many small States were represented in Bonn, but there was not a single case of a consul being entrusted with the performance of diplomatic acts.

45. He drew attention to paragraph 1 of the commentary on article 38, which stated that it was a well-established principle of international law that consular officials could address only the local authorities; that meant that a consular official could not address the central government in the case envisaged in article 17, paragraph 1. If the provisions of that paragraph were included in the future convention, his government might be unable to sign it.

46. The CHAIRMAN said that, if there were no objection, he would consider that the Committee agreed to refer the South African amendment (L.128) to the drafting committee.

It was so agreed.

47. Mr. KEVIN (Australia) withdrew the oral amendment he had proposed at the previous meeting, in view of the general support for the joint amendment by Canada and India.

48. The CHAIRMAN said that he would put to the vote the Venezuelan amendment in so far as it applied to paragraph 1. The proposal to delete paragraph 2 would be voted on later.

The Venezuelan proposal (A/CONF.25/C.1/L.89) to delete paragraph 1 was rejected by 46 votes to 11, with 9 abstentions.

49. The CHAIRMAN put to the vote the joint oral amendment by Canada and India, subject to the drafting points mentioned earlier by the Indian representative.

The joint amendment was adopted by 56 votes to 1, with 10 abstentions.

50. Mr. FUJIYAMA (Japan) said that, since the Committee had decided to leave it to the drafting committee to choose between the words " consular official " and the word " consulate ", his delegation would not press its amendment (L.57).

51. Mr. HEPPEL (United Kingdom) said he had voted in favour of the joint amendment on the understanding that the words used would be " consular official " and not " consulate ". The amendment related to the occasional performance of diplomatic acts by a specific person; to speak of the performance of such acts by a consulate would be tantamount to turning consulates into diplomatic missions. That could not be the Committee's intention.

Paragraph 1, as amended, was adopted by 56 votes to 2, with 6 abstentions.

The Venezuelan amendment (A/CONF.25/C.1/L.89) to delete paragraph 2 was rejected by 54 votes to 7 with 3 abstentions.

The Italian amendment (A/CONF.25/C.1/L.117) was adopted by 27 votes to 16, with 23 abstentions.

52. The CHAIRMAN observed that the oral sub-amendment by Kuwait to the United Kingdom amendment, inserting the words " international or " before the words " intergovernmental organizations ", seemed to be unnecessary, unless the delegation of Kuwait considered that paragraph 2 should also apply to non-governmental organizations. The general term " international organizations " comprised two categories: intergovernmental and non-governmental organizations.

53. Mr. HEPPEL (United Kingdom) said he would accept the Kuwait sub-amendment, since the use of the term " intergovernmental " alone might not be comprehensive enough to cover organizations, particularly the United Nations itself, whose membership consisted of States rather than governments. His delegation could also accept the insertion suggested by the Austrian representative, but thought that the phrase in question should read ". . . any privileges or immunities agreed by customary international law or by international agreement . . ."

54. Mr. KRISHNA RAO (India), while agreeing with the Chairman, asked for a separate vote on the words " international or ". He felt that the amendment would be confusing; the term " intergovernmental " would express what was intended.

55. Mr. BARTOŠ (Yugoslavia) supported the Indian representative's request. The International Law Commission had taken the same view as the Chairman; there were no international organizations properly so-called, but only intergovernmental and non-governmental organizations.

56. Mr. EL-SABAH EL-SALEM (Kuwait) objected to a separate vote being taken on his delegation's sub-amendment, because it had been accepted by the United Kingdom delegation. The text of the United Kingdom amendment should be voted on as a whole.

57. The CHAIRMAN said that, since the United Kingdom amendment was merely an addition to paragraph 2, the Kuwait amendment might be regarded either as a sub-amendment to the United Kingdom text or as an amendment to the Commission's draft. Under rule 40 of the rules of procedure, two representatives might speak in favour of the Indian request for a separate vote, and two against.

58. Mr. EL-SABAH EL-SALEM (Kuwait) said that his delegation had not intended the words " international or " to render the paragraph applicable to non-governmental organizations. Since the United Kingdom delegation had accepted the sub-amendment, there was no need to take a separate vote on it.

59. Mr. CAMERON (United States of America) said that he was in favour of a separate vote on the Kuwait sub-amendment, because it would introduce uncertainty as to the meaning of the term " intergovernmental organizations ". The Yugoslav representative had drawn attention to the Commission's view on the matter. Moreover, the United States delegation had always understood the term " intergovernmental " to mean organizations, such as the United Nations, on which governments were represented.

60. Mr. ABDELMAGID (United Arab Republic) thought that no serious difficulty of substance was involved, since the terms " international organizations " and " intergovernmental organizations " meant much the same. The representative of Kuwait might now concur with the Chairman's interpretation.

61. Mr. WESTRUP (Sweden) thought that a separate vote should be taken on the Kuwait sub-amendment, because some delegations which had intended to vote for the United Kingdom amendment would be unable to do so if the words " international or " were added.

62. Mr. EL-SABAH EL-SALEM (Kuwait) said he would not press his objection. His delegation had had no intention of altering the substance of the United Kingdom amendment, but had merely been anxious to improve the text.

63. Mr. HEPPEL (United Kingdom) said his delegation had accepted the Kuwait sub-amendment because it had not been certain of the scope of the term " intergovernmental organizations "; it might be advisable to refer the sub-amendment by Kuwait to the drafting committee.

64. The CHAIRMAN said that as the representative of Kuwait had withdrawn his objection he would put the words " international or " to the vote separately as requested by the Indian delegation.

The sub-amendment by Kuwait was rejected by 38 votes to 5, with 22 abstentions.

The United Kingdom amendment (A/CONF.25/C.1/L.125), as orally amended by the Austrian delegation, was adopted by 62 votes to 1, with 7 abstentions.

Paragraph 2, as amended, was adopted by 62 votes to none, with 7 abstentions.

Article 17, as a whole, as amended, was adopted by 63 votes to 1, with 4 abstentions.

65. Mr. MIRANDA e SILVA (Brazil) said he had abstained from voting on the article as a whole because, as his delegation had stated at the sixteenth session of the General Assembly, the wording of article 17 narrowed the limits of general practice in the matter of the performance of diplomatic acts by consular officials. Furthermore, the Brazilian member of the International Law Commission had stated that view during the debates on the draft article.[3]

66. Mr. BINDSCHEDLER (Switzerland) said he had voted against the United Kingdom amendment because the sentence that had been added to paragraph 2 was not applicable in practice. Even if it were applicable, it would cause great confusion by allowing the same individual to act both as a diplomatic agent and as a consular official.

Article 18 (Appointment of the same person by two or more States as head of a consular post)

67. The CHAIRMAN drew attention to the amendments to article 18 submitted by the delegations of Italy (A/CONF.25/C.1/L.118) and the United Kingdom (A/CONF.25/C.1/L.126).

68. Mr. MAMELI (Italy), introducing his delegation's amendment, said that, since the possibility envisaged in the article was a complete innovation in consular law, it would be advisable to take the precaution of making it subject to the explicit consent of the receiving State.

69. Mr. HEPPEL (United Kingdom) said that the object of his delegation's amendment was to provide for cases in which the head of a consular post whom two or more States wished to act on their behalf was absent, ill or not available for any other reason. The whole purpose of the article would be better secured if its applicability were not confined to the head of a consular post.

[3] See *Yearbook of the International Law Commission, 1961*, vol. I (United Nations publication, Sales No. 61.V.1, vol. I), p. 67.

70. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said he could not support the United Kingdom amendment, which made it appear that the head of one consular post had a subordinate official acting in another. That could not be regarded as logical and, since similar amendments submitted by the United Kingdom to earlier articles had already been rejected by the Committee, the USSR delegation would vote against the United Kingdom amendment to article 18.

71. His delegation could not support the Italian amendment either, since it would impair the Commission's draft.

72. Mr. HEPPEL (United Kingdom), replying to the USSR representative, said that there was no connexion between his delegation's amendment to article 18 and the similar amendments it had submitted to earlier articles. The sole purpose of the United Kingdom amendment to article 18 was to widen the scope of the provision, since there might be consular officials other than the head of post whom two States might wish to act on their behalf.

The Italian amendment (A/CONF.25/C.1/L.118) was adopted by 33 votes to 14, with 15 abstentions.

The United Kingdom amendment (A/CONF.25/C.1/L.126) was adopted by 27 votes to 20, with 17 abstentions.

73. The CHAIRMAN observed that the adoption of the United Kingdom amendment would entail a drafting change in the title of the article.

Article 18, as amended, was adopted by 45 votes to none, with 19 abstentions.

Article 19 (Appointment of the consular staff)

74. The CHAIRMAN drew attention to the amendments to article 19, the first three of which called for the deletion of paragraph 2.[4]

75. Mr. OSIECKI (Poland), introducing the amendment which his delegation had submitted jointly with that of Hungary, drew attention to paragraph 7 of the commentary on article 19, which stated that the whole structure of the draft was based on the principle that only the head of a consular post needed an exequatur or a provisional admission to enter upon his functions. The commentary went on to say that consent to the establishment of a consulate and the exequatur granted to the head of a consular post covered the consular activities of all the members of the consular staff, as was explained in the commentary on article 11.

76. The Committee had confirmed that principle by adopting articles 8, 11 and 13, and his delegation did not believe that the exception provided for in article 19, paragraph 2, was necessary. Indeed, the disadvantages of adopting such a paragraph might be considerably greater than the advantages. In the first place, it would cast doubt on the whole modern conception of the grant of the exequatur; secondly, such an exception was contrary to the law of most States; and thirdly, there was no reason to grant an exequatur which was not required by the receiving State. Moreover, even if the paragraph were regarded as *lex perfecta* it would not be desirable, since it would destroy the formal equality of status of the consuls of different sending States in the same receiving State. Considerable confusion might arise in procedure before the competent authorities, because some consular officials would have an exequatur while others would not, though they were acting in similar matters. To avoid those doubts and difficulties, it would be better to delete paragraph 2.

77. Mr. TORROBA (Spain) said he would withdraw his delegation's amendment (L.131) in favour of the amendment submitted by the Federal Republic of Germany (L.130), which fully met the Spanish delegation's purpose. It was only right for the receiving State to be informed in advance of the full name, category and quality of a prospective member of the consulate. His delegation also supported the reference to article 23, paragraph 3.

78. On the other hand, his delegation was against the deletion of paragraph 2 of article 19, because it believed that States which followed the practice of requesting an exequatur for consular officials should be able to continue to do so.

79. Mr. von HAEFTEN (Federal Republic of Germany) said that the purpose of his delegation's amendment was to ensure that the receiving State was informed well in advance of the appointment of consular officials other than heads of post. While it might be unnecessary to request an exequatur in every case, the receiving State should have an opportunity of refusing to accept such officials. It was particularly desirable to submit the necessary information well in advance, so that the receiving State could inform the sending State of its refusal before the official in question arrived and took up his functions; at that stage the refusal could be communicated confidentially, and the sending State could appoint another official without embarrassment or difficulty.

80. It might be argued that the amendment was covered by articles 23 and 24, but those articles did not in fact provide for advance notification or for communication of the full name, category and class of all consular officials.

81. Mr. CAMERON (United States of America) said he did not consider that paragraph 2 imposed an unreasonable burden on the authorities of the receiving State by providing that some form of recognition, described in paragraph 2 as the exequatur, should be given to consular officials. He could not agree that paragraph 2 should be deleted.

82. His delegation fully supported the amendment submitted by the Federal Republic of Germany, because it was convinced that every right entailed a corresponding duty. Since under article 23, paragraph 3, the receiving State might declare a person unacceptable before he

[4] The following amendments had been submitted: Switzerland, A/CONF.25/C.1/L.17; Japan, A/CONF.25/C.1/L.58; Hungary and Poland, A/CONF.25/C.1/L.96; Italy, A/CONF.25/C.1/L.119; Federal Republic of Germany, A/CONF.25/C.1/L.130/; Spain, A/CONF.25/C.1/L.131.

arrived in its territory, the sending State was under an obligation to give the receiving State the necessary information for it to form its judgement on the acceptability of consular officials.

83. Mr. WU (China) supported the amendment submitted by the delegation of the Federal Republic of Germany, which reflected a universally accepted practice. It was important to provide that the information in question should be submitted in good time and the reference to article 23 was particularly apposite.

84. His delegation was in favour of deleting paragraph 2 because under Chinese law an exequatur was granted only to heads of post and not to subordinate officials.

85. Mr. MAMELI (Italy), introducing his delegation's amendment, said that, although the article, as drafted, was fairly satisfactory, it did not seem to go far enough. If the sending State could request the grant of an exequatur to a consular official, the receiving State should also, if its law so required, be able to stipulate admission to the exercise of consular functions by exequatur. Without such a provision, the sovereignty of the receiving State would be impaired. Italian law provided that all consular officials should be granted an exequatur, and the law of a number of other countries contained similar provisions. It might be possible to introduce that idea into the Commission's text; perhaps the question could be referred to the drafting committee. He would vote for the amendment submitted by the Federal Republic of Germany.

86. Mr. ALVARADO GARAICOA (Ecuador) said he would support the German amendment, because it was essential for the receiving State to be informed in advance of the appointment of all consular officials, in order to avoid subsequent disputes between the two States.

87. Mr. DEGEFU (Ethiopia) said his delegation could not support the proposals to delete paragraph 2 or the Italian amendment. He would, however, vote in favour of the amendment submitted by the Federal Republic of Germany.

88. Mr. RAHMAN (Federation of Malaya) said his delegation thought it important that the interests of small nations should not be overlooked or sacrificed in connexion with article 19. In the economic, political and ideological conflicts between the great powers in the modern world, the small nations tended to be victimized because they lacked the advantages, not only of technical knowledge, but of a state apparatus which could prevent them from being used to serve outside interests. The amendment submitted by the Federal Republic of Germany would provide a useful safeguard.

89. It was obvious that the interests of the receiving State could be protected in a capital city through well-established relations with a diplomatic mission, but consulates in outlying districts might be used to the disadvantage of the receiving State unless adequate safeguards were provided. Even though it might be assumed that no State would be likely to take action prejudicial to friendly relations with other States, prevention was better than cure. He would therefore vote in favour of the German amendment.

90. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) said that his delegation would also support the amendment by the Federal Republic of Germany, which would satisfactorily complement the provision in article 23, paragraph 3. Although his delegation was not altogether satisfied with paragraph 2 of article 19, it saw no objection to retaining that paragraph.

91. Mr. JAYANAMA (Thailand) also supported the amendment by the Federal Republic of Germany. Since all the countries represented at the Conference both appointed and received consuls, delegations should take the interests of both sending State and receiving State equally into account. Two basic rules of the law of nations were particularly applicable in the case of article 19. First, a sovereign nation was entitled to exercise exclusive jurisdiction in its own territory. Secondly, the laws or desiderata of one State had no force within the territorial limits of another. Those were incontestable principles of international law, which the amendment would serve to clarify in the article. Another important practical reason for supporting that amendment was that it would help to promote friendly relations among States, irrespective of their constitutions and social systems.

92. Mr. FUJIYAMA (Japan) said that the reason why his delegation had submitted its amendment deleting paragraph 2 was that, although it realized that the law of some countries provided for the grant of an exequatur to consular officials other than heads of post, Japanese authorities were not permitted to issue an exequatur to such officials. If the article in question referred to some other form of authorization, his delegation could accept the idea. His delegation, however, believed it was best to leave the question to the law of the receiving State.

93. Mr. BINDSCHEDLER (Switzerland) said that his delegation had submitted its amendment deleting paragraph 2 for three reasons. First, the paragraph seemed to be unnecessary, as it was generally agreed that the exequatur granted to the head of post covered all functions exercised by consular officials. Secondly, the paragraph would complicate the procedure of appointment, and could militate against the interests of sending States requesting the grant of an exequatur for consular officials, since on the occasion of every request the receiving State would have an opportunity to refuse. Thirdly, as the Chinese and Japanese representatives had pointed out, the law of some States prohibited the grant of an exequatur to consular officials other than heads of post. While Swiss law did not go so far as that, the exequatur had to be granted through a formal decision of the Federal Council after consulting the cantonal government concerned. If the document were issued to all consular officials, the same decision would have to be taken in each case.

The meeting rose at 6.15 p.m.

TWENTIETH MEETING

Tuesday, 19 March 1963, at 10.35 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 19 (Appointment of the consular staff) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 19 and the amendments there to.[1]

2. Mr. PALIERAKIS (Greece) said that he was in favour of the amendment submitted by the Federal Republic of Germany, which made it possible for the receiving State to exercise its right under paragraph 3 of article 23. On the other hand, if paragraph 2 of article 19 were retained, it would be advisable to adopt the Italian amendment, which took into consideration the requirements of the law of the receiving State.

3. Mr. CHIN (Republic of Korea) supported the amendment of the Federal Republic of Germany. For the receiving State to be able to exercise its rights under paragraph 3 of article 23, it would have to be notified in sufficient time of the name, category and capacity of all consular officials other than the head of post. His delegation was in favour of deleting paragraph 2 of article 19, as proposed by the Swiss, Japanese and joint Hungarian and Polish amendments. The provision contained therein was an optional and supplementary measure which was not required by international law, as indeed had been recognized by the International Law Commission in paragraph 7 of its commentary on the article.

4. Mr. de MENTHON (France) said that he too would vote for the amendment submitted by the Federal Republic of Germany, which filled a gap in the International Law Commission's draft. His delegation was also in favour of retaining paragraph 2 and of adding to article 19 the additional paragraph proposed in the Italian amendment.

5. Mr. KOCMAN (Czechoslovakia) said that paragraph 1 of article 19 stated a rule of international law already recognized in article 7 of the Vienna Convention on Diplomatic Relations. Paragraph 2 made provision for an exception to that rule, which could be stipulated in a bilateral convention. His delegation was therefore in favour of deleting that paragraph. The Italian amendment seemed to be contrary to consular tradition, and his delegation would vote against it.

6. The amendment submitted by the Federal Republic of Germany would be more appropriate in connexion with article 24. It the sponsors were willing for it to be discussed when that article came up for consideration, the Czechoslovak delegation would support it.

7. Mr. CRISTESCU (Romania) considered that the provisions of paragraph 2 were not in accordance with the general practice of all States and were of interest to a relatively small number of countries. Moreover, the matter could be settled through bilateral agreements. For those reasons, his delegation would vote against the amendments to delete paragraph 2 and, therefore, against the Italian amendment.

8. Mr. TÜREL (Turkey) said that he did not consider it advisable to include in a multilateral convention a provision such as paragraph 2 of article 19, since it was an optional measure not required by international law. The amendment submitted by the Federal Republic of Germany, on the other hand, was highly opportune, because it would facilitate the application of the provisions of paragraph 3 of article 23.

9. Mr. SHARP (New Zealand) said that he regarded article 19 as a compromise between the system of granting an exequatur to all consular officials and that of restricting it to the head of post. The Italian amendment was in keeping with practice in New Zealand; his delegation would therefore support it, provided it allowed for the methods set out in the amendment of the Federal Republic of Germany, for which he would likewise vote.

10. Miss ROESAD (Indonesia) considered that the sending State should be free to appoint the members of its consular staff. The Indonesian delegation would therefore vote in favour of paragraph 1 of article 19. The receiving State should likewise be notified in sufficient time of the names of consular officials appointed to a post so as to be able, if it wished, to exercise its rights under article 23, paragraph 3. Her delegation was therefore in favour of the amendment submitted by the Federal Republic of Germany. Paragraph 2 was justified for the reasons stated in paragraph 7 of the International Law Commission's commentary, and there was no reason to delete it.

11. Mr. N'DIAYE (Mali) supported the amendment of the Federal Republic of Germany, which constituted a safeguard for the security of States. That applied more particularly to young States which, in view of the circumstances in which they had gained independence, were obliged to exercise strict control over consular staff. The Italian amendment would be necessary if paragraph 2 were retained, because it rightly gave the receiving State the option of requiring an exequatur for a consular official. His delegation considered that the rejection of that amendment would logically imply the deletion of paragraph 2, the substance of which should be dealt with in bilateral conventions.

12. Mr. ENDEMANN (South Africa) said that the practice of restricting the exequatur to the head of the post was not so widespread as some speakers had claimed; paragraph 2 was therefore justified. The Italian amendment likewise filled a gap. His delegation, however, would prefer it to be drafted to read: " Likewise, the receiving State may, if such is required by its law, grant to a consular official who is appointed to a consulate in accordance with paragraph 1 of this article and who is

[1] For a list of the amendments to article 19, see the summary record of the nineteenth meeting (footnote to para. 74).

not the head of post the exequatur." He would vote for the amendment by the Federal Republic of Germany.

13. Mr. MARTINS (Portugal) said that, although he sympathized with the purpose of the Italian amendment, he would vote against it. Its adoption would impose a fresh formality in connexion with the admission of members of the consular staff. He would likewise vote against the joint amendment and the other amendments deleting paragraph 2. He recognized, however, that the text of that paragraph should be amended.

14. Mr. USTOR (Hungary) said that he was not quite clear as to the meaning of the amendment submitted by the Federal Republic of Germany. It gave the receiving State the possibility of exercising its legitimate right under paragraph 3 of article 23; but how was the exercise of that right to be guaranteed ? Presumably by notification on the part of the sending State; but then the obligation imposed on the sending State should not be stipulated in article 19, since the notification of the appointment of members of the consulate was dealt with in article 24. The amendment should therefore apply to article 24. Moreover, the amendment provided solely for the notification of the names of consular officials other than the head of post, whereas it was just as necessary that the receiving State should be informed of the name, category and capacity of the head of post. The amendment submitted by the Federal Republic of Germany did in fact state that notification should be made by the sending State " in sufficient time ", but that was too vague an expression. Perhaps the delegation of the Federal Republic of Germany could revise the wording of its amendment with regard to that point.

15. Mr. OMOLULU (Nigeria) said that he was in favour of paragraphs 1 and 2 of the draft. He would also support the Italian amendment, as orally revised by South Africa, but he would propose a slight drafting change in the South African sub-amendment and place the words " the exequatur " immediately after the word " grant ". He considered that the amendment of the Federal Republic of Germany would be more appropriate in connexion with article 19; he would support that amendment, which would facilitate the procedure for the admission of consular officials, particularly in the case of the young States which did not have adequate administrative machinery at their disposal.

16. Mr. HEPPEL (United Kingdom) noted with satisfaction that the amendment of the Federal Republic of Germany had met with unanimous approval, at least in substance. The proper place for that amendment was article 19, not article 24 as suggested by the representative of Hungary; article 24 dealt with administrative matters that concerned the Ministry for Foreign Affairs of the receiving State.

17. The United Kingdom delegation was not in favour of the amendments for the deletion of paragraph 2 which, as the International Law Commission had pointed out in its commentary, was not mandatory. But it supported the Italian amendment which placed the sending and receiving States on the same footing so far as the exequatur was concerned. In one form or another the exequatur was very important to a consular official, as it greatly facilitated the exercise of his functions.

18. Mr. TILAKARATNA (Ceylon) supported the amendment of the Federal Republic of Germany, which was the corollary to article 19 and was of particular value for young States, as the Nigerian representative had rightly pointed out.

19. Mr. ROSSI LONGHI (Italy) accepted the South African oral sub-amendment to the Italian amendment.

20. Mr. von HAEFTEN (Federal Republic of Germany), replying to the remarks of the Czechoslovak and Hungarian representatives, observed that article 24 was unsatisfactory in that it failed to provide that adequate notice should be given by the sending State of the appointment of members of consulates. Furthermore, the provisions of article 24 applied to all members of a consulate, whereas it was not necessary for the sending State to give notification in advance of the appointment of certain categories of consular employees. If paragraph 2 were deleted, however, and if the Italian amendment were rejected, the German delegation would agree to leave the question where its amendment should be placed to be settled by the drafting committee.

21. Mr. ALVARADO GARAICOA (Ecuador) supported the amendment by the Federal Republic of Germany and said that since consular officials came into direct and close contact with nationals of the sending State, as well as with the population of the receiving State, it was important that the exequatur should be granted, with full knowledge of the circumstances, not only to the head of a post, but to all consular officials.

22. Mr. USTOR (Hungary) said that while consular officials should be treated differently from other consular employees, article 19 dealt with the appointment of the consular staff, an expression which covered both categories. Perhaps it would be best to insert these various provisions in one or more separate paragraphs, or perhaps in article 24. It was a matter of drafting on which it should be possible to reach agreement. If that condition were met, the Hungarian delegation could accept the amendment by the Federal Republic of Germany.

23. The CHAIRMAN said that since the Spanish amendment (L.131) to paragraph 1 of article 19 had been withdrawn, he regarded paragraph 1 of article 19 as having been approved by the Committee.

24. He thought it best to put to the vote immediately the proposal of the Federal Republic of Germany (L.130) to insert a new paragraph after paragraph 1. The drafting committee could later decide at which point it should be inserted.

The amendment by the Federal Republic of Germany (A/CONF.25/C.1/L.130) was adopted by 53 votes to 11, with 7 abstentions.

25. The CHAIRMAN put to the vote the Swiss (A/CONF.25/C.1/L.17), Japanese (A/CONF.25/C.1/L.58) and Hungarian and Polish (A/CONF.25/C.1/L.96) amendments calling for the deletion of paragraph 2.

The amendments were rejected by 33 votes to 26, with 11 abstentions.

26. The CHAIRMAN put the Italian amendment (A/CONF.25/C.1/L.119), as amended by the South African sub-amendment, to the vote.

The amendment was adopted by 40 votes to 17, with 13 abstentions.

Article 19, as amended, was adopted by 56 votes to 11, with 3 abstentions.

27. Mr. BARTOŠ (Yugoslavia) explained that his delegation had voted against article 19, as amended, because it thought that the idea underlying the International Law Commission's text had been changed and that the balance of the draft as a whole had thus been altered.

28. Mr. RABASA (Mexico) said that his delegation had voted for paragraphs 1 and 2 of article 19 as drafted by the International Law Commission, and for the Italian amendment, as it thought that the granting of the exequatur was quite as important for consular officials as the agrément for members of the diplomatic staff. It had voted against the German amendment (L.130) since, although it approved the first part specifying the particulars to be furnished for all consular officials, it did not agree with the second part concerning the right of the receiving State not to accept consular officials.

29. Mr. WU (China) said that his delegation had voted for the Italian amendment because it referred to the law of the receiving State, which did not always require that an exequatur be granted to consular officials other than heads of posts.

Article 20 (Size of the staff)

30. The CHAIRMAN invites the Committee to consider article 20 and the amendments relating to it.[2]

31. Mr. KRISHNA RAO (India) announced that the delegations of Argentina, Nigeria and India had agreed to replace their separate proposals by a joint amendment according to which it was for the receiving State to keep the size of the staffs of consulates of sending States within reasonable and normal limits. The Argentine representative would explain the reasons which had prompted the amendment.

32. Mr. RUDA (Argentina) said that the Argentine, Nigerian and Indian delegations had presented different texts (L.92, L.104 and L.111) which were, however, based on the same idea: to establish the right of the receiving State to determine, in the absence of an explicit agreement, the reasonable and normal limits within which the size of consulate staffs should be kept.

33. At its thirteenth session, the International Law Commission had already considered a similar text which had had the support of a number of eminent jurists, but the text had not been maintained. He did not see why the standards laid down for the consular service should differ from those adopted for the diplomatic service. In paragraph 3 of its commentary, the International Law Commission had recognized the right of the receiving State to limit the size of consular staffs. In doing so, it had, of course, to apply objective criteria — i.e., the consulate's needs. The principle laid down in the commentary did not seem to have found expression in the draft text of article 20. The right recognized in the text was illusory; to make it effective, it was necessary to specify who should decide whether the size of a staff was reasonable and normal as judged by the criteria mentioned in the commentary; accordingly, it was proposed in the joint amendment to replace the words " reasonable and normal limits " by the words " limits considered by it to be reasonable and normal ".

34. Mr. OMOLULU (Nigeria) entirely agreed with the Argentine representative's statement. As the representative of a young State, he thought that there were three good reasons for the principle that it was the receiving State who should fix the size of consular staffs. The first was security: new States could not accept excessively large consulates as there had been too many abuses in the past. Secondly, there was the practical question of accommodation, schools, etc., as well as the financial question. Lastly, the enjoyment in a small country of diplomatic privileges and immunities by too many persons could exert an undesirable influence on the minds of the local inhabitants.

35. Mr. TÜREL (Turkey) said that his amendment (L.135) aimed at clarifying the text of article 20 whose purpose was to keep the size of consulate staffs within reasonable and normal limits, having regard to the proper performance of consular functions.

36. Mr. TSHIMBALANGA (Congo, Leopoldville) introduced an oral amendment to delete article 20. The question was purely internal and should normally be settled by bilateral agreement, in an atmosphere of mutual understanding. Failing agreement, the receiving State had not the right to limit the size of staffs. His government, therefore, was opposed in principle to the article. If, however, the Committee decided to include it in the Convention, he was prepared to support the Nigeria, Indian and Argentine proposals, and the Turkish amendment; he suggested that the delegations concerned should agree on a joint text.

37. Mr. KEVIN (Australia) said that consulates should not be placed in a more favourable situation than diplomatic missions.

38. Mr. PALIERAKIS (Greece) said that his delegation approved the joint amendment as the International Law Commission's text failed to answer the important question of who was to decide what was reasonable and normal. To admit that the sending State had the right to impose its will on the receiving State would be to jeopardize the sovereignty of the receiving State. He was also in favour of the Turkish amendment.

39. Mr. KHLESTOV (Union of Soviet Socialist Republics) pointed out that article 20 had been approved by the International Law Commission after the Vienna Conference on Diplomatic Relations, but that its text

[2] The following amendments had been submitted: Argentina, A/CONF.25/C.1/L.92; Nigeria, A/CONF.25/C.1/L.104; India, A/CONF.25/C.1/L.111; Turkey, A/CONF.25/C.1/L.135.

differed from that of the corresponding article in the 1961 Convention. To decide whether that was a mistake or a deliberate choice, it was necessary to examine article 20 carefully. Failing an agreement between the sending State and the receiving State, the latter could demand that the size of a consulate staff should be kept within reasonable and normal limits. The question was: Who was to decide the precise meaning of the words " reasonable and normal " ?

40. To give to the sending State the right of fixing the size of consulate staffs would be one extreme solution. The other extreme solution would be to leave the right to decide to the receiving State. Those were doubtless the considerations which had led the International Law Commission to draw up the text as it stood. His delegation had examined with interest the proposed amendments, in particular those of India and of the Congo (Leopoldville); but it thought that the difficulties had been exaggerated. A middle way should be found, which might well be that suggested by the International Law Commission.

41. His delegation would be able to support the Congolese amendment and the first part of the Turkish amendment; but the second part of that amendment seemed inadvisable, since the needs of the consulate had also to be taken into consideration. The USSR delegation did not wish to ignore any relevant factor and was ready to consider all the arguments which might be brought forward in the Committee.

42. Mr. N'DIAYE (Mali) thought that the young and still very vulnerable States in particular should give careful consideration to article 20, as they had to protect themselves from an undesirable growth of consular staffs, whose superfluous members could engage in activities very different from those they were supposed to perform. In his opinion, therefore, it was essential that the article be retained. He was, however, in favour of the joint amendment.

43. Mr. HEPPEL (United Kingdom) said that there were three ways in which the matter could be solved. In the bilateral agreements concluded by the United Kingdom it was left to the sending State to fix the size of each consulate staff. According to the International Law Commission, the receiving State had a word to say in the matter and any disputes could be settled in the light of objective criteria of what was reasonable and normal; the International Law Commission had deliberately refrained from saying how the receiving State should decide what was reasonable and normal. The third solution was to leave the decision to the receiving State. He well understood what had been intended by the International Law Commission, but the discussion had shown that a certain number of States might think that their interests should be better protected. As a sending State which maintained a fairly large number of consular posts, the United Kingdom did not wish to impose its opinion on the Committee, and would therefore abstain on that point.

44. Mr. DADZIE (Ghana) said that although article 20 was perfectly acceptable to Ghana, it seemed to leave in doubt the important question of who was to decide what was reasonable and normal. It seemed to be for the receiving State to judge; but the sending State could not always concur in the receiving State's decision. Rather than leave the matter in doubt, the Ghanaian representative thought it best to support the joint proposal by India, Argentina and Nigeria. He could not support the existing text of the Turkish amendment.

45. Mr. ABDELMAGID (United Arab Republic) observed that article 20 took account of three factors. The most important was the principle of agreement between the two States; the second was a subjective criterion — the idea of what was reasonable and normal; the third was an objective criterion — the needs of the consulate. Existing practice gave priority to the first principle. Agreement solved all difficulties, but if there were no agreement, a decision had to be based on the criteria referred to. The delegation of the United Arab Republic was inclined to support the amendment of the three countries, which seemed to provide an apt solution. The Turkish amendment (L.135) would also be acceptable if it were supplemented by the insertion, after the words " for the performance of the consular functions ", of the words " within the limits of the consular district ".

46. Mr. RABASA' (Mexico) supported the joint amendment. When a dispute arose between two States, there were three possible methods of settling it: by bilateral agreement, which should have priority; by a unilateral solution, in which one of the parties imposed its will; and by the reference of the dispute to a third party. Good sense suggested that, failing agreement between the two parties concerned, it should be for the receiving State to decide what was just and reasonable, and to say what persons it was prepared to accept.

47. As his delegation had found the Argentine representative's argument very convincing, it would vote for the joint amendment in its final form.

48. Mr. DEGEFU (Ethiopia) said that, despite careful study, he had been unable to perceive exactly what the International Law Commission's text intended; he therefore supported the arguments of the Argentine and Indian representatives. He understood the reasons which had prompted the Nigerian amendment (L.104), but doubted if it was advisable to add a new paragraph. He thought that it would overburden the text of the joint amendment if the Turkish amendment (L.135) were amalgamated with it; moreover, a situation infavourable to the States which had recently gained their independence might thereby be created.

49. Mr. ROSSI LONGHI (Italy) said that his delegation supported the amendments.

50. Mr. USTOR (Hungary) said that the International Law Commission's divergence from the position it had adopted at the time of the Vienna Convention on Diplomatic Relations seemed to have been deliberate. He hoped that, before the matter was put to the vote, there would be an opportunity of hearing the special rapporteur's explanation.

The meeting rose at 1 p.m.

TWENTY-FIRST MEETING

Tuesday, 19 March 1963, at 3.5 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 20 (Size of the staff) (*continued*)

1. The CHAIRMAN recalled that the Argentine, Indian and Nigerian delegations had agreed on a single amendment to replace their separate proposals (L.92, L.111 and L.104). In addition, there was a proposal by Turkey (L.135) and an oral amendment by the Congo (Leopoldville).

2. Mr. TILAKARATNA (Ceylon) said that his delegation disagreed as a matter of principle with the suggestion made by the Hungarian representative at the preceding meeting that the opinion of the expert should be requested on article 20. The article had no legal content; it dealt with a political issue. Moroever, the summary records of the Commission's debates showed that the voting on the article had been as close as 8 in favour and 6 against and 4 abstentions, so that it might be embarrassing for the expert to have to give an opinion on the subject.

3. The question dealt with in the article was of great importance to some countries and reflected the friendly relations which should exist between the sending State and the receiving State. It would be sad to see the debate degenerate into a conflict between large and small countries. In practice, and as provided in the Commission's article, it should be for the receiving State to require that the size of the staff be kept within reasonable and normal limits, since that State had at least as much responsibility as the sending State in deciding upon needs in the light of circumstances and conditions in the consular district. Moreover, the interests of the sending State were safeguarded by the reference in the article to the needs of the particular consulate.

4. His delegation deplored the tendency to compare all aspects of the draft articles with corresponding provisions of the Vienna Convention on Diplomatic Relations. Two years had elapsed since the Vienna Conference, and a number of changes had taken place in the conduct of international relations. It therefore seemed unnecessary to impose the same restrictions in the consular convention as had been adopted in the earlier instrument. Delegations were attending the Conference with a view to preparing a vitally important multilateral instrument, which should be implemented in a spirit of friendship; that aim would not be furthered by an acrimonious debate on article 20.

5. Mr. SILVEIRA-BARRIOS (Venezuela) said that his delegation endorsed the legal arguments advanced by the Argentine and Mexican representatives at the preceding meeting and would therefore support the joint amendment.

6. Mr. EL KOHEN (Morocco) said that, in his degation's opinion, the size of the consular staff was a matter of great concern to the receiving State, because of its sovereign right to limit certain activities in its own territory. As the representative of Mali had pointed out, the receiving State was more vulnerable to abuses through the increase of the size of the staff than the sending State. The safeguard provided in the joint amendment was therefore a wise one and, moreover, it corresponded to the recognized practice. He also supported the Turkish proposal to delete the words " and to the needs of the particular consulate ", which were superfluous.

7. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation wished to clarify its position on article 20. It had originally supported the draft article, in the belief that the Commission had duly taken into account the corresponding provision of the Vienna Convention and the existing practice in consular matters, and had tried to balance the interests of the sending State and the receiving State. The debate in the Committee had shown, however, that the joint amendment would serve the interests of a number of countries, particularly those which had recently become independent. The USSR delegation would therefore not oppose the joint amendment.

8. Mr. KRISHNA RAO (India) said that the idea of conferring overriding powers on the receiving State in the matter of the size of the staff was based on the very structure of the draft. Article 2 (Establishment of consular relations) implied that the sending State established consular relations with the receiving State in accordance with the sovereign rights of the receiving State; as a logical consequence of that principle, the receiving State had the right to refuse to admit consular officials to its territory. Article 20 was based on the premise that, if the size of the staff was abnormally large, there might be reason to believe that members of the consulate were engaged in other than consular activities.

9. The reasonable or normal size of the staff should be determined by agreement with the sending State; but, failing such agreement, it was a matter for the receiving State alone to decide. In the absence of a provision to that effect, the matter could hardly be settled by resorting to a possible disputes clause referring it to the International Court of Justice, since the issue was political rather than legal and must be decided on the spot. Thus, from the practical point of view also, it was better for the receiving State to settle the matter, a solution which would help to promote peaceful and friendly consular relations.

10. It had to be borne in mind that diplomatic functions were less specific and tangible than consular functions; in the case of the latter the size of the staff depended on such definite facts as the number of nationals of the sending State in the consular district, the volume of trade between the two countries and so forth.

11. His delegation therefore commended the joint amendment to the Committee. He was grateful to the representative of the Congo (Leopoldville) for his sup-

port of the joint amendment, but that representative's proposal to delete the whole article placed him in a somewhat contradictory position.

12. Mr. TSHIMBALANGA (Congo, Leopoldville) withdrew his proposal to delete article 20. The debate had shown his delegation that the joint amendment would afford considerable advantages to small countries.

13. Mr. BARTOŠ (Yugoslavia) said that the International Law Commission had found itself in a difficult position with regard to article 20 and had decided on a compromise text which clarified the fact that, on the one hand, the sending State had the sovereign right to state the number of personnel it needed to perform consular functions, while on the other hand the receiving State had sovereign rights in its own territory to protect itself against any abuse. It was difficult to decide which State should be so protected; while the receiving State should have all the necessary means of protection at its disposal, it was possible to conceive of acts on the part of the receiving State which might hamper the activities of consuls. The Commission had therefore left it to the Conference to decide on the final solution.

14. Moreover, the Commission had felt unable to take the responsibility of laying down an objective criterion in the absence of compulsory jurisdiction in the matter, since that question was dealt with by the Vienna Convention on Diplomatic Relations in an optional protocol. In the absence of precedent or suitable jurisdiction, the compromise solution had seemed reasonable. Recourse to the International Court of Justice was too costly and in any case would take far too long; as the Indian representative had said, the question must be settled on the spot. He therefore believed that the solution proposed in the joint amendment was the best that could be reached in the circumstances, though the most satisfactory method would be that of *ad hoc* arbitration with the approval of both States.

15. To sum up, the sovereignty of the sending State and of the receiving State was involved; in principle, neither should be favoured at the expense of the other, but a solution which in practice promoted the protection of small States against large States seemed to meet the requirements of international social justice.

16. Mr. TÜREL (Turkey) said he would vote for the joint amendment. In view of the wish expressed by some delegations to retain the words " and to the needs of the particular consulate ", he would agree to withdraw the second part of his delegation's amendment (L.135). He could also accept the proposal of the representative of the United Arab Republic to insert the words " within the limits of the consular district " after the words " for the performance of the consular functions ".

17. Mr. WESTRUP (Sweden) said that at the Vienna Conference of 1961 the Swedish delegation had opposed the principle of making the receiving State competent to decide what was a reasonable and normal size for a diplomatic mission in its territory. His delegation had not changed its opinion, but it did not think that the two conventions should differ on that point. It therefore would not oppose any amendment intended to bring the provisions into line with the Vienna Convention and would merely abstain from voting on them, in the interests of friendly relations among States.

The amendment submitted jointly by the delegations of Argentina, India and Nigeria was adopted by 48 votes to 1, with 16 abstentions, subject to re-wording by the drafting committee.

The Turkish amendment (A/CONF.25/C.1/L.135), as orally amended by the representative of the United Arab Republic, was rejected by 15 votes to 8, with 40 abstentions.

Article 20, as amended, was adopted by 57 votes to none, with 10 abstentions.

Article 21 (Order of precedence as between the officials of a consulate)

18. The CHAIRMAN drew attention to the amendments submitted to article 21.[1]

19. Mr. MIRANDA e SILVA (Brazil) said that his delegation had submitted its amendment for two reasons: first, to specify that the order of precedence was to be established by the head of post and, secondly, to simplify the wording of the article. There were undoubted advantages in stating that the order of precedence as between the officials of a consulate was established by the head of post.

20. Mr. OMOLULU (Nigeria) said that, since his delegation's amendment depended on the ultimate definition of the term " consular official " and since the Committee had not yet discussed article 1 (Definitions), he would withdraw it.

21. Mr. JELENIK (Hungary) said that his delegation could, in principle, accept article 21, which corresponded to article 17 of the Vienna Convention on Diplomatic Relations. It had submitted its amendment in order to clarify the clause and to make it correspond more closely to existing practice. Although it might be implicit in article 21 that changes in the order of precedence must be notified to the authorities of the receiving State, it was advisable to state that fact explicitly.

22. Mr. MAMELI (Italy) said that his delegation had introduced its amendment because there seemed to be no reason to make an exception to the rule that a consular official should not enter into contract with the Ministry for Foreign Affairs of the receiving State. Even where the sending State had no diplomatic mission, the same procedure should be used as for the establishment of consular relations.

23. Mr. ENDEMANN (South Africa) said that his delegation had submitted its proposal to delete article 21 for two main reasons. First, the Commission's draft might cause a great deal of confusion in practice. In most consular districts, the order of precedence of officials was decided by the dean of the consular corps, but article 21 could, by implication, mean that the Ministry

[1] The following amendments had been submitted: Brazil, A/CONF.25/C.1/L.66; Hungary, A/CONF.25/C.1/L.97; Nigeria, A/CONF.25/C.1/L.105; Italy, A/CONF.25/C.1/L.120; South Africa (A/CONF.25/C.1/L.129).

for Foreign Affairs of the receiving State could take over the duty of determining precedence for consular officials throughout the country, which would impose a great burden on that ministry. Secondly, the implication that the head of post should establish the precedence of his staff would raise practical difficulties. For example, in one and the same consular district, post A might have two or three officials with the rank of consul on its staff while post B might have only one official in that class; the senior official in that class at post A might leave and the new official who replaced him might, by a decision of the head of post, rank first in his class. The relationship between that new official and the only official of the same class at post B would then be most confused. In the practice of many countries, seniority in the consular corps was reckoned from the date when the official assumed his duties in his class, and anyone appointed at a later date was automatically junior. For those two reasons, the South African delegation had proposed that the article be deleted.

24. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) observed that the Brazilian amendment referred to the establishment of the order of precedence. That was a matter within the exclusive competence of the sending State; it was not relevant to article 21, which dealt only with notification of the order of precedence to the authorities of the receiving State. His delegation could not vote for that amendment or for the Italian amendment, the effect of which would be to leave no definitive indication as to who was to notify the authorities of the receiving State. Nor could his delegation support the South African proposal to delete the article, since it had considerable practical value and a similar provision had rightly been included in the Vienna Convention on Diplomatic Relations. The Hungarian amendment, on the other hand, improved the Commission's text, and his delegation would vote in favour of it.

25. Mr. BARTOŠ (Yugoslavia) said he could not support the South African proposal to delete article 21; it was better to have a precise rule laying down that the authorities of the receiving State must follow the order of precedence established in accordance with the critiria of the sending State than to leave the question to subjective decisions which might give rise to disputes. He would vote against the Brazilian amendment, however, because it was not always the head of post who established the order of precedence within the consulate: some countries left that function to a relatively junior official specially empowered to deal with such administrative matters, and that practice should not be interfered with.

26. On the other hand, the act of notifying the authorities of the receiving State of the order of precedence was an international act involving another State; that was why the Commission had provided that the head of post should be responsible for such notification. He could not vote for the Italian amendment, because it was important to specify the person competent to notify the Ministry for Foreign Affairs of the receiving State or the authority designated by the said ministry. The Commission had included the last phrase of the article in order to provide for the case of federal States and other States which preferred to leave contacts with consular officials to regional authorities. There again, it would not be proper in a multilateral convention to specify the authority on which the government of the receiving State could confer competence to receive the notification.

27. He would vote for the Hungarian amendment, which clarified the Commission's text.

28. Mr. MARTINS (Portugal) said he would vote for the Brazilian amendment because it simplified the text of article 21. Once the order of precedence had been established, it was self-evident that the head of post would communicate it to the authorities of the receiving State.

29. Mr. WU (China) supported the South African amendment. The question of precedence as between the officials of a consulate was unimportant and had little practical interest except in such minor matters as the issue of invitations and the publication of lists of the consulars corps. The ministries of foreign affairs of receiving States should not be burdened with such trivia. If the majority of the Committee thought that the provision should be retained, his delegation would vote for the Italian amendment, because the head of a consular post was not in a position to communicate directly with the Ministry for Foreign Affairs of the receiving State.

30. Mr. de MENTHON (France) said he would vote for the Italian amendment. The head of a consular post normally had no direct contact with the Ministry for Foreign Affairs. If the consulate concerned was situated in the capital city, it would be for the diplomatic mission to notify the ministry of the order of precedence of consular officials; but in the case of consulates in other districts, the notification should be made to the local authorities. The Commission's text therefore seemed too rigid to meet all the cases that might arise in practice.

31. Mr. PALIERAKIS (Greece) said he would support the Hungarian amendment, since it seemed advisable to notify the authorities of the receiving State of changes in the order of precedence. He could not support the Brazilian and Italian amendments, however, for the reasons given by the Yugoslav representative.

32. Mr. DADZIE (Ghana) said that he could not agree with the South African representative's view that the effect of the Commission's text might be to place the onus of establishing the order of precedence on the Ministry for Foreign Affairs of the receiving State. Article 21 merely provided that the head of post would notify the ministry or another authority designated by it. The establishment of the order of precedence was within the exclusive competence of the sending State, and he could not support the South African proposal. Nor could he vote for the Italian amendment, because, even if the head of post might not actually sign the notification, another responsible official would do so on his behalf. He would vote against the Brazilian amendment, because the essential purpose of article 21 was to provide for notification of the order of precedence to the receiving State. He would vote in favour of the

Hungarian amendment, which conformed with the existing practice in the matter.

33. Mr. BREWER (Liberia) said he could support the Brazilian amendment if it were treated as an addition to the Commission's text. The text of the article might then read as follows: " The order of precedence as between the officials of a consulate shall be established by the head of post and shall be notified by him to the Ministry for Foreign Affairs of the receiving State or to the authority designated by the said ministry."

34. He did not think that the Hungarian amendment would serve any useful purpose, since it was implicit in the Commission's text that changes in the order of precedence would be notified to the competent authorities.

35. Mr. HEPPEL (United Kingdom) said he would prefer article 21 to be deleted, since the question of precedence within the consulate would be best regulated with reference to the date on which each official in a given class entered upon the exercise of his functions. He agreed with the Chinese representative that the Ministry of Foreign Affairs should not be concerned with such matters. Indeed, it was doubtful what such ministries would do with the streams of notifications they would receive and whether they would be willing to answer questions concerning the precedence of the consular corps in various parts of the country. Where there were several consular officials of the same rank, such minor questions as might arise could easily be settled locally. He would therefore support the South African amendment, but if the article was retained, he would vote for the amendments which removed the implication that heads of post should communicate directly with the Ministry for Foreign Affairs.

36. Mr. ABDELMAGID (United Arab Republic) said he would vote against the South African amendment; his delegation deplored the prevailing tendency to delete articles from the Commission's draft. He would also vote against the Italian amendment, because the person notifying the authorities of the receiving State must be specified, and against the Brazilian amendment, because it was irrelevant to the purpose of article 21. On the other hand, he would support the Hungarian amendment, which clearly showed that the order of precedence was not immutable.

37. Mr. N'DIAYE (Mali) said that he had not been convinced by the arguments for deleting the article and would vote against the South African amendment. He could not support the Italian amendment either, since it was essential to indicate the person who would notify the authorities of the receiving State. Adoption of the Brazilian amendment would sanction interference with the municipal law of the sending State, and he could not vote for it. He would support the Hungarian amendment, which filled a gap in the Commission's text.

38. Mr. MIRANDA e SILVA (Brazil) accepted the Liberian representative's oral sub-amendment, which satisfactorily combined the two ideas of establishment and notification of the order of precedence.

The South African amendment (A/CONF.25/C.1/L.129) was rejected by 48 votes to 5, with 10 abstentions.

The Brazilian amendment (A/CONF.25/C.1/L.66), as orally amended by Liberia, was rejected by 33 votes to 8, with 24 abstentions.

The Hungarian amendment (A/CONF.25/C.1/L.97) was adopted by 45 votes to 3, with 18 abstentions.

The Italian amendment (A/CONF.25/C.1/L.120) was rejected by 27 votes to 15, with 23 abstentions.

Article 21, as amended, was adopted by 61 votes to 1, with 3 abstentions.

39. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted for the Brazilian proposal as amended by Liberia because it was more systematic than the International Law Commission's text.

Article 22 (Appointment of nationals of the receiving State)

40. The CHAIRMAN invited debate on article 22 and drew attention to the amendments submitted.[2]

41. Mr. DONOWAKI (Japan), introducing his delegation's amendment deleting article 22, said that he wished to emphasize the fact that the provisions of paragraph 1 did not correspond to existing practice. Honorary consuls and consular agents were usually not nationals of the sending State.

42. Paragraphs 2 and 3 of the article were superfluous, because the receiving State had the right to refuse admission to any consular official, regardless of his nationality. Moreover, the amendment (L.130) to article 19 adopted at the previous meeting provided for prior notification of the names of all consular officials to the receiving State, so that the position of that State was safeguarded in every respect.

43. Mr. MIRANDA e SILVA (Brazil), introducing his delegation's amendment adding the word " express " in paragraph 2, said it was the practice of Brazil to require the express consent of the authorities of the receiving State for the appointment of a consular official from among persons having the nationality of that State; that also applied to honorary consuls.

44. Mr. WU (China) explained that his delegation favoured the deletion of article 22, as proposed by the Japanese delegation, because it considered that the practice of appointing nationals of the receiving State as consuls was out of date. Any provision to the effect that nationals of the receiving State could be appointed to act as foreign consuls would create difficulties. It was embarrassing for a person to act in his own country in the interests of a foreign State and of its nationals; moreover, the exercise of consular functions might confer certain privileges upon a national of the receiving State — a situation which was altogether anomalous.

45. If article 22 was retained, however, his delegation's amendment specifying that the " prior " consent of the receiving State was required would lessen the evil effects of the provision under discussion.

[2] The following amendments had been submitted: Japan, A/CONF.25/C.1/L.59; Brazil, A/CONF.25/C.1/L.67; China, A/CONF.25/C.1/L.112; South Africa, A/CONF.25/C.1/L.137.

46. Mr. ENDEMANN (South Africa), observed that article 22, paragraph 1, followed the terms of article 8, paragraph 1, of the Vienna Convention on Diplomatic Relations. He did not think it advisable to reproduce that provision in a convention on consular relations. Many countries, particularly small countries, could not afford to send career consuls to all the places where they needed to establish consulates; they therefore appointed as honorary consuls persons who were either nationals of, or residents in, the receiving State.

47. Nationality was not as important a factor for the exercise of consular functions as it was for the exercise of diplomatic functions, and his delegation therefore proposed that paragraph 1 should be deleted. He noted, moreover, that paragraph 2, by referring to the possibility of appointing nationals of the receiving State, appeared to contradict paragraph 1.

48. The object of his delegation's amendment to paragraph 3 was to extend its provisions to persons permanently resident in the territory of the receiving State, irrespective of their nationality. Permanent residents in a country often had large vested interests there and might even take some part in politics; it was proper that the receiving State should be consulted and have an opportunity of deciding that a resident was not suitable for appointment as a consular official.

49. Mr. EL-SABAH EL-SALEM (Kuwait) supported the proposal to delete paragraph 1 for reasons quite contrary to those which had been put forward by the representative of China. Kuwait had adopted a new law on its foreign service, which provided that nationals of a third State could be appointed not only as honorary consuls of Kuwait, but also as career consuls. Kuwait was a small country which faced certain practical difficulties. It was surrounded by a number of friendly countries, many of whose citizens had taken up residence in Kuwait. Some of those persons had become naturalized but others had retained their original citizenship; no distinction was made between them and they were all given the same treatment as the nationals of the country. There was no reason why persons who were thus accepted as reliable and trustworthy should not be eligible for appointment as consular officials of Kuwait.

50. Another reason for deleting paragraph 1 was that its terms contradicted the provisions of paragraphs 2 and 3, which permitted the appointment of persons other than nationals of the sending State as its consular officials. Moreover, paragraph 1 did not appear in the article originally adopted by the International Law Commission at its twelfth session and reproduced in paragraph 1 of the commentary. He did not agree with the statement in paragraph 2 of the commentary that the original text " implied that consular officials should, as a rule, have the nationality of the sending State ". There was no such implication in the original text, which also left open the question of the appointment of nationals of a third State.

51. He could not agree that the system embodied in the law of Kuwait was in any way outmoded. On the contrary, it was consistent with the modern trend away from excessive emphasis on nationality and an unjustified distrust of foreigners. The system adopted by his country had not given rise to any complications in its relations with a great many friendly countries, and the reliability of the consular officials of Kuwait had never been in doubt.

52. If article 22 was retained by the Committee, he proposed that the words " in principle " in paragraph 1 should be replaced by the word " normally ". If the article was adopted in its present form it would be very difficult for his country to ratify the future convention on consular relations.

53. Mr. HELWEG (Denmark) supported the proposal to delete paragraph 1. The principle stated there was perhaps true of career consuls but certainly not of honorary consuls. Denmark had fifty consuls in France, all of them honorary and all of them French nationals. It was quite common for a State which could not afford the expense of sending a career official to a distant country to appoint an honorary consul who was a national of the receiving State. In the circumstances, it was undesirable to lay down any specific rule regarding the nationality of consular officials.

54. Mr. HELANIEMI (Finland) said that in most cases his delegation had been prepared to accept the draft articles drawn up by the International Law Commission; it had voted against many amendments without giving any explanation. In the case of article 22, however, his delegation would have to oppose the Commission's text. The article was intended to lay down a rule similar to that in article 8 of the Vienna Convention on Diplomatic Relations; but there was no valid analogy between the case of diplomatic agents and that of consular officials. Unlike diplomatic agents, the majority of consuls, who were in fact honorary consuls, were chosen from among nationals of the receiving State. For those reasons, he supported the proposal to delete article 22.

55. Mr. D'ESTEFANO PISANI (Cuba) opposed the deletion of article 22. His delegation considered the provisions of that article important and could support only the Brazilian amendment, which improved the text of paragraph 2 by specifying that the consent referred to should be " express ".

56. The South African amendment (L.137) introduced an unnecessary reference to permanent residents into an article which already required the consent of the receiving State to the appointment of one of its own nationals or of a national of a third State as a consular official. Article 22 would not prevent the appointment of persons other than nationals of the sending State as consular officials; it merely provided that the consent of the receiving State was required for such an appointment.

57. His delegation deplored the tendency to propose the deletion of certain articles of the draft on the basis of a totally unfounded distinction between " important " and " unimportant " articles. That tendency was particularly dangerous because it could upset the structure of the whole draft. It might also result in certain matters of great importance, which should be regulated by the future convention, being left to the discretion of States.

58. Mr. SOLHEIM (Norway) said that article 8, paragraph 1, of the Vienna Convention on Diplomatic Relations stated a well-established rule — namely, that " members of the diplomatic staff of the mission should in principle be of the nationality of the sending State ". His delegation had voted in favour of that rule in 1961. It would, however, strongly oppose the attempt to embody that rule in consular law in the form set out in article 22, paragraph 1.

59. The International Law Commission had erred in drawing a direct comparison between diplomatic agents and consular officials. A diplomatic agent had a general representative character: he represented the government of the sending State in its relations with the government of the receiving State. A consular official, on the other hand, was not a link between governments; he exercised certain limited functions and did not enjoy the immunities and privileges of a diplomatic agent.

60. The provisions of paragraph 1 might have been acceptable to a great many delegations if they had applied exclusively to career consular officials. As drafted, however, they applied also to honorary consuls and were at variance with tradition and current practice; they took no account of the needs of small nations.

61. Even at a very early stage in history, it had been the practice to appoint as consular officials not only persons who were nationals of the sending State, but also nationals of the receiving State. By stipulating that consular agents should in principle be nationals of the sending State the International Law Commission seemed to be stating that an old and widespread practice was wrong in principle. The article as drafted would place the smaller countries in an extremely difficult position. If no qualified national of the sending State was available in a country, where there was a need for consular services, the sending State would be faced with the choice between establishing a career consular post at great expense, or leaving its interests unprotected.

62. His delegation accordingly supported the proposals to delete paragraphs 1 and 3. It had no objection to paragraph 2, but considered its provisions unnecessary; the receiving State was not under any obligation to accept the nomination of its nationals as consular officials of a foreign State in its territory: it could always refuse to grant admission under the provisions of other articles of the convention.

63. He was opposed to the South African amendment extending the provisions of paragraph 3 to persons permanently resident in the territory of the receiving State irrespective of their nationality. The sending State would be placed in an extremely difficult position if, being unable to appoint a national of the receiving State as a result of the application of paragraph 2, it were faced with difficulties when falling back on the only possible alternative — namely, a foreign permanent resident in that State.

64. Mr. WESTRUP (Sweden), supporting the proposal to delete paragraph 1, deplored the tendency to adopt restrictive provisions as a matter of principle. He urged that consideration should be given to the position of a number of countries like his own, with widespread maritime and commercial interests which exceeded their administrative resources. It was necessary for such countries to maintain a large number of consulates, particularly at seaports, and it was impossible for them to send career consular officers to all the places concerned. Nor was it generally possible to find locally a qualified citizen of the sending State; hence they generally called upon a shipping agent or merchant, more often than not a national of the receiving State, to act as consul. It would be extremely unfortunate if article 22 were to begin with a statement implying that such a choice was abnormal or even reprehensible. For the same reasons as the delegation of Norway, his delegation favoured the deletion of paragraph 3 as well as paragraph 1.

65. Mr. SILVEIRA-BARRIOS (Venezuela) considered that article 22 should be retained. He supported the Brazilian amendment inserting the word " express " before the word " consent " in paragraph 2. If that amendment was not adopted, his delegation would support the Chinese amendment inserting the word " prior " before the word " consent ".

66. Mr. von HAEFTEN (Federal Republic of Germany) said that the provisions of paragraph 1 should obviously apply to career consular officials only; honorary consuls were generally nationals of the receiving State. He suggested that the word " career " might be inserted before the words " consular officials " at the beginning of the paragraph.

67. Mr. PALIERAKIS (Greece) supported that suggestion. He also supported the amendment submitted by China.

68. Miss ROESAD (Indonesia) was in favour of retaining paragraph 1 as it stood. Critics of that paragraph had exaggerated its effects; the provisions of paragraph 1 did not stand alone, but should be read in conjunction with those of paragraphs 2 and 3, which allowed nationals of the receiving State and of third States to be appointed as consular officials subject to the consent of the receiving State. She could not support the proposals to delete article 22 or any part of it, but was in favour of the Brazilian amendment.

69. Mr. BARTOŠ (Yugoslavia) pointed out that there had been great changes in the conduct of consular relations. The tendency was to appoint fewer honorary consuls and more career consuls, and to appoint nationals of the receiving State less frequently. That was in line with the changes that were taking place in contemporary society; consuls no longer represented only the interests of certain maritime and banking firms as they had in the liberal economy of the nineteenth century. Even in capitalist countries, there had been a marked change in that respect, and economic relations had become the concern of the community of nations.

70. In the circumstances, it was proper to state that a consul should, in principle, be a citizen of the country which appointed him. Article 22 did not prevent the appointment of nationals of the receiving State as honorary consuls: it merely made the consent of the

receiving State necessary. There could be no doubt that that consent was necessary, because the receiving State was entitled to expect loyalty from its citizens; indeed, there were countries — although Yugoslavia was not one of them — where a citizen who accepted public office from a foreign country without the consent of his own country forfeited his nationality. That showed the importance which many countries attached to the duty of loyalty.

71. Certain delegations had misunderstood the provisions of article 22; those provisions were not aimed at abolishing honorary consuls or at preventing citizens of the receiving State from being appointed as consuls; they merely restated the need for the consent of the receiving State to the appointment of one of its own nationals as a foreign consul. In that connexion, it was not accurate to say that the receiving State's position was safeguarded by the need for the consul to obtain an exequatur. Only the head of a consular post needed to obtain an exequatur, and a national of the receiving State could be appointed as honorary consul in a consular district which already had a head of post.

72. Referring to the commentary on article 22, he stressed the fact that the International Law Commission, in departing from the wording it had adopted for the article at its twelfth session, had not departed in any way from the substance of the provision. It had merely deleted the qualification " express " before the word " consent " and had added the words " which may be withdrawn at any time ". The central idea had remained the same.

73. He supported the Brazilian amendment restoring the word " express ".

74. Mr. HUBEE (Netherlands) said that his delegation's attitude towards the various amendments was determined by its firm view that small States should be permitted to appoint foreign nationals to conduct their consular affairs in places to which they were unable to send career consular officials. His delegation would support all amendments aimed at eliminating restrictions based on nationality, including the Japanese proposal to delete article 22 altogether and the South African proposal to delete paragraph 1. On the other hand, it would vote against all amendments aimed at qualifying the consent of the receiving State so as to make the relevant provision more stringent.

75. He hoped that other delegations would understand the position of the smaller States and appreciate that the provisions of article 23, which enabled the receiving State to declare a consular official unacceptable at any time, provided a sufficient safeguard for that State.

76. If the Japanese proposal was not adopted, his delegation would propose that the concluding words of paragraph 2, ". . . except with the consent of that State which may be withdrawn at any time ", be replaced by the words " unless that State after prior notification does not object thereto ". That text would be more flexible than the International Law Commission's draft.

77. Mr. N'DIAYE (Mali) was in favour of retaining article 22, the various paragraphs of which stated self-evident facts. Paragraph 1 laid down the basic rule that the officials of a country should have its own nationality. That rule was laid down " in principle " and exceptions were provided for in the other paragraphs. In paragraphs 2 and 3, provision was made for the consent of the receiving State to the appointment of one of its nationals or a national of a third State as a consular official of the sending State. He saw no difficulty in those provisions, which merely restated the general rule that the consent of the receiving State was necessary for the admission of a consular official.

78. His delegation was therefore in favour of retaining the text of article 22 with only two changes: the Brazilian amendment introducing the word " express " before the word " consent " in paragraph 2, and the South African amendment introducing the words " as in paragraph 2 " in paragraph 3. The latter proposal, which was only a drafting amendment, could be referred to the drafting committee.

79. Mr. HEPPEL (United Kingdom) said that he had been impressed by the arguments put forward by the representatives of Kuwait, Norway and Sweden. The provisions of paragraph 1 did not embody a generally accepted principle and some sending States would find them embarrassing. It was not at all uncommon for a consular official not to be a national of the sending State and he therefore supported the proposals to delete paragraph 1.

80. The provisions of paragraphs 2 and 3 were in no way contrary to the views held by his delegation. It was the United Kingdom practice to require all consular officials to be admitted by the receiving State. Since, in his delegation's view, all consular officials were required to obtain an exequatur or other form of admission, he would not oppose the provisions of paragraphs 2 and 3 as they stood; he was not inclined to support the South African proposal to introduce a special provision concerning permanent residents.

81. His delegation was somewhat concerned at the proposals to qualify the word " consent " by introducing the terms " express " and " prior ". It would be undesirable to vote on the inclusion of those words, because, in his view, the term " consent " implied prior express consent unless the context required otherwise. His delegation would therefore oppose the inclusion of the words proposed.

82. Miss WILLIAMS (Australia) said that she saw great advantages in retaining the provisions of paragraph 1 as they stood. In view of the increasing tendency to bring the office of the diplomatist and the consul closer, there was no reason to depart from the rule, adopted as article 8, paragraph 1, of the Vienna Convention on Diplomatic Relations. Moreover, in view of the watering down of the customary practice of requiring an exequatur for all consular officials, it was all the more necessary to provide special safeguards for the receiving State in regard to their nationality. The deletion of paragraph 1 would not serve the interests of the majority of States, whether large or small. The convention on consular relations should establish general rules

of consular practice and not be primarily concerned with the special question of honorary consuls or the particular problems of particular countries.

83. Mr. ENDEMANN (South Africa) pointed out that paragraph 2 did not rule out the possibility of appointing a national of the receiving State, which was a well established practice. He had heard of only one country which forbade its nationals to act as foreign consuls. The consent referred to in paragraph 2 was therefore not consent to the principle of the appointment of a national of the receiving State, but consent to the admission of the individual concerned. The same applied to paragraph 3; there was no great danger that the sending State would not find a suitable candidate who would prove acceptable to the receiving State.

84. Mr. RABASA (Mexico) whole-heartedly supported the text of article 22 as it stood. It was the normal rule for the officials of a country to be nationals of that country; hence it was natural and normal for article 22 to begin with a statement to the effect that if was preferable for consular officials to have the nationality of the sending State.

85. Mr. DAVOUDI (Iran) said that his delegation generally supported the articles drafted by the International Law Commission, and rarely took the floor. Professor Matine-Daftary, the eminent Iranian jurist, had often addressed the Commission, and Iran had actively participated in the preparation of the draft. In the case of article 22 his delegation supported the Brazilian amendment, but was opposed to all the other amendments proposed.

The Japanese amendment (A/CONF.25/C.1/L.59) was rejected by 52 votes to 11, with 4 abstentions.

The South African amendment to paragraph 1 (A/CONF.25/C.1/L.137) was rejected by 45 votes to 13, with 9 abstentions.

The oral amendment by Kuwait replacing the words " in principle " by the word " normally " in paragraph 1 was rejected by 36 votes to 9, with 20 abstentions.

The Netherlands oral amendment to paragraph 2 was rejected by 47 votes to 10, with 9 abstentions.

The Brazilian amendment to paragraph 2 (A/CONF.25/C.1/L.67) was adopted by 35 votes to 13, with 17 abstentions.

The Chinese amendment to paragraph 2 (A/CONF.25/C.1/L.112) was rejected by 26 votes to 5, with 23 abstentions.

The South African amendment to paragraph 3 (A/CONF.25/C.1/L.137) was rejected by 40 votes to 4, with 21 abstentions.

Article 22 as amended was adopted as a whole by 57 votes to 6, with 3 abstentions.

The meeting rose at 6.45 p.m.

TWENTY-SECOND MEETING

Wednesday, 20 March 1963, at 10.40 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 22 (Appointment of nationals of the receiving State) (*continued*)

1. The CHAIRMAN said that he understood that certain representatives wished to explain their votes on article 22.

2. Mr. ABDELMAGID (United Arab Republic) said that he had supported the International Law Commission's draft as modified by the Brazilian amendment (L.67) because that amendment struck a good balance between the three paragraphs of the article, and there was no contradiction between paragraphs 1 and 2.

3. Mr. CAMERON (United States of America) said he had voted against the Brazilian and Chinese amendments, not because he was opposed to obtaining prior consent, but because if that condition were stipulated in article 22 there would arise an implication that when the word " consent " was used alone elsewhere in the Convention it did not mean prior or express consent.

4. Mr. EL-SABAH EL-SALEM (Kuwait) said he had voted against article 22 although he had supported some amendments to that article. He was chiefly opposed to the adoption of too strict a formula which would bring article 22 into conflict with article 18.

5. Mr. WU (China) said that the purpose of his delegation's amendment to article 22, paragraph 2, had been to stipulate that the consent of the receiving State must always be obtained previously. The amendment had been rejected on the ground that consent always meant prior consent and that the addition of the word " prior " was unnecessary. On that understanding, his delegation was satisfied with the result of the vote.

6. Mr. CRISTESCU (Romania) said he had voted for the International Law Commission's draft as amended by Brazil, because the article was thus in keeping with the evolution of consular practice. He had listened to the representatives of States employing honorary consuls, and was opposed to their views. Romania neither employed nor admitted honorary consuls.

Article 23 (Withdrawal of exequatur — Persons deemed unacceptable)

7. The CHAIRMAN invited the Committee to consider article 23. He suggested that the amendments submitted by Hungary and Spain (parts 1 and 2) should be

regarded as amendments of form which could be referred to the drafting committee.[1]

It was so decided.

8. The CHAIRMAN said that the amendments submitted by Chile (L.90) and Spain (L.114, part 2) were purely drafting amendments and could be combined in a single text. The Indian amendment (L.147) could be included in the joint amendment submitted by Austria and Switzerland (L.149). The amendments submitted by Mexico (L.134), Spain (L.114 part 3) and Argentina (L.150) were substantially the same and could be combined in a single amendment. The joint amendment by Austria and Switzerland (L.149) replaced the separate amendments submitted by those two delegations (L.28 and L.18).

9. Mr. KIRCHSCHLAEGER (Austria) introduced the joint Austrian and Swiss amendment (L.149) to delete the reference to " serious grounds " in paragraph 1, because that was too vague a criterion. The sponsors had based their text on article 9 of the Vienna Convention on Diplomatic Relations. The second proposal in the joint amendment was to add to article 23 a new paragraph based on the same article of the Vienna Convention which had also guided the delegations of Spain, Mexico, India and Argentina in drawing up their amendments. The addition of the new paragraph proposed by Austria and Switzerland would ensure that, in the two cases provided for in paragraph 1 and paragraph 3, the receiving State would not have to explain its decision.

10. Mr. CAMERON (United States of America) introduced his delegation's amendment (L.3/Rev.1) to paragraph 3 of article 23 to provide for the eventuality in which a person deemed unacceptable was already in the receiving State. In that case also the receiving State should be able to exercise its right under paragraph 3 of article 23.

11. Mr. RABASA (Mexico) introduced a joint amendment agreed upon between his delegation and the Argentine, Chilean and Spanish delegations, in which the first phrase of paragraph 1 would follow the wording of the Austrian and Swiss amendment (L.149), on the understanding that a new paragraph 4 would be added to article 23, stipulating that in the cases mentioned in paragraphs 1 and 3, the receiving State would not be obliged to state the grounds for its refusal or the withdrawal of the exequatur. The Mexican delegation requested, however, that in the Spanish version of the new draft the words " persona no aceptable " be replaced by the words " persona non grata ".

12. His delegation would accept the United States amendment (L.3/Rev.1) to paragraph 3 and, of course, the joint Austrian and Swiss amendment to paragraph 1 the text of which, being identical with that of the four-power amendment, could be combined in that proposal.

13. Mr. BINDSCHEDLER (Switzerland) thanked the delegations of Argentina, Chile, Spain, and Mexico for having adopted the views of the Austrian and Swiss delegations in deleting from paragraph 1 the " serious grounds " criterion, which was far too vague, and might be construed in such a way as to cause differences between the sending and the receiving State. It was inadvisable to incorporate a provision to the effect that the sending State was entitled to request the receiving State withdrawing the exequatur to explain its attitude, for the exercise of that right might impair relations between the States concerned. It was obvious that the receiving State would only exercise its rights under article 23, paragraph 3, in exceptional cases. For the same reason, he supported the International Law Commission's draft of paragraph 3. As explained in paragraph 11 of the commentary, when the receiving State declared a person unacceptable before his arrival in its territory, it was not obliged to communicate the reasons for its decision. In recognition of that principle, Austria and Switzerland had proposed the addition of the new paragraph which formed point 2 of the joint amendment (L.149).

14. With regard to the Mexican representative's comment concerning the Spanish text of paragraph 1, the Swiss delegation wished to point out that the term " persona non grata " had so far been applied only to diplomatic staff, and Switzerland was reluctant to introduce the term into consular law. Nevertheless, if Mexico and the other sponsors of the amendment strongly desired that that expression should be used in the Spanish version, the Swiss delegation would not oppose it. The matter could be settled by the drafting committee.

15. Mr. TORROBA (Spain) said that his delegation, as one of the sponsors of the joint amendment submitted by the delegation of Mexico, would withdraw its amendment to article 23 on the understanding that the Spanish text would be revised by the drafting committee.

16. Mr. TSHIMBALANGA (Congo, Leopoldville) said that his delegation's amendment (L.146) applied not to paragraph 1, as stated in that document, but to paragraph 2 of article 23. It took into consideration the fact that in the newly independent countries postal services were often defective and mail was not always delivered to its destination. Notification by the receiving State might fail to reach the sending State. The receiving State should therefore make certain, before withdrawing the exequatur, that the sending State had actually received the notification. That was an important consideration for the new States.

17. Mr. PETRŽELKA (Czechoslovakia) said that he was in favour of the International Law Commission's draft of paragraph 1. The text of paragraph 1 necessarily differed from article 9 of the Vienna Convention on Diplomatic Relations, because the position of consular officials was not the same as that of the staff of diplomatic missions, and the functions they exercised laid them more open to arbitrary decisions. They should therefore be

[1] The following amendments had been submitted: United States of America, A/CONF.25/C.1/L.3/Rev.1; Switzerland, A/CONF.25/C.1/L.18; Austria, A/CONF.25/C.1/L.28; Chile, A/CONF.25/C.1/L.90; Hungary, A/CONF.25/C.1/L.98; Spain, A/CONF.25/C.1/L.114; Mexico, A/CONF.25/C.1/L.134; Congo (Leopoldville), A/CONF.25/C.1/L.146; India, A/CONF.25/C.1/L.147; Austria and Switzerland, A/CONF.25/C.1/L.149; Argentina, A/CONF.25/C.1/L.150.

protected against possible abuses; hence the restricting clause requiring serious grounds for deeming a person unacceptable. He could not agree to part 1 of the joint Austrian and Swiss amendment (L.149), but had no objection to part 2.

18. Mr. KRISHNA RAO (India) said that his delegation agreed to the second part of the joint Austrian and Swiss amendment (L.149) but could not accept the first part, because paragraph 1 of the International Law Commission's draft was in conformity with the practice followed.

19. Mr. WESTRUP (Sweden) supported the additional paragraph 4 submitted by Austria and Switzerland. The receiving State would be released from the obligation to give grounds for its decision, all discussion referring to such grounds would be avoided, and there would no longer be any need to mention the criterion of serious grounds in paragraph 1. Accordingly, his delegation would also vote for the text of paragraph 1 submitted by Austria and Switzerland. It would likewise vote for the United States amendment (L.3/Rev.1) which it considered most opportune.

20. Mr. von HAEFTEN (Federal Republic of Germany) supported the joint Austrian and Swiss amendment. If the receiving State was not obliged to give grounds for its decision, paragraph 1 could be retained as it stood. He supported the amendments submitted by the Congo (Leopoldville) and the United States.

21. Mr. PEREZ-CHIRIBOGA (Venezuela) said that his delegation would vote for paragraph 1 of the joint oral amendment, with the substitution in the Spanish text requested by the representative of Mexico. It would also vote for paragraph 3 as amended by the United States, and the additional paragraph 4 contained in the Austrian and Swiss amendment, which was similar to the Indian proposal.

22. Mr. ABDELMAGID (United Arab Republic) said that the clauses of paragraph 1 were a safeguard for all parties concerned. The term " serious grounds " still remained to be defined, for the legal experts were not yet agreed on that point. His delegation would therefore support the joint Austrian and Swiss amendment to delete that test. It would support the joint amendment submitted by Mexico, Argentina, Chile and Spain, and likewise the United States amendment which made paragraph 3 clearer and filled a gap in article 23. It would also vote for the amendment submitted by the Congo (Leopoldville), but feared there might be great difficulty in proving that the notification had actually been received.

23. Mr. DJOKOTO (Ghana) supported the joint Austrian and Swiss amendment. The receiving State was always entitled to refuse admission to a consular official without having to explain its decision. Awkward situations were thus avoided. He would support the joint amendment submitted by Mexico, Argentina, Chile and Spain; he would like time to consider the United States amendment and the amendment of the Congo (Leopoldville).

24. Mr. N'DIAYE (Mali) supported the amendment submitted by Congo (Leopoldville) as it was necessary to take account of the possibility that the message had not arrived at its destination. He therefore agreed with the author of the amendment that paragraph 2 should apply only if the sending State had in fact received the notice declaring the person concerned unacceptable. He was also inclined to support the United States amendment which filled a gap in the International Law Commission's text and the Hungarian amendment, which clarified the text of paragraph 3. The arguments presented in favour of the first part of the joint amendment of Switzerland and Austria seemed cogent and he was also inclined to approve the second part of that amendment, which was supported by India, as it expressed the attitude adopted by the Committee during its consideration of article 11.

25. He saw no objection to adopting the expression " persona non grata " in the Spanish text, provided that the expression " personne non acceptable " were retained in the French text.

26. Mr. HUBEE (Netherlands) thought that paragraph 1 of article 23 raised highly important questions of substance. In the first place, there was the question whether the right of the receiving State to declare a consular official unacceptable should be limited to cases where the conduct of the person concerned gave the receiving State serious grounds for complaint, or whether the right could also be exercised for political motives. The Internatonal Law Commission seemed to have decided in favour of the first alternative, in other words in favour of the limitation of the right. The Netherlands delegation accepted that limitation and would defend it because it seemed to provide a necessary safeguard against arbitrary measures. The joint amendment by Switzerland and Austria did not take that limitation into account and his delegation would therefore vote for paragraph 1 of the International Law Commission's text, and against point 1 of the Austrian-Swiss amendment. With regard to the substitution of the expression " persona non grata " for " personne non acceptable " the two terms covered an important difference between diplomatic law and consular law.

27. The second question of substance was whether the sending State could request the receiving State to give the reasons for its decision. The International Law Commission had not decided that point. The proposal of the Austrian and Swiss delegations that the receiving State should not be obliged to give reasons for its decision seemed wise and advisable because such an obligation might give rise to unpleasant discussion between the receiving State and the sending State. Finally, he was also in favour of the United States amendment.

28. Mr. de MENTHON (France) observed that the United States amendment was particularly valuable because the staff of many consulates included persons normally domiciled in the receiving State. He also approved the amendments by Hungary and the Congo (Leopoldville), and part 2 of the joint Austrian-Swiss amendment, supported by India, Chile, which was substantially the same as the amendment of Spain, Argentina,

Chile and Mexico. He was doubtful about supporting part 1 of the Austrian and Swiss amendment, which would not perhaps have the same practical value if it were decided that the receiving State was not obliged to give reasons for its decision.

29. Mr. MIRANDA e SILVA (Brazil) supported the joint amendment submitted by Argentina, Chile, Spain and Mexico. With regard to substituting the term " persona non grata " for the term " no longer acceptable ", he thought that the expression " persona no aceptable " had too strong a meaning in Spanish. He supported the United States amendment.

30. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said that although certain conventions stipulated that the receiving State should state its reasons for withdrawing an exequatur, international practice did not oblige the receiving State to give reasons for withdrawing the agrément from a member of a diplomatic staff. If this principle were accepted in relation to consular staff, it would be necessary, in the text of paragraph 1, to retain the phrase " if the conduct of the head of a consular post or of a member of a consular staff gives serious grounds for complaint ", so as to set certain limits to the receiving State's right. The reasons for retaining the International Law Commission's text, which had already been referred to by the Czechoslovak representative, were given in paragraph 2 of the International Law Commission's commentary on article 23. The Hungarian amendment seemed indispensable.

31. Mr. BARTOŠ (Yugoslavia) thought that care should be exercised in replacing the expression " persona no aceptable " by the expression " persona non grata " in the Spanish text. First of all, the International Law Commission had evidently wished to draw a distinction between members of the diplomatic service and consuls. He did not think that such a distinction need be drawn, but it was important to note that the replacement of one term by another in one of the language versions might well introduce some difference of meaning between the texts, which were all equally authentic. If the amendment were adopted by the drafting committee and if a different expression were retained in the other languages, that point should be made quite clear in the record. With regard to the main question, concerning the deletion of the phrase " if the conduct of the head of the consular post or of a member of the consular staff gave serious grounds for complaint ", the International Law Commission's reasons for including it should be carefully considered. It was a question of a moral rule, with no practical sanction, based on the Commission's desire to warn the official who would have to decide on the withdrawal of the exequatur, so that he would realize the full gravity of such a step. The official should remember that the action he was about to take was permissible only if there were serious grounds for complaint. The rule was therefore related to the theory of the abuse of power in French law. He thought that the reference to " serious grounds " should be retained. He agreed with the sponsors of the joint amendment that the receiving State was not obliged to communicate to the sending State the reasons for its decision to withdraw an exequatur, and he would support any amendment in that sense.

32. Mr. PALIERAKIS (Greece) said that the question of using the words " serious grounds for complaint " was the same as that which had arisen during the discussion of article 20 about the phrase " within reasonable and normal limits ". The question was: Who was going to decide? Discussions and exchanges of views between the two States might lead to friction. International conventions were for developing friendly relations between States and not for multiplying disputes. For that reason he supported the deletion of the phrase. He also thought that the receiving State should not be obliged to give reasons for its decision. He therefore favoured the joint Mexican, Spanish, Argentine and Chilean amendment, and also the Austrian-Swiss amendment.

33. He preferred the expression " no longer acceptable " to " persona non grata ". He also supported theUnited States amendment, which supplemented the International Law Commission's text. He found the Congolese amendment unnecessary as the point could be taken as understood. He favoured the addition proposed by Hungary.

34. Mr. ALVARADO GARAICOA (Ecuador) agreed with the Brazilian representative about the use of the expression " persona non grata " in the Spanish text. He was also inclined to support the United States amendment, which raised a very important point.

35. Mr. HOANG XUAN KHOI (Republic of Viet-Nam) supported the joint Austrian-Swiss amendment (L.149) to paragraph 1, and the proposals by Austria and Switzerland and by India, to add a new paragraph 4 to article 23. The question concerned the very principle of the sovereignty of the receiving State, which should be accorded the right to forbid a person to continue to exercise his functions on its territory, without having to give a reason for its decision. The United States amendment seemed a useful addition to the International Law Commission's text.

36. Mr. CHIN (Republic of Korea) supported part 2 of the joint Austrian and Swiss amendment and the joint oral amendment, which provided that the receiving State was not obliged to give reasons for its decision. If the Committee adopted the opposite principle it would be contradicting not only the Vienna Convention on Diplomatic Relations but its own decisions on article 11 dealing with the exequatur. He regretted his inability to accept part 1 of the Austrian and Swiss amendment because, in view of the difference of status between diplomats and consuls, the sending State should be safeguarded against arbitrary decisions of the receiving State concerning consuls. Accordingly, he preferred the International Law Commission's draft of paragraph 1. For paragraph 3, he was inclined to support the United States amendment.

37. Mr. D'ESTEFANO PISANI (Cuba) said he regretted he could not support the amendment submitted by Mexico, Spain, Argentina and Chile for a different text from that of the International Law Commission.

He approved the principle whereby the receiving State had the right to declare a person unacceptable without giving reasons for its decision. That right, however, should be limited to cases where the conduct of the person concerned gave serious grounds for complaint. The Mexican representative had said that a member of a diplomatic mission could, by the terms of article 9 of the Convention on Diplomatic Relations, be declared persona non grata without the receiving State being obliged to furnish reasons for its decision; but as the Czechoslovakia representative had said, there were differences of status between the two categories of official, particularly with respect to their privileges and immunities.

38. It had been argued that, to promote good relations between States, it would be better to delete any reference to " serious grounds for complaint " from paragraph 1. But good relations primarily required the elimination of abuses. Consuls should be protected against arbitrary decisions by the receiving State. His delegation therefore would oppose any modification of paragraph 1. He approved the use of the expression " persona non grata " in the Spanish text. He also favoured the second part of the Austrian-Swiss amendment, supported by the Indian proposal, and the Hungarian amendment.

39. Mr. OUEDRAOGO (Upper Volta) drew the Committee's attention to the special difficulties of newly independent States in their diplomatic and consular relationships, and in particular to the fact that their means of communication were insufficiently developed. The lack of precision in article 23 might lead to misunderstandings. The question of a possible delay in the mail seemed to him important, and he therefore supported the amendment of the Congo (Leopoldville). It seemed necessary to be sure that the sending State had received the notice.

40. Mr. HEPPEL (United Kingdom), speaking on the question of terminology, recalled that article 9 of the Vienna Convention on Diplomatic Relations had laid down that the head of a mission or any other member of the diplomatic staff could be declared persona non grata, whereas any other member of the staff of the mission could be declared " not acceptable ". The results, in any event, were the same. He thought that the question was one for the drafting committee.

41. The United Kingdom delegation would support the United States amendment. It also approved the joint Austrian and Swiss amendment. In certain bilateral agreements concluded by the United Kingdom, the United States and other countries, it was specified that the sending State could ask the receiving State for the reasons for its withdrawal of an exequatur, but, as a general rule, the receiving State was not obliged to give its reasons; if it did so, it should be of its own accord.

42. Although he sympathized with the amendment to paragraph 2 submitted by the delegation of the Congo (Leopoldville), he would not be able to support it as it might lead to longer delays. It should be noted that the reference to " a reasonable time " already constituted a safeguard.

43. Mr. USTOR (Hungary) said that his delegation was in favour of the text prepared by the International Law Commission, firstly, because it was in accordance with accepted world-wide practice and, secondly, because it followed from the logic of the text, as was shown in paragraph 2 of the commentary.

44. Nevertheless, although he approved of the International Law Commission's draft, he was prepared to support the amendments to the effect that the receiving State should not be obliged to give reasons for its decision, and to accept the insertion of a new paragraph 4. The amendment proposed by Austria and Switzerland and by India seemed to him a happy compromise. He thought the United States amendment most useful.

The meeting rose at 1 p.m.

TWENTY-THIRD MEETING

Wednesday, 20 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 23 (Withdrawal of exequatur — Persons deemed unacceptable) (*continued*)

1. The CHAIRMAN announced that the amendments [1] by Switzerland and Austria (L.149, replacing the separate amendments in documents L.18 and L.28), Spain (L.114), Mexico (L.134), Argentina (L.150) and Chile (L.90) had been withdrawn in favour of the following joint proposal to amend paragraph 1 and to insert a new paragraph 4, which had been submitted by Argentina, Chile, Mexico and Spain:

(1) Replace the first sentence of paragraph 1 by the words: " The receiving State may at any time notify the sending State that the head of a consular post or a member of the consular staff is no longer persona grata."

(2) Add a new paragraph 4 reading as follows: " In the cases mentioned in paragraphs 1 and 3 of the present article, the receiving State is not obliged to explain its decision."

2. The Committee also had before it the amendment submitted by Congo (Leopoldville) to paragraph 2 (L.146), the United States amendment to paragraph 3 (L.3/Rev.1), the Hungarian amendment to paragraph 3 (L.98) and the Indian proposal for a new paragraph 4 (L.147).

3. Mr. KRISHNA RAO (India) withdrew his amendment (L.147) in favour of the new joint amendment, the effect of which would be the same.

4. Mr. JAYANAMA (Thailand) said that his delegation supported the joint amendment, though it would

[1] For a list of the amendments, see the summary record of the twenty-second meeting, footnote to para. 7.

have preferred the text proposed by Austria and Switzerland (L.149) the wording of which was in line with article 19, paragraph 2 as amended by the Committee. The deletion from article 23, paragraph 1, of the reference to " serious grounds for complaint " was very wise, as that expression might be given different interpretations by the receiving State and the sending State. Moreover, article 9, paragraph 1, of the Vienna Convention on Diplomatic Relations provided that " The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is persona non grata . . ." and since consuls were placed under the general supervision of the diplomatic representatives of their countries, there was no reason to give them more favourable treatment than diplomatic agents themselves.

5. Many authorities could be cited to show that international law did not require the receiving State to give any reason for withdrawing the exequatur or for declaring a member of the consular staff unacceptable. In any event, arbitrary action on the part of the receiving State was unlikely, since unjustified withdrawal of the exequatur could be harmful to relations between the two countries concerned and would be in the interests of neither.

6. His delegation supported the United States amendment (L.3/Rev.1), which was in line with the text adopted by the Committee for article 19. On the other hand, the amendment submitted by Congo (Leopoldville) (L.146) went into details which were not essential, and he would not support it.

7. Mr. WU (China) said he had preferred the original amendment submitted by Austria (L.28), which had added a new paragraph to the effect that the receiving State was not obliged to explain its decision, but retained the original text of paragraph 1 unchanged. The fact that the receiving State was not obliged to explain its decision did not mean that it could withdraw the exequatur or declare a consul unnaceptable without any reason. His delegation would therefore vote for the retention of paragraph 1 as it stood and for the introduction of a new paragraph 4. It would also support the United States amendment to paragraph 3.

8. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said that article 23 was very important and his delegation was prepared to give the most careful consideration to the various amendments. He supported the proposals by the United States and Hungary, which would improve the text of the article, and would also vote for the undoubted right of the receiving State not to explain its decisions. He could not support the Austrian and Swiss amendment (L.149) nor the amendment by the Congo (Leopoldville) (L. 146).

9. Mr. DONOWAKI (Japan) pointed out that his delegation had proposed the insertion in article 11 of a provision to the effect that the receiving State must give its reason for refusing to grant an exequatur.[2] In the case of article 23, however, which dealt with the withdrawal of an exequatur or declaration that a person was unacceptable, his delegation fully agreed with the sponsors of the joint amendment. He had been impressed by the argument that the retention of the reference to " serious grounds for complaint " would give rise to difficulties of interpretation.

10. His delegation supported the amendments to paragraph 3 submitted by the United States and Hungary.

11. Mr. RABASA (Mexico) said that the Committee had the choice between two radically different systems. The first was that embodied in the text of article 23 as drafted by the International Law Commission: under that system, the existence of " serious grounds for complaint " was a *sine qua non* for declaring a person unacceptable. The second system was that proposed in the joint amendment, which placed no restriction whatsoever on the receiving State and made the exercise of its rights in the matter absolutely unconditional.

12. He noted that the discussion had led to an attempt to reconcile those two irreconcilable systems by retaining paragraph 1 as it stood and adding a new paragraph along the lines of the joint amendment. He could understand, although he opposed, the first system; and he was one of the sponsors of the second. But he could not understand the idea of adopting both at once. It was not possible to retain the reference to " serious grounds for complaint " in paragraph 1 and at the same time provide that the receiving State had no obligation to explain its decision.

13. Speaking on behalf of the sponsors of the joint amendment, he stressed that the proposed new paragraph 4 could not be added to a text which contained paragraph 1 as originally drafted. He urged that the two proposals in the joint amendment — the amendment of the first sentence of paragraph 1 and the insertion of the new paragraph 4 — should be voted on together, since they were inseparable.

14. Mr. EL KOHEN (Morocco) supported the insertion of a new paragraph stating that the receiving State was not obliged to explain the reasons for its decision to the sending State. But he was also in favour of retaining the original text of paragraph 1, which would make the provisions of the article better balanced. The right of the receiving State was not an absolute one; it should be confined within reasonable limits in the interests of international relations. The receiving State should have good grounds for its action, but it should not be obliged to explain them to the sending State. It was essential to provide certain safeguards, not only in the interests of the two States concerned, but also in the interests of the individual affected by the decision. A consular official's career should not be jeopardized without good reason.

15. Mr. TSHIMBALANGA (Congo, Leopoldville) expressed his thanks to those delegations which had supported his amendment (L.146). Although he had referred in his introductory remarks to certain instances where mail might be lost, his amendment was intended to cover all cases in which the sending State did not in fact receive the notification that the person concerned was

[2] See document A/CONF.25/C.1/L.56.

unacceptable. There were many ways in which that could happen; for instance, delay on the part of the head of a consular post in transmitting the notification received from the authorities of the receiving State. In cases of that kind, he thought the receiving State should communicate with the sending State, by such means as a direct telegram or letter, in order to satisfy itself that the notification had in fact been received.

16. The CHAIRMAN pointed out that the Committee had before it only two amendments to paragraphs 1 and 2: the joint oral amendment of Argentina, Chile, Mexico and Spain to paragraph 1 and the amendment of the Congo (Leopoldville) to paragraph 2. He put the joint amendment to the vote on the understanding that the choice between the terms " persona grata " and " acceptable " would be referred to the drafting committee.

The joint amendment to paragraph 1 was adopted by 41 votes to 25, with 2 abstentions.

The amendment to paragraph 2 submitted by the Congo (Leopoldville) (A/CONF.25/C.1/L.146) was rejected by 17 votes to 12, with 39 abstentions.

17. The CHAIRMAN observed that there were two amendments to paragraph 3, proposed by the United States of America and Hungary; he suggested that the latter (A/CONF.25/C.1/L.98) should be referred to the drafting committee.

It was so agreed.

The United States amendment to paragraph 3 (A/CONF. 25/C.1/L.3/Rev.1) was adopted by 66 votes to none, with 2 abstentions.

18. The CHAIRMAN put to the vote the joint oral proposal for a new paragraph 4, submitted by Argentina, Chile, Mexico and Spain on the understanding that the Spanish text would be referred to the drafting committee, which would formulate it on the lines of the corresponding provision of the 1961 Vienna Convention on Diplomatic Relations.

The proposed new paragraph 4 was adopted unanimously.

Article 23, as amended, was adopted as a whole by 66 votes to none, with 3 abstentions.

Article 24 (Notification of the appointment, arrival and departure of members of the consulate, members of their families and members of the private staff)

19. The CHAIRMAN announced that the Spanish delegation had withdrawn its amendment (A/CONF. 25/C.1/L.132) and drew attention to the amendments to article 24 submitted by the delegations of South Africa (A/CONF.25/C.1/L.138), Indonesia (A/CONF.25/C.1/L.144), and India (A/CONF.25/C.1/L.148).

20. Mr. ENDEMANN (South Africa) said that his delegation's amendment to paragraph 1 (*a*) was intended to make good a small omission from the Commission's text. The sub-paragraph should be completed by a reference to " any change in designation " while the member of the consulate was at the consular post.

21. His delegation proposed the deletion of the words " entitled to privileges and immunities " from paragraph 1 (*d*) because, although article 48, paragraph 2, and article 49, paragraph 2, extended certain immunities to consular employees and other staff, article 69, paragraph 2, envisaged the possibility that the receiving State might extend to other members of the consulate, members of their families and members of the private staff who were nationals of the receiving State, privileges and immunities in excess of those provided for in the convention. If the authorities of the receiving State were only notified of the names of persons entitled to provileges and immunities under the convention, and not of the names of persons who might enjoy other privileges and immunities through the generosity of the receiving State, the effect of paragraph 1 (*d*) would be unduly restricted.

22. Miss ROESAD (Indonesia), introducing her delegation's amendment (L.144), observed that, according to the Commission's definition in article 1, the term " members of the consulate " meant all the consular employees in a consulate. Paragraph 1 (*d*), however, related to persons resident in the receiving State, and under Indonesian law only consular employees might be such residents. Use of the term " members of the consulate " would imply that consular officials might also be residents of the receiving State, which was contrary to the provisions of article 22.

23. Mr. KRISHNA RAO (India) said that his delegation's amendment (L.148) to paragraph 1 (*a*) was intended to take account of other changes that might occur in the course of service with the consulate. It had been drawn to his delegation's attention, however, that the phrase " any other changes " might be too broad, and he would therefore insert the words " affecting their status " after the words " any other changes " in his amendment.

24. Mr. PEREZ-CHIRIBOGA (Venezuela) said he would support the South African amendment (L.138) to paragraph 1 (*a*). He thought, however, that the interpretation of the other sub-paragraphs of paragraph 1 would depend on the final wording of the definition in article 1, paragraph 1 (*f*). Under the existing definition, those sub-paragraphs provided for notification with regard to members of the consulate enjoying privileges and immunities, but his delegation could not agree that those privileges and immunities should be extended to members of the consulate other than those having consular status. He asked for a separate vote on sub-paragraphs (*b*), (*c*) and (*d*) and said he would vote against them.

25. Mr. ENDEMANN (South Africa) withdrew his amendment to paragraph 1 (*a*) in favour of the modified text of the Indian amendment.

The Indian amendment (A/CONF.25/C.1/L.418), as orally revised, was adopted by 53 votes to none, with 7 abstentions.

The Indonesian amendment (A/CONF.25/C.1/L.144) was rejected by 15 votes to 11, with 34 abstentions.

The South African amendment (A/CONF.25/C.1/L.138) to paragraph 1 (d) was rejected by 24 votes to 15, with 25 abstentions.

The introductory phrase to paragraph 1 was adopted unanimously.

Paragraph 1, sub-paragraph (a), as amended, was adopted unanimously.

Sub-paragraph (b) was adopted by 63 votes to 1.

Sub-paragraph (c) was adopted by 62 votes to 1, with 1 abstention.

Sub-paragraph (d) was adopted by 60 votes to 2, with 3 abstentions.

Paragraph 2 was adopted unanimously.

Article 24 as a whole, as amended, was adopted by 65 votes to none, with 1 abstention.

Article 25 (Modes of termination of the functions of a member of the consulate)

26. The CHAIRMAN drew attention to the South African proposal (A/CONF.25/C.1/L.139) to delete article 25.

27. Mr. ENDEMANN (South Africa) said that his delegation had proposed the deletion of article 25 because, as drafted by the Commission, it referred in particular to two modes of termination, although a number of other modes were mentioned in the commentary. Of the two modes specifically referred to in the article, however, the first was already provided for in article 24 and the second in article 23. Accordingly, article 25 seemed to serve no useful purpose. Had it contained a comprehensive list of modes of termination it might have been useful, but his delegation considered that such superfluous matter could well be omitted from the convention.

28. Mr. PETRŽELKA (Czechoslovakia) could not agree that article 25 should be deleted, particularly since the same matter was dealt with in article 43 of the Vienna Convention on Diplomatic Relations. He suggested, however, that the words " *inter alia* " might be substituted for the words " in particular ".

29. Mr. KRISHNA RAO (India) said he could not accept the South African representative's arguments for the deletion of article 25, since articles 23 and 24 dealt with quite a different subject. The mode of termination of functions was an important point in any convention on consular relations and the most common causes of termination were specified in the article. He thought that the Czechoslovak representative's suggestion was useful and might be referred to the drafting committee.

30. Mr. PRATT (Israel) observed that, while the article itself specified only two modes of termination, the commentary listed five others, two of which, namely, the closure of the consulate and severance of consular relations, were referred to in article 27. It would have been better to include these two modes of termination in article 25, in addition to the two already covered by articles 23 and 24, but his delegation had not felt strongly enough on the point to submit an amendment and was prepared to vote for article 25 as it stood.

31. Mr. MAMELI (Italy) could not agree with the South African representative that the article 25 was superfluous because the cases it dealt with were referred to in other parts of the convention.

32. Mr. ABDELMAGID (United Arab Republic) said he could not support the South African amendment. He agreed with the Indian representative that the Czechoslovak suggestion might be useful.

33. He pointed out that chapter I, section II of the draft, which comprised articles 25, 26 and 27, corresponded to articles 43, 44 and 45 of the Vienna Convention on Diplomatic Relations, and should be placed near the end of the future convention on consular relations, just before the general provisions.

The South African amendment (A/CONF.25/C.1/L.139) was rejected by 53 votes to 1, with 13 abstentions.

Subject to the drafting committee's decision on the Czechoslovak oral amendment, article 25 was adopted by 60 votes to none, with 5 abstentions.

Article 26 (Right to leave the territory of the receiving State and facilitation of departure)

34. The CHAIRMAN drew attention to the amendments to article 26 submitted by the delegations of the United States of America (A/CONF.25/C.1/L.4 and Add.1), Indonesia (A/CONF.25/C.1/L.145) and Czechoslovakia (A/CONF.25/C.1/L.151).

35. Mr. PETRŽELKA (Czechoslovakia) said that his delegation had submitted its amendment in order to fill a gap in the Commission's text by providing that the receiving State should grant persons leaving its territory the necessary time to prepare for their departure and for the transport of their property.

36. Mr. CAMERON (United States of America) said that the purpose of his delegation's first amendment (L.4) proposing a new paragraph was to deal with a problem which had been specifically dealt with in the 1960 draft considered by the Commission at its twelfth session, but which was not included in the present text of the convention. The 1960 draft had specifically provided that the rights granted by the present article were subject to the application of the provisions of the article which had become article 41. The Commission had evidently decided to omit the provision in question as being unnecessary on the basis that each article of the draft should be read in the context of the others. The purpose of the United States amendment was to remove any possibility of interpreting the article to mean that all persons, whether or not they were defendants in litigation, had the right to leave the territory of the receiving State. It should be noted that, under the United States proposal, facilitation of departure would not be denied, but would be held in abeyance until legal proceedings were satisfactorily concluded.

37. The primary purpose of his delegation's amendments in document A/CONF.25/C.1/L.4/Add.1 was to clarify the text and to draw attention to some slight inconsistencies. Paragraph 1 of the amendment had been proposed in order to make it absolutely clear that

the receiving State was not obliged to facilitate departure whenever the persons concerned wished to leave its territory; although section II was entitled " End of consular functions ", that title might be omitted from the final text and, in any case, it seemed advisable to state that point clearly. The deletion of the word "their", proposed in paragraph 2 of the amendment, would make it clear that the nationality meant was that of members of the families of persons enjoying privileges and immunities, and the addition of the words " forming part of their household " would bring the wording of the article into line with that of articles 48, 49 and 50. Finally, the insertion of the phrase proposed in paragraph 3 of the amendment would bring the article into conformity with article 50; there was no good reason for laying down different rules in the two articles.

38. Miss ROESAD (Indonesia) said that the purpose of her delegation's amendment was to specify that the persons enjoying privileges and immunities were, in fact, the " members of the consulate, members of their families and members of the private staff in their service " referred to in paragraph 1 of the commentary on article 26.

39. Mr. von HAEFTEN (Federal Republic of Germany) said he would support the Indonesian amendment and parts 1 and 2 of the second United States amendment (L.4/Add.1), though he would be obliged to abstain from voting on part 3 of that text. He would also support the Czechoslovak amendment.

40. Mr. KRISHNA RAO (India) said he would support parts 2 and 3 of the second United States amendment (L.4/Add.1), but was not sure that the amendment in part 1 was strictly necessary. He would vote for the Indonesian amendment and could support the principle of the Czechoslovak amendment, though its wording did not seem quite satisfactory and might perhaps be referred to the drafting committee.

41. Mr. PETRŽELKA (Czechoslovakia) accepted the Indian representative's suggestion.

42. The CHAIRMAN suggested that parts 1 and 2 of the second United States amendment (L.4/Add.1) and the final wording of the Czechoslovak amendment should be referred to the drafting committee.

It was so agreed.

The Indonesian amendment (A/CONF.25/C.1/L.145) was adopted by 33 votes to 6, with 18 abstentions.

Subject to re-wording by the drafting committee, the Czechoslovak amendment (A/CONF.25/C.1/L.151) was adopted by 45 votes to none, with 15 abstentions.

Part 3 of the United States amendment (A/CONF.25/C.1/L.4/Add.1) was adopted by 31 votes to 3, with 29 abstentions.

The United States proposal for a new paragraph (A/CONF.25/C.1/L.4) was rejected by 17 votes to 16, with 29 abstentions.

Article 26, as amended, was adopted by 61 votes to none, with 1 abstention.

43. Mr. KEVIN (Australia) said he had abstained from voting on article 26 because his delegation might wish to revert to it in connexion with other articles.

The meeting rose at 5.15 p.m.

TWENTY-FOURTH MEETING

Thursday, 21 March 1963, at 10.35 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 27 (Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances)

1. The CHAIRMAN announced that the United States amendment (L.5) to article 27 had been withdrawn.[1]

2. Mr. WU (China), introducing his delegation's amendment (L.113) to article 27, said that paragraph 1 of the draft article dealt only with the severance of consular relations. But, if the sending State had a diplomatic mission in the receiving State, it might maintain its diplomatic relations with that State, and in that case, it was to that diplomatic mission, and not to a third State, that the sending State should entrust the protection of its interests and those of its nationals. That was the purpose of the Chinese amendment, which in no way affected the principle of article 27.

3. Mr. USTOR (Hungary), introducing his delegation's amendment (L.99), said that paragraph 2 of article 27 applied only to the temporary or permanent closure of a consulate in cases where the sending State had no diplomatic mission and no other consulate in the receiving State. The provisions of paragraph 1 would apply in such cases. The provisions of sub-paragraph (*a*), however, would apply in all cases, whether or not the sending State had a diplomatic mission or other consulate in the receiving State. The purpose of the first part of the Hungarian amendment was to rectify that anomaly. The purpose of the second part was to supplement paragraph 3 by a provision which seemed self-evident, but which it might be advisable to include in the text.

4. Mr. MARTINS (Portugal) said that his delegation had submitted only one amendment (L.141) to the International Law Commission's draft, a fact which showed the high regard of his country for the draft. Moreover, the Portuguese amendment to article 27 would not affect the substance, but would merely simplify the text by combining the last two paragraphs into a single paragraph divided, like paragraph 1, into sub-

[1] The following amendments had been submitted: United States of America, A/CONF.25/C.1/L.5; Hungary, A/CONF.C/1.L.99; China, A/CONF.25/C.1/L.113; Portugal, A/CONF.25/C.1/L.141; United Kingdom, A/CONF.25/C.1/L.142; Australia, A/CONF.25/C.1/L.152.

paragraphs corresponding to the two sets of circumstances envisaged. A further purpose of the amendment was to improve the two paragraphs in question, as the text was not very clear.

5. Mr. HEPPEL (United Kingdom) said that the purpose of his delegation's amendments (L.142) to article 27 was to ensure wider protection of the interests of the sending State in the event of temporary or permanent closure of a consulate, by making the provisions of paragraph 1 applicable in cases where the sending State had no diplomatic mission or other consulate in the same territory as the closed consulate.

6. Miss WILLIAMS (Australia) said that her delegation's amendment (L.152) was intended to ensure that the provisions of paragraph 1 would apply even if the sending State had a diplomatic mission or other consulate in the receiving State.

7. Mr. PAPAS (Greece) supported the Portuguese amendment. It made article 27 more logical and could be combined with the Hungarian amendment which he likewise supported. His delegation was not opposed to the United Kingdom amendment, although it introduced the notion of territory, which would have to be defined.

8. Mr. von HAEFTEN (Federal Republic of Germany) said that as none of the amendments affected the substance of article 27 the Chairman might set up a working group consisting of the sponsors of all the amendments, to prepare a text acceptable to all delegations.

9. Mr. MIRANDA e SILVA (Brazil) supported the Portuguese amendment, which could be of considerable practical value. When a sending State which had no diplomatic mission closed its only consulate in the receiving State, it would naturally entrust the protection of its interests and those of its nationals to a third State. That practice had been successfully followed by Brazil.

10. Mr. TORROBA (Spain) supported the Portuguese amendment, together with the proposal by the Federal Republic of Germany to set up a working group to draw up a single amendment.

11. Mr. KRISHNA RAO (India) likewise supported the proposal by the Federal Republic of Germany, but said that he would prefer the working group to draw up two texts, so that the Committee could choose between them.

12. Mr. CHIN (Republic of Korea) supported the Chinese amendment which greatly improved paragraph 1, and also the United Kingdom amendment, which did not affect the substance of the article. The Portuguese amendment concerning the structure of article 27 could be referred to the drafting committee.

13. Mr. ENDEMANN (South Africa) said he regretted the withdrawal of the United States amendment (L.5) since it contained a provision relating to sub-paragraph (*b*) which not only clarified the text but brought it into line with sub-paragraph (*a*).

14. The CHAIRMAN agreed to the proposal made by the representative of the Federal Republic of Germany to set up a working group, and invited the sponsors of the amendments submitted in connexion with article 27, including the representative of the United States, to meet with a view to submitting a single text to the Committee at its next meeting.

Proposed new article to be inserted between articles 5 and 6 (Refugees)

15. Mr. WESTRUP (Sweden) introduced the joint proposal by Argentina, Australia, Belgium, Colombia, Denmark, Iran, Nigeria, Sweden and the United Kingdom (A/CONF.25/C.1/L.124) for the insertion of a new article between articles 5 and 6. He said that few countries had not, at one time or another, sheltered refugees who had fled from their native land in order to escape persecution. The United Nations had concerned itself with the fate of refugees and had set up the Office of the High Commissioner to take steps for their protection. For obvious reasons, refugees had no desire to contact their consulates in the host country and did not want those consulates to intervene in their affairs in any way. For that reason, such refugees should be protected against any attempt at seizure of their person by the consulate of their country of origin. That was the purpose of the joint proposal.

16. Mr. OMOLULU (Nigeria) explained why the sponsors of the joint amendment were particularly anxious that it should be adopted. The provisions of the proposed new article were not in any way contrary to the consular functions enumerated in article 5. The right of asylum was governed by extradition treaties and could not be claimed by criminals under the ordinary law. Once asylum had been granted to a refugee, any intervention on the part of the consulate of his country of origin would constitute an infringement of the sovereignty of the receiving State. The moment had come to insert in a convention on consular relations a provision protecting refugees against interference of that kind.

17. Mr. CASAS-MANRIQUE (Colombia) said that his country had associated itself with the sponsors of the joint proposal since it was essential to avoid any possibility of ambiguity in the future convention.

18. Mr. KEVIN (Australia) said that, as one of the sponsors of the draft resolution, he had five points to make. First, the amendment followed the memorandum addressed to the Conference by the United Nations High Commissioner for Refugees (A/CONF.25/L.6). Second, it provided a logical corollary to the concept of political asylum recognized and accepted by international law. Third, it was in accordance with the Charter of the United Nations and the principles of the United Nations concerning human rights. Fourth, in so far as it aimed at preventing undue interference, it constituted a practical application and was not a mere theoretical assertion. Fifth, it differed from other amendments on access to consuls submitted in the Second Committee in having a much narrower field of application and a more profound meaning.

19. Mr. FUJIYAMA (Japan) supported the principle of the joint proposal, and said that he would vote for it.

20. Mr. von HAEFTEN (Federal Republic of Germany) supported the proposal. He said that Germany, unfortunately, had been through some sad experiences with regard to refugees. Under the Nazi regime a great many Germans had been forced to flee from their country and seek shelter abroad. Generally speaking, they had refused to have anything to do with the German consulates in the host country. After the collapse of the Nazi regime they had returned to west Germany, where there were more than 12 million refugees from the eastern European countries and 200,000 refugees under the terms of reference of the High Commissioner. All those refugees refused to have any contact with their consulates, which showed a suspicious interest in them. Those refugees must be protected and their consulates prevented from concerning themselves with them. That was the aim of the joint proposal, for which the delegation of the Federal Republic of Germany would vote.

21. Mr. SHARP (New Zealand) said that his country received many persons who had fled their homeland from fear of persecution for racial, religious or political reasons, or simply because they were opposed to their country's social system. All that those persons wanted was to be permitted to resettle in the New Zealand community and to live in peace. They had therefore to be protected against any possible action by their consulates.

22. Mr. USTOR (Hungary) regretted that the nine countries had seen fit to submit their proposal which introduced a cold war atmosphere into the conference. The wind of liberty was blowing across the world of the day and soon on earth there would be only sovereign States living in peace. The development and codification of international law were therefore a necessity, but it was a long-term task. The convention under preparation for the regulation of consular relations between States would probably come into force only after a number of years, when the last vestiges of the cold war had disappeared. At a time when the peoples of the world were working for a peaceful future, it might well be asked how certain countries could dare to submit a text which had no place in the convention in preparation, since the question of refugees was completely alien to consular relations. According to a rule of consular law, people who lived in foreign countries needed protection and should be able to get in touch freely with the consular authorities of their country. Statelessness was a deplorable condition which should be eliminated. The proposal submitted to the Committee tended to impose that situation on numerous persons and, under cover of humanitarianism, to jeopardize the rights which every human being should be able to enjoy. The nine countries' proposal was inhuman since it was designed to erect a barrier between States and their nationals and to prevent refugees from returning home with the help of their consulate.

23. The Hungarian representative urgently appealed to the sponsors to withdraw their proposal. If, however, they refused to do so, the Hungarian delegation would ask the Committee to reject the proposal so as to preserve the integrity of the Conference's intentions and the harmony of its discussions.

24. Mr. PETRŽELKA (Czechoslovakia) entirely agreed with the attitude of the Hungarian representative. The question of refugees could not be dealt with in the convention, the purpose of which was to promote friendly relations between States by presenting an accurate statement of international law concerning consular relations. Moreover, the Second Committee of the Conference had already disposed of the question during its discussions. Bodies such as the Third Committee of the General Assembly and the International Law Commission were already dealing with the question of the right of asylum. Finally, the question of refugees had been settled by the 1951 Convention relating to the status of refugees.

25. The refugee question was peculiar to the present times and would no longer exist in the future. The rules laid down in the future convention should hold good both for the present and for the future. Futhermore, the inclusion of the article would destroy the universal character of the convention since it would prevent a large number of States from accepting the convention, which would thus fail in its aim. The proposal in question was equally unacceptable from the legal and from the political points of view, since it ran counter to the principle of the sovereignty of States, which gave every State the right to ensure diplomatic and consular protection to all its nationals. No State could be deprived of that right.

26. Mr. BARTOŠ (Yugoslavia) recalled that his country had signed the convention relating to the status of refugees and that it was represented at the office of the United Nations High Commissioner for Refugees. Yugoslavia had often played the role of country of first asylum and, on the other hand, a limited number of Yugoslav citizens had emigrated to other countries. The principle of the future convention, according to which the sending State should ensure the protection of its nationals wherever they might be, was a truly humanitarian principle. The joint proposal, under its humanitarian guise, would on the contrary permit certain countries to continue their policy of exploiting refugees.

27. The United Nations itself wished to see a diminution in the number of refugees and to give to most of them the opportunity to return freely to their countries. Yugoslavia had promulgated a general amnesty in favour of Yugoslav refugees, but certain receiving countries had prevented its publication, as if they desired to keep refugees in ignorance of the possibilities of returning to their countries, although the 1951 Convention relating to the status of refugees recognized the right of refugees to place themselves freely at the disposal of their countries' authorities.

28. His delegation was prepared to accept a proposal stipulating that refugees were not obliged to accept the intervention of their countries' consuls; but it vehemently protested against a text which sought only to extend the influence of the country of residence over refugees

or persons requesting asylum, by forbidding them any contact with the representatives of their countries, and thus any possibility of re-acquiring a normal status, in spite of the rule laid down by the United Nations.

29. It was an extremely dangerous question which could not fail to have serious political repercussions. It would be better to leave it to the specialized international organizations and, in particular, to the Office of the High Commissioner for Refugees.

30. He appealed to all representatives to reject the joint proposal which would distort a convention which he himself hoped to see ratified by a very large number of countries. A provision based on that proposal would undoubtedly reduce the number of ratifications.

31. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that the proposal, which concerned the political aspect of the relations between States, had given rise to a regrettable state of tension in the Committee. The text bore upon specialized, complex and delicate questions which would be far better settled by means of bilateral agreements.

32. The question of refugees and displaced persons had been raised many times at various conferences. In every case, it had provoked a cold war atmosphere which was harmful to the spirit of co-operation and aroused hostile sentiments between countries with different economic and political systems.

33. From a purely legal aspect, the amendment aimed at depriving the consulate of the possibility of getting into touch with those nationals of the sending State who were refugees or who had requested right of asylum in the receiving State. The question was therefore linked with that of the right of asylum, which was being dealt with by other organs of the United Nations, in particular the Committee on Human Rights. It certainly had no place within the framework of the convention.

34. The Convention on Diplomatic Relations contained no article of that type. One of the functions of diplomatic representatives was precisely to protect nationals of the sending State in the receiving State, yet no proposal similar to that under discussionb y the Committee had been submitted to the 1961 conference. His delegation was categorically opposed to the insertion of the new article.

35. Mr. TSYBA (Ukrainian Soviet Socialist Republic) also found the proposal unnecessary and unacceptable. It was contrary to article 36 and to the convention as a whole, since the essential function of a consulate was to ensure the defence and protection of nationals of the sending State. A person who requested asylum from the receiving State nevertheless needed the assistance of the sending State for he had left a family and property in his country. He might need documents. Why therefore should he be deprived of the help of his consul ?

36. Moreover, there was no foundation in law for the proposal: it was contrary to the inalienable and undisputed right of all States to protect their nationals wherever they might be. That right had always existed and article 8 of the resolution adopted by the Institute of International Law, at its 44th session held in England, which dealt with the right of asylum, accorded to all States the right to protect their nationals.

37. After the First World War, the situation of numerous refugees who had left threatened or occupied areas had been the subject of a number of international agreements. After the Second World War, the problem of refugees and displaced persons had greatly increased. General Assembly resolutions 8 (I) and 62 (I) of 12 February and 15 December 1946 had assigned to the United Nations the fundamental task of ensuring the rapid return of refugees to their homes. Article 13 of the Universal Declaration of Human Rights accorded to everyone the right to leave any country and to return to it. How was a refugee to exercise that right without the help of his country's consul ? How could he obtain the necessary passports and visas ? The proposed new article, by depriving refugees of the right to contact their consuls, robbed them of any chance of eventually returning to their countries. The insertion of the article would make the convention unacceptable for many countries and would thus remove its universal character.

38. Mr. DAVOUDI (Iran) recalled that, according to resolutions adopted by the General Assembly, the protection of refugees was the province of the Office of the High Commissioner for Refugees. While visiting refugee camps as a member of the Executive Committee of the High Commissioner's Programme, he had been able to verify that certain refugees did not wish to get into contact with the authorities of their country of origin. When such a situation arise, the Office intervened and protected the refugee so that he could decide in perfect freedom. He thought it indispensable to define exactly the functions of consuls of the sending State with regard to refugees, and he accordingly urged delegations to support the joint proposal.

39. Mr. MIRANDA e SILVA (Brazil) thought that all that was necessary to make the text acceptable to all delegations would be to insert the words " against his will " after the words " or otherwise concern himselfwith ".

40. Mr. GUNEWARDENE (Ceylon) said that the question had already been raised in 1961, but that the Conference had not thought it advisable to include special provisions for refugees in the Convention on Diplomatic Relations. Moreover, the legal basis of the joint proposal was very questionable. The problem of refugees was a personal tragedy which the article would do nothing to alleviate. Nothing should be done to aggravate an already complicated situation; the proposal might give rise to much friction. He urgently appealed, therefore, to the members of the Commonwealth and to the other delegations who believed in friendship between peoples to ensure that the proposal was withdrawn in the interests of peace and international co-operation.

41. Mr. DADZIE (Ghana) expressed his astonishment at seeing a conference called to codify consular law discussing so complicated a question as that of refugees and the right of asylum. The United Nations Third and Sixth Committees were already dealing with the question of the right of asylum, and the International

Law Commission had also put that question on its agenda. It would not be wise for the Conference to adopt a text which might contradict that of the experts on the International Law Commission. The Committee could not reach a decision without having seriously studied the question. Moreover, delegations were without instructions from their governments on the matter. If the joint proposal were put to the vote, the Ghanaian delegation would vote against it. It associated itself with the representative of Ceylon's appeal to the sponsors of the proposal to withdraw it so as to preserve the atmosphere of goodwill which till then had existed in the Committee.

42. Mr. TSHIMBALANGA (Congo, Leopoldville), speaking on a point of order, said that, as discussion of the joint proposal was likely to be lengthy, he would propose that the Committee should first decide whether it could usefully continue the debate. As he had received no instructions or mandate from his government, he himself could not take part in a vote on the proposal.

43. The CHAIRMAN said that, in accordance with rule 31 of the rules of procedure, he would invite the Committee to decide whether it was or was not competent to consider the proposal submitted to it.

44. Miss ROESAD (Indonesia) supported the Congolese representative's motion. In her opinion, the Committee was not competent to discuss the question.

45. Mr. HEPPEL (United Kingdom), speaking on a point of order, asked whether rule 31 gave the Committee the right to decide on its own competence. In his view, since it was a question of the protection of nationals of the sending State, the Committee's competence could not be called into question.

46. Mr. DADZIE (Ghana), speaking on a point of order, observed that the United Kingdom representative was returning to the substance of the question. His remarks were therefore out of place.

47. The CHAIRMAN invited the Committee to vote on the competence of the Conference to consider the proposal submitted to it, in accordance with rule 31 of the rules of procedure.

The Committee decided by 36 votes to 25, with 8 abstentions, that it was competent to consider the joint proposal.

48. Mr. BINDSCHEDLER (Switzerland) said that his country had always accepted and protected refugees. The refugee question had existed at other periods; there had always been and there would always be political refugees because no State, no political system, was perfect. That was why the question had to be settled in accordance with law and human rights.

49. He regretted having to oppose the arguments adduced by the Yugoslav representative. He particularly protested against the insinuation that the receiving country might exploit refugees. In Switzerland there were many refugees who were unable to work. They were maintained out of public funds and housed in hospitals and in homes. Moreover, Switzerland had never prevented and never would prevent refugees from returning to their own country, and nobody in Switzerland had ever prevented or ever would prevent the publication in the newspapers of reports concerning amnesties in foreign countries.

50. The sponsors of the joint proposal did not wish to exacerbate the cold war, but to codify international law in its current state. The right of asylum, too, was an essential attribute of the sovereignty of States. Nothing new was being introduced; the existing right was merely being confirmed. That was what was understood by codification.

51. It had to be recognized that the joint proposal was not altogether satisfactory as to form. The consulate of the sending State was refused the right even to act on behalf of refugees. Why should he be denied the right, for example, to pay them their pensions or social security benefits ? He therefore approved the modification proposed by Brazil. Finally, he thought that the place of the new article was not between articles 5 and 6 but rather in chapter IV, among the general provisions, or at the end of the Convention. Notwithstanding those reservations as to form, he would vote for the joint proposal on humanitarian grounds.

52. Mr. PAPAS (Greece) said that in principle his delegation would support the proposal. Furthermore, it considered that the question should not be given any political significance, because it had no unilateral aspect. There were foreign political refugees in Greece, and Greek political refugees in other countries. His delegation nevertheless thought that a consul should retain the right to show interest in a political refugee who was a national of his country. That could be done through an impartial body such as the Office of the High Commissioner for Refugees. Such a procedure might be followed in the cases referred to by the representative of Switzerland.

53. Mr. BARTOS (Yugoslavia) denied that his remarks had ever been specifically directed at Switzerland, which moreover was not one of the sponsors of the joint proposal. He would, however, venture to point out to the Swiss representative that official labour statistics published in Switzerland showed that the wages of foreign workers were lower than those of Swiss nationals.

The meeting rose at 1 p.m.

TWENTY-FIFTH MEETING

Thursday, 21 March 1963, at 3.15 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Proposed new article to be inserted between articles 5 and 6 (Refugees) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of the nine-power proposal for a new article (A/CONF.25/C.1/L.124).

2. Mr. KNEPPELHOUT (Netherlands) expressed the hope that the Committee would be able to continue its deliberations in the harmonious atmosphere which had prevailed hitherto. It was quite unnecessary to enter into political controversy on an article embodying a fundamental principle which was in the interests of all persons seeking asylum. As a country which had given shelter to refugees for centuries, the Netherlands considered it necessary to include the article.

3. Mr. KESSLER (Poland) agreed with the representatives who had held that the proposed new article was out of place in a consular convention. It should be borne in mind that the task of the Conference was to codify international law on consular relations, and paragraph 29 of the report of the International Law Commission covering the work of its thirteenth session (A/CONF.25/6) stated that the Commission had agreed to base its draft articles not only on customary international law, but also on the material furnished by international conventions, especially consular conventions. It could not be maintained that the principle stated in the proposed article was recognized either in customary international law or in any consular convention. The settlement of the refugee problem was outside the scope of a convention on consular relations; moreover, since the International Law Commission had included the right of political asylum in its long-term programme for the codification of international law, it would be improper to anticipate its decisions, as the proposed article did, to some extent.

4. While he did not wish to insinuate that the sponsors of the new article were motivated by ill will, he was not convinced by their arguments and did not believe that they were all prompted by lofty humanitarian ideals. He could not share the rather sombre view of the Swiss representative that the refugee problem should be perpetuated in the convention because refugees had existed since ancient times and would always continue to exist. His delegation believed that the modern era differed from the past by reason of the possibilities that had been created for universal and peaceful co-existence; it firmly believed in a future for mankind which would be free from war and its disastrous consequences, including the refugee problem. Members of the Committee should realize that the introduction of a purely political matter, having no bearing on consular relations, could easily breed ill will. The successful conclusion of the Conference depended on continued co-operation and business-like discussion.

5. Mr. CRISTESCU (Romania) expressed his delegation's deep conviction that the proposed new article was absolutely contrary to all the purposes of the Conference. In the first place, it conflicted with the sovereign right of all States to protect their nationals abroad; secondly, it was anti-humanitarian, since its effect would be to prevent consular officials from acting on behalf of nationals of the sending State; thirdly, it would hinder the day-to-day performance of consular functions; fourthly, its introduction had poisoned the atmosphere of the Conference by introducing an element of the cold war which had no place in the convention and was not calculated to further the codification and progressive development of international law; and finally, its inclusion in the convention would undoubtedly detract from the universality of that instrument. His delegation would therefore vote against the proposed article.

6. Mr. D'ESTEFANO PISANI (Cuba) thought that the underlying motives of the joint proposal were highly dubious. A number of international organizations were already concerned with the protection of refugees. Furthermore, the receiving State could not fail to recognize consular officials as protectors of the nationals of the sending State. As the Hungarian representative had pointed out, a multilateral consular convention could not include a transitory provision contrary to all legal philosophy and to the work of the International Law Commission; the inclusion of such a provision would vitiate the whole text of the convention.

7. From the practical point of view, the refugee problem could not be solved by a provision which would deprive nationals of the sending State of the protection of that State and would sever contact between them and their consulates. It would be both absurd and inhumane to deny the sending State an opportunity to assist its nationals when they were particularly dependent on its support. The Yugoslav representative had rightly pointed out that the article would be against the interests of refugees, since its adoption would help certain countries to benefit by cheap foreign labour.

8. A number of attempts had been made to introduce provisions which could only hinder the improvement of relations between States. The proposed new article was an extreme example; it was contrary to international law, and would be an obstacle to the promotion of friendly consular relations and humanitarian ideals. The intensive and constructive work already done proved that it was possible to discuss the Commission's text in a spirit of co-operation and understanding; that spirit should continue to prevail in the Committee.

9. Mr. PUREVJAL (Mongolia) agreed with previous speakers that the proposed new article was out of place in a multilateral consular convention. The extraneous question of refugees had been introduced for political reasons which were incompatible with the aims of the Conference. Moreover, the purpose of the proposal was to prevent the repatriation of refugees, although the principle of such repatriation was recognized by international law. His delegation strongly opposed the proposal and associated itself with the appeals made to the Committee at the previous meeting by the representatives of Hungary, Ceylon and Ghana.

10. Mr. MUÑOZ MORATORIO (Uruguay) said that he would support the proposed new article because it was the policy of Uruguay to offer to all refugees in its territory every facility and full guarantees for the protection of the inherent rights of the human person and the protection of the physical and moral integrity of the individual. Nevertheless, he had some doubts concerning the wording of the article. He had voted against the motion of the representative of the Congo (Leopoldville) because he held that it would not be superfluous,

in a convention which laid down the rule that consuls had the right to look after their compatriots, to add an article specifying in which cases they had not that right, in other words, in the case of political refugees.

11. It had been said that the wording of the article would prevent nationals of the sending State from appealing to their consuls for assistance; but all such persons could not be regarded as refugees, and in any event a refugee was always free to abandon his refugee status. Furthermore, no provision of the convention could be interpreted as giving a consul the right to act on behalf of a person who did not wish him to do so. He understood the purpose of the Brazilian oral amendment, which was to show that a consul would not act on behalf of a refugee who did not wish him to do so, but that provision might give rise to further difficulties, since it might be concluded, *contrario sensu*, that a consul could act on behalf of a person who did not wish him to do so if that person was not a national of the sending State.

12. As a country in which many foreigners were resident, Uruguay could not admit the right of a foreign consul to violate the principle stated in the proposed new article, and he would vote for the text as it stood.

13. Mr. WU (China) observed that, since the Committee had adopted the provision in article 5 (*e*) that consular officials had the function of helping and assisting nationals of the sending State, the question of situations in which such nationals did not wish to be assisted by a consular official naturally arose. The proposed new article offered a timely and appropriate answer to that question and should be inserted after article 5; article 5 (*e*) might be held to refer to material assistance, whereas the new article related to political freedom.

14. It might be unnecessary to reaffirm the status of political refugees in the convention, but the proposed new article would prevent consuls from interfering with the system of political asylum. His delegation would not, however, oppose a compromise satisfactory to all parties. Perhaps some qualifying phrase such as " except those who refuse such assistance and help " might be added at the end of article 5 (*e*). If the Committee failed to reach a compromise, however, and the new article was put to the vote, the Chinese delegation would vote in favour of it.

15. Mr. GHEORGHIEV (Bulgaria) pointed out that the task of the Conference was clearly laid down in General Assembly resolution 1685 (XVI) and that the International Law Commission had not referred to such political questions as the right of asylum and the refugee problem in its draft because they were irrelevant to a convention on consular relations. Furthermore, the Second Committee at the Conference had recently rejected a proposal to refer to the right of asylum in one of the draft articles. The effect of adopting the proposed article would be to deprive the unhappy victims of aggressive wars of the right to enter into contact with the representatives of their own countries, and thus to ensure that they could be used as cheap labour in the receiving countries. The proposal was therefore anti-humanitarian and was hardly likely to promote friendly relations among States. Such an article could only distort the convention, since it conflicted with a number of the articles already adopted, and its adoption would prevent many countries from signing the convention. The Bulgarian delegation would vote against the proposal, which it could only regard as an attempt to disrupt the harmony which had hitherto prevailed at the Conference.

16. Mr. KIRCHSCHLAEGER (Austria) said he would support the proposal, which he did not regard as a political attack against any government, or as a move detrimental to friendly relations among States, or as an attempt to infringe the sovereignty or other rights of the sending State. Article 24, paragraph 8, of the Consular Convention concluded between Austria and the United Kingdom on 24 June 1960 stipulated that nothing in the provisions of that article should be construed so as to oblige either party to recognize the right of a consular officer to perform any function on behalf of, or otherwise concern himself with, a national of the sending State who had become a political refugee for reasons of race, nationality, political opinion or religion. The inclusion of that provision, which was very similar to the proposed new article, in a bilateral consular convention, showed that the proposal had no unfriendly aspect, but merely stated certain limitations of consular functions where the receiving State had to exercise the humanitarian duty of protecting the refugee — though only, of course, to the extent that the refugee wished to be protected. His delegation could accordingly support the Brazilian oral amendment.

17. Mr. PAPAS (Greece) said he was in favour of the principle stated in the proposal and pointed out that it had no unilateral political character. Greece, for example, had given asylum to political refugees, while Greek political refugees had been given asylum by other countries. On the other hand, it should be borne in mind that the High Commissioner for Refugees was the competent authority in the matter, and could act as an intermediary between refugees and the consuls of the sending State. The International Committee of the Red Cross could act as an intermediary in countries which were not parties to the 1951 convention on refugees. He agreed with the Swiss representative that the proper place for the new article was not in the body of the convention, but among the general provisions.

18. Mr. KRISHNA RAO (India) said that his remarks on the proposed new article would be based solely on the legal points involved. The article had originated from a memorandum from the United Nations High Commissioner for Refugees (A/CONF.25/L.6); but article 2 of the statute of the Office of the High Commissioner provided that his work should be entirely non-political, humanitarian and social in character and should relate, as a rule, to groups and categories of refugees. Hence, no political argument should be used in that context. The High Commissioner, however, had not asked the Conference to take any action, but had only drawn attention to certain provisions of his statute. He therefore agreed with the representative of Ceylon that it was unnecessary to include the proposed new article,

particularly since the Vienna Convention on Diplomatic Relations contained no such provision and since the International Law Commission had not deemed it necessary to include one in its draft.

19. The High Commissioner had referred to articles 5 (*a*) and 36 of the draft, but the Indian delegation could not see how those provisions affected the High Commissioner's Office. Article 36 could not be construed as conferring on a consul any right to take action if the national concerned did not wish such action to be taken on his behalf. It should also be borne in mind that the activities in question would take place in the territory of the receiving State, whose authorities would be in a position to curb any abuses.

20. The proposed article itself was most unsatisfactory, both in drafting and in substance, and might lead to many difficulties of interpretation. To take only one example, the definition of the word " refugee " had been the subject of controversy for four or five years before it had been adopted in article 1 of the 1951 convention relating to the status of refugees, and some States still did not agree with that definition.

21. India was fully alive to the refugee problem, but could not agree that the relationship between refugees and consuls was one which should be defined in a convention on consular relations. Any problems which arose in that connexion should be settled on a bilateral basis or by the internal policy of each country. Much progress had been made in international relations since early consular conventions, under which consular officials of the sending State had certain rights over the nationals of that State. He appealed to the sponsors of the proposal to withdraw their draft. If they could not do so, he would vote against it.

22. Mr. HEPPEL (United Kingdom) observed that his government had drawn attention to the need for such an article in its comments on the draft articles; it could not therefore be argued that the matter had been raised unexpectedly. His delegation attached great importance to the article because of its conviction that it was improper for a consul to concern himself with nationals of the sending State who were refugees or were seeking asylum for any reason. The fact that his country's bilateral consular conventions with a number of other countries contained similar provisions clearly showed that the proposal was not political, but a matter of day-to-day administration between friendly States. The Indian representative had put the matter in its correct perspective when he had referred to article 2 of the High Commissioner's statute.

23. From the practical point of view, one of the most important purposes of the convention was to ensure that the consul of the sending State had access to any national of that State who was in trouble; article 36 contained precise provisions to that end. A consul should not be allowed to concern himself with a refugee as if he were an ordinary national of the sending State. It was equally important both to avoid any vagueness in the obligations of the receiving State under article 36 and to make it clear that those obligations were not the same in the case of refugees. Of course, the Committee should strive for harmony in its deliberations, but those who strongly opposed the new article were trying to exert pressure on its sponsors in order to give consular officials rights over refugees which they did not in fact possess. In those circumstances, he could not agree with the representative of Ceylon that it was the sponsors of the article who were introducing friction into the debate.

24. Some representatives had argued that, since such a provision had not been included in the Vienna Convention on Diplomatic Relations, it had no place in the convention under discussion. The United Kingdom delegation believed, however, that a multilateral convention on consular relations must both lay down rules for the protection of nationals of the sending State and also clearly state all possible exceptions to that rule. The representative of Czechoslovakia had drawn attention to a decision of the Second Committee of the Conference on the question of asylum, but that decision had related only to asylum on consular premises, which was an entirely different matter. He fully agreed with the representative of Czechoslovakia that decisions to be taken elsewhere on the refugee problem should not be prejudiced; but the effect of the proposed article would be simply to ensure that the consular convention, in its reference to dealings between consuls and nationals of the sending State, did not prejudice the position of refugees.

25. The Hungarian representative had said that the proposal related to matters foreign to the subject of the Conference. It was true that it was not the function of a consular official to concern himself with a national of the sending State who was a refugee or seeking asylum, but it was essential to make that perfectly clear in the convention, in order to avoid any possibility of misunderstanding. The Czechoslovak representative had objected to including an allegedly transitory provision in a convention which would lay down consular law for a long time to come: it should be borne in mind, however, that the refugee problem was as old as mankind. For thousands of years, a stranger seeking protection had been deemed to be entitled to special regard and consideration. The question of sovereignty had been raised by a number of speakers. The point at issue was indeed one of sovereignty and his delegation appealed to all countries, small and large, new and old, to be masters in their own house where the situation of refugees was concerned, and not to renounce that aspect of their sovereignty. An alien who did not wish to communicate with a consul of his country and who placed himself under the protection of the receiving State should not have to be the object of attention by a consul unless he so desired.

26. The wording of the proposed article could no doubt be improved, in order to make clear that no restriction was being placed on the right of a refugee to approach his own consulate or embassy. Article 36 stated the right of all nationals of the sending State, whether or not they were refugees, themselves to communicate with their consuls.

27. However, some delegations evidently considered that the wording of the proposed article unduly re-

stricted that right. His delegation had been impressed by the Uruguayan representative's criticism of the Brazilian oral amendment and would try to draft some more acceptable wording.[1]

28. Mr. BANGOURA (Guinea) said that, although at first sight his delegation had not seen much harm in the proposed new article, the statements of a number of speakers, particularly that of the Yugoslav representative, had convinced it that such a provision was undesirable. From a purely practical point of view, if the right of asylum was placed under the jurisdiction of the receiving State, there would be no provision for facilitating the return of refugees who subsequently changed their minds. If the appeal of the representatives of Ghana and Ceylon met with no response, he would vote against the joint proposal.

29. Mr. AVILOV (Union of Soviet Socialist Republics) said that the question of refugees was absolutely irrelevant to the subject under discussion and was dealt with by other organs of the United Nations, including the Third Committee of the General Assembly and the International Law Commission. Moreover, since even those specialized bodies had found it difficult to reach any solution of the problem, there was no reason to think it could be solved in one article of the convention on consular relations. The consular conventions which his country had concluded on a bilateral basis contained no references to refugees, and the correctness of that policy was borne out by the omission of any such provision from the Commission's draft and from the Vienna Convention on Diplomatic Relations.

30. The difficult situation of refugees in their new countries of residence was well known, and the Soviet Union possessed a considerable amount of data on steps taken to prevent their repatriation, in contravention of General Assembly resolution 8 (I). It was therefore surprising, to say the least, that the proposed article was being introduced on allegedly humanitarian grounds; as the Ceylonese representative had pointed out, the nations of Asia and Africa had bitter experience of such so-called humanitarianism. Contrary to the United Kingdom representative's assertion, the opponents of the proposal did not wish to introduce any vague provisions in the convention: they wanted to protect the interests of the nationals of the sending State, and not speculate on human misery. The Soviet Union was only too well aware of the situation of thousands of refugees and displaced persons whose families had been divided and who had been prevented from returning to their countries. Fortunately, however, large numbers had managed to return and were now enjoying normal living conditions in their own country.

31. Under the guise of concern for human rights, the sponsors of the proposal were trying to prevent refugees from making contact with the consul of the sending State. Moreover, there was no guarantee that persons who allegedly did not wish to communicate with their consuls were not victims of provocation. In his country's experience, many refugees had agreed to repatriation after they had seen their consuls; and since they met the consul in the presence of the authorities of the receiving State, there could be no danger to them. If a national of the sending State declared his unwillingness to be repatriated before the consul, no objection could be made; the difficulty arose when the person concerned was prevented from seeing the consul.

32. He deplored the disruption of the friendly atmosphere that had hitherto prevailed at the Conference and hoped that the joint proposal would be withdrawn. If the sponsors pressed their proposal he would vote against it.

33. Mr. RABASA (Mexico) observed that the joint proposal constituted a new article unfamiliar to the governments which had sent delegations to the Conference to discuss the draft prepared by the International Law Commission. In future, he would have to abstain from voting on any proposal for a new article, regardless of its merits. He had no instructions from his government, and was not in a position to obtain any, concerning a provision outside the scope of the draft articles referred to the Conference by the General Assembly.

34. Notwithstanding the absence of any instructions from his government, however, he was prepared to support the joint proposal, because of the traditional policy of Mexico in the matter of political asylum. At the Sixth International American Conference held at Havana in 1928, Mexico had been one of the sponsors of a convention on diplomatic asylum. That convention had endorsed the Latin American system of granting asylum to political refugees on the premises of diplomatic missions; the institution of diplomatic asylum had been confirmed by a second convention on the subject signed at the Seventh International American Conference at Montevideo in 1933. At the 1954 International American Conference held at Caracas, two conventions had been signed: one on political asylum in the territory of the contracting States and the other on diplomatic asylum. Mexico had been one of the prime movers of those conventions, which reflected the latest developments in the matter of asylum in Latin America, and the Mexican Senate had approved their ratification. Moreover, in its legislation on the immigration and residence of aliens, Mexico had included provisions for the protection of persons who had sought asylum for political reasons.

35. He therefore believed that he was faithfully interpreting the policy of his government by supporting the proposal, which did not appear to be inspired by any ulterior motive, but intended only to strengthen the institution of political asylum. He was obliged to point out, however, that his full powers were *ad referendum* and for the purposes of voting in the plenary meeting; he therefore reserved the right to act in accordance with any instructions he might receive from his government.

36. Miss ROESAD (Indonesia) said that, at the previous meeting, her delegation had voted in favour of the proposition that the Conference was not competent

[1] A revised text was subsequently circulated in document A/CONF.25/C.1/L.124/Rev.1.

to deal with the question under discussion. She would therefore refrain from going into the substance of the matter; her delegation was not opposed to the right of asylum as such, but believed that it would serve no useful purpose to include a reference to it in a convention on consular relations.

37. Mr. ABDELMAGID (United Arab Republic) also thought that the proposed new article would be out of place in a convention on consular reltions. His delegation was fully conversant with the refugee problem; the United Arab Republic gave every facility to the United Nations High Commissioner for Refugees, who had a representative at Cairo. However, he was certain that if the text under discussion had been submitted to the International Law Commission, its members, regardless of nationality and political background, would have come to the conclusion that is should not be included in the draft articles on consular relations. He therefore endorsed the appeal made by the representative of Ceylon to the sponsors not to press their proposal, which had given rise to such a long discussion, largely of a political character.

38. Mr. von HAEFTEN (Federal Republic of Germany) pointed out that the proposed provision would not impose any obligation on States, which would remain free to grant asylum or not, as they chose. Nor would it prevent a refugee from returning to his country of origin or establishing contact with his consul if he decided to do so of his own free will; the United Kingdom representative had offered to make that point clear in the text. The purpose of the proposed new article was simply to prevent pressure being exerted on refugees.

39. Mr. TORROBA (Spain) thought that the proposed provision was not absolutely indispensable. But he had no objection to its inclusion, particularly if the text were improved as suggested.

40. Mr. de MENTHON (France) stressed the fact that his country had shown constant concern with the refugee problem. France had given asylum throughout its history to a large number of refugees from many different countries and of many political tendencies. It co-operated whole-heartedly with the work of the United Nations High Commissioner for Refugees and was a signatory of the 1951 Convention relating to the status of refugees. An office for the protection of refugees and stateless persons had been set up in France and the United Nations High Commissioner for Refugees was represented at Paris.

41. His delegation believed that it was necessary to include an article along the lines proposed in the convention on consular relations. It was essential that there should be no conflict between the provisions of that convention and the instruments relating to refugees. In view of the provisions of article 5 of the draft on safeguarding the interests of nationals of the sending State, it was essential to recognize the freedom of choice of the persons concerned; that applied, in particular, to persons who did not wish to enter into contact with the consular representatives of their country of origin.

42. The purpose of the proposed new article was to lay down necessary limits for the exercise of consular functions. He felt certain that it had been put forward without any ulterior political motive, and that it would serve a genuine need in the future because, unfortunately, there would always be refugees.

43. Mgr. CASAROLI (Holy See) stressed that, in its attitude towards the proposal before the Committee, his delegation was not prompted by any considerations relating to contemporary and, it was to be hoped, transitory conditions, but by legal considerations and by a general concern for the grave, long-standing and unfortunately enduring problem under discussion.

44. He would not enter into the details of the proposal, and would consider only its central idea. He had noted with satisfaction, however, that a clause was to be added — which his delegation considered essential — to make it clear that the proposed provision did not prevent the persons concerned from contacting the consular officials of their country of origin if and when they desired.

45. There was a logical argument in favour of the proposal. International law fortunately recognized that a person could legitimately seek asylum outside the country which, while remaining his native land, had ceased to offer him peace and safety, not because he had committed a crime, but because of factors independent of his will, such as race or nationality, or even because of some lawful act. International law also recognized the right of a State to offer hospitality to those seeking asylum for legitimate reasons. Accordingly, so long as it was possible for a person in certain cases freely to remove himself from the authority of his own State, it would seem logical to recognize his right to be exempt from the authority of the consular officials of that State in the country where he had taken refuge.

46. The logical argument in favour of the proposal was strengthened by humanitarian considerations, even though an occasional abuse might be possible and even though, unfortunately, humanitarian concern might sometimes also cover intentions and attitudes of a different character. His delegation hoped that, through the goodwill of all, a genuine, just and humane solution would soon be found for the distressing problem of refugees, in the interests of the persons concerned and of the peace of the world.

47. He noted that the proposal was, he believed intentionally, couched in negative terms; it merely provided that nothing in the convention obliged the receiving State to recognize a consular official of the sending State as entitled to act in the circumstances specified. That language did not prejudice the positive aspect of the question, the substance of which was left to the bodies competent to study the right of asylum and related questions.

48. It was in that spirit and in view of those considerations that his delegation would support the proposal, with the change proposed by the United Kingdom representative.

49. Mr. DJOUDI (Algeria) expressed appreciation of the services rendered to Algerian refugees by the

United Nations High Commissioner. His country had become a party to the 1951 Convention relating to the Status of Refugees.

50. He considered, however, that the fact that a person was a refugee did not divest him of his allegiance to his country of origin. The proposed new article would provide the receiving State with an indirect means of rendering consular protection inoperative. He agreed with those representatives who took the view that the article would be out of place in a convention on consular relations; moreover, it had become apparent that if it was included many countries would not accede to the convention. In the interests of the universality of that instrument, he therefore urged the sponsors of the proposal to withdraw it.

51. Mr. DI MOTTOLA (Costa Rica) said that he would support the proposal, which was in line with the traditional policy of his country. It was consistent with the principles of international law relating to the granting of asylum, and would serve a useful purpose by specifying the limits within which certain consular functions could be exercised.

52. Mr. BARTOŠ (Yugoslavia) pointed out that, in his memorandum (A/CONF.25/L.6), the High Commissioner for Refugees had not requested the inclusion of any provision on the lines of the joint proposal. The purpose of that memorandum had been merely to draw attention to the competence of the High Commissioner to grant protection to refugees by virtue of certain international instruments.

53. The United Kingdom representative had spoken of a clause which, he had said, was currently used in connexion with the subject under discussion and which, according to that representative, reflected day-to-day international practice. In fact, however, so far as he (Mr. Bartoš) was aware, the clause in question was used only by the United Kingdom and appeared only in that country's consular conventions with Sweden, Denmark and Austria. A practice which involved only four countries could hardly be described as international or general. Besides, the practice in question was of a purely nominal character, for there were few refugees from Austria, Denmark or Sweden in the United Kingdom and probably no United Kingdom refugees in those countries. The practice could not form the basis of a codification of international law, nor could it constitute a starting-point for the purpose of the progressive development of international law, inasmuch as it was a condition that a practice, in order to income the basis of a codification or development of international law, must have been accepted by the different legal systems, a condition which was not fulfilled in the particular case.

54. Even with the improvement suggested by the United Kingdom representative, the new article was unacceptable to his delegation. It contained no provision to ensure that the persons concerned had been given an opportunity of exercising their right to contact their consul. If such an article were introduced into the convention, many States would be unable to accede to it.

55. Mr. WESTRUP (Sweden) expressed surprise that the proposal co-sponsored by his delegation should have led to such bitter argument. Sweden was in no way concerned in the " cold war " and he noted from the moderate remarks made by the Polish and other representatives that no suspicion was being cast on the intentions of his delegation. He wished to assure the opponents of the proposal that it had not been put forward in the spirit suggested by certain representatives; it had been made in order to meet the future needs, since the refugee problem could not be expected to disappear.

56. Mr. N'DIAYE (Mali) said that, as he understood it, the joint proposal had had its origin in the discussions on article 36 in the Second Committee of the Conference.[2] It had been pointed out during that discussion that, since the receiving State was required to notify the consul of the arrest of one of his nationals, it would have to inform the consul of the country of origin of any refugee arrested for illegally crossing the frontier. That problem had in fact been dealt with by introducing into article 36 a provision to the effect that, where an arrested person did not wish the receiving State to notify his consul, it was not required to do so. In the circumstances, he saw no reason for introducing the proposed new article.

57. The problem of refugees was a matter for the United Nations High Commissioner. He understood the humanitarian motives of the sponsors of the joint proposal but considered that its subject matter was outside the scope of the Conference. It the proposal were put to the vote, his delegation would be obliged to abstain. He endorsed the appeal made to the sponsors to find a compromise solution, so as to enable the Committee to continue its work in the constructive and friendly atmosphere which had hitherto prevailed.

58. Mr. NESHO (Albania) opposed the joint proposal, which would introduce an extraneous element into the future convention on consular relations.

59. Mr. MAMELI (Italy) supported the joint proposal, which had been improved by the addition of a new sentence. Italy had given asylum to a large number of refugees and was a signatory to the 1951 Convention relating to the Status of Refugees. His delegation was interested in the humanitarian problem of refugees and considered that the proposed new article would be most appropriate in a convention on consular relations.

60. Mr. PETRŽELKA (Czechoslovakia) said that the United Kingdom representative had failed to answer the most important arguments which he had put forward at the previous meeting. A point which he wished to make in particular was that many countries were not parties to the international instruments on refugees, so that the inclusion of a provision on the proposed lines would not be codification of a general international practice.

61. Many States would not agree to renounce their right to protect their nationals. It was not possible to accept the proposition that the receiving State had the right to recognize or not to recognize the sending State's

[2] See the summary records of the sixteenth, seventeenth and eighteenth meetings of the Second Committee.

right to exercise consular functions in respect of its own nationals. Such a proposition would be inconsistent with the sovereign equality of States proclaimed in Article 2 (1) of the Charter. It would also be inconsistent with the provisions of article 3, paragraph 1 (*b*) of the 1961 Vienna Convention on Diplomatic Relations, which stated that it was the function of a diplomatic mission to protect in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law. Another legal shortcoming of the proposal was that it would deprive the sending State of its sovereign rights and give those rights to individuals, in defiance of international law.

62. As aptly pointed out by the Indian representative, the definition of the term " refugee " was crucial to the matter under discussion and it was not the task of the present conference to define that term.

63. It was undeniable that the joint proposal involved a dangerous political issue and that it constituted an effort to impose certain views, against the opinion of a large number of States. The adoption of such a proposal might make the convention unacceptable to a large number of States.

64. Mr. TORROBA (Spain), replying to the representative of Yugoslavia, said that the three countries he had mentioned were not the only ones with which the United Kingdom had concluded consular conventions containing a provision on refugees. The provision in question was also contained in the consular convention between the United Kingdom and Spain and he did not deny that there were certain Spaniards resident in the United Kingdom who regarded themselves as political refugees.

65. Mr. USTOR (Hungary) said that the Indian representative had already pointed out the legal shortcomings of the joint proposal and drew attention to the need to define the term " refugee ". In the absence of such a definition, the vague language of the proposed new article would make it possible for almost any foreigner to be considered as a refugee.

66. Persons who left their country of origin did so in the hope of attaining a happier life; their reasons were mostly of an economic character, although sometimes there were other reasons as well. The question arose who was entitled to determine a person's reasons for taking the fateful decision to leave his country of origin. Any suggestion that it was the unilateral right of the receiving State to do so would be a flagrant interference in the sovereign rights of the sending State and an illegitimate intervention between that State and its own nationals.

67. Under the proposed new article, a consul would be faced with insurmountable practical difficulties. In particular, he would not know whether a person was considered as a refugee by the receiving State or not. And it would be clearly impracticable to allow the person concerned to decide that question for himself, because it would give an opportunity even to criminals to declare themselves refugees in order not to be deported.

68. A provision such as that under discussion might perhaps be included in a bilateral agreement, but it would create chaos and confusion if introduced into a general multilateral convention. It would also detract from the universality of the convention and thus impede the process of codifying international law.

69. Mr. GUNEWARDENE (Ceylon) pointed out that the Commission on Human Rights, the Economic and Social Council and the General Assembly itself had all dealt with the problems of refugees and asylum and was still working on those problems. If those competent organs of the United Nations had been unable fo find a solution, it was futile to attempt the task in a conference of a limited character such as the present conference.

70. He appreciated the generosity of the United Kingdom and other countries to refugees, and felt sure that the four Commonwealth countries and the five other countries sponsoring the joint proposal had been prompted by the best intentions. But the proposal had introduced a cold war atmosphere into the Committee's discussion; he earnestly reiterated his appeal to the sponsors to withdraw it so as to enable the Conference to arrive at a convention that could be unanimously approved.

71. Mr. KEVIN (Australia) said that the sponsors of the joint proposal were not trying to define the term " refugee ", but simply to specify how far a consul could go in the exercise of his functions. He saw no connexion between the proposal and the cold war.

72. Mr. GUNEWARDENE (Ceylon) proposed that a vote on the joint proposal should be deferred until the next meeting.

It was so agreed.

The meeting rose at 6.20 p.m.

TWENTY-SIXTH MEETING

Friday, 22 March 1963, at 10.35 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Proposed new article to be inserted between articles 5 and 6 (Refugees) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of the nine-power proposal for a new article (A/CONF.25/C.1/L.124) and drew attention to the revised text of that proposal (A/CONF.25/C.1/L.124/Rev.1).

2. Mr. AVILOV (Union of Soviet Socialist Republics) associated himself with the appeal made by the representative of Ceylon to the sponsors of the draft article to withdraw their proposal, discussion of which was inappropriate and was likely to introduce into the Conference a cold-war atmosphere and thus to jeopardize its success. Moreover, the insertion of the article in the

convention would prevent many States from ratifying it and would nullify eight years' work by the International Law Commission, a state of affairs for which the sponsors of the proposal would bear the responsibility. His delegation appealed to the good sense of the Committee to reject the draft article.

3. Mr. HEPPEL (United Kingdom) stressed the importance of the issue that confronted the Conference and the necessity for inserting the proposed new article in the draft convention, because the question had a direct bearing on consular relations and therefore was within the Conference's competence. It was regrettable that the question had taken a political turn yet its humanitarian aspect made it a subject of general interest.

4. Mr. RAHMAN (Federation of Malaya) regretted that the debates, which had been conducted so far in a spirit of harmony, should have become embittered. The hope of a compromise solution, however, which would represent a real success for the Conference, should not be abandoned. Both groups recognized the importance of the question and its humanitarian character. He would suggest therefore the establishment of a small sub-committee of representatives of the two groups to examine the question thoroughly.

5. The CHAIRMAN said that he would welcome such a solution, but the two sides had hardened in their attitudes and taken up diametrically opposite positions. There was little hope under those conditions of a sub-committee composed of representatives of the two groups reaching a compromise.

6. Mr. PAPAS (Greece), introducing his amendment (A/CONF.25/C.1/L.156), explained that its purpose was to alleviate the apprehension expressed by many delegations with regard to the proposed new article. Its text might be modified; there might be a provision, for instance, for the good offices of the International Committee of the Red Cross or the intervention of an impartial person. If, however, the sponsors of the joint proposal could not accept the Greek amendment, his delegation would not press it.

7. Mr. KRISHNA RAO (India) doubted whether the Committee was qualified to confer a mandate on the United Nations High Commissioner for Refugees, as proposed in the Greek amendment. The High Commissioner's mandate had been defined by the General Assembly, and the Conference had no authority to extend it to include new tasks.

8. Mr. BINDSCHEDLER (Switzerland), endorsing the Malayan representative's proposal, said that the Committee might decide to set up a sub-committee whose members would be chosen by the Chairman, and to adjourn the debate until the sub-committee had reported to the Committee on the result of its efforts to reach a compromise.

9. Mr. DADZIE (Ghana) said that if it were decided to set up the sub-committee suggested by the Malayan representative, it should be composed of representatives not belonging to either of the two groups.

10. The CHAIRMAN suggested the establishment of a sub-committee composed of the representatives of Brazil, Ceylon, the Federation of Malaya, the Union of Soviet Socialist Republics, the United Kingdom and the Upper Volta. In the meantime, as the Swiss representative had suggested, the debate could be adjourned.

It was so decided.

Article 27 (Protection of consular premises and archives and interests of the sending State in exceptional circumstances) (*continued*) [1]

11. The CHAIRMAN drew attention to the text of the amendment to article 27 submitted by the working group for the consideration of the Committee (A/CONF. 25/C.1/L.157).

12. Mr. KEVIN (Australia) introduced the working group's proposal and said that the text suggested for the new paragraph 2 of article 27, replacing paragraphs 2 and 3 of the International Law Commission's draft, had been accepted by the sponsors of the various amendments.[2] The text of the introductory phrase of paragraph 1 in the amendment was a variant of the existing text and could be referred to the drafting committee.

13. Mr. CAMERON (United States of America) pointed out that the working group's draft of the new paragraph 2 did not take account of his delegation's amendment (L.5) to paragraph 1 (*b*) of the original text to substitute the words " of the consulate ", taken from paragraph 1 (*a*), for the words " it contains ". Moreover, his delegation had proposed to amend paragraph 1 (*a*) by changing the words " respect and protect ", which went too far, to read " accord all due respect and protection to ". The working group had not accepted those proposals, which his delegation submitted anew to the Committee.

14. Mr. HEPPEL (United Kingdom) said that his delegation had proposed an amendment (L.142) to insert the words " in the same territory of " in paragraph 2 before the words " the receiving State ". On reflection, he thought that that amendment, which was not in the working group's text, did not call for a formal proposal and he would not press it.

15. Mr. WU (China) explained that his delegation's amendment (L.113) to the introductory phrase of paragraph 1 did not effect any substantial change in the International Law Commission's draft. It merely rounded off the text and made it easier to apply.

16. Mr. USTOR (Hungary) said that he would vote against the introductory phrase of paragraph 1 proposed by the working group, on which there had been some disagreement within the group. As to the second part of the United States amendment, his delegation preferred the International Law Commission's text.

7. Mr. VAN HEERSWIJNGHELS (Belgium) said that he would accept the working group's text if that

[1] Resumed from the twenty-fourth meeting.

[2] For the list of amendments to article 27, see the summary record of the twenty-fourth meeting, footnote to para. 1.

part of the introductory phrase to paragraph 1 beginning "... where the sending State ..." were deleted, since those words could lead to misunderstanding.

18. Mr. de MENTHON (France) said his delegation preferred the International Law Commission's text for the introductory phrase to paragraph 1 and the French delegation would therefore ask for a separate vote on the second part of that phrase as quoted by the Belgian representative.

19. The CHAIRMAN put to the vote the second part of the introductory phrase of paragraph 1 of the working group's text (A/CONF.25/C.2/L.157) beginning with the words "... where the sending State ..."

That part of the phrase was rejected by 34 votes to 23, with 12 abstentions.

20. The CHAIRMAN put to the vote the text of new paragraph 2 submitted by the working group, as amended by the United States proposal for paragraph 1 (*b*) of the original text.

That text was adopted by 44 votes to none, with 21 abstentions.

21. Mr. USTOR (Hungary) expressed doubts about the regularity of the voting procedure followed by the Chairman. The text of the working group's new paragraph 2, as amended by the United States, had been put to the vote without any decision of the Committee on the amendment itself.

22. The CHAIRMAN replied that he had taken the view that if the text of paragraph 2, as amended by the United States, were adopted then paragraph 1 (*b*) would have been amended as a result. He put to the vote draft article 27, as amended.

Draft article 27, as amended, was adopted by 64 votes to none, with 4 abstentions.

Article 68 (Exercise of consular functions by diplomatic missions)

23. The CHAIRMAN invited the Committee to consider article 68 of the International Law Commission's draft and the amendments thereto.[3]

24. Mr. ENDEMANN (South Africa) said that his delegation withdrew its amendments (L.140 and Add.1), since the amendments submitted by the United States to paragraph 2 and by the United Kingdom to paragraph 4 had made them superfluous.

25. Mr. CAMERON (United States of America) withdrew his amendment (L.6) to paragraph 4 in favour of the United Kingdom amendment (L.153). He proposed to modify his amendment to paragraph 2 by replacing the words at the end of the sentence in his amendment " shall be admitted to the exercise of their consular functions in accordance with article 11 " by the words " shall exercise those functions only with the consent of the receiving State, should that State so require ". The United States delegation supported the United Kingdom amendment to paragraphs 1 and 3 of article 68.

26. Mr. HEPPEL (United Kingdom) pointed out that the amendments in document L.153 were based directly on decisions already taken by the two committees of the Conference. The object of the amendment to paragraph 1 was to substitute a more general reference to " the provisions of the present convention " for the reference to articles 5, 7, 36, 37 and 39. That was merely a drafting change, but it seemed to him necessary, particularly in view of the amendment to article 3, which had already been adopted. The other amendments were intended to bring the wording of paragraph 3 into line with that adopted by the Second Committee for article 38, and that of paragraph 4 with the wording of paragraph 2 of article 17 concerning the position of a head of consular post who was at the same time a representative to an international organization.

27. He thanked the United States delegation for having withdrawn its own amendments in favour of those of the United Kingdom and in particular the amendment to paragraph 4. For its part, the United Kingdom delegation would support the new wording of paragraph 2 proposed in document L.6, as modified by the oral sub-amendment submitted by the United States.

28. Mr. MAMELI (Italy) explained the amendment proposed by his delegation (L.121): a diplomatic mission authorized to exercise consular functions should be entitled to adress the authorities of the receiving State, other than the Ministry of Foreign Affairs, which were competent under the law of that State.

29. Mr. von HAEFTEN (Federal Republic of Germany) said that he would vote for the United Kingdom amendment to paragraph 1, and for the amendment to paragraph 2 proposed by the United States. He was inclined to support the Italian amendment to paragraph 3, but he preferred the International Law Commission's wording of paragraph 4 since the United Kingdom amendment might cause confusion.

30. Mr. PETRŽELKA (Czechoslovakia) said that his delegation was opposed to both the United Kingdom and the United States amendments and would vote for the International Law Commission's text.

31. Diplomatic agents and consular agents constituted two separate categories and the status of diplomatic agents had already been fixed by a special convention. The privileges and immunities of diplomatic officials were recognized by all States. The proposed amendment conflicted with the corresponding clauses of the Convention on Diplomatic Relations, and for that reason he would be forced to vote against them.

32. Mr. DADZIE (Ghana) said that he would vote against the United States and United Kingdom amendments, which might lead to confusion. He preferred the International Law Commission's draft.

33. Mr. KONZHUKOV (Union of Soviet Socialist Republics) and Mr. CRISTESCU (Romania) supported

[3] The following amendments had been submitted: United States of America, A/CONF.25/C.1/L.6; Italy, A/CONF.25/C.1/L.121; South Africa, A/CONF.25/C.1/L.140 and Add.1; United Kingdom, A/CONF.25/C.1/L.153.

the views expressed by the Czechoslovak and Ghanaian representatives. The proposed amendments seemed liable to create difficulties. Their delegations would vote for the original International Law Commission draft.

34. Mr. de MENTHON (France) said that he supported the amendments submitted by the United Kingdom to paragraphs 1 and 3. On the other hand, he could not support the United Kingdom proposal for paragraph 4, nor that of the United States for paragraph 2.

35. Mr. HOANG XUAN KHOI (Republic of Viet-Nam) said he supported the United Kingdom amendments to paragraphs 1 and 3, which seemed to him to make the wording clearer, and also the United States amendment to paragraph 2, which upheld the principle of national sovereignty. The United Kingdom amendment to paragraph 4 seemed to him to follow on logically from article 17. Since the Committee had approved paragraph 2 of article 17, it could hardly reject the paragraph 4 proposed by the United Kingdom.

36. Mr. CAMERON (United States of America) thanked those representatives which had supported his delegation's amendment to paragraph 2. With regard to the amendment to paragraph 4 proposed by the United Kingdom in favour of which the United States delegation had withdrawn its own amendment, it had been said that the status of diplomatic officials exercising consular functions had been fixed by the 1961 Vienna Convention. He wished, however, to draw the Committee's attention to paragraph 2 of article 3 of that convention, which had been included with the precise object of leaving the 1963 Conference entire freedom of action in determining the circumstances in which diplomatic officials would be authorized to exercise consular functions.

37. Mr. DADZIE (Ghana) proposed that the words " shall continue to be governed " in paragraph 4 should be replaced by the words "shall be governed". There was no very clear-cut distinction in small countries between officials fulfilling diplomatic functions and those exercising consular functions. Hence, he did not feel able to vote for amendments the effect of which would be to reduce the privileges and immunities of a diplomatic official entrusted with consular functions.

38. Mr. OSIECKI (Poland) observed that article 68 was of very great importance for all States that were under the necessity of supplementing their consular network by consular sections of diplomatic missions. He was opposed to amendments that would complicate the position, and he was opposed in particular to the change proposed in document L.6, and in the United Kingdom amendments to paragraphs 1 and 4.

39. Mr. HEPPEL (United Kingdom), replying to criticism of the amendment to paragraph 4 proposed by his delegation, said that the proposed amendment would not result in depriving diplomatic officials of the personal immunity to which they were entitled. It simply meant that, in the exercise of consular functions, they should be in the same position as any other consular official fulfilling those functions. The amendment was a logical sequel to the amendments made by the Committee to paragraph 2 of article 17, which had been adopted by 62 votes to none, with 7 abstentions.

40. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said he would vote against the amendments proposed by the United States and the United Kingdom, since they were contrary to accepted international practice, and also to the interests of small States.

41. Mr. PETRŽELKA (Czechoslovakia) pointed out that article 3, paragraph 2, of the Convention on Diplomatic Relations quoted by the United States representative referred only to that convention. With regard to the United Kingdom amendment, he drew the Committee's attention to paragraph 4 of the commentary on article 68.

42. Mr. GHEORGHIEV (Bulgaria) said that he was likewise not in a position to support the proposed amendments; he preferred the International Law Commission's wording.

43. Mr. N'DIAYE (Mali) said that, like the French representative, he approved the amendments to paragraphs 1 and 3 of article 68 proposed by the United Kingdom; but he was not able to accept its amendment to paragraph 4, nor that of the United States. It was inconceivable that in the case of small States, which lacked staff, diplomatic officials exercising consular functions should be deprived of a part of their privileges and immunities.

44. Mr. USTOR (Hungary), Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) and Mr. D'ESTEFANO PISANI (Cuba) entirely agreed with the views expressed by the representative of Mali, and said they were firmly opposed to the United Kingdom amendment to paragraph 4, which might gravely prejudice the inviolability of diplomatic officials.

The United Kingdom amendment to paragraph 1 (A/CONF.25/C.1/L.153) was adopted by 42 votes to 16, with 11 abstentions.

The United States amendment to paragraph 2, as orally revised by its sponsors, was rejected by 25 votes to 24, with 19 abstentions.

The Italian amendment to paragraph 3 (A/CONF.25/C.1/L.121) was rejected by 23 votes to 11, with 34 abstentions.

The United Kingdom amendment to paragraph 3 (A/CONF.25/C.1/L.153) was adopted by 39 votes to 14, with 16 abstentions.

The United Kingdom amendment to paragraph 4 (A/CONF.25/C.1/L.153) was rejected by 34 votes to 18, with 17 abstentions.

45. Mr. DADZIE (Ghana) said that his delegation's oral amendment to paragraph 4 was purely a question of drafting: it might be referred to the drafting committee without being put to the vote.

It was so decided.

Article 68 as a whole, as amended, was adopted by 61 votes to none, with 10 abstentions.

Article 70 (Non-discrimination)

46. The CHAIRMAN invited the Committee to consider article 70, to which two amendments (A/CONF.25/C.1/L.44 and L.82) had been submitted by the Federal Republic of Germany.

47. Mr. von HAEFTEN (Federal Republic of Germany) explained that the object of his delegation's amendment (L.44) was to replace the existing text of paragraph 2 by a wording similar to that of article 47 of the Convention on Diplomatic Relations. His delegation's second amendment (L.82) was in the nature of an explanation. The principle of reciprocity should apply just as much to consular as to diplomatic relations. If, for instance, as between two States, one State were to apply the rules of the Convention restrictively, the second State would not be bound to grant to the first rights and advantages greater than those conceded to it by the first State. Again, two States should be able to grant each other more favourable treatment than that laid down in the Convention, without bringing the most-favoured-nation clause into operation. He thought that the matter should be settled in the same way in both conventions.

48. Mr. BALTEI (Romania) said that he entirely approved of the International Law Commission's wording of article 70. Paragraph 1 of that article was based on the principle of the equal sovereignty of States. Paragraph 2, which enabled States to grant each other immunities and privileges more extensive than those provided for in the Convention, was of a nature to promote the development of consular relations. For that reason the Romanian delegation was opposed to the amendment (L.44) of the Federal Republic of Germany, which contemplated the possibility of a restrictive application of the Convention. Such a point a view was contrary to the very principle of the future convention.

49. The Romanian delegation considered it wrong to assume *a priori* that States would not observe the convention or would apply it restrictively. That would amount to casting doubt from the outset on the efficacy of the convention and on the very work of the Conference. On the contrary, the Romanian delegation considered that the convention would represent a starting point for the development of friendly consular relations among States; that was the main purpose of the instrument. Even to mention restrictive application of the convention would be equivalent to proclaiming that restriction as a principle, whereas the actual principle of international law was that of the strict observance of international conventions: *pacta sunt servanda*. A reference to the possibility of restrictive application would weaken by a general and declaratory provision the obligations upon which the Conference would agree.

50. The great majority of the members of the International Law Commission, including such eminent jurists as Mr. Ago of Italy, Mr. Tunkin of the Soviet Union, Sir Humphrey Waldock of the United Kingdom and Mr. Padilla Nervo of Mexico, had opposed the adoption of the restrictive application clause. At the 608th meeting of the International Law Commission, Mr. Ago and Mr. Padilla Nervo had said that the provisions of article 47 of the 1961 Convention on Diplomatic Relations were the most regrettable in that instrument and that the introduction of the restrictive clause was particularly dangerous because it would tend to weaken the obligations assumed by States under the Convention. According to Mr. Padilla Nervo, it seemed a great mistake to imply that States could avoid fulfilling the obligations of the Convention on the grounds that they were taking retaliatory action.[4]

51. In the light of those considerations, the Romanian delegation would vote against the amendment and would support the text as drafted by the International Law Commission.

52. Mr. ABDELMAGID (United Arab Republic) pointed out that, in fact, article 47, paragraph 2, of the Convention on Diplomatic Relations did no more than make provision for reciprocity. With a view to bringing the wording of the two conventions into line, he would vote for the amendment of the Federal Republic of Germany. For the same reason, it would, in his opinion, be preferable if the wording of article 70, paragraph 1, followed that of article 47, paragraph 1, of the Convention on Diplomatic Relations and read "In the application of the provisions of the present convention the receiving State shall not discriminate as between States." He submitted that proposal to the Committee as a purely formal amendment.

53. Mr. DADZIE (Ghana) said that, for the reasons already stated by the Romanian representative, he was not in a position to accept the amendment submitted by the Federal Republic of Germany.

54. Mr. PAPAS (Greece) said that he was inclined to support that amendment.

55. Mr. FUJIYAMA (Japan) recalled that when the matter had been discussed by the International Law Commission in connexion with diplomatic relations, the Japanese representative had opposed the inclusion of such a provision, not because he was against the idea, but because in his opinion the clause was self-evident. Since, however, it appeared in the Convention on Diplomatic Relations, he would vote for the amendment of the Federal Republic of Germany with a view to keeping the two documents in line.

56. The CHAIRMAN put the amendment to the vote.

The amendment of the Federal Republic of Germany (A/CONF.25/C.1/L.44) was adopted by 39 votes to 15, with 14 abstentions.

57. The CHAIRMAN put to the vote article 70 as a whole, as amended, on the understanding that the oral amendment submitted by the representative of the United Arab Republic would be referred to the drafting committee direct.

Article 70, as a whole, as amended, was adopted by 51 votes to 1, with 16 abstentions.

The meeting rose at 1.5 p.m.

[4] See *Yearbook of the International Law Commission, 1961*, vol. I (United Nations publication, Sales No. 61.V.1, vol. I), pp. 165-166.

TWENTY-SEVENTH MEETING

Monday, 25 March 1963, at 10.40 a.m

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 71 (Relationship between the present articles and conventions or other international agreements)

1. The CHAIRMAN invited the Committee to consider article 71 and the amendments thereto by Austria, Canada and the Netherlands (A/CONF.25/C.1/L.154) and by India (A/CONF.25/C.1/L.155).[1]

2. Mr. KNEPPELHOUT (Netherlands), speaking on behalf of the sponsors of the joint amendment (L.154), said they had agreed to change the wording to read: "The provisions of this convention shall not affect other existing or future conventions or international agreements between States parties to them."

3. The purpose of the amendment was to supplement the text of article 71 by specifying that not only existing international instruments, but future instruments as well would be unaffected by the multilateral convention. With that amendment, the way would be left open for two or more States to enter into more extensive agreements on the subject of consular relations.

4. Mr. KRISHNA RAO (India), introducing his amendment (L.155), said he realized that it raised very important and complicated legal questions relating to the binding nature of the provisions of the multilateral convention.

5. Broadly speaking, four different approaches could be adopted. The first was to provide that, if an existing or future agreement on the same subject contained provisions conflicting with those of the multilateral convention, the States parties to that agreement were free to apply the rules agreed by them therein. Such a provision would greatly impair the value of the multilateral convention and would not advance the progressive development of international law. A State which had signed the multilateral convention should not be permitted to enter into agreements at variance with its provisions without first denouncing the convention. To that extent, the exercise of a signatory State's sovereign rights should be limited by the convention. Such an approach would, moreover, represent a retrograde step. The rules of consular law were at present scattered in customary international law, in provisions of municipal law and in a large number of consular conventions; Article 13, paragraph 1 (*a*), of the Charter called for the codification and the progressive development of international law, and States should not be encouraged to disregard the provisions of a multilateral convention codifying international law in order to apply instead the provisions of particular consular conventions.

6. The fact that a provision similar to article 71 had been included in article 24 of the 1928 Havana Convention regarding Consular Agents [2] and in article 25 of the 1958 Geneva Convention on the Territorial Sea,[3] did not seem to his delegation a sufficient reason for including such a provision in the multilateral convention on consular relations, the object of which was to achieve harmony in consular practice. That purpose would be defeated if particular arrangements were allowed to override the provisions of the multilateral convention.

7. The multilateral convention would be mainly of interest to the countries of Asia and Africa. The American countries had concluded the 1928 Havana Convention; the European countries had entered into a large number of bilateral consular conventions, and the Legal Committee of the Council of Europe was considering the question of consular relations. It would be unsatisfactory to give the impression that the American and European States were going to be left free to apply their own particular agreements, and that only the Asian and African States would be bound by the multilateral convention formulated by the present conference.

8. The second approach was to declare that the multilateral convention did not affect existing international instruments, but that parties to it should refrain in the future from concluding conventions incompatible with its terms. That approach would also be inadequate, because it would favour the existing conventions concluded between American and European States, to the detriment of States in other continents.

9. The third approach was that adopted in Article 103 of the Charter, which provided that in the event of conflict between the obligations of Members of the United Nations under the Charter and their obligations under any other agreement, their obligations under the Charter should prevail. If that approach were adopted for the multilateral convention on consular relations, its provisions would constitute a sort of overriding higher law — a system which would be open to criticism because, under international law, general multilateral agreements did not necessarily abrogate the provisions of particular existing conventions.

10. There remained the fourth approach, which was that adopted by his delegation in its amendment. As amended, article 71 would provide, first, that States were not precluded from concluding bilateral agreements confirming or supplementing or extending or amplifying the provisions of the multilateral convention; secondly, that States parties to the multilateral convention should review and revise existing bilateral agreements if necessary in so far as they were incompatible with the basic rules embodied in the multilateral convention.

11. Paragraph 1 of his delegation's proposal would make it clear that in the future, consular conventions could be concluded on matters of detail by the parties

[1] The separate amendments by the Netherlands (A/CONF.25/C.1/L.8), Austria (A/CONF.25/C.1/L.29) and Canada (A/CONF.25/C.1/L.136) had been withdrawn.

[2] League of Nations, *Treaty Series*, vol. CLV, 1934-1935, No. 3582, p. 301.

[3] *United Nations Conference of the Law of the Sea, Official Records*, vol. II (United Nations publication, Sales No. 58.V.4, vol. II), p. 135.

to the multilateral convention. That provision was in line with the system adopted by the Conference when dealing with a number of articles of the draft, such as article 70, in relation to which it had been agreed that States could adopt more liberal provisions than those of the multilateral convention. A new convention could supplement, extend or amplify the provisions of the multilateral convention, but it must not reverse those provisions.

12. The approach adopted in his amendment was more satisfactory than any of the other three. It would not serve any useful purpose to prepare a mere set of model rules on the subject of consular relations, as had been done on the subject of arbitration. It was undesirable to leave States free to contract out of the basic rules of international law laid down in order to rationalize and harmonize consular law.

13. Mr. CAMERON (United States of America) said that his delegation could not support the Indian amendment (L.155), paragraph 1 of which would seem to permit future agreements only in so far as they confirmed, supplemented, extended or amplified the provisions of the multilateral convention on consular relations. Bilateral agreements that derogated or varied from those provisions would accordingly seem to be forbidden. The multilateral convention would thus be laying down rules of consular law for an indefinite future — rules which would not be susceptible to change by agreement between two States. That would be going far beyond the intention of the International Law Commission, which had stated in paragraph 2 of its commentary that " The Commission hopes that the draft articles on consular relations will also provide a basis for any particular conventions on consular relations and immunities which States may see fit to conclude." It was clear from that commentary that in drafting article 71 the Commission had not intended to preclude particular conventions which, as between the States parties to them, derogated from the rules laid down in the draft articles. Because of the special relations between them, or their co-ordinated legislation on a certain subject, or for some other reason, two States might well desire to adopt for their own purposes a rule different from that embodied in the multilateral convention on consular relations. He saw no good reason to prevent them from doing so and therefore opposed paragraph 1 of the Indian amendment.

14. As to paragraph 2, its provisions were directly contrary to the Commission's intention and he could not support it. Article 71 had been drafted in such a manner as not to interfere with existing bilateral conventions.

15. His delegation urged the Committee to retain the system adopted by the International Law Commission and supported the joint amendment (L.154) which made the meaning of the article clear.

16. Mr. BARTOŠ (Yugoslavia) commended the Indian representative for his valuable analysis of the legal position.

17. He found the joint amendment surprising; its provisions appeared contrary to the whole idea of the codification of international law. If adopted, it would introduce into the multilateral convention the seeds of its own destruction. The joint amendment would in effect make the multilateral convention state explicitly that parties to it could enter into agreements at variance with its provisions. A State would thus be able to sign and ratify the multilateral convention, while remaining free not to comply with its provisions. Freedom of contract could not be carried to that extremity: States were only free to enter into agreements within the framework of the international order, which was based on the codification of international law. He could understand a system which left existing conventions unaffected, but not one which would enable parties to a general multilateral convention to disregard it and enter into bilateral conventions which conflicted with its provisions.

18. He fully supported the Indian amendment which laid down that any future agreements must be confined to confirming, supplementing, extending and amplifying the provisions of the multilateral convention. That approach was consistent with the purpose of codification of international law pursuant to Article 13, paragraph 1 (*a*), of the Charter. It would defeat the whole purpose of codification if the provisions of consular law, as codified in the multilateral convention, could be set aside by two States at any moment.

19. His delegation accordingly opposed the joint amendment, and unreservedly supported paragraph 1 of the Indian amendment. As to paragraph 2 of that amendment, his delegation viewed with sympathy the recommendation embodied in it, but felt that it would not be advisable to include such a recommendation in the multilateral convention.

20. Mr. de ERICE y O'SHEA (Spain) noted that the joint amendment supplemented the text of article 71 by introducing a reference to future agreements. That raised the old problem of the validity of conventions in international law. For his part he did not hesitate to affirm that a bilateral agreement could not nullify a multilateral convention. Two parties to a multilateral convention could not, for the purposes of a bilateral agreement between them, regard the multilateral convention as *res inter alios acta.*

21. His delegation could not support the proposition which appeared to be embodied in the letter — though not, he was sure, in the spirit — of the joint amendment. He was referring to the proposition that if one hundred and ten countries had signed a general multilateral convention, it was possible for two of them to set it aside. Such a proposition would be contrary to the principle of legal continuity and would be detrimental to the interests of the other one hundred and eight parties to the convention.

22. He did not believe that the joint amendment had been proposed in that spirit and he accordingly suggested adding, at the end, the words: " in so far as they do not conflict with the provisions of this convention while those States remain parties thereto ". That formulation would incorporate in the joint amendment the idea embodied in paragraph 1 of the Indian amendment. It

recognized the sovereign right of States to enter into bilateral agreements, provided that their terms did not conflict with the multilateral convention on consular relations.

23. His delegation could not support paragraph 2 of the Indian amendment, which it considered unnecessary. Upon the multilateral convention being signed and ratified by a country, its provisions would be incorporated into that country's municipal law. They would accordingly repeal all provisions of municipal law which conflicted with them. There could be no doubt that conventions on consular relations previously entered into by States parties to the multilateral convention and embodied by them in their municipal law would be superseded by the provisions of the multilateral convention. The only problem which could arise was that of an existing bilateral consular convention between a country which was a party to the multilateral convention and one which was not. The latter country would not, he thought, refuse to revise the bilateral convention in order to bring it into line with the general multilateral convention.

24. Mr. KRISHNA RAO (India) pointed out that in his introductory statement he had not advocated the approach adopted in Article 103 of the Charter.

25. Mr. MARAMBIO (Chile) said that both the amendments under discussion aimed at filling a gap in the text of article 71, which did not lay down any rule regarding the relationship between the proposed multilateral convention and future conventions or other international agreements between States parties to it.

26. The joint amendment adopted a flexible approach, whereas the Indian amendment limited the scope of future agreements to provisions which confirmed, supplemented, extended or amplified those of the multilateral convention. His delegation favoured paragraph 1 of the Indian amendment and shared the views put forward by the representative of Spain on that point. It could not support paragraph 2 of the Indian amendment, because it could have the effect of disturbing existing international agreements.

27. The Spanish proposal to introduce the idea of paragraph 1 of the Indian amendment into the joint amendment might well provide a satisfactory basis for a compromise solution acceptable to the majority of delegations.

28. Mr. LEE (Canada) urged the Committee to take a practical view of the existing state of international law. The Indian amendment endeavoured to attain an ideal goal, but was unfortunately entirely impracticable. All States should be free to decide whether or not they wished to enter into agreements of their own choice on consular relations. It was clear that the International Law Commission had not intended to inhibit the further development of international law. States should be free to enter into agreements which would grant either more or less than what was set out in the draft articles. It was only in that manner that future changes could be taken into account and that progress could reasonably be made.

29. It was essential to adopt the joint amendment in the interests of the universality of the convention on consular relations. Unless a provision on those lines was incorporated in the convention, many States would be unable to ratify it.

30. Mr. MARESCA (Italy) pointed out that the purpose of the multilateral convention on consular relations was to codify customary international law. The purpose of bilateral consular conventions was to improve customary international law by adjusting the often-conflicting interests of the receiving State and the sending State. Accordingly, the multilateral convention on consular relations should not prevent two States from entering into a particular agreement on questions of interest to themselves. His delegation supported the joint amendment, which would make it clear *ex abundante cautela* that the provisions of article 71 applied not only to existing agreements, but also to those that might be concluded in the future.

31. Paragraph 1 of the Indian amendment had the merit of making it clear that future consular conventions would serve the purpose of confirming, supplementing, extending or amplifying the provisions of the multilateral convention. He was opposed to the use of the adjective " bilateral " in that paragraph, however; there was no reason to exclude such regional multilateral agreements as the Havana Convention regarding Consular Agents.

32. His delegation could not support paragraph 2 of the Indian amendment and believed that every State should remain the sole judge of its interests regarding existing agreements. He accordingly asked that the two paragraphs of the Indian amendment should be put to the vote separately.

33. Mr. HEPPEL (United Kingdom) fully agreed with the representative of Canada. Room must be left for the progressive development of internatonal law. A flexible approach would also make it possible to accommodate the different points of view and practices which were bound to exist in regard to consular relations. He saw no reason why a multilateral convention on consular relations should in any way restrict States which were parties thereto from concluding bilateral or regional arrangements with different provisions. States might wish to make their particular provisions broader or, conversely, less onerous.

34. As an example, he cited the provisions of article 37 on the obligation of the receiving State to give certain information to the consulate of the sending State. There was no reason to prevent two States from waiving any of those provisions. If paragraph 1 of the Indian amendment were adopted, parties to the multilateral convention would be precluded from entering into bilateral or regional agreements other than for the purpose of confirming, supplementing, extending or amplifying the provisions of the multilateral convention. In fact, the States concerned might wish to waive one of the provisions of the multilateral convention or lay down lesser obligations.

35. He could not agree with the Indian representative that, if existing and future bilateral or regional conven-

tions were permitted to contain provisions different from those in the multilateral convention before the Conference, the only States bound by the multilateral convention would be the African and Asian States. The fact that two European or American States had a bilateral convention between them would not in any way affect their rights and obligations with regard to African or Asian States which were co-signatories with them of the multilateral convention.

36. If the proposed inflexible rule set out in paragraph 1 of the Indian amendment was introduced, it could well hinder the fruitful development of international law and night deter many States from ratifying the multilateral convention.

37. Furthermore, his delegation could not support paragraph 2 of the Indian amendment, which would place an unnecessary and burdensome obligation on States to review existing bilateral agreements.

38. His delegation supported the joint amendment, which provided a flexible framework that would not unduly restrict the freedom of the contracting parties.

39. Mr. ABDELMAGID (United Arab Republic) pointed out that, when signed and ratified, the multilateral convention on consular relations would become a law-making treaty [traité-loi] for the signatory States; its provisions would become part of the legal system of each contracting State.

40. As to the relationship between the multilateral convention and existing treaties, his delegation was satisfied with the text of article 71. As to the relationship with future agreements, it had been suggested, in support of the joint amendment, that the multilateral convention would be codifying customary international law and should therefore leave some scope to consular conventions. But the preamble to the multilateral convention would, like that of the 1961 Convention on Diplomatic Relations, affirm that the rules of customary international law should continue to govern matters not expressly regulated by the convention; that meant only those matters which were not covered by provisions in the multilateral convention.

41. Paragraph 1 of the Indian amendment would usefully supplement article 71, to which it could be added with suitable drafting changes. His delegation could not support paragraph 2 of that amendment, which seemed outside the scope of the articles under discussion. Perhaps it could be embodied in a separate optional protocol, in order to meet the wishes of certain delegations.

42. Mr. KIRCHSCHLAEGER (Austria) expressed surprise at the criticisms made against the joint amendment. It was a matter of common knowledge that many multilateral agreements left the way open for further agreements. For instance, the 1954 Hague Convention relating to civil procedure did not prevent the contracting parties from entering into additional agreements which differed from its provisions. Austria had, in fact, concluded additional agreements with other States parties to the 1954 Convention to serve particular needs. He saw no reason why that system, which had been adopted in a number of multilateral conventions, should not also be adopted in the convention on consular relations. It was all the more necessary since the multilateral convention would deal with many matters not exclusively concerned with consular relations and immunities. For example, article 47 dealt with social security exemption; but social security was the subject of many bilateral agreements and there was no reason to preclude States parties to the convention on consular relations from making special social security arrangements applicable to certain categories of consular service staff. States should be left free to make their own decisions concerning such special arrangements. The freedom of States to enter into special agreements did not affect the rights of other contracting States, which were protected by the provisions of article 70 (Non-discrimination).

43. Mr. BARTOŠ (Yugoslavia) said that, in invoking the progressive development of international law in favour of their amendment, the sponsors of the joint text were, in fact, speaking against it, and in favour of paragraph 1 of the Indian amendment. Article 70 had been cited in support of the argument that the validity of the Convention would not be affected, since any State was free to supplement its provisions by bilateral or regional conventions; that was clearly stated in paragraph 1 of the Indian amendment, but not in the joint amendment. The latter text contained no restrictions as to the content of future agreements, and thus permitted provisions contrary to the basic ideas on which the convention would rest. As the representative of the United Arab Republic had rightly pointed out, international law could be developed within the framework of the convention, but provisions contrary to those of the convention did not represent freedom of contract. That freedom was clearly expressed in paragraph 1 of the Indian amendment, but the joint amendment was based on the anachronistic idea that a State was sovereign in all its acts and was not limited by the rules of international law. Hence the joint amendment was contrary to the very principle of the codification of international law.

44. Mr. TSYBA (Ukrainian Soviet Socialist Republic) observed that the reference to future agreements in the joint amendment, which was the only respect in which it differed from the Commission's text, altered the whole meaning of the article and opened the way for complete disruption of the convention. The Conference's task of preparing an instrument to serve as a basis for future agreements would be vain if the principle of compliance with the convention were abandoned. It should be noted that the Netherlands member of the International Law Commission had argued against such a formula, drawing attention to its omission from the Conventions on the Law of the Sea. The Ukrainian delegation could not vote for the joint amendment.

45. Paragraphs 1 and 2 of the Indian amendment seemed to be somewhat contradictory, since paragraph 1 was concerned with supplementing the provisions of the Convention, while paragraph 2 proposed the revision of existing agreements to bring them into line with that instrument. He hoped that the Indian delegation

would take into account some of the statements made in the debate, particularly those of the representatives of Yugoslavia and the United Arab Republic.

46. Mr. RABASA (Mexico) observed that the Committee was faced with two alternatives; it could prepare either a multilateral convention which represented immutable and supreme international law, or a flexible instrument which, while establishing a multilateral system, would respect existing bilateral and multilateral agreements. His government's policy was to reserve the former treatment for such far-reaching international instruments as the United Nations Charter and the Charter of the Organization of American States, and to leave wider freedom of interpretation for other multilateral conventions.

47. The draft article clearly provided that agreements already in force should be respected, while in paragraph 2 of the commentary the Commission expressed the hope that the article would also provide a basis for any particular conventions on consular relations and immunities which States might see fit to conclude. The Mexican delegation believed that the system recommended by the Commission should be adhered to and that the joint amendment would serve to introduce into the text of the article itself what the Commission had meant in paragraph 2 of its commentary. He would therefore vote for that amendment.

48. Mr. N'DIAYE (Mali) agreed with the Yugoslav representative that the joint amendment should be rejected, because its adoption would run counter to the very principle of a universal convention. There seemed to be no purpose in drafting and signing a multilateral instrument which could at any moment be rendered ineffective by subsequent bilateral agreements.

49. On the other hand, paragraph 1 of the Indian amendment allowed for the development and improvement of the system through bilateral and other international agreements, and the Malian delegation would support that text. It could not vote for paragraph 2 of the Indian amendment, since the revision of existing agreements might give rise to unnecessary legal and practical complications. He agreed with the representative of the United Arab Republic that paragraph 1 of the Indian amendment should be added to the Commission's text of article 71.

50. Mr. BREWER (Liberia) supported paragraph 1 of the Indian amendment, which was consistent with the progressive development of international law. The task of the Conference was to codify consular law for the future, and the work of both the International Law Commission and the Conference would be nullified if the provisions of the convention could be set aside by the conclusion of subsequent agreements. The Commission had made a genuine attempt to take existing agreements into account, for it had realized that all the provisions of those agreements could not be included in the Convention. Nevertheless, the Commission's text referred only to existing agreements, and paragraph 1 of the Indian amendment improved it by adding a constructive proposal with regard to future agreements. Paragraph 2 of that amendment would lead to undue interference with existing agreements; the Liberian delegation could not support either that text or the joint amendment.

51. Mr. WESTRUP (Sweden) thought that the opponents of the joint amendment seemed to be basing their arguments on a false analogy with municipal law. For obvious reasons, individuals could not be allowed to conclude contracts which were incompatible with laws enacted by the legislature, which represented the majority of the people; but the case of two or more States which wished to conclude an agreement exceeding the scope of a universal convention could not be regarded as parallel. On the other hand, he was not sure whether the joint amendment in its present form provided sufficient guarantee against the conclusion of bilateral agreements which would affect the obligations of other States parties to the Convention. He would therefore abstain from voting on that amendment.

52. Mr. PETRŽELKA (Czechoslovakia) said he was convinced that the joint amendment was more restrictive than the Commission's text and that its adoption would be contrary to Article 13, paragraph 1 (*a*), of the Charter, which recommended Member States to encourage the progressive development of international law and its codification. Moreover, if, as the United Kingdom representative had indicated, the joint amendment applied to agreements which did not directly concern consular relations, it was entirely out of place in a convention on that subject. He would therefore vote against the joint amendment, but he agreed with the views expressed by the representatives of the Ukrainian Soviet Socialist Republic and the United Arab Republic concerning paragraph 1 of the Indian amendment.

53. Mr. DE CASTRO (Philippines) said his delegation preferred the International Law Commission's text to any of the amendments submitted, because it both preserved the validity of existing agreements and left States free to conclude agreements on consular relations in the future. If that text were adopted, the multilateral instrument would have the force of law in the absence of contrary provisions in bilateral agreements and where such agreements were silent it would constitute a supplementary rule. The joint amendment, on the other hand, gave States undue freedom to deviate from the basic provisions of the conventions. Those were the principles which would guide the Philippine delegation in voting on all the amendments.

54. Mr. EL KOHEN (Morocco) agreed with the Yugoslav and Malian representatives that there seemed to be no purpose in drafting a detailed convention which could be nullified by the provisions of subsequent bilateral or other agreements. Moreover, the Spanish representative had rightly pointed out that, in international law, multilateral conventions superseded bilateral agreements. The Spanish representative's oral proposal to add the words " in so far as they do not conflict with the provisions of this convention " might provide a way out of the Committee's dilemma. Perhaps the sponsors of the amendments and the delegations

which had made suggestions during the debate might meet to agree on a compromise text.

55. Mr. BOUZIRI (Tunisia) observed that ratification of an instrument, whether multilateral or bilateral, to some extent indicated that earlier obligations were superseded. The multilateral convention that the Conference was preparing would supersede existing agreements, but the subsequent conclusion of agreements containing contrary provisions would constitute tacit denunciation of the convention by the States concerned. Hence a State which ratified the convention could not enter into an agreement containing previsions incompatible with it. His delegation could not support the joint amendment, but would vote for paragraph 1 of the Indian amendment.

56. Mr. KRISHNA RAO (India) agreed that paragraph 1 of his delegation's amendment could be regarded as supplementary to the Commission's text. Since the consensus of opinion in the Committee seemed to be that paragraph 2 of that amendment was unduly idealistic, he thought that it might serve as the basis for a recommendation in the form of a resolution attached to the convention.

57. He asked that the debate be adjourned to enable him to confer with other representatives with a view to preparing a revised text of his amendment.

It was so agreed.

Proposed new article to be inserted between articles 5 and 6 (Refugees) (*continued*)

58. The CHAIRMAN recalled the Committee's decision at its 26th meeting to set up a sub-committee to reach a compromise solution on the joint proposal for a new article to be inserted between articles 5 and 6 (A/CONF.25/C.1/L.124/Rev.1). The draft resolution (A/CONF.25/C.1/L.160) now before the Committee was the result of that sub-committee's deliberations.

59. Mr. RAHMAN (Federation of Malaya), speaking as chairman of the sub-committee, commended the draft resolution to the Committee.

60. Mr. RUEGGER (Switzerland) said that his delegation had grave doubts about the advisability of adopting the draft resolution. In view of the breadth of the discussion in the Committee — which had strayed from the purely legal context — he wished to make his delegation's position quite clear at that juncture. He fully agreed with the view expressed by the representative of Ceylon during the debate, that it would have been well to avoid any division of opinion concerning a matter which had been discussed in other United Nations organs; but he could not agree with that representative's proposal that the matter should be referred to those organs. They had disposed of it after long deliberation, and to refer it back to them would be unnecessary. In his delegation's opinion, there were two over-riding considerations. First, human rights should be respected at all costs. Next, nothing should be done which, instead of contributing to the development of international law regarding humanitarian questions, might, even indirectly, cast a shadow of doubt on the progress made in that respect in other organs. The doubts which had been expressed during the debate might be used as support for a retrogression of the law regarding humanitarian questions, which was a living reality. It therefore seemed inadvisable to refer the matter back, as proposed in the resolution.

61. In particular, his delegation had not been convinced by the argument that the refugee problem would no longer exist when the Convention entered into force; it could not accept the pessimistic view that the entry into force of that instrument would be delayed for several years.

62. As a country which had given asylum to refugees for centuries past, Switzerland believed that the refugee problem would, unfortunately, always exist. Switzerland had given asylum to refugees who had subsequently played an outstanding part in politics — to give just a few examples, two presidents of the Republic of Poland and a name which belonged to history, that of Lenin. Switzerland would remain true to its traditions, which had become part of the customary law of the land.

63. In his delegation's opinion, it was deplorable to include in international instruments vague provisions which were open to a variety of interpretations. Despite its earnest wish to participate effectively in the codification of consular law, Switzerland would be obliged either to make a specific reservation on the refugee question or to seek other means of clarification on the matter. No provision of the convention should clash with those of other international instruments on behalf of refugees.

64. Mr. WESTRUP (Sweden) said that, as a co-sponsor of the proposed new article, his delegation had agreed without enthusiasm to the proposal for a compromise solution, for it had hoped that the proposal would be discussed in the same objective spirit as other articles. Nevertheless, the opponents of the new article had alleged that the Committee was being drawn into a political debate and had even appealed to the sponsors to withdraw it. The Swedish delegation was grateful to the sub-committee for its efforts, but it did not find the compromise solution satisfactory from a legal point of view, since the draft resolution in effect said absolutely nothing and could not replace a clear rule based on a humanitarian principle.

65. His delegation wished to state formally, first, that it interpreted the draft resolution to mean that the problem which the High Commissioner for Refugees had brough before the Conference had not been solved; secondly, that the convention would suffer from a serious omission; and thirdly, that the Swedish Government would maintain its freedom to act according to its own principles in the matter of contact between refugees and consuls of the sending State.

66. Mr. HEPPEL (United Kingdom) recommended the Committee to adopt the draft resolution. His delegation had from the first been anxious to approach the drafting of the Convention in a spirit of co-operation. Hence, although the proposed new article had been given widespread support in the debate, his delegation, which had served on the sub-committee at the Chairman's request, believed that the compromise solution achieved

would give general satisfaction. The main point of the draft resolution was that the Conference had decided not to take any decision on the question, but to transmit all documents and records pertaining to the discussion to the appropriate organs of the United Nations. Accordingly, any issue that might arise between two States in connexion with the refugee question would be settled without reference to the convention, and in whatever manner and in accordance with whatever principles those States would have adopted prior to the convention. That solution was the best that could be found to reconcile the conflicting positions taken during the debate.

67. Mr. DADZIE (Ghana) congratulated the sub-committee on its useful work, and said he would support the draft resolution.

68. Mr. KEVIN (Australia) observed that the draft resolution merely meant that all States would maintain their positions on the matter. It seemed a pity, however, to narrow the context of the problem, which was not limited by time.

69. Mr. EL-SABAH EL-SALEM (Kuwait) welcomed the draft resolution, which clearly showed that there was no difference between the basic motives of the members of the Committee. The refugee problem was of great concern to all States, as the humanitarian arguments advanced during the debate had amply proved. Many delegations had, however, doubted whether the convention was the proper place to express their support of refugees, particularly as the question had been raised unexpectedly and they had had no instructions on the subject from their governments.

70. Mr. AVILOV (Union of Soviet Socialist Republics) thanked the members of the sub-committee for the spirit of co-operation and goodwill they had shown in helping to break a deadlock which had threatened the harmonious progress of the Committee's work. The solution proposed took account of the impossibility of settling, in three or four meetings of a technical conference, a complex problem which specialized organs of the United Nations had failed to solve after years of work.

The draft resolution (A/CONF.25/C.1/L.160) was approved by 61 votes to none, with 6 abstentions.

71. Mr. RUDA (Argentina), explaining his delegation's vote on the joint draft resolution, said that he had voted for it without, however, abandoning the idea of the nine-power proposal (L.124/Rev.1) for a new article. His vote was in keeping with Argentina's traditional policy of supporting conciliatory moves in international relations.

72. Mr. TSHIMBALANGA (Congo, Leopoldville), explaining his vote on the draft resolution, said that his country was deeply concerned over the refugee question for two reasons. First, the tragic situation of refugees all over the world could leave no one indifferent; not only material and moral aid, but assistance with a view to repatriation should be extended to all those unfortunate people. Secondly, the Congo (Leopoldville) had given, and was still giving, shelter to thousands of refugees, to mention only those from Angola and Rwanda. His delegation had been surprised that the political aspects of the refugee question had been raised at a purely technical conference and regretted that the debate had taken the unfortunate, though usual, form of a difference of opinion between two blocs.

The meeting rose at 1.10 p.m.

TWENTY-EIGHTH MEETING

Monday, 25 March 1963, at 3.5 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

New article to be inserted after article 67 (Optional character of the institution of consular agents who are not heads of post)

1. The CHAIRMAN invited debate on the new article which Switzerland proposed should be inserted after article 67 (A/CONF.25/C.1/L.102/Rev.1).

2. Mr. REBSAMEN (Switzerland) said that article 9 of the International Law Commission's draft mentioned four classes of heads of consular post, including consular agents. Some countries had consular agents who conducted consular agencies but who had not been appointed by the sending State as heads of consular posts. The future convention made no provision for that class, and it was to fill in that gap that Switzerland had submitted the draft of a new article leaving each State free to decide whether it would establish or admit consular agencies conducted by that class of consular agents, whose privileges and immunities would be determined by agreement between the sending State and the receiving State. The system had proved successful and should be provided for in a convention. It was not merely a matter affecting the codification of international law; it was also a question of equity.

3. Mr. de MENTHON (France) agreed with the Swiss representative. France did not regard its many consular agents throughout the world as heads of posts. A consular agent was appointed as such by the head of post under whose superintendence he was placed. He had no consular district and performed whatever consular functions were delegated to him. He was either a national of the sending State living in the town in which the agency was situated, or a national of the receiving State resident in the town; or also he could be a national of a third State, who, in most cases, carried on a gainful occupation.

4. The consular agent's status corresponded to that of honorary consuls or vice-consuls of foreign countries in France. Other countries had a different system, and there was nothing in article 9 to prevent consular agents who were not heads of post from conducting consular agencies. Accordingly, the manner in which consular

agents carried out their activities, and their privileges and immunities, should be defined. The new article proposed by Switzerland would answer the purpose, and he would vote for it.

5. Mr. WARNOCK (Ireland) said the new article was necessary, and he would vote for it.

The new article proposed by Switzerland (A/CONF.25/C.1/L.102/Rev.1) was adopted by 32 votes to 12, with 17 abstentions.

Article 71 (Relationship between the present articles and conventions or other international agreements) (*continued*)

6. The CHAIRMAN invited the Committee to continue its discussion of the amendments thereto submitted by Austria, Canada and the Netherlands (L.154), and by India (L.155).

7. Mr. KRISHNA RAO (India) announced that, after reflection, he wished to change his delegation's amendment, of which Ceylon, Liberia, Mali, the United Arab Republic and Yugoslavia had also become sponsors. He proposed the retention of the International Law Commission's draft as paragraph 1, and the addition of a paragraph 2 in the following terms: " Nothing in the present convention precludes States from concluding agreements or conventions confirming or supplementing or extending or amplifying the provisions thereof."

8. So far as point 2 of his delegation's original amendment was concerned, he asked the Committee merely to accept the principle, which would form the subject of a recommendation to be embodied in a conference resolution and which was sponsored by Ceylon, India, Mali, the United Arab Republic and Yugoslavia.

9. Mr. EVANS (United Kingdom) asked whether the delegate of India could say whether his text left undisturbed the rule of international law which permitted any two or more parties to a multilateral convention to agree to a departure from the terms of such a convention as between themselves, provided that the departure did not infringe the rights of the other parties to the convention. If that could be confirmed, he would vote for the text submitted by India.

10. Mr. KRISHNA RAO (India) said it was hard to answer that question, for the answer would have a bearing on the convention being prepared and also on conventions or agreements which might be concluded in the future.

11. Mr. WARNOCK (Ireland) said that, while he recognized the merits of the Indian amendment, it would in his view be preferable to retain the International Law Commission's text.

12. Mr. CAMERON (United States of America) said that since the Indian amendment as revised involved the retention of paragraph 1 of the International Law Commission's text, he would ask for a separate vote on the Indian text for paragraph 2.

13. Mr. KIRCHSCHLAEGER (Austria), speaking on behalf of the sponsors of the amendment by Austria, Canada and the Netherlands (L.154), asked that the Indian amendment should be put to the vote first.

14. The CHAIRMAN put to the vote the revised Indian text proposed as paragraph 2 of article 71.

The paragraph was adopted by 23 votes to 6, with 36 abstentions.

15. The CHAIRMAN announced that as the Indian amendment had been adopted there was no need to put the joint amendment to the vote. He put to the vote article 71 as amended.

Article 71, as amended, was adopted by 54 votes to none, with 9 abstentions.

16. The CHAIRMAN put to the vote the principle set forth in the second part of the Indian amendment (A/CONF.25/C.1/L.155), intended to form the subject of a recommendation by the Conference.

The Committee rejected the principle by 27 votes to 8, with 27 abstentions.

17. Mr. ABDELMAGID (United Arab Republic) said that he had voted for the first part of the Indian amendment, but considered that the text should be revised by the drafting committee.

18. Mr. KNEPPELHOUT (Netherlands) explained that he had voted against the principle set forth in the second part of the Indian amendment because he thought there was no need for a conference recommendation on the subject.

19. Miss ROESAD (Indonesia) said she had not voted for the principle set forth in the second part of the Indian amendment because she considered that the future convention should not be treated as a " pillar " agreement.

20. Mr. CRISTESCU (Romania) said that he had voted for article 71 as drafted by the International Law Commission on the understanding that the provisions of the convention would not affect existing international conventions or other agreements in force as between States parties to those conventions or agreements.

21. Obviously, the article could not be interpreted as having any bearing on consular conventions or agreements to which Romania had been a party, and which had lapsed and hence had lost all legal force.

Final clauses

22. The CHAIRMAN invited the Committee to consider the proposal for final articles submitted by the United States (A/CONF.25/C.1/L.7) and the amendments to that proposal submitted by the Union of Soviet Socialist Republics (A/CONF.25/C.1/L.158) and by the United Arab Republic and Yugoslavia (A/CONF.25/C.1/L.159). The United States had submitted a separate proposal for a disputes clause (A/CONF.25/C.1/L.70).

23. Mr. CAMERON (United States of America), introducing his delegation's proposal for final clauses, said that it reproduced the corresponding provisions of the Vienna Convention on Diplomatic Relations. While

providing that the Secretary-General should serve as the depositary of the Convention, his proposal recognized the important role which the generosity of the Austrian people and their government had played in the success of the Conference by providing that the Convention should remain open for signature at the Federal Ministry for Foreign Affairs of Austria until 31 October 1963.

24. The United States proposal contemplated that the Convention would enter into force thirty days after the deposit of the twenty-second instrument of ratification. Some delegations had suggested that sixty days would be a more appropriate period; his delegation had no objection to the longer period if that was the wish of the Committee.

25. The final articles proposed by the United States delegation would permit only States Members of the United Nations or the specialized agencies, States parties to the Statute of the International Court of Justice, and States invited by the General Assembly, to become parties to the Convention. That limitation was a logical consequence of the decision of the General Assembly to limit participation in the Conference to States Members of the United Nations and the specialized agencies. It was also politically necessary in order to avoid imposing on the Government of Austria and the Secretary-General the difficult political question of which political entities claiming statehood were in fact entitled to that status. The United States proposal placed that determination within the responsibility of the General Assembly, which was the political organ of the United Nations most capable of dealing with the question.

26. Accordingly, his delegation was strongly opposed to the amendments proposed by the Soviet Union and by the United Arab Republic and Yugoslavia, both of which would have the effect of permitting States not invited by the General Assembly to become parties to the Convention.

27. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said that the task of the Conference was to prepare an international convention to serve as a guide to all States which had maintained consular relations since the most ancient times. The largest possible number of States should therefore be admitted to become parties to the convention; that would be a guarantee of the successful implementation of the provisions of the convention and would enhance the importance of the convention in international affairs. Limitation of the number of States parties to the convention was contrary to the aims and spirit of international collaboration. He had noted with regret that the final clauses proposed by the United States limited the number of States eligible to become parties. That was unacceptable to the USSR, and his delegation had accordingly submitted an amendment (L.158), which was based on international agreements, such as the Geneva conventions of 1949 on the protection of victims of war,[1] and the Declaration on the Neutrality of Laos, 1962. The convention on consular relations was an instrument to which all States should be parties.

28. Mr. ABDELMAGID (United Arab Republic), introducing the amendment (L.159) sponsored by his delegation and by the Yugoslav delegation, said that, according to Article 102 of the Charter, conventions registered with the Secretary-General of the United Nations could be invoked by the parties to them before any organ of the United Nations.

29. Mr. MARESCA (Italy) said that admittedly the Conference was free to adopt final clauses differing from those of the Vienna Convention on Diplomatic Relations, 1961, and based on other criteria than those adopted then. But those other criteria should be sound. The criterion introduced by the joint amendment sponsored by the United Arab Republic and Yugoslavia was not acceptable, for bilateral consular conventions registered with the Secretariat of the United Nations differed intrinsically from a multilateral convention on consular relations.

30. With regard to the criterion to be applied in the matter of the invitation addressed to States to become parties to the convention, he said it was true that in current practice international treaties often made provision for such an invitation; but it was essential that the invitation should be issued by a competent body. At present, the General Assembly of the United Nations did not *per se* possess that competence, which could be conferred on it only by the future convention. There was no objection to that procedure, inasmuch as the Conference had been convened by the United Nations and its deliberations were carried on under the auspices and in the spirit of the Organization. For all those reasons, the Italian delegation, while appreciating their motives, was unable to vote for the amendments to the United States proposal.

31. Mr. WU (China) expressed his delegation's full support for the United States proposal (L.7). He particularly approved article 1 and would oppose any amendment calling for the omission of one of the four categories of States eligible to become parties to the convention and also any amendment tending to increase the number of such States. He was particularly opposed to the joint amendment (L.159).

32. Mr. PETRŽELKA (Czechoslovakia) said that the final clauses were of crucial importance. The convention on consular relations should become an integral part of international law and should promote the development of relations between States in conformity with the principles laid down in the Charter. Like all general multilateral treaties, it should be open to all States without discrimination. The principle of universality,

[1] The four conventions in question, which are all dated 12 August 1949 and are reprinted in the United Nations *Treaty Series*, vol. 75, Nos. 970-973, are:

(i) Geneva Convention for the Amelioration of the Condition of Wounded and the Sick in Armed Forces in the Field;

(ii) Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea;

(iii) Geneva Convention Relative to the Treatment of Prisoners of War;

(iv) Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

which followed logically from that of the sovereign equality of States laid down in the Charter, had been accepted by the International Law Commission at its fourteenth session.[2]

33. General Assembly resolution 1685 (XVI) was not mandatory. Once assembled, the Conference of Plenipotentiaries had full liberty to decide its own procedure and to take any decision compatible with international law. For that reason the Czechoslovak delegation would support the amendment submitted by the USSR (L.158) and requested the United States to accept it in a spirit of co-operation and goodwill.

34. Mr. KRISHNA RAO (India) said that he was likewise of the opinion that no State should be denied the right to become a party to the convention. There were many multilateral conventions the parties to which included countries that did not recognize one another. No provision of the Charter stipulated that only Members of the United Nations could become parties to international treaties and conventions. He suggested that point (*b*) of the joint amendment should be modified to read " or by parties to conventions on consular relations which have been registered with the Secretariat of the United Nations ".

35. Mr. ABDELMAGID (United Arab Republic) accepted that suggestion.

36. Mr. MEYER-LINDENBERG (Federal Republic of Germany) agreed that multilateral conventions which codified international law should be governed by the principle of universality. The convention should therefore be open to all States recognized as such. In other words, the convention should not be open to entities which, in the opinion of the majority, did not possess the character of States. He would support the United States proposal for the final clauses because under that text the question whether an entity was eligible to become a party would be decided by a United Nations body on which most States were represented.

37. The USSR amendment, which dispensed with any criterion for deciding which States should be admitted to participate in the convention, would leave the decision to the Secretary-General of the United Nations with whom the instruments of accession would be deposited; but obviously the Secretary-General could not take such a decision by himself.

38. The joint amendment would have the same undesirable consequences as the USSR amendment, in that it would permit any entity whatever to become party to the convention including even unrecognized States which had signed with recognized States a convention registered with the Secretary-General of the United Nations. His delegation would accordingly vote in favour of the United States proposal, which was modelled on the corresponding provisions of the Vienna Convention on Diplomatic Relations.

39. Mr. JELENIK (Hungary) said that the United States proposal was unacceptable as it stood, for it tended — in violation of international law — to discriminate between States, and in particular to exclude the Democratic Republic of Viet-Nam, the Democratic People's Republic of Korea and the German Democratic Republic. Those States were not Members of the United Nations, nor of the specialized agencies and were not parties to the Statute of the International Court of Justice, but they existed, and maintained normal diplomatic and consular relations with many other States. The adoption of the United States proposal would in effect create two separate systems of international law, one applying to Members of the United Nations, specialized agencies and the Court, and the other to States not admitted to membership of those bodies. The proposal ignored the principle of the sovereign equality of States, which rested on objective criteria. That was why he supported the amendment submitted by the USSR and would be unable to vote for the final clauses proposed by the United States unless they were so amended.

40. Mr. KESSLER (Poland) said that the convention should be open for the signature of all States. Any proposal tending to restrict the number of parties was unacceptable. In the case of non-political treaties, like that of the convention under discussion, there was an undeniable trend towards recognizing the right of all nations freely to accede to international instruments, a trend which resulted from the close interdependence of all States, whatever their economic or political systems. It would not be sensible to deny the benefit of the convention to certain States which were recognized by many States Members of the United Nations and which possessed a fully developed network of consulates.

41. The United States proposal was manifestly discriminatory. The political attitudes of certain States should not impede other States from acceding to international instruments of such importance. The arguments in favour of a " closed " convention were not convincing. It would not be logical to accord complete freedom to the plenipotentiaries of more than sixty States to codify international law and at the same time to refuse them the right to decide whether the convention they were to prepare should be open or closed. To be effective, the codifying convention should be universal. Poland was opposed to any form of ostracism or discrimination against certain States, and his delegation would therefore support the USSR amendment.

42. Mr. ANGHEL (Romania) said that the convention on consular relations should serve as the starting point for the development of consular relations among States, and that the participation of all States in the convention would be the fundamental condition of its efficacy. All States maintained consular relations and were interested in the codification and development of consular law. Many States represented at the Conference maintained consular relations with States which were not represented, and there should not be two different legal systems for the two categories of States. The accession of all States to the convention was the only solution in conformity with the principle of the equality of States, whatever their social and political system, and whether or not

[2] See *Official Records of the General Assembly, Seventeenth Session, Supplement No. 9*, chap. II, commentary on draft article 9.

they were members of the United Nations Nations or the specialized agencies, or parties to the Statute of the International Court of Justice. Any discriminatory provision would be contrary to the spirit of the Charter. The convention on consular relations would codify the rules which should be applied universally in the interests of peaceful coexistence and friendly relations among States. The principle of the universality of international conventions and treaties had long been recognized, and all deliberations should be based on the idea that the convention would be a legal, and not a political instrument. The idea of universal participation in conventions had already been accepted in international practice: the final clauses of the four Geneva conventions of 1949 on the protection of victims of war made it possible for all States to adopt and give effect to the provisions of those conventions. Similarly, certain international bodies had adopted the principle of universal participation in their meetings and in instruments adopted by them. For example, the rules of procedure of the First Meeting of the High Contracting Parties to the Convention on the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954), held in Paris in 1962, provided for that possibility. Furthermore, General Assembly resolution 1766 (XVII) recommended the study of the question of extend participation in general multilateral treaties and conventions and that question had been placed on the provisional agenda of the eighteenth session of the General Assembly. The final clauses proposed by the United States (L.7) were therefore unacceptable and the Romanian delegation would accordingly give its full support to the USSR amendment; it would also support the amendment submitted by the United Arab Republic and Yugoslavia, which would open the convention to a larger number of States.

43. Mr. de ERICE y O'SHEA (Spain) recalled the debate at the 40th and 41st meetings of the Committee of the Whole of the 1961 Vienna Conference on articles 48 to 53 of the Convention on Diplomatic Relations. With all due respect for the sponsors of amendments to the United States proposal for final clauses he thought there was no other solution than to approve the provisions proposed by the United States, which were modelled on articles 48 to 53 of the 1961 Convention. The Conference had been convened under General Assembly resolution 1685 (XVI), and that resolution had invited only States Members of the United Nations or of the specialized agencies and States parties to the Statute of the International Court of Justice to participate in the Conference. If the Conference exceeded the powers given to it, its decisions might be void; it was sovereign only within the limits expressly laid down by the General Assembly. Without wishing to enter into political, economic or legal questions, he said that the only solution was to embody in the convention on consular relations the terms of articles 48 to 53 of the Convention on Diplomatic Relations, and he therefore fully supported the United States proposal. It would still be open to the General Assembly at its next session to enlarge the number of States eligible to become parties to the convention.

44. Mr. CHIN (Republic of Korea) said he would support the proposal for the final clauses submitted by the United States because it was in accordance with the principle of universality and because it was exactly modelled on the final articles of the Vienna Convention on Diplomatic Relations. Moreover, it respected the terms of the General Assembly resolution under which the Conference had been convened. He was firmly opposed to the amendments to the United States proposal, for they diverged too greatly from the provisions of the 1961 Convention and conflicted with the relevant resolutions of the General Assembly. The questions which they raised should be brought up before the General Assembly as they were outside the Conference's mandate. His delegation would therefore vote in favour of the United States proposal and against all the amendments to it.

45. Mr. ALVARADO GARAICOA (Ecuador) said that the United States draft referred not only to States Members of the United Nations and of the specialized agencies and the States parties to the Statute of the International Court of Justice, but also to any other State invited by the General Assembly of the United Nations, and he was therefore prepared to support the proposal.

46. Mr. de MENTHON (France) entirely approved the United States draft. He was unable to support either the USSR amendment or that submitted by the United Arab Republic and Yugoslavia, for the Conference was bound by the terms of the General Assembly resolution, which had invited only the States Members of the United Nations and of the specialized agencies and the States parties to the Statute of the International Court of Justice. The United States text, which followed the provisions of the 1961 Convention, in no way ruled out the accession of other States, but left it to the Assembly of the United Nations to decide.

47. Mr. EVANS (United Kingdom) said that the question under discussion had been debated on many past occasions. He thought it was generally understood that only States recognized as sovereign and independent could become parties to international conventions and other international instruments. The question was which international entities should be regarded as sovereign independent States. Some entities were recognized as such by only a small minority of the international community, whilst most members of that community refused to accord them that status. A decision on that point was a very delicate and political matter. Since the Secretary-General of the United Nations was to be the depositary of the original text of the future convention, he should receive precise guidance to enable him to decide whether some particular entity fulfilled the conditions for becoming a party to the convention. The Soviet proposal to open the convention to signature and accession by " all States " did not offer the necessary guidance and would leave the Secretary-General with complete responsibility for a political decision which he should never be asked to take. The amendment by the United Arab Republic and Yugoslavia would have the same result since it was well established in the practice of

the United Nations that the registration of an agreement by the Secretariat did not carry any implication as to the status of the parties to the agreement in international law. For those reasons, the United Kingdom delegation would vote for the United States proposal and against both of the amendments to it.

48. Mr. DI MOTTOLA (Costa Rica) said that the mere fact of its existence did not confer on an international entity the status of member of the international community. The categories referred to in the United States text specified which States could sign the convention. In particular, under the provision concerning the fourth category, any State not already a Member of the United Nations or the specialized agencies, or a party to the Statute of the International Court of Justice, would be able to become a party to the convention on the invitation of the General Assembly. That provision was an alternative to the automatic operation of the first three criteria in that it would authorize the accession of additional States which were accepted by the international community. He would therefore vote for the United States proposal and against the amendments to it.

49. Mr. DONATO (Lebanon) said that, while realizing the force of the arguments advanced by the sponsors of the two amendments, he would be unable to accept either of them, for they did not observe the rules laid down by the Assembly resolution. He supported the United States proposal because it conformed with the spirit and the letter of the recommendations of the United Nations General Assembly and left the door open to any additional State which might be invited by the Assembly to become a party to the convention.

50. Mr. TÜREL (Turkey) agreed with the representatives who had sopken in favour of the United States proposal. That proposal was consistent with the relevant resolution of the General Assembly and with the terms of the corresponding provisions of the Vienna Convention of 1961. The Spanish representative had very aptly stated the reasons why the Conference should not depart from that precedent. The Turkish delegation would therefore vote against the amendments and for the United States proposal as it stood.

51. Mr. JAYANAMA (Thailand) said that the Conference should not discuss the controversial problem of universality and in that respect he shared the views of the Italian representative. He would therefore vote in favour of the United States proposal, all the more since it repeated the exact terms of articles 48 to 53 of the Vienna Convention, 1961, from which there was reason to depart.

52. Mr. PAPAS (Greece) said that he would vote for the United States proposal.

53. Mr. GUNEWARDENE (Ceylon) said that he had at all times actively upheld the principle of universality in the United Nations. The same problem had arisen during the discussion of the 1961 Convention. At that time, the delegation of Ceylon had supported a proposal similar to that submitted to the Committee by the United States representative and, as chairman of the drafting committee, he had done all in his power to prepare a text acceptable to the largest possible number of delegations. In the same spirit, and desiring to preserve the atmosphere of understanding and harmony in the Committee, he urged delegations not to reopen a debate which had been successfully settled at the previous conference by common sense and mutual comprehension. He fully recognized the merits of the amendments by the USSR and by the United Arab Republic and Yugoslavia, but continued to believe that, in existing circumstances, and for the sake of the success of the Conference itself, the best solution was still that adopted at the 1961 Convention. To enable members to reach agreement, he proposed that the Committee should postpone its vote till the next day.

54. Mr. PUREVJAL (Mongolia) said that, if the convention was to promote good relations between States, it should be universal and open to all States without discrimination. The United States proposal was essentially discriminatory and hence at variance with the principles of international law and with the purposes of the United Nations and of the convention itself, and he therefore supported the Soviet amendment. With regard to the question of competence, he thought that the Conference was free to decide which States were eligible to become parties to the convention.

55. Mr. de CASTRO (Philippines) thought that certain United Nations bodies were better qualified than the Conference to consider the political question which had been raised. He supported the United States proposal since it duly took account of the principle of universality while adhering to a reasonable and recognized practice. The text proposed by the United States would enable additional States to become parties to the convention provided that they could satisfy the international community of their status as sovereign independent States.

56. Mr. EL-SABAH EL-SALEM (Kuwait) said that his delegation had always been very optimistic as to the possibility of finding a basis of agreement and had always believed in the success of conferences like the present. The adoption of the 1961 Convention had proved that it was right. He thought that agreement could be reached and proposed that the Committee should postpone its vote on the proposals under discussion till the following meeting.

57. Mr. CAMERON (United States of America) said that there was no need to postpone the vote since his delegation's proposal reproduced the final clauses of the 1961 Convention and the matter had been debated exhaustively.

58. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said that the comments made by several representatives reflected a certain concern caused by the current debate. He considered the proposal of the representative of Ceylon extremely wise, for it would enable delegations to ponder once again the full consequences of their vote.

59. Mr. CHIN (Republic of Korea) considered the matter quite clear and agreed with the United States representative.

60. The CHAIRMAN put to the vote the question whether the Committee wished to vote forthwith on the proposals before it.

The Committee decided to vote forthwith by 36 votes to 20, with 15 abstentions.

61. The CHAIRMAN put to the vote the amendment submitted by the Union of Soviet Socialist Republics (A/CONF.25/C.1/L.158).

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

The United States of America, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Yugoslavia, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Hungary, India, Indonesia, Mongolia, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic.

Against: United States of America, Uruguay, Republic of Viet-Nam, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Costa Rica, Denmark, Ecuador, Ethiopia, Federation of Malaya, Finland, France, Federal Republic of Germany, Greece, Holy See, Iran, Ireland, Israel, Italy, Japan, Republic of Korea, Lebanon, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Portugal, San Marino, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Ceylon, Congo (Leopoldville), Ghana, Guinea, Kuwait, Laos, Mali, Morocco.

The amendment of the Union of Soviet Socialist Republics (A/CONF.25/C.1/L.158) was rejected by 49 votes to 15, with 8 abstentions.[3]

62. The CHAIRMAN put to the vote the amendment submitted jointly by the United Arab Republic and Yugoslavia (A/CONF.25/C.1/L.159).

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

Indonesia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Indonesia, Mongolia, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Guinea, Hungary, India.

Against: Ireland, Israel, Italy, Japan, Republic of Korea, Liechtenstein, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Pakistan, Peru, Philippines, Portugal, San Marino, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Republic of Viet-Nam, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Colombia, Costa Rica, Denmark, Ecuador, Federation of Malaya, Finland, France, Federal Republic of Germany, Greece, Holy See.

Abstaining: Iran, Kuwait, Laos, Lebanon, Liberia, Mali, Morocco, Nigeria, Ceylon, Congo (Leopoldville), Ethiopia, Ghana.

The joint amendment of the United Arab Republic and Yugoslavia (A/CONF.25/C.1/L.159) was rejected by 44 votes to 16, with 12 abstentions.

63. Mr. TSYBA (Ukrainian Soviet Socialist Republic) requested that the United States proposal (A/CONF.25/C.1/L.7) should be put to the vote article by article.

At the request of the representative of the Republic of Korea, a vote was taken by roll-call on the first article.

Ethiopia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Ethiopia, Federation of Malaya, Finland, France, Federal Republic of Germany, Greece, Holy See, Iran, Ireland, Israel, Italy, Japan, Republic of Korea, Kuwait, Lebanon, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Portugal, San Marino, Sierra Leone, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Republic of Viet-Nam, Argentina, Australia, Austria, Belgium, Brazil, Canada, Ceylon, Chile, China, Colombia, Costa Rica, Denmark, Ecuador.

Against: Hungary, Mongolia, Poland, Romania, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia.

Abstaining: Ghana, Guinea, India, Indonesia, Laos, Mali, Morocco, United Arab Republic, Yugoslavia, Congo (Leopoldville).

The first article was adopted by 53 votes to 11, with 10 abstentions.

The second article was adopted unanimously.

The third article was adopted by 55 votes to 11, with 5 abstentions.

The fourth article was adopted unanimously.

The fifth article was adopted by 56 votes to 10, with 5 abstentions.

The sixth article was adopted by 59 votes to 11, with 5 abstentions.[4]

64. Mr. BARTOŠ (Yugoslavia) suggested that it was unnecessary to vote on the United States proposal as a whole, because the articles had been put to the vote separately.

It was so agreed.

65. Mr. TSHIMBALANGA (Congo, Leopoldville) said that, as a non-aligned country, the Congo had abstained from voting on the amendments to the United

[3] The delegation of Ghana has informed the Secretariat that "The policy of Ghana which has always been in favour of the doctrine of 'all States' remains unchanged", and that consequently the vote of Ghana on this amendment, recorded as "abstention", should be changed to "yes".

[4] The new article at the end of the United States proposal was withdrawn and submitted as a separate proposal (A/CONF.25/C.1/L.70), which was considered at the twenty-ninth, thirtieth and thirty-first meetings.

States' proposal and on the controversial articles it contained because they had caused some political discussion. It had, however, voted in favour of the non-controversial articles submitted by the United States.

The meeting rose at 6.30 p.m.

TWENTY-NINTH MEETING

Tuesday, 26 March 1963, at 10.45 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Preamble

1. The CHAIRMAN drew attention to the proposals for a preamble to the convention submitted jointly by the delegations of Argentina, Ceylon, Ghana, India, Indonesia and the United Arab Republic (A/CONF.25/C.1/L.71) and by the delegations of the Congo (Leopoldville), Ethiopia, Guinea, Liberia, Libya, Mali, Morocco, Sierra Leone, Tunisia and Upper Volta (A/CONF.25/C.1/L.106).

2. Mr. KRISHNA RAO (India), introducing the six-power proposal (L.17), said that that text closely followed the preamble to the Vienna Convention on Diplomatic Relations. The statement in the fifth paragraph that the purpose of privileges and immunities accorded to consular officials was not to benefit individuals but to ensure the efficient performance of functions was designed not only to appeal to national legislative bodies, which would be called upon to ratify the convention, but also to reflect accurately the motives of delegations in their deliberations on those privileges and immunities. The paragraph expressed the so-called principle of functional necessity which was an essential attribute of consular priviliges and immunities.

3. Mr. BOUZIRI (Tunisia), introducing the ten-nation proposal (L.106) said that it reproduced the preamble to the draft articles prepared by the drafting committee of the International Law Commission (A/CONF.25/6, paragraph 36). The sponsors had proposed that formula in order to stress the difference between the convention under discussion and the Convention on Diplomatic Relations. Accordingly, they had not deemed it necessary to include a paragraph corresponding to the fourth paragraph of the preamble to the 1961 Convention, which rightly stressed the importance of diplomatic privileges and immunities. In a convention on consular relations, which granted very few privileges and immunities to consular officials, and those only in the exercise of their consular functions, such a paragraph seemed unnecessary. Moreover, privileges and immunities were granted to diplomatic agents as representatives of the sending State, whereas it was nowhere stated in the draft articles that consular officials represented the sending State. The sponsors had therefore considered it enough to refer merely to consular relations, which covered the notion of privileges and immunities and other facilities granted to consular officials in the exercise of their functions.

4. It also seemed unnecessary to state in the preamble that the few privileges and immunities granted to consular officials in the convention should be confined to the performance of their functions. In any case, the granting of privileges and immunities was a necessary evil and differentiation between various classes of persons should certainly be eliminated in an ideal world; reference to privileges and immunities had had to be included in the text of the convention, but there was no reason to mention them in the preamble.

5. Mr. ABDELMAGID (United Arab Republic) said that his delegation had sponsored the six-power proposal because consular privileges and immunities were inherent in consular functions and had become a part of international law. The essential difference between diplomatic and consular privileges and immunities lay in the functional character of the latter. The sponsors had therefore deemed it necessary to include the fifth paragraph of their proposal and to differentiate it from the corresponding paragraph of the preamble to the 1961 Convention by referring to " functions by consulates on behalf of their respective States ", as distinct from " functions of diplomatic missions as representing States ".

6. Mr. RUDA (Argentina) said that the sponsors of the six-power proposal had submitted their text in the belief that a codification of international law should be introduced by an indication of the general bases for its interpretation. The only essential difference between the two proposals before the Committee was that one of them included a reference to the basis on which privileges and immunities were granted to consular officials and the other did not. His delegation thought it essential to indicate the framework within which those privileges and immunities were granted and to state that their purpose was not to benefit individuals but to ensure the efficient performance of functions.

7. Mr. RUEGGER (Switzerland) noted with satisfaction that both the proposals affirmed in their last paragraphs that the rules of customary international law should continue to govern matters not expressly regulated by the provisions of the convention. At the 1961 Vienna Conference on Diplomatic Intercourse and Immunities, his delegation had proposed an additional article to that effect and it welcomed the inclusion of that important passage in the preamble.

8. Of the two texts before the Committee, his delegation preferred the six-nation proposal; it could not share the Tunisian representative's views concerning the difference between diplomatic and consular privileges and immunities. Moreover, article 5 (*a*) referred specifically to the consular function of protecting the interests of the sending State in the receiving State. The fifth paragraph of the six-power proposal should also be retained for psychological reasons: the convention would serve as a practical guide to career and honorary consuls

throughout the world, and it would be useful to remind them, as well as diplomatic agents, that the purpose of their privileges and immunities was not to benefit individuals, but to ensure the efficient performance of their functions.

9. Miss ROESAD (Indonesia) said she could not agree with the Tunisian representative that a reference in the preamble to consular privileges and immunities was unnecessary. Paragraph 34 (*b*) of chapter II of the report of the International Law Commission (A/CONF. 25/6) referred to a whole chapter of the draft articles entitled " Facilities, privileges and immunities of career consular officials and consular employees ". Since the Second Committee of the Conference had spent all its time working on the articles in that chapter, it could hardly be deemed contrary to the spirit of the Conference to mention privileges and immunities specifically in the preamble.

10. Mr. DADZIE (Ghana) endorsed the arguments advanced by other sponsors of the six-power proposal. A really appropriate preamble to the convention on consular relations must include a reference to the basis on which consular officials enjoyed certain privileges and immunities.

11. Mr. DONATO (Lebanon) and Mr. AVILOV (Union of Soviet Socialist Republics) said they would support the six-power proposal.

12. Mr. ALVARADO GARAICOA (Ecuador) said he would vote for the six-Power proposal because the reasons for granting consular privileges and immunities should be accurately explained in the preamble.

13. Mr. HEPPEL (United Kingdom) said he would support the inclusion of a paragraph on the functional necessity of granting consular privileges and immunities. Perhaps the difficulties that some delegations experienced in accepting the six-power proposal were due to the fact that it laid too much stress on privileges and immunities: immunities were mentioned three times and privileges twice in three successive paragraphs. The words might be omitted from the third and fourth paragraphs, and retained in the fifth paragraph, with the consequential substitution of the word " consular " for " such ".

14. He was, of course, aware that the reference to immunities in the third paragraph was due to the fact that the 1961 Conference had been entitled " United Nations Conference on Diplomatic Intercourse and Immunities ". On the other hand, since the convention under discussion would probably be entitled the " Vienna Convention on Consular Relations ", it might be advisable to substitute the word " relations " for the phrase " intercourse, privileges and immunities " in the fourth paragraph.

17. Finally, he suggested that the words " since ancient times " in the first paragraph of both proposals might be placed before the words " consular relations ", in order to bring the English text into line with the French and Spanish.

16. Mr. KRISHNA RAO (India) observed that the references to privileges and immunities in the third and fourth paragraphs had been included to take into account the history of both the Vienna Convention on Diplomatic Relations and the draft articles now before the Conference. If the six-power proposal were adopted, the United Kingdom representative's suggestions might be referred to the drafting committee.

17. Mr. PAPAS (Greece) said he would support the six-power proposal, but wished to suggest a few drafting changes. He thought the third paragraph, referring to the 1961 Conference, was unnecessary; so was the first paragraph, though he had no specific objection to it. With regard to the fourth paragraph, he thought that the words " and functions " should be added after " immunities " and that the phrase " irrespective of their differing constitutional and social systems " might be dispensed with, since that principle was self-evident in an instrument concluded by States Members of the United Nations.

18. Mr. MARESCA (Italy) said that a preamble should not be regarded merely as a general explanation of intentions, but also as an important element in understanding the general system of a convention, since it could throw light on each individual article. The omission of a reference to privileges and immunities in the preamble could have serious consequences. A study of the conventions on diplomatic and consular privileges and immunities that had been concluded since the Second World War showed that each of them contained an article confirming the functional necessity of granting privileges and immunities.

19. It was also important to bear in mind that the general term " consular relations " included the status of the consular official. It was not quite accurate to say that a diplomatic agent was a representative of the sending State, whereas a consular official was not; both the diplomatic agent and the consular official were agents of the State, though one of the functions of the former was to represent the State in international relations while the functions of the latter were subject to a different jurisdiction. Nevertheless, within his own sphere a consul, too, represented the sending State and assumed all the consequent responsibilities. He hoped that if the six-power proposal were adopted, the drafting committee could take his remarks into account and indicate that a consular official was an agent of the State.

20. Mr. BREWER (Liberia), speaking as one of the sponsors of the ten-power proposal, said that the fifth paragraph of the six-nation proposal was unnecessary because of the basic difference between diplomatic and consular functions. If all the provisions of the Vienna Convention on Diplomatic Relations were to be copied, there seemed to be no need for a separate convention on consular relations. To cite only one example of the wide difference between the two kinds of functions, article 43 of the draft provided for limited immunity from jurisdiction only in the exercise of consular functions, whereas article 31 of the Convention on Diplomatic

Relations provided for general immunity in respect of all acts performed by the diplomatic agent. In view of the limited scope of consular privileges and immunities, it seemed inappropriate to mention them in the preamble.

21. Mr. de ERICE y O'SHEA (Spain) fully supported the idea of including a so-called " probity clause " in the preamble. Nevertheless, he preferred the rest of the wording of the ten-power proposal, which reproduced the text prepared by the drafting committee of the International Law Commission. He would vote for that text if it included the " probity clause ", but if the texts could not be combined, he would support the six-power proposal.

22. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said he would support the six-power proposal in the belief that the text of the preamble should be as similar as possible to that of the preamble to the Vienna Convention on Diplomatic Relations. It would be unwise to omit the paragraph relating to consular privileges and immunities, since consuls, like diplomatic agents, were state officials, and both enjoyed privileges and immunities, though to different degrees. Disparity between the two preambles might give rise to undesirable difficulties in interpretation.

23. Mr. BOUZIRI (Tunisia), replying to the Indonesian representative, said that although the draft articles included a chapter on facilities, privileges and immunities, there was no reason to mention privileges and immunities specifically in the preamble; another chapter of the draft related to honorary consular officials, but there had been no suggestion that they should be mentioned in the preamble.

24. The sponsors of the ten-power proposal still thought that a reference to consular relations was all that was necessary in the preamble, but in order to secure unanimity, they had decided not to press their proposal.

25. Mr. USTOR (Hungary) said he would vote for the six-power proposal. He could not agree with the United Kingdom representative's criticism of the stress laid on immunities in that text. The fifth paragraph closely resembled the fourth paragraph of the preamble to the Vienna Convention; it would be remembered that the first proposal of that kind at the 1961 Conference had been unsatisfactory to a number of delegations, because it had presupposed that diplomatic agents would abuse their privileges and immunities. When it had been submitted in a milder form, however, the Conference had adopted the paragraph, because it was self-evident that persons enjoying privileges and immunities must not use them for their own advantage and because it was advisable to show the public that diplomatic agents were not creating privileges and immunities for their own benefit.

26. As to the theory of the legal basis of diplomatic privileges and immunities, the three main bases mentioned during the 1961 Conference had been extra-territoriality, functional necessity and the representative character of diplomatic agents. The preamble, as finally adopted, made it clear that the legal bases of diplomatic privileges and immunities were their functional necessity and the representative character of diplomatic agents. The outdated theory of extra-territoriality had thus been tacitly excluded.

27. The legal bases of consular privileges and immunities were much less well documented; the one certain basis was that of functional necessity, which should therefore be clearly specified in the preamble. The second part of the fifth paragraph of the six-power proposal raised the controversial question whether consular officials were representatives of a State and whether that representative character could be regarded as a basis for consular privileges and immunities. His delegation considered that, although a consul was not a representative of the Head of State, he represented the administration of the sending State and therefore acted on behalf of it; that attribute of consular officials was clearly brought out in the six-power proposal.

28. Mr. BARTOŠ (Yugoslavia) said that, according to an eminent publicist, a preamble to a convention had three aspects: first, the aesthetic or formal aspect; secondly, the political aspect, or statement of the motives of the signatories of the convention; thirdly, the legal aspect, or the criterion for the interpretation of the operative part of the instrument. The fifth paragraph of the six-power proposal represented the legal aspect, since it referred to a subject to which nearly half of the operative part of the convention was devoted. The paragraph might have been unnecessary if a similar provision had not been included in the Vienna Convention on Diplomatic Relations, but to omit it now would be dangerous for the future interpretation of the convention on consular relations.

29. Mr. CRISTESCU (Romania) said that he would support the six-power proposal. The object of consular activities should be to promote co-operation between States on the basis of mutual respect for national sovereignty and the freedom and independence of peoples, and to develop friendly relations among nations. His delegation was glad to see those ideas embodied in the two proposed amendments. It considered, however, that the proposal contained in document A/CONF.25/C.1/L.71 was the more far-reaching and would support it.

30. Mr. GUNEWARDENE (Ceylon) thanked the sponsors of the ten-power proposal for the spirit of co-operation they had shown in agreeing not to press for their text.

31. Mr. EL-SABAH EL-SALEM (Kuwait) thought that the text of the Vienna Convention on Diplomatic Relations should be followed closely wherever possible, particularly in view of the general tendency to merge the functions of diplomatic agents and consular officials. Some of the articles already adopted, such as article 41 (Personal inviolability of consular officials), clearly indicated that trend and it was advisable to reflect it in the preamble.

32. Mr. RABASA (Mexico) said he could support the six-power proposal and the drafting amendments suggested by the United Kingdom representative. He believed that the distinction between diplomatic and

consular functions should be stressed, as had been done in the fifth paragraph of the proposal.

33. Mr. de MENTHON (France) suggested that, although the ten-power proposal had been withdrawn, the drafting committee should take it into account when considering the preamble.

34. The CHAIRMAN said that the suggestions made during the debate would be referred to the drafting committee.

Subject to re-wording by the drafting committee, the six-power proposal (A/CONF.25/C.1/L.71) was adopted unanimously.

Disputes clause

35. The CHAIRMAN said that proposals for an article on the settlement of disputes had been submitted by the United States of America (A/CONF.25/C.1/L.70) and Switzerland (A/CONF.25/C.1/L.161). The Belgian delegation had submitted a proposal (A/CONF.25/C.1/L.162) for an optional protocol on the lines of the protocol attached to the 1961 Convention on Diplomatic Relations.

36. Mr. CAMERON (United States of America) drew attention to the fact that his delegation had withdrawn the new article at the end of its proposed final articles (L.7), in order to submit it as a separate proposal concerning the settlement of disputes (L.70). The proposal specified that any dispute arising from the interpretation or application of the convention on consular relations should be submitted, at the request of either of the parties, to the International Court of Justice unless an alternative method of settlement was agreed upon.

37. His delegation felt strongly that the codification of international law and the formulation of measures to ensure compliance with its provisions should go hand in hand. The response of other delegations to the United States proposal would make it possible to evaluate their support for international law and its enforcement by the principal judicial organ of the United Nations. He appealed for support for that proposal, which dealt with one of the most important points connected with the convention on consular relations.

38. Mr. RUEGGER (Switzerland), introducing his delegation's proposal (L.161), emphasized the fact that it should not be considered as being in opposition to the United States draft clause, but should be regarded as a subsidiary text. His delegation whole-heartedly supported the United States proposal, and if no such provision for compulsory judicial settlement had been proposed, his own delegation would have had to submit one in pursuance of precise instructions received from its government.

39. He requested that the United States proposal should be discussed and voted on before the Swiss proposal. Since the International Law Commission's draft contained no disputes clause and since the United States proposal on the subject had been submitted before the Swiss proposal, it was normal that it should be voted on first.

40. His delegation attached the greatest importance to a vote in which every delegation would have an opportunity of declaring its position on compulsory jurisdiction and arbitration. Such a vote would make it possible to note what progress had been made towards the ideal of compulsory arbitration since the first United Nations Conference on the Law of the Sea in 1958. On that occasion such a vote had taken place on a Colombian proposal,[1] which had received the fullest support of the Swiss delegation.

41. A disputes clause which provided for genuine compulsory arbitration and jurisdiction was an essential corollary to any codification of international law. The process of transforming customary international law into written law called for a body which could pronounce upon request.

42. His delegation had another reason for supporting compulsory arbitration and jurisdiction. Immediately after the First World War, the Swiss Federal Chambers had unanimously adopted a report by the Government of the Confederation laying down the broad outlines of a policy on international arbitration and judicial settlement, which was both bold and flexible, whereby the Government was authorized to enter into negotiations with other States for the purpose of concluding treaties of conciliation, arbitration and judicial settlement which would go as far as possible towards compulsory arbitration and jurisdiction.

43. As a result of that policy, Switzerland was linked with a large number of States through a system of arbitration treaties supplemented by the protocol under article 36 of the Statute of the International Court of Justice and by the General Act of Arbitration concluded under the auspices of the League of Nations and taken over by the United Nations. In recent years that policy had been actively pursued and had enabled Switzerland to negotiate similar treaties with several of the newly independent States. That showed what importance the Swiss Government attached to the incorporation in multilateral agreements of arbitration clauses of a truly compulsory nature.

44. The actual wording of the clause was not important to his delegation. There were many excellent models, such as that prepared by the Institute of International Law at its Granada session. The one point which his delegation considered essential was that the clause should not have any loopholes. To be truly compulsory, the application of the clause should not depend on agreement between the parties — i.e., on a compromise reached in each specific case. Any such provision would be a mere semblance of an arbitration clause. His delegation thought it essential that the disputes clause should provide that any dispute arising from the interpretation or application of the convention on consular relations should be submitted to the International Court of Justice at the request of either of the parties.

45. At the first United Nations Conference on the Law of the Sea his delegation had proposed a separate

[1] See *United Nations Conference on the Law of the Sea, Official Records*, vol. II (United Nations publication, sales No. 58.V.4, vol. II), annexes, document A/CONF.13/L.24, annex II.

optional protocol on the compulsory settlement of disputes.[2] A proposal on the same lines had been made with success at the 1961 Vienna Conference by the representative of Iraq. The Belgian delegation was making a similar proposal at the present conference; but his delegation regarded the optional protocol as a last line of defence, a last way of retaining the link between the idea of arbitration and a convention codifying international law. Consequently his delegation was prepared to vote for the protocol, but only if the clause proposed by the United States and its own proposal were both rejected.

46. At the present stage, his delegation submitted its proposal as a subsidiary text, in case the United States proposal were not accepted. The Swiss proposal offered an intermediate solution between the United States clause and the optional protocol proposed by Belgium. Like the latter, it was based on reality, a reality that could not be disregarded: the fact that a number of important States in several continents were not yet ready to accept the idea of compulsory arbitration and jurisdiction.

47. In order to prevent the disputes clause from standing in the way of the universality of the convention on consular relations, the Swiss proposal provided, in paragraph 2, that any contracting party might at the time of signing or ratifying the convention, or of acceding thereto, declare that it did not consider itself bound by paragraph 1; the other contracting parties would then not be bound by paragraph 1 with respect to any contracting party which had formulated such a reservation.

48. The Swiss proposal had two main advantages over an optional protocol. The first was that the text had been taken from an existing convention, although it was not yet in force: it reproduced the very terms of article 20 and article 21, paragraph 1, of the Brussels Convention of 25 May 1962 on the liability of operators of nuclear ships. He stressed the fact that his delegation attached no special importance to the language of paragraph 1, and would be quite willing to replace it by wording such as that of the United States proposal. The second advantage was that the text would appear in the convention itself, not in a separate instrument. That would represent a genuine step forward in the progress of international arbitration because the signature of an optional protocol could be avoided or postponed, whereas it was necessary to take a decision in order to make a reservation.

49. In conclusion, he appealed to delegations to prepare the way for a really compulsory system of judicial settlement by voting for the United States proposal.

50. Mr. VAN HEERSWIJNGHELS (Belgium) said that his delegation could support the United States proposal in principle; it was purely in a spirit of conciliation and compromise that it was proposing an optional protocol (L.162) similar to that attached to the Vienna Convention on Diplomatic Relations. The main reason for making that proposal was that many States had not yet recognized the compulsory jurisdiction of the International Court of Justice in pursuance of article 36, paragraph 2, of the Statute of the Court.

51. Mr. de MENTHON (France) unreservedly supported the United States proposal. On 14 November 1947 the General Assembly had adopted resolution 171 (VII) recommending as a general rule that States should submit their legal disputes to the International Court of Justice. According to Article 92 of the Charter, that court was the principal judicial organ of the United Nations. It was one of the normal functions of the International Court to settle legal disputes arising out of the interpretation of treaties, so it was natural that any dispute arising out of the interpretation or application of the convention on consular relations should be submitted to it.

52. The present conference had shown by several of its votes the desire of the participating States to contribute to the progressive development of international law. His delegation believed that the introduction into the convention of a clause on the judicial settlement of disputes would contribute to such development. It would also contribute to the building up of judicial practice and legal precedents, which would be helpful in the codification of international law on consular relations.

53. His delegation considered that the United States proposal would serve the interests of States and of the whole international community.

54. Mr. WESTRUP (Sweden) said that Sweden shared with other small nations the aspiration to see international arbitration and judicial settlement by the International Court of Justice consolidated and developed. It was therefore with great satisfaction that his delegation saw a major power like the United States of America sponsoring a proposal for compulsory judicial settlement. He supported that proposal without reservation.

55. He had little to add to the cogent arguments advanced in support of the United States proposal by the Swiss and French delegations. It would be unrealistic not to recognize that certain governments were unwilling to surrender some measure of national sovereignty in the settlement of disputes affecting their vital interests; but it was to be hoped that the majority of States would be prepared to accept a clause on compulsory judicial settlement for the purposes of consular relations.

56. Whatever form the convention on consular relations might take, its provisions would deal only with purely technical and practical matters. All controversial matters had been eliminated; he could cite a very recent case of a proposed article which had been dropped merely because it had been described by a number of delegations as having some political implications. In the circumstances, there appeared to be no risk in adopting a clause on the lines proposed by the United States delegation.

57. In view of the nature of its provisions, the future convention on consular relations thus provided a unique opportunity for the international community to take a step towards a universal system of impartial settlement of disputes — a system which was desired by all mankind.

58. He had little enthusiasm for the Belgian proposal, which was a last resort to be used only if a better solution

[2] *United Nations Conference on the Law of the Sea*, vol. II, annex I.

could not be adopted. Like the Swiss representative himself, he preferred the United States proposal to the Swiss proposal and requested that a roll-call vote be taken on it.

59. Mr. RUDA (Argentina) pointed out that his country had consistently favoured arbitration. Argentina had submitted many important disputes to arbitration, including boundary disputes with its neighbours — Brazil, Paraguay, Bolivia and Chile.

60. However, it was the position of his government that the submission of a dispute to arbitration was subject to the agreement of the parties in each specific case. Hence his delegation could not support any formulation which might lead to the judicial settlement of a dispute without such agreement.

61. Argentina had recognized the compulsory jurisdiction of the International Court of Justice only in respect of a few humanitarian conventions. It had done so in those exceptional cases precisely because of the humanitarian character of the conventions concerned.

62. In the circumstances, his delegation urged that the precedent of the first United Nations Conference on the Law of the Sea and of the 1961 Vienna Conference on Diplomatic Intercourse and Immunities should be followed by adopting a separate optional protocol on the settlement of dispute. If the proposal for an optional protocol were not adopted, his delegation would propose a sub-amendment to the United States amendment replacing the words " shall be submitted at the request of either of the parties to the International Court of Justice " by the words " shall be submitted by mutual consent of the parties to conciliation, to arbitration or to the International Court of Justice ".

63. The Swiss proposal was substantially in line with the position of the Argentine delegation. Paragraph 2, however, was in fact a reservations clause, and his delegation considered reservations undesirable in the case of a convention codifying international law. By dealing with the settlement of disputes in a separate protocol, it would be possible to ensure the universality of the convention on consular relations.

The meeting rose at 1.15 p.m.

THIRTIETH MEETING

Tuesday, 26 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Disputes clause (continued)

1. The CHAIRMAN invited the Committee to continue consideration of the proposals for a clause relating to the settlement of disputes submitted by the United States (A/CONF.25/C.1/L.70) and Switzerland (A/CONF.25/C.1/L.161) and of the Belgian proposal for an optional protocol (A/CONF.25/C.1/L.162).

2. Mr. MARESCA (Italy) said that every legal rule should be accompanied by a guarantee to ensure its application even if one of the parties refused to comply with it. Consular law was no exception to that requirement. The Italian delegation thought that the natural place for a clause providing for settlement of the disputes which might arise over the application or interpretation of the convention was in the body of the convention itself. The settlement of any dispute of that nature should be entrusted to the International Court of Justice, which was competent to decide all disputes coming under international law. The Italian delegation therefore unreservedly approved the solution proposed by the United States (L.70) and hoped that it would become an integral part of positive law. It wished nevertheless to suggest a slight modification of the text, consisting of the insertion of the words " which cannot be settled through diplomatic channels " after the words " this convention ". If the United States proposal did not receive the necessary majority, the Italian delegation would support the alternative solution submitted by Switzerland (L.161), which seemed calculated to allay all fears and provided a generally acceptable way out. If that solution also were rejected, there would be no alternative but to adopt the Belgian proposal (L.162) that the settlement of disputes be dealt with in an optional protocol in accordance with the precedent set by the Convention on Diplomatic Relations.

3. Mr. KHLESTOV (Union of Soviet Socialist Republics) observed that the United States delegation had explained the need to include a disputes clause in the convention by the fact that the United States and other countries accepted the compulsory jurisdiction of the International Court of Justice. The draft articles prepared by the International Law Commission contained no provision concerning the settlement of disputes, however, and it might be questioned how far the United States proposal was justified. A study of positive law showed that the choice of methods for settling disputes depended on the will of each State. Article 33 of the Charter listed various means of peaceful settlement of disputes; in other words, it granted each State the right to choose the means it considered most appropriate. Article 36 of the Statute of the International Court of Justice also provided that recognition of the compulsory jurisdiction of the Court depended on the decision of each State. Hence the fact that certain States recognized the compulsory jurisdiction of the International Court of Justice did not mean that all States were obliged to recognize it. In fact, out of more than one hundred States Members of the United Nations, only forty-six had recognized the jurisdiction of the Court as compulsory, and in the great majority of those cases recognition was accompanied by numerous reservations. The United States itself had made numerous reservations; in particular, it did not recognize the compulsory jurisdiction of the International Court in any dispute whose substance came within the domestic jurisdiction of the United States as so defined by the United States itself.

4. The Soviet Union considered that a dispute should be submitted to the International Court of Justice only at the request of both the parties. In a few cases it had accepted the jurisdiction of the Court, basing its decision on the circumstances on each occasion.

5. Previous conventions, such as the 1958 Geneva conventions on the law of the sea and the 1961 Vienna Convention on Diplomatic Relations did not contain any clause on the compulsory jurisdiction of the International Court of Justice. Such clauses had been included in optional protocols. Hence there seemed to be little justification for the United States proposal. The Convention on Diplomatic Relations had given an example of wisdom and flexibility, which should be followed by adopting the Belgian proposal (L.162).

6. He regretted that the Swiss delegation had submitted its unhappy proposal (L.161), fearing that an optional protocol might be an obstacle to ratification of the convention. That had not been true either of the Geneva conventions on the law of the sea or of the Vienna Convention on Diplomatic Relations, whereas, on the contrary, many countries, including the United States and the USSR, had not signed the 1962 Brussels Convention referred to by Switzerland. Finally, he found it hard to understand the point of the Swiss request that all the amendments should be put to the vote. That could only complicate the discussion; it would be better to seek a compromise solution at once. A few days before, the spirit of co-operation of all delegations had made it possible to overcome a fairly grave difficulty. He thought that representatives could agree on an optional protocol that would be acceptable to all delegations.

7. Mr. CAMERON (United States of America) observed that the USSR representative had spoken of the United States proposal as though it were based on Article 36, paragraph 2, of the Statute of the International Court of Justice; in fact, the proposal had been made in accordance with Article 36, paragraph 1. Moreover, the clause proposed did not differ in any way from those adopted in many treaties.

8. The CHAIRMAN announced that a new proposal had been submitted by the delegations of Ghana and India (A/CONF.25/C.1/L.163).

9. Mr. DADZIE (Ghana) said that the joint proposal was similar to the Belgian proposal. Ghana attached particular importance to the question of the settlement of disputes. To make no provision on that point would doom the convention to remain a dead letter. It was obviously desirable that all States should agree to submit to the same jurisdiction and there was none more appropriate than that of the International Court of Justice. Many countries, however, had not thought fit to accept the compulsory jurisdiction of that Court without paralysing reservations.

10. Consequently, the Ghanaian and Indian delegations proposed the solution adopted by the 1961 Conference, which was to draw up an optional protocol providing for optional recourse to the International Court of Justice. That solution would have the advantage of allowing many States to accede to the Convention, whereas the proposals of Swirzerland and the United States might give rise to many difficulties. Moreover, the United Nations General Assembly had recognized at its seventeenth session that the International Court of Justice could only validly be seized of a dispute when both parties agreed to submit to its jurisdiction.

11. Since their proposal was identical with that of Belgium, the Indian and Ghanaian delegations would be glad to join the Belgian delegation as sponsors of its proposal.

12. Mr. CRISTESCU (Romania) said that his delegation would vote against the proposals of the United States and Switzerland. Similar proposals had often been rejected in the past. When the Statute of the International Court of Justice had been adopted, only a very small number of States had recognized the compulsory jurisdiction of the Court, and most of them had only done so with important reservations. The great majority of States were not prepared to accept the compulsory jurisdiction of the Court. Article 36, paragraph 1, of the Statute of the Court itself limited its competence to cases referred to it by the parties. That was necessary because the contrary solution would infringe the sovereignty of States, which could not be subject to restrictions on the exercise of their prerogatives when they had to decide in each specific case whether the jurisdiction of the Court should be accepted.

13. That was the only solution entirely consistent with the concept of sovereignty and it had therefore been adopted in many international conventions. It had been for the same reasons, both theoretical and practical, that in the matter of disputes over the application of the Geneva conventions on the law of the sea, and also of the Vienna Convention on Diplomatic Relations, the majority of States parties to those conventions had no accepted the compulsory jurisdiction of the International Court of Justice. Separate protocols had therefore been concluded for the convenience of some States.

14. At its seventeenth session, the General Assembly had rejected the clause on the compulsory jurisdiction of the Court.[1] Consequently, a provision for the compulsory settlement of disputes over the interpretation or application of the convention had no place in the text.

15. A whole series of modes for the peaceful settlement of disputes were available to States, in particular those mentioned in Article 33 of the Charter. They could likewise be employed in the case of disputes over the interpretation or application of the convention on consular relations.

16. Mr. ALVARADO GARAICOA (Ecuador) fully endorsed the statements made by the representative of Argentina at the preceding meeting. The problem of the settlement of disputes concerning the interpretation or application of the convention was of great importance.

[1] See *Official Records of the General Assembly, Seventeenth Session, Annexes*, agenda item 75, document A/5356, para. 47.

It was necessary to avoid anything that might hinder the application of the convention, and to safeguard the principle of the sovereign right of all States to accept or reject the jurisdiction of the International Court of Justice. It was essential to adopt a flexible solution which was acceptable to the majority and would ensure the final success of the Conference.

17. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that he unreservedly supported the principle of peaceful settlement of international disputes by the International Court of Justice. He would accordingly wote for the United States proposal, which laid down very fully the procedure to be followed in regard to interpretation and application of the convention.

18. Mr. PETRŽELKA (Czechoslovakia) said that his delegation could not accept the disputes clause proposed by the United States, because it was at variance with the provisions of Article 33, paragraph 1, of the Charter, in that it gave a single party to a dispute the right to refer it to the International Court of Justice, and gave that method preference over the other methods of settlement mentioned in Article 33. Furthermore, the proposed clause was contrary to the current trend in international law. The best method of settling disputes over the interpretation or application of the convention was direct negotiation between the sending State and the receiving State. The article proposed by Switzerland, which provided for three stages in the settlement of disputes, did not leave States free to choose the method of settlement. Furthermore, it was contrary to the principle that any dispute must be settled with the consent of all parties concerned. Hence the Czechoslovak delegation could not accept the article. On the other hand, it was willing to accept an optional protocol such as that proposed by Belgium and by India and Ghana.

19. Mr. DONATO (Lebanon) said that he would vote for the disputes clause submitted by the United States, which was clear, simple, precise and ethical, and respected the competence of the International Court of Justice. The Lebanese delegation would, however, like the United States proposal to be amended as suggested by the Italian representative. The underlying idea of the oral amendment submitted by Argentina was already implicit in the United States text. If that text was rejected, the Lebanese delegation would vote for the optional protocol proposed by Belgium and by India and Ghana; the new article proposed by Switzerland was too subtle and complicated.

20. Mr. SOLHEIM (Norway) said that his delegation warmly supported the United States proposal. The adoption of that proposal by such a representative conference would be a very important and useful step. If the United States proposal were to be rejected, careful consideration should be given to the proposal submitted by Switzerland, which might, as a compromise, have the support of the majority of delegations. The Swiss proposal was very wisely balanced, because in its paragraph 2 the interests of the States which could not accept the provision in paragraph 1 were taken into account. The experience of the 1961 Vienna Conference, and other experience, showed that a number of States were unable, for different reasons, to accept the compulsory jurisdiction of the International Court of Justice for the time being. That fact was, undoubtedly, the motive behind the Swiss proposal, especially its paragraph 2, and it was therefore the sincere hope of the Norwegian delegation that the proposal would be accepted as drafted.

21. Norway was among the countries which at a very early stage had accepted the so-called " optional " clause of the Statute of the International Court of Justice, in the hope that all States would accede to that clause. Unfortunately, the hope had not as yet been fulfilled. Nevertheless, his delegation hoped that a great number of countries which were still unable to accept the general " optional " clause of the Statute of the International Court might, as a first step, accept the obligation of international arbitration in the limited field covered by the draft convention before the Committee.

22. Mr. RABASA (Mexico) said that his country had always remained faithful to the principle of the peaceful settlement of disputes. Mexico was a party to several agreements, including the Charter of the Organization of American States and the Bogotá Pact, in which that principle was embodied. Mexico was also firmly attached to the principle stated in Article 2, paragraph 3, of the United Nations Charter, but the clause proposed by the United States restricted the choice of means of the settling of disputes which was left to States by paragraph 3. It was true that Mexico had recognized the compulsory jurisdiction of the International Court, in disputes on the matters referred to in Article 36, paragraph 2, of the Court's Statute, but that did not mean that it accepted the Court's jurisdiction in all cases. The clause proposed by the United States was inspired by the desire to provide for the peaceful settlement of disputes, in particular disputes concerning the interpretation or application of the convention, but, contrary to what the United States representative had stated, it did not fall within the scope of Article 36, paragraph 1, but rather of paragraph 2 of that article, which dealt with the settlement of legal disputes. The Mexican delegation regretted that it could not support the United States proposal, which made the jurisdiction of the International Court of Justice compulsory. Nor could the Mexican delegation vote in favour of the article proposed by Switzerland (L.161). It would, in fact, be difficult for a contracting party to exercise the right conferred on it by paragraph 2 of that article without repudiating paragraph 1, which was inspired by noble ideas.

23. His delegation would, on the other hand, be willing to agree to an optional protocol concerning the settlement of disputes being attached to the Convention as proposed by Belgium and by India and Ghana.

24. Mr. DONOWAKI (Japan) thought that a convention which did not contain a disputes clause would be an ineffective instrument. His delegation supported the clause proposed by the United States which made the jurisdiction of the International Court of Justice compul-

sory for the interpretation and application of the convention and would thus contribute to the maintenance of international peace. However, the last part of the text might be understood to mean that where an alternative method of settlement was merely agreed upon, the parties to a dispute were not obliged to submit it to the Court even when that alternative method had failed to bring about a settlement of the dispute. In order to preclude such an interpretation, the Japanese delegation suggested that the words " unless an alternative method of settlement is agreed upon " should be replaced by the words " unless the dispute is settled by an alternative method ". If that sub-amendment was accepted by the United States, it could be referred to the drafting committee. If the United States proposal was rejected, however, the Japanese delegation would vote in favour of the new article proposed by Switzerland; if that text was also rejected, it would vote in favour of the proposals by Belgium and by India and Ghana to attach an optional protocol to the convention.

25. Mr. MABAMBIO (Chile) said that his country had consistently applied the principle of the judicial settlement of disputes; accordingly, it had voluntarily, and in the exercise of its sovereign rights, made use of arbitration or direct negotiations for the settlement of its boundary disputes. Many countries did not accept the compulsory jurisdiction of the International Court of Justice and it was undesirable for the Conference to seek to make a pronouncement on a point on which there remained profound divergences between States. Consequently, he could not vote in favour of the clause proposed by the United States or in favour of the article proposed by Switzerland although paragraph 2 of the latter article would enable the parties to contract out of the obligation laid down in paragraph 1. On the other hand, he would support the proposals by Belgium and by India and Ghana for an optional protocol.

26. The Brazilian delegation had requested him to state that it concurred with those views.

27. Mr. N'DIAYE (Mali) pointed out that when any multilateral agreement was concluded, each contracting party must freely consent to surrender a portion of its national sovereignty, for reservations to a multilateral agreement could prejudice its effective application. His delegation was, however, obliged to make reservations regarding the new article proposed by Switzerland. It was true that in introducing the idea of arbitration into the convention, the Swiss delegation had wished to leave it open to the contracting parties to settle their disputes amicably and thus avoid instituting lengthy proceedings before the International Court of Justice, which were expensive for small countries. Mali was not resolutely opposed to recourse to the International Court of Justice, but considered that States which were not parties to the Statute of the Court should not be obliged to accept its jurisdiction; they should be free to choose the mode of settlement that suited them. Consequently, his delegation, in spite of its sumpathy with the clause proposed by the United States and with paragraph 1 of the article proposed by Switzerland, would not be able to vote in favour of those texts. On the other hand, it strongly supported the proposals by Belgium and by India and Ghana to attach an optional protocol to the convention, since that solution offered maximum safeguards to small countries.

28. Mr. OSIECKI (Poland) said that his country was opposed to the principle of the compulsory jurisdiction of the International Court of Justice. Hence the Polish delegation could not accept the proposals of the United States and Switzerland. On the other hand, it was in favour of the proposals by Belgium and by India and Ghana to attach to the convention an optional protocol similar to that attached to the Vienna Convention on Diplomatic Relations.

29. Mr. ABDELMAGID (United Arab Republic) said that where precedents existed they should be invoked if the circumstances were identical. In the case in point, the precedent was the protocol which the Conference on Diplomatic Intercourse and Immunities had decided to annex to the 1961 Vienna Convention. His delegation therefore supported the proposals submitted by Belgium, and by India and Ghana.

30. Mr. PAPAS (Greece) considered that the system adopted for the Convention on Diplomatic Relations should be adhered to. Honce his delegation could not support the proposals of the United States and Switzerland and would support the proposals by Belgium and by India and Ghana.

31. Mr. BOUZIRI (Tunisia) pointed out that his country had never recognized the compulsory jurisdiction of the International Court of Justice for the settlement of disputes; consequently he could not accept it for the settlement of disputes over the interpretation or application of the convention. His delegation would accordingly vote against the United States and Swiss proposals, but would support the proposals by Belgium and by India and Ghana.

32. Mr. KRISHNA RAO (India) thought that compulsory recognition of the jurisdiction of the International Court of Justice was not a practical solution. He outlined the history of the question since the San Francisco Conference, at which the representatives of the United States and the USSR had been opposed to extending the jurisdiction of the Court. As a result, no precise and generally accepted principle of positive international law had been formulated, and Article 36 of the Statute of the International Court of Justice had finally emerged. At present, only about forty Member States out of 110 recognized the obligation to submit to the jurisdiction of the Court. Too much haste in the matter would be harmful to the final result, and by seeking to confirm the compulsory nature of the Court's jurisdiction they might prevent many States from acceding to the convention.

33. He had always been convinced of the need to recognize the compulsory jurisdiction of the International Court of Justice, and he contested the validity of many of the arguments advanced against that recognition. However, he did not think that the Conference was the proper place to debate such a problem. The best solution, therefore, would be to adopt an optional protocol,

separate from the Convention itself. That was the substance of the joint proposal submitted by Ghana and India, and of the Belgian proposal, and he hoped that the Committee would adopt it despite his sympathy with the other two proposals, particularly that of Switzerland.

34. Mr. EVANS (United Kingdom) said that his delegation would be able to accept any one of the three proposals under consideration. The United States proposal, in particular, was perfectly in keeping with the policy of the United Kingdom, which had accepted the compulsory jurisdiction of the International Court of Justice under numerous treaties and under article 36, paragraph 2, of the Statute of the Court concerning a wide range of disputes. Unfortunately, however, many members of the international community were not yet prepared to accept that jurisdiction. Consequently, if the United States proposal was rejected, it would be necessary to choose between the Swiss proposal and the proposals for an optional protocol. The Swiss proposal had certain disadvantages in that it provided for a procedure which was too elaborate for the purposes of the Convention. In particular, the six-month period of delay for the purpose of trying to arrange arbitration before a party to a dispute could submit it to the International Court of Justice was not satisfactory.

35. All things considered, as between the Swiss proposal as it stood and a separate protocol, he would prefer the latter. But if the Swiss delegation was willing to substitute the United States text for the first paragraph of its proposal he would support it; otherwise he would have to abstain from voting on the Swiss text. However, as a last resort, the United Kingdom delegation would vote for a separate protocol.

36. Mr. RUEGGER (Switzerland) explained that paragraph 1 of the Swiss proposal had been borrowed from existing international conventions, but his delegation was quite willing to replace it by the United States text, which left no loophole.

37. Mr. de ERICE y O'SHEA (Spain) said that the 1961 Conference had encountered the same difficulty, and he paid a tribute to the delegations which had shown their legitimate desire for peace and harmony by defending the cause of compulsory jurisdiction. The representative of Mali had said that the requirements of national sovereignty should be reconciled with those of compulsory international jurisdiction. While, admittedly, States might be asked to surrender some part of their sovereignty in the interests of international justice, they should not as a consequence be subjected to the unilateral will of a State with which they were in dispute. That was exactly what would be the regrettable result of the clause proposed by the United States.

38. Commenting on the Swiss proposal, he agreed with the United Kingdom delegation that the procedure for submission and the six-month period would give rise to needless complications. True, the Swiss proposal left the States free to make reservations, but that possibility would only impair the structure of the convention and the desired cohesion among the signatories. He was therefore unable to support the Swiss proposal.

39. He remained firmly convinced of the usefulness of the International Court of Justice and of the need to recognize its jurisdiction, but, for the moment, the optional protocol adopted for the Vienna Convention of 1961 and again proposed by Belgium, and by Ghana and India was the best solution. Any States which would make reservations if the Swiss proposal was adopted would need to do nothing more than refrain from signing the protocol. That solution would have the advantage of being acceptable to the majority, especially to the Latin American States which had been unable to accept the idea of compulsory jurisdiction even within the framework of the Organization of American States. In other words, any States which would consider it necessary to make reservations should still be able to ratify the convention.

40. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said that the United States proposal was based on an idea which had been rejected by most of the delegations in 1961 because it invalidated the basic principle of the equality of rights between States. A dispute should not be referred to the Court except with the consent of all the parties concerned. The protocol solution would have the advantage of respecting the majority view while enabling those in favour of compulsory jurisdiction to accept it by signing the protocol. He would vote against the United States and Swiss proposals, and urged other delegations not to depart from the sound precedent of the 1961 Conference but to vote in favour of the proposals by Belgium and by India and Ghana. He hoped that the United States delegation would spare the Conference needless complications and contribute to good understanding by withdrawing its proposal.

41. Mr. BARTOŠ (Yugoslavia) agreed with the United Kingdom representative; so far as the Yugoslav delegation was concerned, all three proposals were acceptable. Yugoslavia was party to some twenty international conventions concluded under the auspices of the United Nations and its specialized agencies, and all of them included a clause on the compulsory jurisdiction of the Court. Accordingly, he supported the substance of the United States proposal, as well as that of the Swiss proposal, although the latter had some drawbacks, particularly the provision concerning the six-month period within which the party concerned could apply to the Court for a ruling in the dispute, and that allowing States to make reservations which might place them in an embarrassing position. It would be more practical to adopt an optional protocol as proposed by the three delegations. In addition, the solution proposed by them was in conformity with the case-law of the International Court of Justice as reflected in its advisory opinion concerning reservations to the Convention on the Prevention and Punishment of the Crime of Genocide.[2] Yugoslavia, which had signed and actually ratified the Optional Protocol of 1961, nevertheless did not rule out the possibility of finding a procedure acceptable to the other parties to the conventions of which it was a signatory. He would vote against the United States and Swiss proposals, and in favour of the three-power proposal.

[2] *ICJ Reports 1951.*

42. Mr. GUNEWARDENE (Ceylon) agreed with the representative of India. While recognizing the merits of the United States proposal, his delegation considered that a general debate on the recognition of compulsory jurisdiction was inadvisable and would not facilitate the Committee's work. The important thing was to adopt a convention on consular relations and, for that purpose, to find the most generally acceptable formula.

43. The Swiss proposal was a praiseworthy compromise, but suffered from the drawback of obliging more than half of the States Members of the United Nations to make express reservations. He urged the representatives of the United States and Switzerland, in the interests of justice and good understanding, to withdraw their proposals and thus enable the Committee to arrive at a unanimous decision.

44. Mr. GHEORGHIEV (Bulgaria) noted that the International Law Commission had not seen fit to include a compulsory arbitration clause in its draft. That meant that it had been aware of the difficulties which the problem had raised at the 1961 Conference. The omission of that clause was even more justified in the case of the convention on consular relations. Since arbitration affected the sovereignty of States, it should not be mandatory; rather, parties to disputes should be free to choose whatever procedure they wished. He would vote in favour of a separate protocol, and against the United States and Swiss proposals.

45. Mr. JELENIK (Hungary) agreed with the representatives who had criticized the Swiss and United States proposals. As in 1961, his delegation would support the fundamental principle of the voluntary acceptance of the jurisdiction of the Court and it would vote in favour of an optional protocol.

46. Mr. van SANTEN (Netherlands) said that the United States proposal offered the simplest solution and would receive his delegation's support, al the more as the traditional policy of the Netherlands was based on the universal recognition of law and justice to be based on final decisions of a court. The Committee had rejected the idea that States parties to the convention would be free to conclude treaties at variance with the terms of the convention. The consequence would be that disputes relating to the interpretation or application of so rigid a convention would be much more serious, and hence the clause dealing with the settlement of disputes should logically form an integral part of the convention. The fact that obligatory submission of disputes to judges had not been achieved at an earlier codification conference did not invalidate his argument, nor was the fact that many States were not prepared to recognize a compulsory jurisdiction under Article 36, paragraph 2, of the Statute of the Court a sound reason against accepting a compulsory jurisdiction clause in the Convention, as that clause would be in keeping with the provisions of Article 36, paragraph 1, of the Statute of the Court to which all Members of the United Nations and of the Court were bound. That being so, he could not understand the objections raised by certain small States for whom the maintenance of the law through the courts was of such great importance.

47. In his opinion, the only difference between the Swiss proposal and the proposal for a separate protocol was that, in the first case, it was the refusal of compulsory jurisdiction — in the form of a reservation — which was exceptional, whereas in the second case, it was the acceptance of compulsory jurisdiction which was exceptional. For the international lawyer, therefore, the Swiss proposal was the more appropriate. He could not share the Spanish representative's opinion on the question of reservations, for he regarded the fact of relegating the matter to a protocol outside the Convention as itself constituting a reservation forced upon all the parties thereto. The question of the settlement of disputes within the Convention was of the highest importance, and he urged the Committee to accept at least the Swiss proposal, if it found it impossible to adopt that of the United States.

48. Mr. WU (China) said that the United States proposal was preferable in that it made express provision for the jurisdiction of the International Court of Jurtice, to which all States Members of the United Nations should refer their disputes. It was true that many of them did not recognize the compulsory jurisdiction of the Court, but, inasmuch as the disputes to which the interpretation of the convention might give rise would never be so serious as to endanger fundamental principles, it would be particularly desirable for the Conference to encourage the universal acceptance of the Court's jurisdiction and so to promote the progressive development of the international rule of law. The Republic of China had accepted the Court's jurisdiction from the start and would vote unreservedly for the United States proposal.

49. Mr. EL KOHEN (Morocco) moved that the vote on the various proposals should be postponed so as to enable certain delegations to obtain instructions from their governments concerning the very recently submitted proposals for an optional protocol.

It was so agreed.

The meeting rose at 6 p.m.

THIRTY-FIRST MEETING

Thursday, 28 March 1963, at 10.15 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Disputes clause (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the proposals for a clause relating to the settlement of disputes submitted by the United States of America (L.70) and Switzerland (L.161) and of the proposals by Belgium (L.162) and by Ghana and India (L.163) for an optional protocol.

2. Mr. KRISHNA RAO (India) requested that the joint proposal by Ghana and India should be put to the vote first.

3. Mr. RUEGGER (Switzerland) opposed the Indian representative's motion. As a legal body, discussing the codification of international law, the Conference should approach legal issues dispassionately. He therefore urged that the rules of procedure should be applied in the normal way.

4. A vote should first be taken on the question whether a disputes clause should be included in the convention or not. The Committee was discussing the articles of the convention itself, and that was the appropriate stage at which to consider that question. An optional protocol was a separate document, which should be discussed separately and voted upon separately, if and when the Committee came to consider it. He urged that the Committee should proceed in the same manner as the first United Nations conference on the codification of international law — the 1958 Conference on the Law of the Sea — had proceeded in an identical situation. The International Law Commission not having made any proposal for a disputes clause, a Colombian proposal — similar to the present United States proposal (L.70) — had been voted on first. Upon that proposal being rejected, but only then, a vote had been taken on an optional protocol submitted by the Swiss delegation as a last resort.[1]

5. The Swiss delegation at the 1958 Conference had made its proposal with extreme reluctance and solely in order to establish a link between a convention codifying international law and the principle of compulsory jurisdiction. Unfortunately, the 1958 Protocol had soon become a sort of prototype. An optional protocol had been proposed by Iraq, Italy, Poland and the United Arab Republic at the 1961 Vienna Conference; at the present conference, Belgium, India and Ghana had made similar proposals.

6. He appreciated the high motives of the Indian delegation, which considered it desirable to secure unanimous agreement on a particular formula at once. But he himself believed that a dispassionate discussion on a controversial subject should logically lead to a vote on the United States proposal, which was desired by many delegations, such as those of the Netherlands, Sweden, and a number of other small countries. The vote would serve the practical purpose of showing which States were in favour of a disputes clause of the kind proposed, which was supported by the highest authority in international law — the Institute of International Law. It would also provide a useful indication to States intending to include disputes clauses in bilateral agreements or in multilateral agreements of a more limited character than the convention on consular relations.

7. The CHAIRMAN said that since the various proposals related to the same question under rule 42 of the rules of procedure they should normally be voted on in the order in which they had been submitted, so that the United States proposal would be voted on first. However, that rule was qualified by the words " unless it (the Conference) decides otherwise ". He would therefore submit the Indian motion to the vote, in order to ascertain whether the Committee wished to depart from the normal rule.

8. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the Indian motion calling for priority for the joint proposal by Ghana and India, which in fact coincided with the proposal by Belgium, was fully in accordance with rule 42 of the rules of procedure. His delegation saw positive advantages in the proposed order of voting and strongly supported the Indian motion.

9. Mr. WESTRUP (Sweden) opposed the Indian motion, which might create a somewhat dangerous precedent. If such motions were carried it would be possible to prevent a relevant proposal from being put to the vote.

10. Mr. ABDELMAGID (United Arab Republic) supported the Indian motion.

11. Mr. GUNEWARDENE (Ceylon) said that such motions were quite normal and very common at United Nations meetings. It was open to any delegation to suggest a particular order of voting in the interests of amity and the progress of the work. In the case in point the Indian motion would facilitate the settlement of the differences which had arisen.

12. Mr. BOUZIRI (Tunisia) considered that the Indian motion was in order. However, he would not support it, because he did not think it advisable to adopt the proposed order of voting. It was desirable that the Committee should express its views clearly on the United States proposal; it should then deal with the proposals by Switzerland and Belgium, in that order. For his part, he would vote against the United States and the Swiss proposals. If, as he hoped, those proposals were rejected, he would vote in favour of an optional protocol.

13. Mr. CAMERON (United States of America) said that he would vote against the Indian motion.

14. Mr. VAN HEERSWIJNGHELS (Belgium) endorsed the Tunisian representative's remarks. As he had made clear at the 29th meeting, the Belgian proposal for an optional protocol had been submitted in a spirit of conciliation and compromise. It had always been his understanding that the proposal by the United States of America and the subsidiary proposal of Switzerland would be voted upon before the Belgian proposal.

15. Mr. MEYER-LINDENBERG (Federal Republic of Germany) thought that the United States proposal should be put to the vote first in order to determine whether the Committee wished to include a disputes clause in the Convention itself. If the voting showed that it did not, it should then take a decision on the desirability of an optional protocol.

16. Mr. MARESCA (Italy) expressed his surprise at the rather literal interpretation which had been placed

[1] See *United Nations Conference on the Law of the Sea, Official Records*, vol. II (United Nations publication, Sales No. 58.V.4, vol. II), 13th plenary meeting.

on rule 42 of the rules of procedure. The Committee was not considering two proposals on the same question, but two completely different sets of proposals. The first set would introduce a new article into the Convention; the second set would add an optional protocol to it. In his opinion, the proposals introducing a new article into the Convention itself were the most closely related to the subject of the Committee's work. Since the International Law Commission had not drafted a disputes clause, it was clear that the proposals introducing such a clause should be voted on first.

17. Mr. van SANTEN (Netherlands) opposed the Indian motion. A codification of consular law would not be complete without a clause on the settlement of disputes. It was therefore essential to vote first on the proposals for the inclusion of such a clause.

18. The CHAIRMAN invited the Committee to take a decision on the Indian motion that the joint proposal submitted by Ghana and India (A/CONF.25/C.1/L.163) be put to the vote first.

The motion was rejected by 33 votes to 24, with 10 abstentions.

19. The CHAIRMAN reminded the Committee that at the twenty-ninth meeting the Argentine delegation had announced its intention of submitting an amendment to the United States proposal.

20. Mr. RUDA (Argentina) proposed that the words " shall be submitted at the request of either of the parties to the International Court of Justice " in the United States text should be replaced by the words " shall be submitted by mutual consent of the parties to conciliation, to arbitration or to the International Court of Justice ".

21. Mr. ALVARADO GARAICOA (Ecuador) supported the Argentine sub-amendment, for the reasons he had given at the thirtieth meeting.

22. Mr. van SANTEN (Netherlands), speaking on a point of order, said that the Argentine amendment would nullify the effect of the United States proposal. That proposal was intended to give either of the parties the right to have recourse to the compulsory jurisdiction of the Court; the language proposed by the Argentine representative would preclude that right, by making submission of a dispute to the Court conditional on the consent of both parties. The Argentine sub-amendment would reopen a debate which had been closed by a vote; he considered that it was out of order.

23. The CHAIRMAN pointed out that the Argentine representative had given notice, at the twenty-ninth meeting, of his intention to introduce the sub-amendment. He therefore ruled that it was not out of order.

The Argentine oral sub-amendment was rejected by 25 votes to 22, with 19 abstentions.

24. The CHAIRMAN invited the Committee to vote on the United States proposal (A/CONF.25/C.1/L.70).

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

The Republic of Korea, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Lebanon, Liberia, Liechtenstein, Luxembourg, Netherlands, New Zealand, Nigeria, Norway, Philippines, Portugal, San Marino, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Australia, Austria, Belgium, Canada, China, Colombia, Costa Rica, Denmark, France, Federal Republic of Germany, Ireland, Israel, Italy, Japan.

Against: Mali, Mexico, Mongolia, Morocco, Panama, Poland, Romania, Thailand, Tunisia, Ukrainian, Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Yugoslavia, Algeria, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Chile, Cuba, Czechoslovakia, Ecuador, Ghana, Guinea, Hungary, India.

Abstaining: Republic of Korea, Kuwait, South Africa, Spain, Upper Volta, Republic of Viet-Nam, Congo (Leopoldville), Ethiopia, Federation of Malaya, Finland, Greece, Holy See, Iran.

The proposal was adopted by 31 votes to 28, with 13 abstentions.

25. The CHAIRMAN said that, in consequence of that decision, the first paragraph of the Swiss proposal (A/CONF.25/C.1/L.161), the proposal by Belgium (A/CONF.25/C.1/L.162) and the joint proposal by Ghana and India (A/CONF.25/C.1/L.163) would not be put to the vote. The Committee had still to deal with paragraph 2 of the Swiss proposal, if the Swiss representative wished that paragraph to be voten on.

26. Mr. RUEGGER (Switzerland) said that he did not wish paragraph 2 of his proposal to be put to the vote. The Committee had taken a decision in favour of the United States proposal, which his delegation supported. He had introduced his proposal, in two paragraphs, as a subsidiary text to meet the situation that would arise if the United States proposal were not adopted. He realized that the United States proposal was not likely to obtain the necessary two-thirds majority in a plenary meeting of the Conference, and his delegation would be glad to reintroduce paragraph 2 of its proposal in plenary if necessary.

27. Mr. BARTOŠ (Yugoslavia) re-submitted paragraph 2 of the Swiss proposal on behalf of the Yugoslav delegation. The Committee's decision on the United States proposal covered paragraph 1 of the Swiss proposal; but no decision had been taken on paragraph 2, and he thought it was desirable to put that paragraph to the vote, as its provisions would be welcomed by many delegations.

28. Mr. CAMERON (United States of America) pointed out that the Swiss representative, in introducing his proposal, had stressed its subsidiary character and had specifically requested that a vote should be taken on the United States proposal first. Paragraph 2 of the Swiss amendment was quite incompatible with the United States proposal and consideration of that paragraph

would reopen a question which the Committee had already disposed of.

29. Mr. EVANS (United Kingdom) said that it would be out of order for the Committee to take a vote on paragraph 2 of the Swiss proposal at that stage. Paragraph 2 of the Swiss proposal, as reintroduced by the Yugoslav delegation, could only be regarded as an amendment to the United States proposal. Consequently, if it were to be voted on at all, it should have been voted on before the United States proposal itself.

30. Mr. KRISHNA RAO (India) recalled that the Swiss delegation had agreed to replace paragraph 1 of its proposal by the United States proposal. No objection had been made at the time, so that it could not now be suggested that the two texts were incompatible. The Committee had adopted a disputes clause. It would be perfectly in order for the Committee to consider the Yugoslav amendment to attach to that disputes clause a provision enabling the parties to contract out. His delegation accordingly supported the Yugoslav amendment.

31. Mr. RUEGGER (Switzerland) emphasized the fact that, as he had repeatedly said, his proposal had been introduced as a subsidiary proposal to that of the United States. Now that the United States proposal had been adopted, there was no occasion for the Committee to deal with any part of the Swiss proposal, which was complete in itself. Of course, if the United States proposal did not receive the necessary two-thirds majority in the plenary meeting, paragraph 2 of the Swiss proposal could be discussed and voted on.

32. The CHAIRMAN noted the objection made by the United Kingdom representative. In fact, throughout the debate, both the United States text and the Swiss text had been treated as proposals and not as amendments. Many delegations had said that, if the United States proposal were defeated, they would vote in favour of the Swiss proposal. The fact that the United States proposal had been adopted did not alter the position in any way; the Swiss proposal was still a proposal and not an amendment to the United States proposal. The Swiss delegation not having pressed for a vote on paragraph 2, that paragraph had been reintroduced by the Yugoslav delegation and he would call upon the Committee to vote on it.

33. Mr. van SANTEN (Netherlands) disagreed with the Chairman's ruling. If a vote were now to be taken on paragraph 2 of the Swiss proposal, the Committee would in effect be acting as if it had not adopted the United States proposal. His delegation would vote against the paragraph, because it could not retract its vote for the United States proposal.

34. He thought that a clear victory had been won on the United States proposal, contrary to the expectations of some delegations, and he hoped that the disputes clause adopted by the Committee would obtain the necessary two-thirds majority in plenary.

35. The CHAIRMAN said that the Committee was new discussing paragraph 2 of the Swiss proposal, reintroduced by the Yugoslav delegation. The Netherlands representative seemed to have been speaking of the original Swiss proposal, disregarding the fact that the Committee was now discussing the Yugoslav proposal.

36. Mr. BARTOŠ (Yugoslavia) saw no contradiction between the disputes clause adopted by the Committee and the paragraph 2 resubmitted by the Yugoslav delegation. The Committee had not yet discussed the question of reservations to the Convention. He had no great liking for reservations in general, but in the case under consideration he thought it advisable to include a reservations clause in order to accommodate the many delegations which could not subscribe to the disputes clause.

37. Mr. KRISHNA RAO (India) said he regretted that the Netherlands representative should have used the word " victory ".

38. Mr. BOUZIRI (Tunisia) shared those feelings and strongly supported the Chairman's ruling.

39. Mr. GUNAWARDENE (Ceylon) also expressed great regret at the term used by the Netherlands representative.

40. Mr. van SANTEN (Netherlands) said that the fact that a delegation disagreed with a Chairman's ruling in no way detracted from its respect and esteem for the Chairman. He was sorry if anything he had said had been misunderstood and had hurt the feelings of any delegation; in speaking of " victory " he had been referring to the triumph of the ideals of justice, not to the victory of one side over another.

41. The CHAIRMAN called for a vote on the Yugoslav proposal to attach to the disputes clause a second paragraph with the same wording as paragraph 2 of the Swiss proposal (A/CONF.25/C.1/L.161).

The Yugoslav proposal was adopted by 27 votes to 24, with 18 abstentions.

42. Mr. MUÑOZ MORATORIO (Uruguay), explaining his vote, said that he had voted in favour of the United States proposal for the compulsory judicial settlement of disputes in accordance with the traditional policy of Uruguay, which had been embodied in that country's constitution.

43. The CHAIRMAN called for a vote on the new article on the settlement of disputes as a whole.

At the request of the representative of the United States of America, a vote was taken by roll call.

The Ukrainian Soviet Socialist Republic, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Republic of Viet-Nam, Yugoslavia, Australia, Austria, Belgium, Canada, China, Colombia, Denmark, Ethiopia, Federation of Malaya, Finland, France, Federal Republic of Germany, India, Iran, Ireland, Israel, Italy, Japan, Republic of Korea,

Kuwait, Lebanon, Liberia, Liechtenstein, Luxembourg, Netherlands, Nigeria, Norway, Panama, Portugal, Sweden, Switzerland, Thailand, Turkey.

Against: Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Upper Volta, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Ghana, Guinea, Hungary, Mongolia, Poland, Romania, Tunisia.

Abstentions: Argentina, Brazil, Cambodia, Ceylon, Chile, Congo (Leopoldville), Ecuador, Greece, Holy See, Mali, Mexico, Morocco, Philippines, South Africa, Spain.

The article as a whole was adopted by 39 votes to 14, with 15 abstentions.

44. Mr. ABDELMAGID (United Arab Republic) explained that his delegation had voted in favour of the article as a whole because, as the two paragraphs were interconnected, the resulting new text would have the effect of an optional protocol, a formula which would have been preferable to the text thus adopted. However, his delegation wished expressly to reserve its position regarding paragraph 1 of the article.

45. Mr. WESTRUP (Sweden) said he had voted for the article as a whole, but against paragraph 2 of the original Swiss proposal. The idea of a paragraph which would in fact take the place of an optional protocol had originally been introduced by the Swiss delegation at the First Conference on the Law of the Sea, when it had proved extremely useful. Since then, however, it had been used as a kind of escape clause by countries which did not wish to submit to the compulsory jurisdiction of the International Court of Justice.

46. His delegation had voted for the article as a whole, because it saw some reason for optimism in the fact that, throughout the long debate on the disputes clause, the opponents of the compulsory jurisdiction of the Court had utterly failed to refute the basis arguments of those who were in favour of recognizing that jurisdiction for the purely technical provisions of the convention. It was also encouraging to note that many delegations which had argued against the Court's compulsory jurisdiction had made it plain that they did not want to confirm their negative attitude by a vote.

47. Mr. BARTOŠ (Yugoslavia) explained that he had voted for the article as a whole because, although Yugoslavia would not exercise the right to make reservations under paragraph 2, he had thought it advisable to enable delegations which wished to make such reservations to do so. His government could not accept the compulsory jurisdiction of the International Court of Justice, which was not provided for in the Charter; nevertheless, Yugoslavia had accepted the compulsory jurisdiction of the Court in some twenty multilateral conventions. Those were the reasons why his delegation had taken up paragraph 2 of the Swiss proposal; while it would have preferred an optional protocol, it had wished to record its appreciation of the manner in which the Swiss delegation had continued in its tradition of seeking a just and wise solution acceptable to the majority.

48. Mr. RUDA (Argentina) said he had abstained from voting on the article as a whole because paragraph 2 admitted reservations to the Convention; in his delegation's opinion, reservations to a codification convention were most undesirable. The purpose of the Argentine oral amendment to the United States proposal had been to exclude reservations, but as the article stood, every State would be free to decide for itself whether it accepted the compulsory jurisdiction of the Court or not.

49. Mr. JAYANAMA (Thailand) said his government had hoped that compulsory jurisdiction would be dealt with in an optional protocol, as in the case of the Conventions of the Law of the Sea and the Vienna Convention on Diplomatic Relations. Since the United States proposal had been adopted, however, his delegation had voted for paragraph 2 of the original Swiss proposal, and would exercise its right under that paragraph to reject compulsory jurisdiction.

50. Mr. AVILOV (Union of Soviet Socialist Republics) said that the results of the vote on the United States amendment clearly showed that neither side in the argument could claim the " victory " referred to by the Netherlands representative. His delegation reserved the right to raise the question again in the plenary conference.

51. Mr. KRISHNA RAO (India) said he had voted in favour of the article as a whole because the effect of paragraph 2 would be the same as that of the optional protocol, which his delegation had favoured. Delegations should carefully consider whether an article in the convention providing for the compulsory jurisdiction of the Court, with a reservation clause, or an optional protocol annexed to the Convention would lead to the largest number of accessions. He hoped that point would be considered seriously before delegations cast their votes in the plenary conference.

52. Mr. CRISTESCU (Romania) said he had voted against the article as a whole because his delegation opposed the introduction of such an article into the convention, and wished to make a reservation forthwith concerning it.

53. Mr. PETRŽELKA (Czechoslovakia) said he was still convinced that such a controversial clause had no place in the convention. He reserved his delegation's right to raise the matter again in the plenary conference.

54. Mr. USTOR (Hungary) said he had voted against the United States proposal, but in favour of paragraph 2 of the original Swiss proposal, because it seemed to mitigate the rigidity of the United States text. He had voted against the article as a whole, because that was not the proper way of dealing with possible disputes. He thought that the majority of the Conference was really in favour of the formula adopted for the 1961 Vienna Convention and hoped that that trend would become evident in the plenary meetings.

55. Mr. OSIECKI (Poland) said he had voted against the article as a whole for the reasons he had given during the debate.

Article 52 (Question of the acquisition of the nationality of the receiving State)

56. The CHAIRMAN announced that the Committee had concluded consideration of the articles originally allocated to it. In order to expedite the work of the Conference, articles 52, 53, 54 and 55, originally allocated to the Second Committee, had been transferred to the First Committee for consideration.[2]

57. He invited debate on article 52 and the amendments thereto.[3]

58. Mr. LEE (Canada), introducing the five-power amendment (A/CONF.25/C.2/L.123/Rev.1), said that the Commission's draft of article 52 was open to the same objections as the corresponding draft article of the Vienna Convention. The idea it expressed was too-far-reaching and its inclusion in the convention would cause difficulties for many countries, particularly those whose nationality laws were based on the *jus soli*. He therefore believed that the matter should be dealt with in an optional protocol, as it had been at the 1961 Conference.

59. Mr. NASCIMENTO e SILVA (Brazil) said that article 52 as drafted by the International Law Commission did not conflict with the Brazilian Constitution, but his delegation realized the difficulty which many other countries would have in accepting such a clause. The Brazilian delegation believed that adoption of the article would prevent a number of countries from ratifying the convention; moreover, adoption of the five-power amendment would considerably expedite the work of the Conference by avoiding a detailed examination of domestic nationality laws such as had taken place in 1961.

60. Mr. DADZIE (Ghana) referred to the heated debates on the question of acquisition of nationality which had taken place at the 1961 Conference owing to the great difficulty experienced by *jus soli* countries in accepting a rule which was diametrically contrary to their domestic law. In the interests of general goodwill and to satisfy both *jus soli* and *jus sanguinis* countries, it would be advisable to follow the precedent of the 1961 Conference and adopt an optional protocol.

61. Mr. VAN HEERSWIJNGHELS (Belgium) said that his delegation had co-sponsored the tree-power amendment (A/CONF.25/C.1/L.164) because an optional protocol seemed to be the best solution, in view of the great diversity of municipal laws on the acquisition of nationality. Moreover, the question was so delicate that it would be better to settle it in *ad hoc* bilateral agreements. He suggested that the three-power amendment might be combined with the joint amendment in document A/CONF.25/C.2/L.123/Rev.1.

62. Mr. van SANTEN (Netherlands) said that his delegation was in favour of deleting the article; it had only submitted its amendment (A/CONF.25/C.2/L.19) because, if the majority of the Committee was in favour of retaining the article, the wording should be improved.

63. Mr. OSIECKI (Poland) observed that the purpose of the convention was to develop and clarify the privileges and immunities of consular officials with a view to facilitating consular relations — not to restrict or delete provisions that were already a part of customary international law. If the children of a consular official were to acquire the nationality of the receiving State solely by reason of their place of birth, such an official's family might consist of children with several different nationalities. Nationality laws based on the *jus soli* were of course useful to certain countries of immigration, but it would be unjust to apply them in the exceptional case of the children of consular officials. It had been argued that the question was governed by private international law; that was true in most cases of acquisition of nationality, but his delegation held that consuls and members of their families were governed by public international law in that matter. He therefore objected to the deletion of the article and to the relegation of the subject to an optional protocol.

64. Mr. ABDELMAGID (United Arab Republic) said his delegation was in favour of the Commission's draft, which did not differentiate between nationality laws based on *jus soli* or *jus sanguinis*, but merely stated that the law of the receiving State could not be imposed on consular officials and their families. Moreover, the draft made it clear that the persons concerned could opt for the nationality of the receiving State if its law permitted. He was therefore opposed to the deletion of the article and the drafting of an optional protocol on the subject.

65. Mr. de MENTHON (France) said he could not support the Commission's draft of article 52, which conflicted with his country's nationality laws. If the article were adopted, France would be obliged to enter a reservation on it. He therefore fully supported the proposals to draft an optional protocol.

66. Mr. MARAMBIO (Chile) also supported the two joint amendments. In view of the differences in municipal law on the subject, the article should be omitted from the convention. His delegation could accept an optional protocol, especially as that method had already been followed at the 1961 Conference.

67. Mr. BARTOŠ (Yugoslavia) said that his delegation preferred the Commission's text, since Yugoslav nationality law was based on *jus sanguinis*. The Netherland's proposal to add the words " without their consent " was acceptable, but he did not think that that delegation's somewhat restrictive re-wording of the Commission's text was appropriate. Out of consideration for a number of delegations, and in order to secure the highest possible number of ratifications of the convention, however, his delegation would be prepared to sacrifice article 52 in favour of an optional protocol on the lines of the one adopted by the Vienna confer-

[2] This decision was taken at the third plenary meeting.

[3] The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.19; Brazil, Canada, Ghana, Japan and the United States of America, A/CONF.25/C.2/L.123/Rev.1; Belgium, Portugal and Spain, A/CONF.25/C.1/L.164. Separate amendments by the United States of America (A/CONF.25/C.2/L.8), Japan (A/CONF.25/C.2/L.86), Canada (A/CONF.25/C.2/L.123) and Brazil (A/CONF.25/C.2/L.164) had been withdrawn in favour of the joint proposal in document A/CONF.25/C.2/L.123/Rev.1.

ence in 1961 and contained in document A/CONF.20/11. Of the two proposals for a protocol, he preferred the three-nation proposal, which specifically stated that the protocol should be similar to the one attached to the 1961 Vienna Convention.

68. Mr. TSHIMBALANGA (Congo, Leopoldville) supported the three-power amendment. Every country was entitled to its own nationality laws and a provision which in any way infringed that right might prevent some States from ratifying the convention.

69. Mr. AVILOV (Union of Soviet Socialist Republics) said he was in favour of the Commission's draft which did not conflict with his country's nationality laws. Nevertheless, in a spirit of co-operation, he would not object to the three-power amendment. He would oppose the Netherlands amendment in principle, however, because it would make the acquisition of nationality subject ot the consent of the receiving State.

70. Mr. DONOWAKI (Japan) said that the Commission's draft conflicted with Japanese nationality laws. To take only one minor example, if a consular employee on the service staff of a consulate in Japan married a Japanese husband and had a child in that country, under the Commission's article that child would not acquire Japanese nationality. His delegation had therefore been in favour of deleting the article, but in a spirit of co-operation it had agreed to sponsor a proposal for an optional protocol similar to the one adopted at the 1961 Vienna Conference.

71. Miss WILLIAMS (Australia) said that, under her country's nationality laws, a child born in Australia automatically acquired Australian nationality, except when the father was the envoy of another State. Since a consular official was not the envoy of a State, his children were subject to Australian nationality laws. Her delegation was therefore in favour of an optional protocol on the subject.

72. Mr. PETRŽELKA (Czechoslovakia) said that his delegation would prefer to retain the Commission's draft of article 52, because the principle it stated was accepted in customary international law. Nevertheless, his delegation realized the difficulties with which some countries were faced and it would not oppose the adoption of an optional protocol similar to that annexed to the 1961 Convention.

73. Mr. van SANTEN (Netherlands) said that his delegation would have preferred to delete the article and to have no optional protocol, because the subject of nationality should not be dealt with in a consular convention. If the majority of the Committee was against deletion, however, and thought that something should be said on the matter, the Netherlands delegation would prefer to take as a basis the Commission's draft with the amendments it had proposed (A/CONF.25/C.2/L.19). The purpose of the first part of his delegation's amendment was to clarify the International Law Commission's draft by referring only to the special cases of residence or birth within the territory of the receiving State, so as to exclude marriage; if that were adopted, the case referred to by the Japanese representative would not arise. The addition of the words " without their consent " had been proposed to emphasize a self-evident rule. The USSR representative seemed to have misunderstood the purpose of that second amendment.

74. Mr. MARESCA (Italy) considered that article 52 had a natural place in a consular convention, since the legal situations of children and spouses of consuls were elements of the general status of those officials; that status would be hopelessly confused if the matter were not settled precisely. A number of practical difficulties could arise if no suitable provision were included in the convention: for instance, if a woman consul in a State whose nationality law was based on the principle that a married woman followed her husband's nationality married a national of the receiving State, she would automatically become a national of that State, and her position on return to her country would be difficult. He thought that article 52 should be retained, but he would support the Netherlands amendment, which clarified the text.

75. On the other hand, some countries might find it difficult to accept the International Law Commission's text, and every effort should be made to avoid compelling countries to make reservations. If it became evident that article 52 had no chance of being adopted, his delegation would take a realistic view and accept the solution of an optional protocol; it would do so without enthusiasm, however, because it considered that such optional instruments were merely destined for oblivion.

76. Mr. HART (United Kingdom) said that his country's nationality laws made it very difficult for it to accept article 52. Although he admitted that both in theory and in practice there was a case in respect of the children of diplomatic agents for asserting the existence of a rule of customary international law on the lines of article 52, there was no similar rule applicable to the children of consular officials. Furthermore, it would indeed be curious to include such an article in the consular convention when it had been omitted from the Convention on Diplomatic Relations. Moreover, the 1961 Conference had shown the great practical difficulty of drafting a suitable article, owing to the wide differences in municipal laws on nationality. His delegation would support the proposals for an optional protocol.

77. Mr. AVILOV (Union of Soviet Socialist Republics) thanked the Netherlands representative for drawing his attention to a misunderstanding which had been due to a translation error in the Russian text of the Netherlands amendment. He could withdraw his objection of principle to the amendment, but still preferred the article as drafted by the Commission.

78. Mr. KEITA (Mali) said that, in view of the delicate nature of the whole question of nationality, the inclusion of article 52 in the convention would delay its ratification. He was therefore in favour of an optional protocol on the subject.

79. The CHAIRMAN invited the Committee to vote on the amendment by Brazil, Canada, Ghana, Japan

and the United States (A/CONF.25/C.2/L.123/Rev.1) in conjunction with the amendment by Belgium, Portugal and Spain (A/CONF.25/C.1/L.164).

The amendments were adopted by 52 votes to 4, with 4 abstentions.

80. The CHAIRMAN said that in consequence of that decision the amendment by the Netherlands (A/CONF.25/C.2/L.19) would not be put to the vote. The drafting committee would be instructed to prepare the optional protocol on acquisition of nationality.

The meeting rose at 12.55 p.m.

THIRTY-SECOND MEETING

Thursday, 28 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 53 (Beginning and end of consular privileges and immunities)

1. The CHAIRMAN invited the Committee to consider article 53 and the amendments to it.[1]

2. Mr. CAMERON (United States of America) introduced his delegation's amendment (A/CONF.25/C.2/L.9) to paragraph 4 of article 53, calling for the deletion from that paragraph of the words " his personal inviolability and ". He said that the meaning of personal inviolability was not clear in the context of paragraph 4. Quoting from the corresponding provision in the Vienna Convention of 1961 (article 39, paragraph 2, last sentence), he noted that it contained no such phrase. Paragraph 4 of article 53 should conform to the 1961 Convention in that regard.

3. Mr. HEPPEL (United Kingdom) withdrew the first of his delegation's amendments (A/CONF.25/C.2/L.137) to article 53. The purpose of the second amendment was to provide that members of the family of a consular official and the members of his private staff should not be eligible for the benefit of privileges and immunities before the consular official himself had become entitled to them as otherwise an absurd situation would arise. The United Kingdom delegation would vote for the United States amendment, but against the Japanese amendment, for it thought that the words which Japan proposed to delete from paragraph 2 should be retained. The United Kingdom delegation considered the Cambodian amendment inadvisable, for it introduced the question of the nationality of the members of the family of a consular official, a point which ought to be dealt with in article 69.

[1] The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.9; Japan, A/CONF.25/C.2/L.87; Cambodia, A/CONF.25/C.2/L.128; United Kingdom, A/CONF.25/C.2/L.137; Greece, A/CONF.25/C.2/L.162/Rev.1; South Africa, A/CONF.25/C.1/L.165.

4. Mr. PLANG (Cambodia) said that the sole purpose of his delegation's amendment (A/CONF.25/C.2/L.128) was to specify that the provisions of paragraph 2 were not applicable to persons who were locally recruited.

5. Mr. DONOWAKI (Japan) said that the purpose of his delegation's amendment (A/CONF.25/C.2/L.87) was to exclude the members of a consular official's private staff from consular privileges and immunities; but since article 48 granted them exemption from dues and taxes on the wages which they received for their services, the Japanese delegation would not press its amendment. It could not vote for the Cambodian amendment, for which article 53 was not the right context.

6. Mr. PAPAS (Greece) said that one could not speak of privileges and immunities in connexion with the members of the family of a member of a consulate, but only of advantages granted to those persons. That also applied to the private staff. The third of the Greek delegation's amendments (A/CONF.25/C.2/L.162/Rev.1), which might be referred to the drafting committee, made that point clear. The second of these amendments was designed to delete words which did not fit into the structure of the convention.

7. Mr. ENDEMANN (South Africa), introducing his delegation's amendment (A/CONF.25/C.1/L.165) to paragraph 3 of article 53, said that it dealt with the case where persons referred to in paragraph 2, having ceased to be members of the household or in the service of a member of a consulate, remained for some time longer in the territory of the receiving State. In that case they would continue to enjoy their privileges and immunities until their departure. In other respects, article 53, as amended by the United States proposal, seemed satisfactory, and the South African delegation would therefore vote against the other amendments.

8. Mr. MARESCA (Italy) said that it was important to note that a member of a diplomatic mission or of a consulate acquired his status from the fact of his admission. Hence, in order that the head of a consular post or a member of a consulate should be able to act in his official capacity, he must have been admitted, definitively or provisionally, on entering the territory of the receiving State. The Italian delegation would therefore have been ready to support the first of the United Kingdom's amendments; it regretted that the United Kingdom delegation had withdrawn that part of its proposal, which the Italian delegation wished to resubmit in its own name.

9. Mr. ALVARADO GARAICOA (Ecuador) said that he supported the Italian representative's views.

10. Mr. BOUZIRI (Tunisia) agreed with the Italian representative that it would be anomalous if a potential consul, on arriving in the receiving State, should be able to enjoy consular privileges and immunities before being admitted by the receiving State. He gathered that the Italian delegation, in resubmitting the first of the United Kingdom's amendments in its own name, intended to retain only the phrase specifying as the time as from which consular privileges and immunities should

be enjoyed the date of the admission or provisional admission of the member of the consulate.

11. The idea underlying the South African amendment was sound and the Tunisian delegation would vote for it as it aptly supplemented article 53. It would also vote for the United States amendment and the Greek amendment, and for the second of the United Kingdom's amendments; but it was unable to support the Cambodian amendment which it thought inexpedient.

12. Mr. USTOR (Hungary) disagreed with the Italian representative. Paragraph 1 of article 53 should be read in the context of the draft convention as a whole, and in particular in the light of articles 19 and 23 as adopted by the Committee. The situation envisaged by the Italian representative could therefore not arise. In any case, the amendment withdrawn by the United Kingdom and resubmitted by Italy was in contradiction with other provisions of the draft convention, and the Hungarian delegation would consequently vote against it. It would also vote against the United States and Greek amendments as it thought that the words it was proposed to delete should be retained.

13. Mr. DONATO (Lebanon) supported the United States and South African amendments, for the reasons already given by previous speakers. With regard to the first of the United Kingdom's amendments, now sponsored by Italy, he suggested that it could be retained if the words " in his recognized official capacity " [ès qualités admises] were inserted.

14. Mr. MARESCA (Italy) said that the remarks by the Tunisian and Hungarian representatives had been very pertinent. He thought that, while it went without saying that a consul could not enjoy consular privileges and immunities before being definitively or provisionally admitted by the receiving State, it would be better to say so. He had no objection to the Lebanese suggestion.

15. Mr. de MENTHON (France) said that the suggestions of the Italian, Tunisian and Lebanese representatives were very interesting. He was prepared to vote for the first of the United Kingdom's amendments now resubmitted by Italy, as modified in accordance with those suggestions.

16. Mr. DE CASTRO (Philippines) said he preferred the International Law Commission's original text. The objection raised by the Italian representative would be pertinent only in very exceptional cases. Any abuse would have very serious consequences. Moreover, there was normally little delay between the time when a duly appointed consular official crossed the frontier and the time when he took up his post. On the other hand, there might be some delay before the receiving State granted him definitive or provisional admission. With regard to paragraph 2, he was unable to support the Greek amendment; but the United Kingdom amendment to paragraph 2 seemed entirely acceptable. He could accept the South African amendment to paragraph 3 and the United States and Greek amendments to paragraph 4.

17. Mr. MARESCA (Italy), speaking on a point of order, said that his amendment related solely to that part of the United Kingdom amendment under which the date of entry would be replaced by the date of definitive or provisional admission. He wished to resubmit only the words " from the date of his admission or provisional admission by the receiving State ".

18. Mr. MOLITOR (Luxembourg) said he was grateful to the Italian delegation for having resubmitted the first of the United Kingdom's amendments. It was right that a consular official should not be entitled to consular privileges and immunities before the receiving State had given its consent. Provision should also be made for the case in which the consul was already in the territory of the receiving State — for instance, an honorary consul who was a national of the receiving State. It would be unreasonable to provide that such persons were entitled to consular privileges and immunities even before the sending State had given its consent. His delegation would therefore support the Italian amendment to paragraph 1 and the United Kingdom amendment to paragraph 2.

19. Mr. TSHIMBALANGA (Congo, Leopoldville) said he had been largely won over to the views of the Italian representative. Nevertheless, he wished to point out that draft article 53 was based on article 39 of the Vienna Convention on Diplomatic Relations; if the relevant phrase in article 53 were deleted, it would be difficult to justify its presence in the 1961 Convention. In his view, it would be better to retain it, out of respect for the Convention and in the interests of harmony.

20. Mr. RUDA (Argentina) agreed. So far as the other proposals were concerned, he supported the amendments submitted by the United States and South Africa.

21. Mr. MARAMBIO (Chile) said that he was unable to support the amendments before the Committee. Paragraph 1 of article 53 should be left as it stood and should be judged in the light of the draft as a whole. Difficulties would arise if the amendments were adopted; for instance, a consular official would not be entitled to customs exemption on his arrival in the territory of the receiving State. Furthermore, article 53 was modelled on article 39 of the Convention on Diplomatic Relations.

22. Mr. SILVEIRA-BARRIOS (Venezuela) expressed his support for the Italian and United States amendments. As he understood it, the text of article 53 would be brought into harmony with the other articles. Privileges and immunities could not be restricted to the senior personnel of the consulate.

23. Mr. PLANG (Cambodia) withdrew his delegation's amendment.

24. Mr. DONATO (Lebanon) said that, having listened to the comments of the Italian representative, he supported the substance of the first United Kingdom amendment. Nevertheless, to facilitate the Committee's work, he was willing to accept the International Law Commission's draft, with the possible addition of the words " in his recognized official capacity " [ès qualités admises].

25. Mr. BOUZIRI (Tunisia) requested that the International Law Commission's text should be voted on in parts.

26. Mr. TORROBA (Spain) said that the Spanish version of the United Kingdom amendment differed from the English and French versions.

27. Mr. SILVEIRA-BARRIOS (Venezuela) said that, while he would have voted for the original United Kingdom amendment, he failed to understand the Italian proposal.

28. Mr. WESTRUP (Sweden) said he would vote for the International Law Commission's draft. Admittedly, there was a risk of fraud and abuse but likewise — and in that respect the risk was greater and more general — the arrival of the notification might be delayed. It was essential that the consul should be properly received at the frontier. He thought there was an incipient tendency in the Committee to complicate the draft text in order to provide against all possible risks. The International Law Commission had certainly weighed them all. The Swedish delegation would not subscribe to that tendency.

29. Mr. USTOR (Hungary) suggested that under rule 42 of the rules of procedure the order of the voting might perhaps be reversed, so that the International Law Commission's draft of article 53 would be voted on first. That would have the advantage, if the article was adopted, of avoiding all the difficulties raised by the amendments.

30. Mr. AVILOV (Union of Soviet Socialist Republics) said he still thought that article 53 as drafted by the International Law Commision was more logical and more complete than any that might result from the various amendments submitted. The Hungarian suggestion was therefore attractive, especially as apparently no serious objection had been raised concerning the substance of article 53. It would also have the advantage of sparing the First Committee the procedural difficulties which had arisen in the Second Committee.

31. The CHAIRMAN said that it was not possible to treat article 53 and the relevant amendments as separate proposals under rule 42 of the rules of procedure. The appropriate rule would be rule 41.

32. Mr. USTOR (Hungary) said that, to save time, the Committee might consider voting on the principle of article 53.

33. Mr. KRISHNA RAO (India) pointed out that article 53 contained various principles. It would be unwise to leave it entirely to the drafting committee to draw up a final text on the basis of the principles adopted.

34. The CHAIRMAN agreed, and put to the vote the amendment submitted by Italy, reproducing the first United Kingdom's amendment (A/CONF.25/C.2/L.137) as orally sub-amended by the representative of Lebanon.

The amendment was rejected by 33 votes to 12, with 20 abstentions.

The third Greek amendment (A/CONF.25/C.2/L.162/Rev.1) was rejected by 48 votes to 2, with 12 abstentions.

The first Greek amendment (A/CONF.25/C.2/L.162/Rev.1) was rejected by 45 votes to 1, with 15 abstentions.

The second United Kingdom amendment (A/CONF.25/C.2/L.137) was adopted by 29 votes to 25, with 8 abstentions.

The South African amendment (A/CONF.25/C.1/L.165) was adopted by 22 votes to 20, with 17 abstentions.

The United States amendment (A/CONF.25/C.2/L.9) and the second Greek amendment (A/CONF.25/C.2/L.162/Rev.1) were adopted by 34 votes to 19, with 10 abstentions.

Article 53 as a whole, as amended, was adopted by 49 votes to none, with 15 abstentions.

Article 55 (Respect for the laws and regulations of the receiving State)

35. The CHAIRMAN invited discussion of article 55, the only amendment to which (A/CONF.25/C.2/L.187) had been submitted by Spain.

36. Mr. de ERICE y O'SEA (Spain) said that the object of his delegation's amendment was to extend the scope of article 55 in order that it would cover all the premises at the consulate's disposal in the same town.

37. In reply to Mr. BARTOŠ (Yugoslavia), he said that his amendment did not affect the first sentence in paragraph 3.

38. Mr. KEVIN (Australia) said that paragraph 3 of article 55 was unnecessary if the meaning of the expression " consular premises " was to be defined elsewhere, which seemed to be the case.

39. Mr. AVILOV (Union of Soviet Socialist Republics) said that paragraph 3 was indispensable as an explanatory provision, but he failed to see in what way the Spanish amendment differed from the International Law Commission's draft.

40. Mr. HEPPEL (United Kingdom) said that the Spanish amendment added some useful particulars. He agreed, however, with the representative of Australia that paragraph 3 of article 55 was perhaps not indispensable if the expression " consular premises " was defined elsewhere in the convention.

41. Mr. KRISHNA RAO (India) likewise agreed with the Australian representative: a definition of " consular premises " should normally be given in article 1. If, however, paragraph 3 was retained, he thought there would be no need for the Spanish amendment.

The Spanish amendment (A/CONF.25/C.2/L.187) was adopted by 31 votes to none, with 28 abstentions.

Article 55, as amended, was adopted unanimously.

The meeting rose at 5.25 p.m.

THIRTY-THIRD MEETING

Friday, 29 March 1963, at 10.45 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 54 (Obligations of third States)

1. The CHAIRMAN drew attention to the amendments submitted to article 54.[1]

2. Mr. WARNOCK (Ireland), introducing the joint amendment (L.174), pointed out that the provision in the Commission's draft of paragraph 1 that members of the family of a consular official should be granted personal inviolability and other immunities when accompanying him or travelling separately to join him or to return to their country would in practice cover such cases as the journeys of the official's children to and from school, and any holidays they might take on the way. Moreover, the third State might be called upon to accord personal inviolability and other immunities to such persons when they were travelling to and from countries with which it had no diplomatic or consular relations. The Belgian and Irish delegations considered that the provision could impose an intolerable burden on a third State in those circumstances, and they had therefore proposed to reduce the facilities to those specified in their amendment. They had also limited the scope of the provision to consular officials and members of their families, in the belief that the obligation of third States should be less onerous in the case of consular officials than in that of diplomatic agents.

3. Mr. SRESHTHAPUTRA (Thailand) said that his delegation had submitted its proposal (L.68) for the addition of the word " official " before the word " correspondence " in paragraph 3, because under paragraph 1 of article 35 (Freedom of communication), which had already been adopted by the Second Committee, the receiving State was obliged to permit and protect the passage of correspondence of the consulate for official purposes only. Moreover, under paragraph 2 of the same article only the official correspondence of the consulate was immune. Under the corresponding provision (article 40, paragraph 3) of the Vienna Convention on Diplomatic Relations the third State was under the obligation to permit and protect official correspondence only. The obligation in article 54, paragraph 3, and in article 65 should be brought into line with those other provisions. In order to expedite proceedings he would have no objection if the Committee should consider it appropriate to refer his delegation's amendment to the drafting committee.

4. Mr. CAMERON (United States of America) withdrew part 2 of his delegation's amendment (L.10) in favour of the United Kingdom amendment (L.138). The purpose of his delegation's remaining amendment was not to reduce the immunities of a consular official under the provisions of the convention, but merely to clarify paragraph 1. The Commission's wording of the last clause of the first sentence of paragraph 1 might be interpreted as an obligation to grant the consular official immunities in excess of those accorded to him in the receiving State under the convention. The United States delegation had therefore specified that the immunities concerned were those " provided for by the other articles of this convention "; it believed that the phrase fully covered personal inviolability within the limits laid down in article 41.

5. Mr. FUJIYAMA (Japan) said that his delegation wished to delete the last part of its amendment (L.88) to paragraph 3, in the light of the Second Committee's decision to retain the reference to the consular courier in article 35, paragraph 5. The International Law Commission had drafted paragraphs 1 and 2 of article 54 on the same lines as article 40 of the Vienna Convention on Diplomatic Relations, but the Japanese delegation did not believe that consular officials should be accorded the same facilities as diplomatic agents when travelling through third States. The extension of such privileges and immunities to consular officials was not a firmly established principle of international law and was not even widely accepted in international practice. In particular, to grant personal inviolability to such officials and members of their families was going much too far. His delegation had submitted its amendment to paragraph 3 in order to bring the provision into line with article 40, paragraph 3, of the Convention on Diplomatic Relations.

6. Mr. HEPPEL (United Kingdom) said that the purpose of his delegation's amendments (L.138) to paragraph 3 was to establish that the standard for the treatment of consular officials in third States was the standard which the receiving State was bound to accord under the convention. There might not seem to be much difference between the words " as are accorded by the receiving State " and the words proposed by his delegation, but in practice the freedom and protection which the receiving State was bound to accord under the Convention would be more easily ascertainable. Similarly, the addition of the words " under this convention " at the end of the second sentence would further clarify the Commission's text.

7. Mr. KESSLER (Poland) said that at the end of the phrase " or making other official journeys " proposed in its amendment (L.141), his delegation wished to add the words " to the sending State ". The purpose of the amendment was to fill a slight gap in the Commission's text. Article 54 as it stood set out the obligations of the third State only in cases where a consular official passed through its territory or was in its territory while proceeding to take up or return to his post or when returning to his own country. The Polish amendment also covered cases in which the consular official

[1] The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.10; Thailand, A/CONF.25/C.2/L.68; Japan, A/CONF.25/C.2/L.88; United Kingdom, A/CONF.25/C.2/L.138; Poland, A/CONF.25/C.2/L.141; Belgium and Ireland, A/CONF.25/C.2/L.174.

was travelling home on official duty; it assumed, of course, that " returning to his own country " meant returning on termination of his functions.

8. Mr. PAPAS (Greece) drew attention to paragraphs 3 and 4 of the commentary on article 39 of the draft articles on diplomatic intercourse and immunities, which referred to the question whether a member of the diplomatic mission who was in the territory of a third State had the right to avail himself of the privileges and immunities to which he was entitled in the receiving State.[2] The Commission had noted that opinions differed and that practice provided no clear guide, and had felt that it should adopt an intermediate position. It had proposed that the diplomatic agent should be accorded inviolability and such other privileges and immunities as might be required to ensure his transit or return. In the case of diplomatic agents, therefore, it might be said that, while there was no established rule to codify, a rule was in process of formation.

9. That did not apply, however, to the situation of consular officials who passed through or were in the territory of a third State. The International Law Commission mentioned no such rule in the commentary on article 54, which thus exceeded the boundaries of even the most liberal codification. Moreover, the article might raise practical difficulties, since third States could not be expected to know the status of all persons passing through their territories. For those reasons, the Greek delegation would support the Belgian and Irish amendment and the Japanese amendment.

10. Mr. de ERICE y O'SHEA (Spain) said that his delegation could not support the addition which the Polish delegation had made to its own amendment. The original text of that amendment covered all official journeys — not only journeys to the sending State, but also those that a consular official might make to other countries in the course of his duties. He therefore requested that the original Polish amendment and the subsequent addition to it should be voted on separately.

11. He could support the United States amendment, but suggested that the word " such " should be replaced by the words " all the ", so as to cover the whole convention.

12. The United Kingdom amendment was extremely important and strengthened the entire legal basis of the convention. It was important to stress that the receiving State was bound by the convention to accord freedom and protection of correspondence. The addition proposed by the United Kingdom delegation at the end of paragraph 3 raised no substantive point and could be referred to the drafting committee.

13. The Spanish delegation could not vote in favour of the first Japanese amendment, because the provision that the third State should not hinder transit through its territory was negative and restrictive. The second Japanese amendment, which coincided with the Thai amendment, was also restrictive and also had no practical value: once the envelope containing the correspondence was sealed, the third State had no means of knowing whether the contents were official or private. The Japanese and Thai delegations might perhaps see fit to withdraw the amendment in order to expedite the Committee's work.

14. The phrase " all the necessary facilities " in the Belgian and Irish amendment was so vague that it might lead to confusion. It should be borne in mind that the convention would be applied mainly by minor local authorities, and provisions relating to privileges and immunities must be stated as clearly as possible.

15. Mr. de MENTHON (France) said he would vote for the joint Belgian and Irish amendment, but would have no objection to the introduction of the original Polish amendment into that text. If the joint amendment were rejected, the French delegation would vote for the United States amendment to paragraph 1 and for the United Kingdom amendment to paragraph 3. The Japanese and Thai proposal to insert the word " official " before " correspondence " in the first sentence of paragraph 3 was unnecessary, since the point was covered by the reference to " other official communications ". He could not support the Japanese amendment to paragraphs 1 and 2, for the reasons given by the Spanish representative.

16. Mr. ALVARADO GARAICOA (Ecuador) agreed with the United States representative that the word " immunities " covered personal inviolability; he could therefore vote for the United States amendment. He also agreed with the Spanish representative that the addition which the Polish delegation had made to its amendment was undesirable; immunities should extend to all official journeys.

17. Mr. PRATT (Israel) said that his delegation was satisfied with the second sentence of paragraph 3 concerning protection for consular couriers and bags. It should be borne in mind, however, that at its 14th meeting the Second Committee had adopted a special provision concerning consular couriers *ad hoc* in article 35. No distinction should be made between consular couriers and consular couriers *ad hoc* where protection in third States was concerned.

18. The CHAIRMAN said that, if paragraph 3 of article 54 were adopted, the drafting committee could take the Second Committee's decision into account.

19. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that, in his delegation's opinion, the International Law Commission had been quite right to provide that the third State should accord to consular officials and members of their families the personal inviolability and other immunities provided for by the convention. He could not vote for the United States amendment, since the omission of the reference to personal inviolability would narrow the scope of the article.

20. His delegation found the first Japanese amendment quite unacceptable; it changed the substance of paragraphs 1 and 2 by depriving consular officials of privileges and immunities and placing them on the same level as consular employees. Similar objections applied to the Belgian and Irish amendment, and his delegation would

[2] See *Yearbook of the International Law Commission, 1958*, vol. II (United Nations publication, Sales No. 58.V.1, vol. II), p. 103.

vote against it. The United Kingdom and Thailand amendments clarified the Commission's draft, and could be referred directly to the drafting committee. The Polish amendment, on the other hand, made good an omission in the Commission's draft, and the Byelorussian delegation would support it.

21. Mr. DE CASTRO (Philippines) said that, on the whole, his delegation preferred the Commission's draft to any of the amendments; he thought, however, that the original Polish amendment would provide for cases not covered by article 54.

22. Mr. DJOUDI (Algeria) said he would support the joint Belgian and Irish amendment because it clarified the text and fell within the general framework of the convention. He approved of the words " necessary facilities " which reflected a spirit of courtesy to consular officials who, juridically speaking, were connected only with the receiving State, which alone was bound to accord them the privileges and immunities expressly provided in the convention. Moreover, the amendment summarized the provisions of paragraph 2 of the commentary and included the idea expressed in the Polish amendment. He agreed with the French representative that the amendment submitted by Thailand was unnecessary.

23. Mr. CHIN (Republic of Korea) said he would support the United States amendment to paragraph 1 and the United Kingdom amendment to paragraph 3, which would both bring the article closer to international practice. He would also support the Polish amendment in its original form.

24. Mr. KOCMAN (Czechoslovakia) considered that the obligations of third States in regard to personal inviolability should be similar to the obligations of the receiving State. Article 40 of the Convention on Diplomatic Relations was in conformity with the practice of the majority of States and also with the spirit of the convention under discussion. The exercise of consular relations would be impaired if third States did not accord consular officials the immunities and facilities provided for in the Commission's draft. His delegation could therefore not support the United States, Japanese or joint amendments, which were contrary to those principles, but it would vote for the Polish and United Kingdom amendments.

25. Mr. HEPPEL (United Kingdom) supported the United States amendment to paragraph 1. The proposed change of wording was very necessary, since the provisions of that paragraph covered a wide range of persons whose privileges and immunities varied considerably. For example, the provisions of article 41 on personal inviolability did not apply to members of the family of a consular official; hence the wording of paragraph 1 as it stood might be misleading. He also supported the proposal to introduce the word " official " before the word " correspondence " in paragraph 3, though the idea was already implied in the text. His delegation could not support the first Japanese amendment, however, which appeared to reduce the status of heads of consular post unnecessarily, while they were in transit through a third State. In particular, the purely negative expression " shall not hinder the transit " was not strong enough.

26. As to the joint amendment submitted by Belgium and Ireland, his delegation appreciated its intention, but found the wording less satisfactory than that of paragraphs 1 and 2 of the International Law Commission's draft. The amendment made no provision at all for consular employees and their families. Furthermore, the expression " passing through or in the territory of a third State " was much too wide; it would include persons remaining in a third State for some time.

27. The situation envisaged in the Polish amendment was, he thought, already covered by the words " returning to his own country ", which did not necessarily imply final return on completion of a mission. He could accept the addition of the words " to the sending State ", because official journeys by consuls to third countries were rare and did not justify the only special provision in the convention.

28. Mr. CRISTESCU (Romania) opposed the amendments of the United States and Japan and the joint amendment submitted by Belgium and Ireland, because they would reduce the immunities of consular officials in third States and thereby create difficulties for the performance of consular functions. He strongly supported the draft of article 54, as clarified by the Polish amendment.

29. Mr. FUJIYAMA (Japan) said that in order to expedite the work of the Committee he would withdraw his amendment in favour of that submitted by Belgium and Ireland, on condition that the sponsors amended their text to cover consular employees too, as suggested by the United Kingdom representative.

30. The CHAIRMAN said that the sponsors of the joint amendment had agreed to do so.

31. Mr. DADZIE (Ghana) agreed with the Spanish representative in supporting the original text of the Polish amendment, the United States amendment with the substitution of the words " all the " for " such ", and the United Kingdom amendment. He was opposed to the joint amendment by Belgium and Ireland.

32. Mr. SRESHTHAPUTRA (Thailand), replying to the representative of Spain, said that he was unable to agree with the reasons advanced by that representative in support of his idea that the correspondence of a non-official nature of the consulate should also receive protection under the article, for the consular privileges and immunities derived from consular functions. With regard to the argument of the Spanish representative that it would be difficult to see from the outside which correspondence of the consulate was official and which was not, he said that the difficulty could be overcome easily if the consulate would co-operate by putting a rubber stamp indicating the official nature of the correspondence in question. Moreover, he could not agree that diplomats used private correspondence less than consuls. He therefore asked that a vote be taken on his delegation's proposal for inserting the word "official".

As to the other amendments to the article, he said that his delegation would support the amendment to paragraph 1 submitted by the United States and the amendment to paragraph 3 submitted by the United Kingdom.

33. Mr. PAPAS (Greece), while supporting the joint amendment, said that it would have been preferable to specify in the text that consular officials must be treated with all the respect due to their official status.

34. Mr. CAMERON (United States of America) accepted the Spanish suggestion that the words " such immunities " in his amendment should be replaced by the words " all immunities ". The purpose of his amendment was to make it clear that all immunities, including inviolability where applicable, must be granted to the persons concerned while in transit. The wording of paragraph 1 as it stood could be construed as granting inviolability under the terms of article 54 itself.

35. Mr. DEGEFU (Ethiopia) supported the United States and Polish amendments with the changes suggested by the Spanish representative. He was not in favour of the United Kingdom amendment to paragraph 3 and preferred the original draft of that paragraph.

36. His delegation found the joint amendment acceptable in principle, provided that the amendments submitted by the United States and Poland were incorporated in it. If the joint amendment were not adopted in that form, his delegation would support the retention of article 54 as drafted by the International Law Commission.

37. Mr. BREWER (Liberia) said that he was in favour of introducing the word " official " before the word " correspondence " in paragraph 3. His delegation would vote against the United States amendment; it had voted against a somewhat similar proposal to delete a reference to personal inviolability from article 53. He was opposed to the Polish amendment, because the question of special missions was still under study by the International Law Commission.

38. Mr. SASRADIPOERA (Indonesia) favoured the Commission's draft of article 54, subject only to the Polish amendment.

39. Mr. HERNDL (Austria) noted that reference had been made to the presence of consular officials at the conference as members of delegations, in support of the proposal to include the words " or making other official journeys " in paragraph 1. Under the agreement between the United Nations and the Federal Government of Austria on arrangements for the Vienna Conference on Consular Relations, the Austrian Government accorded to representatives attending the Conference the same privileges and immunities as were accorded to representatives to the International Atomic Energy Agency under the Headquarters Agreement between the Republic of Austria and the IAEA. Members of delegations thus enjoyed those privileges and immunities in their capacity as representatives at the Conference, regardless of whether they were consular officers or not.

40. The CHAIRMAN thanked the Austrian representative for his explanation and said that all representatives were very well satisfied with all the courtesies and privileges extended to them by the Austrian Government.

41. Mr. WESTRUP (Sweden) said that, as a matter of principle, once the contracting parties to the future convention on consular relations agreed to grant certain privileges as receiving States, they should grant the same privileges as transit States. It had been pointed out by the representative of Greece that the provisions of article 54 went beyond mere codification of existing international law. The Conference had been convened, however, not only to codify international law but also to contribute to its progressive development. Generally speaking, his delegation preferred the International Law Commission's draft, with the useful amendments proposed by the United Kingdom and Poland.

42. Mr. TSHIMBALANGA (Congo, Leopoldville) emphasized the fact that the newly independent States needed provisions of the broadest possible character, which provided a flexible framework for their development. His delegation would support the amendments which improved the text, such as those submitted by the United States of America and the United Kingdom and would oppose, or abstain from voting on, the others.

43. Mr. LEE (Canada) pointed out that the question of special missions would be considered by the International Law Commission at its next session. Attendance at Conferences would be covered by the provisions which the Commission would adopt on *ad hoc* diplomacy. As to other official journeys by consuls, the Commission might perhaps have to consider the question of *ad hoc* consular activities at some future time. His delegation accordingly considered it wiser not to take a decision on the Spanish proposal relating to the original Polish amendment, but to leave the matter to the International Law Commission.

44. The CHAIRMAN put to the vote the joint amendment submitted by Belgium and Ireland, the opening words of which had been altered to read: " If consular officials and employees or members of their families . . ."

The joint amendment (A/CONF/C.2/L.174), as so amended, was rejected by 35 votes to 15, with 13 abstentions.

45. The CHAIRMAN said that as requested by the Spanish representative, he would put to the vote the original Polish amendment adding the words " or making other officials journeys " in paragraph 1.

The amendment (A/CONF.25/C.2/L.141) was adopted by 41 votes to 10, with 11 abstentions.

46. Mr. KESSLER (Poland) said that he would not press for a vote on the words " to the sending State " which he had added to his original amendment.

47. The CHAIRMAN put to the vote the United States amendment to paragraph 1 as amended by its sponsor, the words " such immunities " being replaced by " all immunities ".

The United States amendment (A/CONF.25/C.2/L.10) to paragraph 1, as so amended, was adopted by 34 votes to 16, with 12 abstentions.

The United Kingdom amendment to paragraph 3 (A/CONF.25/C.2/L.138) was adopted by 53 votes to 1, with 12 abstentions.

The amendment by Thailand to paragraph 3 (A/CONF.25/C.2/L.68) was adopted by 24 votes to 19, with 21 abstentions.

48. The CHAIRMAN noted that the adoption of the amendment submitted by Thailand covered paragraph 2 of the Japanese amendment (A/CONF.25/C.2/L.88) and invited the Committee to vote on article 54 as a whole, as amended.

Article 54, as amended, was adopted as a whole by 59 votes to none, with 7 abstentions.

49. Mr. DADZIE (Ghana) explained that he had voted in favour of the United States amendment to paragraph 1 although he had doubts about the proposed wording, the meaning of which seemed to be conveyed by the original draft of the article. He suggested that the matter should be referred to the drafting committee.

50. Mr. CAMERON (United States of America) said that he had pressed for a vote on his amendment because he believed that the change of wording was necessary. As he was a member of the drafting committee he would, however, be glad to examine the matter.

51. Mr. BARTOŠ (Yugoslavia) explained that he had voted for article 54 as a whole because it retained, in substance, the system adopted by the International Law Commission, even though he did not approve of some of the amendments made.

52. Mr. ABDELMAGID (United Arab Republic) said that his delegation had abstained from voting on article 54 as a whole.

The meeting rose at 12.55 p.m.

THIRTY-FOURTH MEETING

Wednesday, 3 April 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

Tribute to the memory of Mr. Quinim Pholsena, Minister for Foreign Affairs of Laos

On the proposal of the Chairman, the Committee observed a minute of silence in tribute to the memory of Mr. Quinim Pholsena, Minister for Foreign Affairs of Laos.

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 1 (Definitions)

1. The CHAIRMAN announced that, at the 4th plenary meeting, it had been decided, on the recommendation of the General Committee, that the text of article 1 prepared by the drafting committee (A/CONF.25/C.1/L.166) should be referred to the First Committee.

2. Mr. WESTRUP (Sweden) said that his delegation had received instructions from the Swedish Government to make a formal statement relating to a number of the draft articles. It had been decided to deliver that statement in connexion with the article containing the definitions.

3. The expression " members of their family ", generally qualified by the phrase " forming part of their households " was used in certain articles of the draft. Except for the general statement in paragraph 3 of the commentary on article 48 (Exemption from taxation), the Commission had made no attempt to give any definition of that expression, although the French phrase " faisant partie de leur ménage " used in the 1961 Convention had now been replaced by the words " vivant à leur foyer ", which were perhaps a little more specific.

4. During the 1961 Conference, at the 6th meeting of the Committee of the Whole, the United States delegation had tried to introduce a sub-paragraph defining members of the family as the wife and minor or otherwise dependent children of the person concerned and any other dependants who might be classed as members of the family by special agreement. When that proposal had been withdrawn, the Swedish delegation had carried on the endeavour to get some kind of definition adopted. The reason for its insistence had been that Swedish tax laws limited exemption to diplomatic agents, their wives and their children below a specified age. The Swedish delegation's proposals had been opposed by an overwhelming majority, however, and it had not pressed them.

5. The Swedish delegation to the present conference had been informed that its government could relax that somewhat rigid attitude and would be able to accept the international obligations in question. He wished to make it perfectly clear, however, that neither the 1961 Convention nor the draft before the Conference contained any definition of members of the families of consular staff which could in any way prevent States from deciding for themselves what privileges and immunities they considered equitable for the persons concerned. It was true that the last paragraph of the preamble adopted by the First Committee stated that the rules of customary international law should continue to govern matters not expressly regulated by the provisions of the convention, but that clause was not applicable, since the discussions in the International Law Commission and at both the Vienna Conferences led to the conclusion that there were no rules of customary international law on the matter in question.[1] The Commission itself had not claimed that the expression " forming part of their households " was an objective criterion; the status of the persons concerned was not defined by that expression, since there was no limit to the number of persons who could form part of a large household.

[1] For a discussion of this question, see the summary record of the 613th meeting of the International Law Commission, paras. 56 to 93.

6. Mr. KRISHNA RAO (India), speaking as the chairman of the drafting committee, recalled that a proposal had been made that the drafting committee should consider a definition of members of the family of consular staff. The drafting committee had decided not to consider the question, because no specific definition had been submitted; it would, of course, be prepared to take up any written proposal for a definition which might be approved by the First Committee.

7. The CHAIRMAN drew attention to the text of article 1 recommended by the drafting committee (A/CONF.25/C.1/L.166) and, in particular, to the footnote to paragraph 1 (*j*) suggesting that decisions on the amendments to that sub-paragraph submitted by Brazil and India, and by the Federal Republic of Germany, Japan, and Nigeria should be taken by the First Committee.

8. He invited the Committee to consider that text sub-paragraph by sub-paragraph.

The opening words of paragraph 1 were adopted.

Sub-paragraph (a)

9. Mr. SILVEIRA-BARRIOS (Venezuela) noted with satisfaction that the drafting committee's text of sub-paragraph (*a*) corresponded to the amendment submitted by his delegation.

Sub-paragraph (a) was adopted.

Sub-paragraph (b)

10. Mr. MARAMBIO (Chile) said he preferred the text of the amendment submitted by Venezuela to the drafting committee, because consular functions were exercised by consular officials, not by consular posts.[2]

11. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that reference to the exercise of consular functions within the competence of a consular official, as proposed in the Venezuelan amendment, would cause confusion in cases where more than one consular official exercised such functions in a consular district. The drafting committee had decided that the Commission's text was more precise.

Sub-paragraph (b) was adopted.

Sub-paragraph (c)

Sub-paragraph (c) was adopted.

Sub-paragraph (d)

12. Mr. RABASA (Mexico) thought that the words " en calidad de tal " in the Spanish text should be replaced by the words " con éste carácter ", which would be closer to the English and French texts.

13. Mr. de ERICE y O'SHEA (Spain) suggested that the Spanish-speaking members of the drafting committee should confer with the Mexican representative on the wording of the text.

14. Mr. SILVEIRA-BARRIOS (Venezuela) wondered why the words " including the head of a consular post ", which seemed to be self-evident, had been retained. His delegation thought it much more necessary to specify that the person concerned must have been duly admitted by the receiving State.

15. Mr. KOCMAN (Czechoslovakia) thought that the addition of the words " in a consulate " at the end of the sub-paragraph would clarify the text.

16. Mr. KRISHNA RAO (India), chairman of the drafting committee, explained that the drafting committee had decided against the words proposed by the Czechoslovak representative for two reasons: first, they were not necessary; and secondly, if they were added, the text would not cover cases in which a diplomatic agent exercised consular functions while acting as a member of a diplomatic mission. The words " in that capacity " had been inserted to cover amendments which stressed the criterion of admission by the receiving State.

17. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that the purpose of his delegation's amendment in the drafting committee had been to define the term " consular officer " more fully.[3] The definition should clearly establish that a consular officer must be both appointed by the sending State and duly admitted by the receiving State.

Sub-paragraph (d) was adopted.

Sub-paragraph (e)

18. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said he wished to submit an oral amendment to sub-paragraph (*e*). He proposed that the word " executive " should be inserted after the word " administrative ", because, in the consular services of a number of countries, including his own, consular employees were sometimes entrusted with executive functions, such as issuing visas and other documents, which could not be described as administrative or technical.

19. Miss ROESAD (Indonesia) said that her delegation was perfectly satisfied with the drafting committee's text and saw no reason for granting executive powers to consular employees.

20. Mr. KRISHNA RAO (India) agreed with the Indonesian representative. A consular employee could not perform executive functions; moreover, the issuing of visas, mentioned by the representative of the Federal Republic of Germany, was an administrative function.

The oral amendment submitted by the Federal Republic of Germany was rejected by 33 votes to 10, with 20 abstentions.

[2] The Venezuelan amendment had proposed the following wording: " ' Consular district ' means the area assigned to a consular official for the exercise of the functions within his competence."

[3] The Federal Republic of Germany had proposed in the drafting Committee that sub-paragraph (*d*) should be amended to read " consular officer means any person duly appointed by the sending State, whether in the capacity of a career consular officer or of an honorary consular officer and admitted as such by the receiving State to the exercise of consular functions."

21. Mr. WARNOCK (Ireland) said he had voted for the amendment because, although his delegation could accept the drafting committee's text, in the Irish consular service a vice-consul was an administrative officer.

22. Mr. DADZIE (Ghana) said that, although he agreed with the idea of the oral amendment, he believed that the reference to administrative functions covered executive functions.

23. Mr. BARTOŠ (Yugoslavia) said he had voted against the amendment because the introduction of the word " executive " was contrary to the spirit of a convention on consular relations. No official could exercise executive functions in a foreign State; executive organs had the power to execute legal acts by the use of force, and it would be most undesirable to introduce the idea that consulates might have that power.

Sub-paragraph (e) was adopted.

Sub-paragraph (f)

Sub-paragraph (f) was adopted.[4]

Sub-paragraph (g)

24. Mr. PAPAS (Greece) thought that sub-paragraph (g) practically duplicated sub-paragraph (h), since the only difference between the two definitions was the inclusion of the phrase " other than the head of a consular post " in sub-paragraph (h). That phrase was redundant, since special provisions relating to the head of post were made wherever necessary in the convention. He therefore proposed the deletion of sub-paragraph (g).

The proposal was rejected by 49 votes to 2, with 8 abstentions.

25. Mr. SILVEIRA-BARRIOS (Venezuela) said that his delegation had intended to vote in favour of the Greek proposal, because it had submitted a similar amendment to the drafting committee.

Sub-paragraph (g) was adopted.

Sub-paragraph (h)

26. Mr. PAPAS (Greece) proposed that the sub-paragraph be deleted.

27. Mr. EVANS (United Kingdom) observed that a comma had been omitted after the words " consular officers " in the English text. That omission entirely changed the meaning.

The Greek proposal was rejected by 55 votes to 1, with 9 abstentions.

28. Mr. MUÑOZ MORATORIO (Uruguay) said that the Spanish text of sub-paragraph (h) gave rise to some problems. It might be better to omit the comma after the words " los funcionarios consulares " and to put a semi-colon instead of a comma after the words " salvo el jefe de oficina consular ".

29. Mr. de ERICE y O'SHEA (Spain) said that the Spanish-speaking members of the drafting committee agreed to that change.

30. Mr. DADZIE (Ghana) said he had voted against the Greek proposal because he could not agree that the two sub-paragraphs duplicated each other.

Sub-paragraph (h) was adopted.

Sub-paragraph (i)

31. Mr. PAPAS (Greece) proposed that the words " member of the consular post " should be replaced by the words " consular officer ", in order to limit the number of persons enjoying the privileges and immunities in question.

32. Mr. DADZIE (Ghana) thought that the words " and who is not an employee of the sending State " were inappropriate, since in modern consular practice members of the private staff were sometimes employees of the sending State.

33. Miss ROESAD (Indonesia) agreed with the representative of Ghana and asked whether the chairman of the drafting committee could explain why those words had been added.

34. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that the purpose of the addition, which had been suggested by the Belgian delegation, had been to differentiate between persons in the private service of a member of the consulate and persons employed in the domestic service of a consular post, who were referred to in sub-paragraph (f). The same words had been included in the corresponding definition in article 1 (h) of the Convention on Diplomatic Relations.

35. Mr. CAMERON (United States of America) said his delegation felt strongly that the last phrase of the sub-paragraph should be retained. The wording did not exclude the possibility of government employment of persons in private service, but a distinction must be made between persons employed by the sending State and persons employed privately by consular officials.

36. Mr. van SANTEN (Netherlands), supported by Mr. de MENTHON (France) and Mr. VAN HEERSWIJNGHELS (Belgium), suggested that in the French text the words " qui n'est pas employée de l'Etat d'envoi " should be replaced by the words " qui n'est pas un employé de l'Etat d'envoi ".

37. Miss ROESAD (Indonesia) formally proposed the deletion of the words " and who is not an employee of the sending State ".

38. Mr. van SANTEN (Netherlands) thought it unnecessary to add the condition that a member of the private staff must not be an employee of the sending State. In any case, the sub-paragraph did not seem to cover the case of a person who was both exclusively in the private service of a member of the consular post and also an employee of the sending State.

39. Mr. KRISHNA RAO (India), chairman of the drafting committee, explained that the reference to

[4] For a further discussion of sub-paragraph (f), see the summary record of the thirty-fifth meeting, paras. 36 to 42.

exclusive employment had been included to prevent part-time employees from enjoying privileges and immunities. The category of persons referred to by the Netherlands representative was covered by the definition in sub-paragraph (*g*).

40. Mr. CAMERON (United States of America) fully endorsed the explanation given by the chairman of the drafting committee and pointed out that the idea of two separate definitions had originated in the International Law Commission itself.

41. Mr. BARTOŠ (Yugoslavia) maintained that there was no contradiction between sub-paragraphs (*f*) and (*i*). A number of governments employed persons at their consular posts who were assigned to the domestic service of certain officials. The drafting committee had therefore been right in distinguishing between persons who were in contractual service with an official and those who were employees of the sending State.

42. Mr. van SANTEN (Netherlands) and Mr. MUÑOZ MORATORIO (Uruguay) thought it still was not clear whether persons employed exclusively in the private service of a member of the consular post and who were also employees of the sending State were covered by sub-paragraph (*f*).

43. Mr. DONATO (Lebanon) pointed out that sub-paragraph (*f*) covered all persons employed in the domestic service of a consular post whether or not they were employed by the sending State. The best solution might be to replace the last phrase of sub-paragraph (*i*) by the words " without necessarily being an employee of the sending State ".

44. Mr. CAMERON (United States of America) thought it was quite clear that persons who were employed by the sending State and were assigned to the private service of a consular officer would be members of the service staff, and not members of the private staff. The concern expressed by the Netherlands and Uruguayan representatives seemed unnecessary.

45. Mr. EL KOHEN (Morocco) said the discussion had shown that the purpose of the last phrase of sub-paragraph (*i*) was far from clear. The Committee should therefore decide either to delete the phrase, as the Indonesian representative had proposed, or to refer it back to the drafting committee for clarification.

46. Mr. BOUZIRI (Tunisia) agreed with the Netherlands and Uruguayan representatives that a certain category of persons was not covered by the definition in sub-paragraph (*i*). He suggested that the Committee should vote on the principle that that category was not covered; in the event of an affirmative vote, the drafting committee might be instructed to make good the omission.

47. Mr. KRISHNA RAO (India), chairman of the drafting committee, asked representatives who believed that a category of persons had been omitted from the article to submit a definition in writing, in order to assist the drafting committee.

48. The CHAIRMAN invited the Committee to vote on the Indonesian proposal to delete the last phrase of sub-paragraph (*i*).

The proposal was rejected by 33 votes to 17, with 14 abstentions.

49. Mr. ABDELMAGID (United Arab Republic) suggested that the order of sub-paragraphs (*f*), (*g*) and (*h*) should be reversed. That would clarify the relationship between sub-paragraphs (*f*) and (*i*); moreover, it was the order adopted by the International Law Commission and in the corresponding article of the draft on diplomatic relations.

50. Mr. KRISHNA RAO (India), chairman of the drafting committee, explained that the drafting committee had changed the order used by the International Law Commission because sub-paragraphs (*d*), (*e*) and (*f*) defined consular officers, consular employees and members of the service staff, who were referred to immediately afterwards in sub-paragraph (*g*) as members of the consular post.

51. Mr. van SANTEN (Netherlands) said that the position of persons who were employed exclusively in the private service of a member of the consular post and who were employees of the sending State might be clarified by adding the words " or of a member of the consular post who is an employee of the sending State " at the end of sub-paragraph (*f*). He hoped that it would be possible to revert to that sub-paragraph, although it had already been adopted. The vote on the Indonesian proposal might lead to the conclusion that the Committee believed that the category of persons in question was covered by sub-paragraph (*f*); he was not sure whether that was in fact the case, however, in view of the Tunisian representative's suggestion.

52. The CHAIRMAN invited the Committee to vote on the Lebanese proposal to replace the last phrase by words " without necessarily being an employee of the sending State ".

The proposal was rejected by 26 votes to 16, with 21 abstentions.

Sub-paragraph (i) was adopted by 48 votes to 3, with 13 abstentions.

53. Mr. van SANTEN (Netherlands) said that, since the Lebanese proposal had been rejected, he felt obliged to submit to the drafting committee, as a formal amendment, the suggestion he had made before the vote.

54. The CHAIRMAN suggested that the two-thirds majority rule for the reconsideration of proposals should be waived in the case of the Netherlands amendment to paragraph 1 (*f*).

It was so agreed.[5]

[5] For the Netherlands proposal, see document A/CONF.25/C.1/L.167. Sub-paragraph (*f*) was further discussed at the thirty-fifth meeting (see paras. 36 to 42 of the summary record of that meeting).

Sub-paragraph (j)

55. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that the amendment submitted by his delegation to the drafting committee was similar to those of Japan and Nigeria.[6] An extension of the definition of consular premises to include the residence of the head of consular post would bring it into line with the corresponding definition in article 1, sub-paragraph (*i*), of the Vienna Convention on Diplomatic Relations. His government owned or rented many buildings abroad for use as residences by its consuls. Many foreign States owned premises in the Federal Republic of Germany and used them for the same purpose; they were granted full exemption from taxation. He urged the adoption of the proposed rule, which would contribute to the development of international law.

56. Mr. DONOWAKI (Japan) said that such an extension of the definition was necessary in practice, in order to provide for exemption from taxation. He pointed out that when, at its 31st meeting, the Second Committee had adopted paragraph 1 (*b*) of article 48, it had done so subject to the provisions of article 31 on the exemption of consular premises from taxation. It was all the more necessary to exempt the residence of the head of post from taxation because it was becoming increasingly common for the consulate and the consul's residence to be in the same building.

57. Mr. MIRANDA e SILVA (Brazil) said that the joint amendment submitted to the drafting committee by Brazil and India, inserting the word " exclusively " before the words " for the purposes of the consular post ", would make it possible to simplify the wording of articles 30, 58 and 59. All those articles referred to premises used exclusively for consular purposes. The amendment would also help to prevent abuses in the case of consulates headed by honorary consuls, in which consular functions played a secondary part.

58. The proposals to extend the definition to cover a consul's residence should not be entertained by the Committee, because that would mean reconsidering the Second Committee's decision at its 9th meeting, to reject an amendment to article 30 (A/CONF.25/C.2/L.24) submitted by Spain, extending the inviolability of consular premises to the residence of the head of consular post.

59. Mr. de ERICE y O'SHEA (Spain) said that his amendment to article 30 had not been adopted by the Second Committee, because that Committee had wished to leave open the question of the definition of " consular premises " in article 1 (*j*). There had been no intention of the part of the Second Committee to exclude the residence of the head of consular post from inviolability. In fact, extension of the definition of consular premises to cover the residence of a career consular officer who was head of post was vital to the performance of consular functions. It was the only appropriate way to ensure the inviolability of his residence, without which his personal inviolability would be illusory. Such extension was also necessary in view of the provisions of article 32 on the inviolability of consular archives, because some of the archives might well be kept at the residence of the head of post. The same was true of the provisions adopted as paragraph 4 of article 30, on the immunity of the means of transport of the consulate from requisition.

60. He appealed to the Committee to take into consideration the position of small countries such as Spain, which could not afford to acquire large premises for their consulates. Such countries were obliged to rent an office near the centre of any city where they had a consulate, and a separate residence for the head of consular post. The provisions of the convention on consular relations would be applied by minor local officials, generally far away from the capital. The head of consular post therefore needed protection from possible harassment even more than the head of a diplomatic mission.

61. Mr. DADZIE (Ghana) said he would support the amendment submitted by Brazil and India on the understanding that it would exclude premises used for other than consular purposes, but would not exclude the residence of the head of post. He fully supported the broader definition of consul premises, for the reasons given by the Spanish representative. It would be paradoxical not to protect the head of consular post in his own home. The proposed extension of the definition would assist him in the performance of his consular functions.

62. Mr. EVANS (United Kingdom) supported the amendment by Brazil and India, which would make it clear that the privileges and immunities granted by the convention were extended only to buildings or parts of buildings used exclusively for the purposes of the consular post. On the other hand, he strongly opposed the proposals for a broader definition of " consular premises ". Those proposals could not be adopted, if the Committee were to abide by the decision taken by the Second Committee on article 30, paragraph 2. The first sentence of that paragraph provided protection for " that part of the consular premises which is used exclusively for the purpose of the work of the consulate ". That wording was clearly intended to exclude the residence of the head of consular post.

63. He drew attention to the statement in paragraph 9 of the International Law Commission's commentary on article 30 that some bilateral consular conventions even recognized the inviolability of the consul's residence. The commentary added that " The municipal law of some (though of very few) countries also recognizes the inviolability of the consul's residence ". It was thus clear that the proposed broader definition would not reflect existing customary international law or the contemporary practice of States. It would be an innovation, and one for which his delegation saw no justification. The fact that article 1 (*i*) of the Vienna Convention on Diplomatic Relations defined the premises of a diplomatic mission as " including the residence of the head of the mission " was not a valid argument for extending the definition of consular premises. The head of a diplomatic mission enjoyed a traditional personal

[6] In the amendment by the Federal Republic of Germany, it had been proposed to add the words " including the residence of the head of consular post " at the end of sub-paragraph (*j*). The amendments by Japan and Nigeria were to the same effect.

inviolability and immunity; the inviolability of his residence could be said to be part of that personal inviolability. A consul, on the other hand, enjoyed only a limited measure of inviolability. Moreover, the head of a diplomatic mission normally held the rank of ambassador or minister plenipotentiary, whereas the head of a consular post might well be a vice-consul or a consular agent and it would be quite inappropriate to grant inviolability to the residence of a person of that rank.

64. In reply to the arguments put forward by the Spanish representative, he pointed out that the head of consular post carried with him, wherever he went, the limited measure of personal inviolability he enjoyed; he would therefore retain that inviolability in his residence, without it being included in the definition of consular premises. The same argument applied to the inviolability of consular archives. Article 32 laid down that those archives were inviolable " at any time and wherever they may be "; they would therefore retain their inviolability in the consul's residence, even if that residence were not inviolable. He stressed the fact that the proposed broadening of the definition of consular premises would make it more difficult for many governments to ratify the convention.

65. Mr. BINDSCHEDLER (Switzerland) supported the amendment by Brazil and India, which would usefully clarify the definition by drawing a clear distinction between consular premises properly so called, which enjoyed special protection, and other premises used by the members of the consulate.

66. He was against extending the definition of consular premises in the manner proposed, for the same reasons as the United Kingdom representative. Under customary international law, a consular official enjoyed only limited protection, extended to him solely for the exercise of his functions. In addition, the consular archives were inviolable. Existing international law went no further, however, and the proposed rule was thus an innovation. Of course, the Conference could draw up a new rule, but it should have some good reason for doing so. For his part, he did not believe that the proposed broadeninf of the definition of consular premises would be a step forward in the development of international law.

67. No valid analogy could be drawn between the head of a consular post and the head of a diplomatic mission. The tasks they performed were entirely different. The head of a diplomatic mission was the official representative of the sending State; since his functions were of a much more delicate nature than those performed by a consular official, it was necessary that inviolability should extend not only to his person but to his residence as well.

68. Experience had shown that the existing rules of international law were sufficient to safeguard the exercise of consular functions and that it was not at all necessary to extend the protection of consular premises to the consul's residence. Of course, the receiving State was always free to extend either unilaterally, or on a basis of reciprocity, a greater measure of inviolability than that required by international law.

69. In recent years, with the expansion of diplomatic missions and consular posts, and with the growth of international organizations, the number of persons enjoying privileges and immunities had greatly increased. Privileges and immunities derogated from the sovereignty of the receiving State and were at variance with the principle of equality before the law; hence they should not be extended without serious grounds and his delegation would oppose the proposed innovation, which might lead to abuses.

70. Mr. DONATO (Lebanon) supported the amendment submitted by Brazil and India. As to the proposals to broaden the definition of consular premises, he noted that the Spanish representative had assumed that only career consular officers in charge of a consular post would be covered. If that view were shared by the sponsors of the proposals he could support them; otherwise, he would have to abstain from voting.

71. Mr. de MENTHON (France) said that, while he favoured the amendment submitted by Brazil and India, he could not support the proposals to broaden the definition. He agreed with the Brazilian representative that adoption of the broader definition would conflict with the Second Committee's decision on article 30 — a decision which had been taken in the light of the definition of consular premises formulated by the International Law Commission, which did not include the residence of the head of post. The proposed broadening of the definition would have the effect of extending to the consul's residence not only inviolability (article 30), but also exemption from taxation (article 31), which would be going much too far. A consul should not be given the same status as an ambassador.

72. Another argument against the broader definition was that, if it were adopted, the head of a consular post would enjoy inviolability and exemption from taxation, whereas the head of the consular section of a diplomatic mission would not. Such a situation would be paradoxical, because the head of such a consular section generally held a higher rank than the head of a consular post.

The meeting rose at 6.5 p.m.

THIRTY-FIFTH MEETING

Thursday, 4 April 1963, at 10.35 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 1 (Definitions) (*continued*)

Sub-paragraph (*j*) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the text of article 1, sub-paragraph (*j*), as submitted by the drafting committee (A/CONF.25/C.1/L.166).

2. Mr. MEYER-LINDENBERG (Federal Republic of Germany), replying to a question put at the previous meeting by the Lebanese representative, confirmed that it was the intention of the sponsors of the amendments to sub-paragraph (*j*) to extend the expression " consular premises " to the residence of a career head of consular post.[1]

3. Mr. FUJIYAMA (Japan) said that the intention of Japan in including the residence of the head of consular post under consular premises was to secure for that residence the tax exemption provided in article 31, which was in accordance with international practice. He confirmed that his delegation accepted the Lebanese representative's suggestion.

4. Mr. MIRANDA e SILVA (Brazil) said that the purpose of the amendment submitted by Brazil and India was to ensure that " consular premises " included only those parts of the buildings and land used exclusively for the purposes of the consulate. His delegation was not opposed to the German, Japanese and Nigerian amendments, but it wished to point out that that question had already been decided by the Second Committee.

5. The CHAIRMAN pointed out that the Second Committee had not dealt with the question of buildings and that the decision it had taken did not prejudge the issue so far as the First Committee was concerned.

6. Mr. PAPAS (Greece) supported the joint amendment by Brazil and India but opposed the other amendments for the reasons given by the United Kingdom, Swiss and French representatives.

7. Mr. WU (China) said that he would vote for the amendment submitted by Brazil and India. He was also inclined to support the amendment proposed by the Federal Republic of Germany, Japan and Nigeria: article 5, as adopted by the Committee, had in fact considerably extended consular functions and it was only appropriate that an extension of duties and responsibilities should be accompanied by a corresponding extension of privileges and immunities.

8. Mr. de ERICE y O'SHEA (Spain) noted that the Brazilian representative was not opposed to the residence of the head of post being included in consular premises and consequently sharing their inviolability. Certain bilateral consular conventions already extended the privilege of inviolability to the residence of the consul and, if it adopted the amendments by the Federal Republic of Germany, Japan and Nigeria, the Committee would only be confirming that practice.

9. It had been remarked that recognizing the inviolability of the residence of the head of consular post would, *ipso facto*, confer on it the exemption from taxation provided in article 31. But recognition of inviolability did not necessarily mean tax exemption. The position of career heads of consular post was often difficult and it was important to protect them by giving their residence the same inviolability as consular premises. However, in order to allay certain fears and to secure unanimous support for the amendments submitted by the three Powers, it could be specified that the inviolability of the residence of the head of consular post, which would result from its inclusion in the definition of " consular premises ", did not confer on it the tax exemption provided in article 31.

10. Mr. BOUZIRI (Tunisia) doubted whether the proposals to widen the definition of consular premises were in order. The question had been discussed in the Second Committee, which had come to a negative decision. It was true that the First Committee was not considering the substance of the question, but only a definition of " consular premises "; but the fact remained that the decision it was called upon to take would affect article 30, on which the Second Committee had taken a decision. That article recognized the inviolability of consular premises, but the Second Committee had excluded the residence of the head of consular post. Hence, if the First Committee decided to include the residence of the consul in the definition of " consular premises " it would be going against the Second Committee's decision and article 30, as adopted by that committee, would have to be amended. In those circumstances, he thought that the First Committee would be encroaching on the competence of the Second Committee.

11. The question of tax exemption had been raised as a corollary to inviolability; but the Tunisian delegation considered that it should be discussed in connexion with article 31.

12. The CHAIRMAN reiterated his statement that the discussion would not affect the proceedings of the Second Committee, since it was not concerned with the inviolability of consular premises, but their definition.

13. Mr. TSHIMBALANGA (Congo, Leopoldville) said that he was in favour of including the residence of the head of post under " consular premises ". His delegation would therefore vote for the amendments in question, but it asked that a joint text of those amendments, as orally amended by the Lebanese representative, should be put to the vote. His delegation would also vote for the amendment by Brazil and India.

14. Mr. CAMERON (United States of America) agreed with the views expressed at the previous meeting by the United Kingdom representative and those who had supported him. The United States delegation would vote for the International Law Commission's text of sub-paragraph (*j*), with the amendment by Brazil and India. The question of inviolability of the residence of a head of consular post had been considered and settled by the Second Committee. If the First Committee decided to include the residence of the consul among the consular premises which enjoyed inviolability, either the Second Committee would have to go back on the decision it had taken on article 30, or it would have to be left to the drafting committee to harmonize the definition of consular premises adopted by the First Committee with the intentions of the Second Committee. The Lebanese oral sub-amendment to the three-power

[1] For these amendments, see document A/CONF.25/C.1/L.166, footnote.

amendment added nothing to the draft convention, since article 58, concerning the inviolability of consular premises, applied to the premises of a consulate headed by an honorary consul.

15. The United States delegation had no objection to the residence of a head of post being exempt from taxation, but it would prefer that the words proposed in the amendments by the Federal Republic of German, Japan and Nigeria should not be added to sub-paragraph (*j*), since tax exemption was an entirely separate question which could be dealt with in a relevant article of the draft convention.

16. Mr. JAYANAMA (Thailand) said that the position of a consular official differed from that of a diplomatic agent and for that reason the International Law Commission had thought that the residence of the head of post should not be included in the definition of consular premises in the same way as it had included the residence of the head of mission in the definition of the premises of the diplomatic mission. His delegation would therefore vote against the amendments by the Federal Republic of Germany, Japan and Nigeria and would support sub-paragraph (*j*) as drafted by the International Law Commission and amended by Brazil and India.

17. Mr. BREWER (Liberia) supported the amendments submitted by the three Powers, which added a necessary clarification to the definition of consular premises.

18. Mr. OMOLULU (Nigeria) said that the Conference had everything to gain by applying to consular law the rules laid down in the Convention on Diplomatic Relations, particularly where the inviolability of the residence of the head of consular post was concerned. The amendments in question were of great interest to the smaller countries whose consuls often had more important functions than their diplomatic agents. He accepted the Lebanese sub-amendment.

19. Mr. DRAKE (South Africa) supported the statements made at the previous meeting by the representatives of the United Kingdom, Switzerland and France and the United States representative's statement at the present meeting. It was not justifiable to extend the inviolability of consular premises to include the residence of the head of consular post: to do so would be to go beyond the rules of customary international law. His delegation would vote against the amendments to that effect but in favour of the amendment by Brazil and India.

20. Mr. de MENTHON (France) said that he fully endorsed the lucid and convincing statement of the representative of Tunisia on the effects of the Committee's decision on the articles already approved by the Second Committee. If the First Committee were to approve the amendments submitted by the three countries it would be acting in opposition to an unequivocal decision made by the Second Committee, and it would then be necessary to draw the Second Committee's attention to the need to review article 50.

21. Mr. BOUZIRI (Tunisia) agreed with the Chairman and said that he would not press his point with regard to procedure. He would vote in favour of the amendment by Brazil and India and against the amendments by the Federal Republic of Germany, Japan and Nigeria.

22. Mr. DADZIE (Ghana) supported the Chairman's decision. The First Committee was under no obligation to follow the decisions of the Second Committee. The two committees had equal status, and it was for the plenary conference to reconcile the texts.

23. Mr. LEE (Canada) agreed with the observations made by the representatives of France, Tunisia, the United Kingdom and the United States. Adoption of the amendments proposed by the three countries would result in a serious situation for most receiving States, for they would then be obliged to extend inviolability to the residences of hundreds of consuls and that would go far beyond international practice.

24. Mr. DONATO (Lebanon) said that the amendment in question was not incompatible with articles 30 and 58 as adopted by the Second Committee, since it was merely a question of extending inviolability to the residences of career consular heads of post, not of honorary heads of post.

25. Mr. N'DIAYE (Mali) entirely agreed with the Chairman. With regard to the doubts expressed by the representative of Spain, the matter of the inviolability of the residence of the head of post could always be settled by bilateral convention as indicated in paragraph 9 of the commentary on article 30. For that reason he would vote in favour of the International Law Commission's text as amended by Brazil and India.

26. Mr. USTOR (Hungary) observed that if the First Committee approved definitions that were different from the ones on which the Second Committee had based its decisions on certain articles, the drafting committee would have to reconcile the texts of those articles with the definitions adopted.

27. The CHAIRMAN said that the drafting committee was concerned with matters of terminology. The question whether it would be necessary to reconcile the texts of the different articles would be decided by the Conference in plenary.

28. Mr. RABASA (Mexico) entirely agreed with the Chairman. If the Second Committee made a decision with respect to the substance of any question, that would in no way prevent the First Committee from dealing with the same matter in connexion with the definitions. From a strictly legal point of view, the two committees had the same status and could make contradictory decisions. The final decision would lie with the Conference in plenary. From the practical point of view it was unlikely that the votes would give different results, for the same governments were represented in both committees. The Mexican delegation's position was quite definitive and would be the same in both committees.

29. The CHAIRMAN invited the Committee to vote on the amendments submitted by the Federal Republic of Germany, Japan and Nigeria with the

Lebanese sub-amendment to add the word " career " before the words " head of post ".

The amendments were not adopted, 29 votes being cast in favour and 29 against, with 6 abstentions.

30. The CHAIRMAN put to the vote the amendment submitted by India and Brazil.

The amendment was adopted by 53 votes to none, with 5 abstentions.

Sub-paragraph (j), as amended, was adopted by 57 votes to none, with 7 abstentions.

31. Mr. RUDA (Argentina) explained that his delegation had voted against the admendments submitted by the Federal Republic of Germany, Japan and Nigeria for reasons of terminology which were quite unrelated to the question of the inviolability of the residence of the head of consular post. He pointed out that the criterion for the definition of " consular premises " appeared in the phrase " used for the purposes of the consulate " at the end of the sentence. It was therefore a question of ascertaining in each case whether the residence of the head of consular post was used for the purposes of the consulate. The difference in the case of the residence of a head of diplomatic mission was that it was always used for the purposes of the mission.

32. Mr. SILVEIRA-BARRIOS (Venezuela) stated that he had voted against the amendments by the Federal Republic of Germany, Japan and Nigeria because the extension of inviolability to the residence of the head of consular post was contrary both to his country's national legislation and to the generally accepted principles of consular law.

Sub-paragraph (k)

33. Mr. PAPAS (Greece) proposed that the provisions of sub-paragraph (*k*) should be extended to include sums of money by adding to the text the words " sums of money and safes ".

34. Mr. KRISHNA RAO (India) remarked that sums of money could not be regarded as " archives ".

35. Mr. PAPAS (Greece) withdrew his amendment.

Sub-paragraph (k) was approved.

Sub-paragraph (f)

36. The CHAIRMAN recalled that the two-thirds majority rule for the reconsideration of proposals had been waived in the case of the Netherlands amendment to sub-paragraph (*f*).[2]

37. Mr. van SANTEN (Netherlands) explained that he had submitted his amendment (A/CONF.25/C.1/L.167) so that persons who were in the service of a member of a consular post and who were employees of the sending State would be covered by the Convention.

38. Mr. EVANS (United Kingdom) considered that the Committee should exercise great caution in regard to any change in the definition contained in sub-paragraph (*f*). The approval by both committees of a number of fundamental provisions had been based on the principle that the definitions in article 1 would be maintained in substance. It was clear from a study of sub-paragraphs (*h*) and (*i*) of the International Law Commission draft that the category of persons the Netherlands representative had in view was covered by the definition of " member of the private staff " in sub-paragraph (*i*) of the International Law Commission draft. The consequence of the Netherlands amendment would be to include that category of persons among members of service staff, which might have an effect on the other articles of the Convention, the full extent of which it would be difficult to assess. It might be wiser to request the drafting committee to consider the matter from the point of view of the possible repercussions on the substance of the Convention and draft a text which would be compatible with the decisions taken by the two committees. He suggested that the Netherlands delegation might withdraw its amendment.

39. Mr. KRISHNA RAO (India) agreed with the United Kingdom representative that it would be preferable to refer the question to the drafting committee.

40. The CHAIRMAN asked whether the Netherlands delegation accepted the suggestion made by the United Kingdom representative.

41. Mr van SANTEN (Netherlands) agreed with the procedure proposed, but considered that his amendment should be maintained. Indeed, the question had arisen precisely because the International Law Commission's draft which dealt with that category of persons in sub-paragraph (*i*) had been changed. The remarks of the United Kingdom representative demonstrated even more clearly the difference of opinion in the Committee on the interpretation of sub-paragraph (*f*).

42. The CHAIRMAN said that the Netherlands amendment would be referred to the drafting committee.

Paragraph 2

Paragraph 2 of the text of article 1 submitted by the drafting committee (A/CONF.25/C.1/L.166) was adopted.

43. The CHAIRMAN said that the drafting committee was to prepare a draft optional protocol concerning acquisition of nationality, which would be submitted direct to the Conference in plenary.[3] The draft of the Final Act would be prepared by the Secretariat and considered in plenary.[3]

Completion of the Committee's work

44. After the customary congratulations and expressions of thanks, the CHAIRMAN declared that the Committee had concluded its work.

The meeting rose at 1.5 p.m.

[2] See the summary record of the thirty-fourth meeting, para. 54.

[3] See the summary record of the twenty-second plenary meeting.

SUMMARY RECORDS OF THE SECOND COMMITTEE

FIRST MEETING

Tuesday, 5 March 1963, at 4.10 p.m.

Acting Chairman: Mr. VEROSTA (Austria)
President of the Conference

Election of Chairman

1. The ACTING CHAIRMAN called for nominations for the office of Chairman of the Second Committee.

2. Mr. DADZIE (Ghana) said it was a great pleasure and honour for his delegation to nominate Mr. Gibson Barboza, the leader of the Brazilian delegation, for the office of Chairman of the Second Committee. In view of Mr. Gibson Barboza's distinguished career and high qualifications for the office, he hoped that the nomination would be supported unanimously.

3. Mr. MARAMBIO (Chile) seconded the nomination.

4. The ACTING CHAIRMAN said that in the circumstances a secret ballot could be dispensed with, as provided in rule 43 of the rules of procedure.

Mr. Gibson Barboza (Brazil) was elected Chairman of the Second Committee by acclamation.

The meeting rose at 4.15 p.m.

SECOND MEETING

Wednesday, 6 March 1963, at 11 a.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

Tribute to the memory of Mr. Marcelo Deobaldía, representative of Panama

On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. Marcelo Deobaldía.

Election of officers

1. The CHAIRMAN expressed his great appreciation of the honour done to Brazil by his election as Chairman of the Committee. It was with a deep sense of humility that he accepted the tribute paid through him to his country, which prided itself on being a staunch champion of lawful and peaceful relations between nations. He wished to thank particularly the representatives of Ghana and Chile, by whose generous words on the occasion of his election he had been greatly touched.

2. The Committee's first task was to elect its officers — namely, the first and second vice-chairmen and the rapporteur.

Election of the First Vice-Chairman

3. The CHAIRMAN called for nominations for the office of first vice-chairman.

4. Mr. DAS GUPTA (India) nominated Mr. Kamel (United Arab Republic).

5. Mr. MORGAN (Liberia) seconded the nomination.

Mr. Kamel (United Arab Republic) was elected First Vice-Chairman by acclamation.

Election of the Second Vice-Chairman

6. The CHAIRMAN called for nominations for the office of second vice-chairman.

7. Mr. NASCIMENTO e SILVA (Brazil) nominated Mr. Vranken (Belgium).

8. Baron van BOETZELAER (Netherlands) seconded the nomination.

Mr. Vranken (Belgium) was elected second vice-chairman by acclamation.

Election of the Rapporteur

9. The CHAIRMAN called for nominations for the office of rapporteur.

10. Mr. SPACIL (Czechoslovakia) nominated Mr. Konstantinov (Bulgaria).

11. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) seconded the nomination.

Mr. Konstantinov (Bulgaria) was elected rapporteur by acclamation.

Organization of work

12. The CHAIRMAN recalled that chapters II and III of the draft articles adopted by the International Law Commission (A/CONF.25/6), comprising articles 28 to 67, and article 69 in chapter IV, had been referred to the Committee. Those articles covered the important subjects of the facilities, privileges and immunities of career consular officials, consular employees and honorary consuls.

13. In order that delegations might have an opportunity of studying the amendments already submitted to the first few of those articles, he suggested that the Committee should adjourn until the afternoon.

It was so agreed.

The meeting rose at 11.20 a.m.

THIRD MEETING

Wednesday, 6 March 1963, at 3.20 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)

Article 28 (Use of the national flag and of the state coat-of-arms)

1. The CHAIRMAN invited debate on article 28 of chapter II of the draft articles on consular relations adopted by the International Law Commission, and drew attention to the amendments submitted.[1]

2. Mr. BERGENSTRAHLE (Sweden) hoped that a schedule of work would be established, for his delegation would wish to consult experts on articles 48, 49 and 50.

3. The CHAIRMAN said that the Committee would endeavour to work out a time-table and would inform the Swedish delegation beforehand when those articles would be discussed.

4. Mr. PEREZ HERNANDEZ (Spain) said that the purpose of his delegation's amendment (L.23) to article 28 was to simplify the text.[2] The head of post was the embodiment of the consulate, and the right to use the national flag on the consular building or on his means of transport vested in the consul himself or, in his absence, in the person acting for him.

5. Mr. NASCIMENTO e SILVA (Brazil) said that his delegation's amendment (L.28) proposed a different solution. There was a fundamental difference between the head of a consular post and the head of a diplomatic mission, and the same privileges could not be granted equally to both of them, either with regard to the building or with regard to means of transport. The receiving State would be faced with difficult problems if the head of a consular post could, like the head of the diplomatic mission, use the national flag on his vehicles.

6. The Brazilian delegation would prefer that the article in question should not refer to the right of the head of consular post to use a flag on his motor-car, but it would certainly not suggest that he should be prohibited from doing so.

7. If his delegation's amendment were not accepted, he would consider supporting those submitted by Switzerland or Italy (L.22 and L.35).

8. Mr. EVANS (United Kingdom), asking the Committee's indulgence for the delay in submitting his delegation's amendment (L.40), explained that it had enabled him to modify the original text in the light of the amendments proposed by other delegations.

9. The Spanish delegation's amendment (L.23) was perhaps unduly specific in referring to the head of the consular post. The United Kingdom delegation had wished to avoid specifying whether the right to fly the national flag vested in the consulate or in the person of the consul. The Swiss delegation's amendment would subordinate that right to the practices in force in the receiving State; yet surely, according to established international practice, there was an absolute right to display the flag and coat-of-arms on the consulate building, and accordingly the convention should set out that principle explicitly.

10. He could, however, understand the reservations expressed by certain countries as regards the flying of the flag on means of transport. His delegation's amendment would make that provision subject to the laws and regulations of the receiving State, but extend it to the residences and means of transport of all consular officers.

11. Mr. DAS GUPTA (India) said that there was a lack of agreement among delegations on draft article 28. In paragraph 7 of the commentary there was a reference to article 20 of the Vienna Convention on Diplomatic Relations, 1961; but consular functions could not be placed on a par with diplomatic functions. The International Law Commission's draft provided for the right to use the flag and the coat-of-arms on the building, and his delegation considered that provision sufficient. To extend that right to the means of transport would tend to make for confusion and create difficulties for the receiving State.

12. Mr. SERRA (Switzerland) recalled that his government had already commented on the point. The right to fly the flag should not be unrestricted for, by reason of the respect due to a foreign national emblem, the receiving State was responsible for its protection at all times, and that was a heavy responsibility.

13. Mr. SPACIL (Czechoslovakia) said that draft article 28 satisfied all the essential requirements. It was proper that the right to fly the flag should vest in the head of post, and his delegation would vote against any amendments which diminished that right. It might happen that a State had no diplomatic mission in a country, but was represented by consuls, in which case the consul who performed quasi-diplomatic functions could hardly be denied the right to use the national flag. So far as vehicles were concerned, the head of post should likewise have the right to fly the national flag.

14. Mr. HEUMAN (France) said that Brazil and Spain had submitted proposals that were diametrically opposed. The best solution seemed to be that proposed in the United Kingdom amendment, or at any rate the first part of it, which he would be prepared to endorse.

15. The amendments submitted by Switzerland and Italy would in varying degrees make the right to fly the flag contingent on the law or practice of the receiving State. While not opposed to either of those texts, he said it was most important that the right to use the national flag on the means of transport should be expressly

[1] The following amendments had been submitted: Switzerland, A/CONF.25/C.2/L.22; Spain, A/CONF.25/C.2/L.23; Brazil, A/CONF.25/C.2/L.28; Italy, A/CONF.25/C.2/L.35; Nigeria, A/CONF.25/C.2/L.36; United Kingdom, A/CONF.25/C.2/L.40.

[2] All references in this and subsequent records of the Second Committee to "L" documents are references to documents in the series A/CONF.25/C.2/L...

recognized in the convention on consular relations, for it might help to ensure the safety of the consul and of his nationals in times of disturbance, war or rebellion. The French delegation would support the first part of the United Kingdom amendment. It would also endorse the amendment submitted by Switzerland, provided that the expressly recognized right to use the national flag on means of transport was referred to in the record.

16. Mr. MARESCA (Italy) said that the use of the national flag was of some importance. The police of the receiving State could not be expected to be overwatchful in ensuring respect for a national emblem. He agreed that it was occasionally necessary to fly the flag on the means of transport and, in that respect, he shared the French delegation's opinion. The United Kingdom amendment was an excellent formula, which avoided specifying whether the right to do so vested in the consulate or in the head of post.

17. Mr. KHLESTOV (Union of Soviet Socialist Republics) paid a tribute to the work of the International Law Commission and in particular to its special rapporteur, Mr. Žourek. The draft articles prepared by the Commission formed a good basis for the conclusion of the convention.

18. Article 28 laid down the generally admitted principle of the right to fly the national flag on the buildings and means of transport. That principle had been recognized in the law of the USSR ever since 1926, and Austria too, for example, had enacted provisions to the same effect.

19. In so far as the Swiss amendment (L.22) empowered the receiving State to decide in what circumstances the sending State could use its national flag, his delegation would regard the amendment as unacceptable.

20. The amendment submitted by the Spanish delegation (L.23) did not involve any great change; the first part of the Brazilian amendment (L.28) was acceptable, whereas the second part might be the subject of discussion.

21. Although he had not as yet seen the Russian text of the United Kingdom amendment, his impression was that it constituted a positive contribution. With regard to means of transport, he said there was a good case for retaining the original text of article 28, and the idea that the right to fly the flag on motor-cars should to some extent depend on the practices in force in the receiving State might be discussed.

22. His delegation would therefore support article 28 as drafted, but would welcome a re-draft taking into account the different views expressed.

23. Mr. SALLEH bin ABAS (Federation of Malaya) said that the text of article 28 was entirely satisfactory. If, however, the Committee wished to change it, his delegation would support the amendment submitted by the United Kingdom.

24. Mr. JESTAEDT (Federal Republic of Germany) said that he shared the opinion of the USSR and other delegations and would support draft article 28 or, if that text were to be amended, the United Kingdom proposal.

25. Mr. SHITTA-BEY (Nigeria) said that the International Law Commission had obviously wished to make a distinction between the consulate, which was an establishment, and the head of post, who was an individual, and article 28 conferred a privilege on that person, a privilege which should attach to the function.

26. The United Kingdom amendment seemed to him to be entirely acceptable, but he thought that the right to fly the flag should be exercised only within the limits imposed by the laws of the receiving State. The two States could agree on the circumstances in which the flag of the receiving State could be flown on the consul's residence.

27. Mr. TILAKARATNA (Ceylon) thought that the head of a consular post should be allowed to display the national flag on his means of transport, in cases where no head of diplomatic mission accredited by the same government was stationed in the same place.

28. Mr. HARASZTI (Hungary) said that the right to display the national flag on the means of transport was more important for a head of consular post than for a head of diplomatic mission and that that right should definitely be included in the Convention. He shared the views expressed by the Nigerian representative on the question of the right to fly the flag on the consul's residence.

29. Mr. PEREZ HERNANDEZ (Spain) said that he was prepared to withdraw his delegation's aemndment (L.23) in favour of the United Kingdom amendment, so as to facilitate the Committee's work.

30. Mr. KAMEL (United Arab Republic) said that the right to fly the flag should be restricted to the consulate building and to the consul's residence. To permit its display on means of transport would lead to difficulties without increasing the consul's protection. His delegation took a favourable view of the United Kingdom amendment, but thought that the receiving State should not be given discretion to decide on the exercise of the right to fly the flag.

31. Mr. ZEILINGER (Costa Rica) said he would have preferred article 28 not to mention the entrance door, but only the building. Furthermore, the circumstances in which the sending State could fly its national flag and display its coat-of-arms should be defined.

32. Mr. SPYRIDAKIS (Greece) said that, since article 28 as drafted by the International Law Commission followed closely the language of article 20 of the 1961 Convention, it was preferable. If, however, the majority of the representatives should wish to amend the provision, he would, like the representative of the United Arab Republic, prefer the use of the word "shall" in place of "may" in the United Kingdom amendment.

33. He drew the United Kingdom representative's attention to the expression "consular officers", which was not defined in article 1 of the International Law Commission's draft, and asked for further information on that point. The right to fly a pennant on means of

transport should be reserved exclusively to the head of post and should not be extended to consular officials.

34. Mr. VRANKEN (Belgium) said that he could accept the United Kingdom amendment if the phrase " subject to the laws and regulations " were replaced by " in conformity with customary practice ".

35. Mr. WASZCZUK (Poland) said he was inclined to accept the Nigerian amendment (L.36) to the effect that " on suitable occasions " the flag might be flown on the head of post's residence; that would be in keeping with the underlying idea of article 20 of the 1961 Convention. His delegation agreed with those who had expressed a preference for article 28, as originally drafted, but would not oppose the consideration of certain amendments.

36. Mr. EVANS (United Kingdom), in reply to the Greek representative, said that he realized that the expression " consular officers " did not actually appear in the draft articles; there was no difference in meaning between that expression and the expression " consular officials ". He had, however, chosen the former designedly, since his delegation would propose that the word " officers " should be substituted for the word " officials " throughout the text.

37. The CHAIRMAN said that the point concerned terminology and should be left to the drafting committee.

38. Mr. CHIN (Republic of Korea) said that his delegation would support the United Kingdom amendment.

39. Mr. BLANKINSHIP (United States of America) said that the text as established by the International Law Commission was satisfactory; he was not, however, opposed to the United Kingdom amendment, which seemed to meet with the approval of a large number of delegations.

40. Mr. BERGENSTRAHLE (Sweden) proposed that the United Kingdom amendment, as amended by the Belgian representative, be accepted.

41. Mr. DAS GUPTA (India) said that the original text was in general acceptable. In his opinion, the use of the term " consular officers " in the United Kingdom amendment was liable to lead to confusion since it might have the effect of extending the scope of the article to too large a number of persons.

42. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) thought that it was unnecessary to amend the draft article. He would therefore approach with caution any amendments which tended to restrict the rights of States, as did, for instance, the Swiss and Italian amendments; such restrictive provisions should not be introduced. He had not yet received the Russian text of the United Kingdom amendment, but at first sight it seemed acceptable, subject to certain improvements. More specifically, the use of the phrase " may be flown ", whereas the original text spoke of a right, seemed to introduce a restriction which was not perhaps intended by the United Kingdom representative and which was not in conformity with the spirit of article 28. That question might be left to the drafting committee. He too was of the opinion that the phrase " laws and regulations " should be replaced by the expression " customary practices ". The main question was, however, whether it was desirable to amend article 28 at all.

43. Mr. KONSTANTINOV (Bulgaria) thanked the Committee for the honour that it had done to his country and himself by electing him rapporteur.

44. He was of the opinion that the International Law Commission's draft should serve as the basis for the Committee's work, but he noted that several amendments took account of the practice observed in various States. He was firmly of the opinion that the principle of the " right " to fly the flag should be inviolate.

45. The United Kingdom amendment contained two features that should be eliminated. It was incorrect to say " may be " flown, since in fact a " right " was involved. Secondly, if the number of persons using the flag was increased too greatly, the provision would go much further than the original text.

46. In short, the original text should be taken as the basis for discussion, but the amendments by the United Kingdom, Nigeria and Brazil should be taken into account. In that way it might perhaps be possible to agree on a generally satisfactory text.

47. Mr. PEREZ-CHIRIBOGA (Venezuela) said that he would support the Brazilian amendment, which improved draft article 28.

48. Mr. LEVI (Yugoslavia) said that he had no objection to article 28 as originally drafted. He was nevertheless prepared to consider amendments, more especially those submitted by Switzerland, Italy and the United Kingdom. Like that of India, his delegation could not agree to the replacement of the expression " head of post " by " consular officers ".

49. Mr. RODRIGUEZ (Cuba) said that his delegation would accept the original text, but it would be prepared to agree to a provision extending the use of the flag to the residence of the head of post if the majority in the Committee so wished.

50. Mr. ANGHEL (Romania) said that article 28 was well drafted and reflected existing international practice. Nevertheless the Committee had before it amendments tending to restrict the right to fly the flag either to the consular post or to the head of post, and even to make that right subject to conditions. His delegation's view was that no change should be made in the proposed draft of article 28 that might restrict the right dealt with in that article and give rise to confusion on the subject. His delegation would therefore support the text as it stood, unless, as proposed by the USSR and Bulgarian delegations, the sponsors of the amendments submitted a re-draft of article 28.

51. Mr. DRAKE (South Africa) said he had no objection to the original text of article 28, but would consider the United Kingdom amendment, subject to the Belgian representative's suggestion that the words " subject to laws and regulations " should be replaced by the words " in conformity with customary practice ".

52. He thought that the use of the flag on means of transport should be reserved exclusively for the head of post.

53. Mr. WALDRON (Ireland) said he preferred the new compromise proposal of the United Kingdom which set up the proper balance between the rights of the sending State and those of the receiving State. Thus the sending State could control the use of the flag on the consulate, and the receiving State could control its use on the residence of the consul and, more especially, on the means of transport. He could not accept the Belgian proposal that the phrase " in conformity with customary practice " be substituted for the phrase " subject to the laws and regulations "; it would be better, if necessary, to mention " laws, regulations and practices ".

54. He too thought that the privilege of flying the flag on means of transport should be reserved for the head of the post.

55. Mr. SRESHTHAPUTRA (Thailand) said that, with the exception of two points, the United Kingdom proposal was very close to his delegation's point of view. First, he was doubtful whether the door to the consulate was always the right place at which to fly the flag or display the coat of arms. Secondly, like the representatives of India and Yugoslavia, he found the expression " consular officers " unacceptable. If the United Kingdom representative took account of those objections, the Thailand delegation would endorse that proposal.

56. Mr. DAS GUPTA (India) hoped that the United Kingdom delegation would provide some further explanations, for that delegation's amendment might imply that " consular officers " might have a rank equal to that of an ambassador, whereas in international practice the ambassador alone was entitled to fly the national flag.

57. Mr. EVANS (United Kingdom) said in reply that, so far as the use of the flag was concerned, the consul's status was not exactly on a par with that of the diplomat; the actual functions were different in that consuls were concerned essentially with the protection of their nationals, whereas ambassadors had the principal function of representing their governments in the receiving State. Nevertheless, in deference to the Indian representative's criticism, he would be prepared to reconsider his position on that point.

58. Mr. DAS GUPTA (India) said that in the light of the United Kingdom representative's explanations he was unable to accept the amendment in question, for the amendment might mistakenly convey the impression that the consular service ranked on a par with the diplomatic service.

59. Mr. NASCIMENTO e SILVA (Brazil) noted that there was virtually universal agreement on the text of article 28, subject to the United Kingdom amendment and to some drafting changes. He hoped that a generally acceptable revised draft would be submitted at the next meeting.

60. Mr. MORGAN (Liberia) said that he was fully able to accept article 28 as it stood so far as it related to the use of the national flag on consular buildings, though he could not take the same view of the provisions relating to the use of the flag on means of transport in places where diplomatic missions were situated.

61. Mr. HEUMAN (France) said he would prefer the original text of article 28 to stand, though he noted that a majority of delegations seemed prepared to accept the United Kingdom's proposal, as amended. In the light of that general opinion his delegation would be prepared to accept the United Kingdom text except in one respect: the expression " may be flown ", which seemed to imply an option, was too weak, for an absolute right could not be described in terms suggesting it was a mere faculty; the provision should expressly mention the sending State's right. The other amendments raised no problems.

62. Mr. SPACIL (Czechoslovakia) said that his delegation shared the doubts expressed by the representative of France. Article 28 was acceptable as drafted, but inasmuch as the majority seemed to support the United Kingdom amendment his delegation was prepared to consider it. At the same time, there seemed to be some contradiction between the United Kingdom text and the statement of that country's representative concerning an unconditional absolute right — an idea which the Czechoslovak delegation shared fully — whereas the amendment itself did not reflect that notion. Accordingly, without wishing to make a formal proposal (since he understood that the United Kingdom would revise its text), he suggested that the Committee should approve the first part of the original text of article 28 subject to slight changes and add what the United Kingdom had proposed in its original amendment. In that way the Committee would be able to specify the respective rights of the sending and of the receiving States.

63. Mr. MARESCA (Italy) said that the problem was how to balance the sending State's right to use its flag against the receiving State's right not to be expected to make too great an effort in protecting that flag. He considered that his own delegation's amendment (L.35) offered the right solution.

64. The CHAIRMAN suggested that the representatives concerned should confer with the United Kingdom representative with a view to preparing a text that could be put to the vote at the next meeting.

The meeting rose at 5.55 p.m.

FOURTH MEETING

Thursday, 7 March 1963, at 10.45 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 28 (Use of the national flag and of the state coat-of-arms) (*continued*)

1. The CHAIRMAN recalled that there had been general support at the previous meeting for an amend-

ment to article 28 submitted by the United Kingdom (L.40). He suggested, however, that discussion should be deferred as the United Kingdom representative was preparing a new draft.

It was so agreed.

Article 29 (Accommodation)

2. The CHAIRMAN invited attention to the amendments submitted by the United States of America in document A/CONF.25/C.2/L.1.

3. Mr. BLANKINSHIP (United States of America), introducing the amendments, said that, although under international law the receiving State was not required to allow the sending State to acquire property by purchase, in practice such acquisitions were made possible in most countries by municipal law or by courtesy or comity. The United States delegation believed that the practice, which was widely accepted, should be recognized in the convention and secured as a right, so that the sending State would be able to choose the most advantageous of available forms of tenure. The right was provided for in a number of bilateral consular conventions and was already recognized by article 31 (*l*), which provided for tax exemptions for " owned " property.

4. The proposed amendment was drafted so as to ensure that the sending State could not acquire any tenure not generally available to nationals of the receiving State and also that the sending State should not be allowed to deviate from the normal rules of municipal law concerning conveyancing and registration of title to land and leases. In his view, it was not necessary for article 29 to conform to article 21 of the Vienna Convention on Diplomatic Relations, since the establishment and maintenance of consular relations often called for the acquisition or construction of many buildings in different places, which was not the case with diplomatic missions. The financial savings from purchase as opposed to long-term lease could be considerable.

5. In view of the purposes of consular relations, the acquisition of premises should be on a basis at least as favourable as that granted to nationals of the receiving State. The principle embodied in the amendment would also serve as notice that expropriation without adequate compensation of consular property owned by the sending State for other than public improvement and similar purposes would be in derogation of a right established by the Conference.

6. Mr. ANGHEL (Romania) said that he was in favour of the article as adopted by the International Law Commission; it was a guarantee that the receiving State would provide adequate office and housing accommodation for the consulate of a sending State. The amendment proposed by the United States representative removed the obligation from the receiving State and gave the sending State a right without a guarantee that it could be exercised. Practice had shown that the mere granting of a right to the sending State could prove illusory, or at any rate insufficient, if the receiving State failed to take action on the matter. In fact, the article as modified by the United States amendment would place upon the receiving State an obligation merely in respect of accommodation for the members of the consulate. The Romanian delegation did not think that it was more important to house the members of the consulate than to acquire, or facilitate the acquisition of, premises for the consulate itself. In any case, the principle that the sending State should receive treatment no less favourable than that accorded to nationals of the receiving State was implicit in the International Law Commission's draft. From the drafting aspect, the same principle should be followed: each paragraph of article 29 should contain a reference to the obligation for the receiving State, as indeed was recommended, by the International Law Commission.

7. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that he was satisfied with article 29 as adopted by the International Law Commission. He did not approve of the first of the United States amendments which merely lessened the obligation of the sending country to assist the receiving country, whose consulates often faced legal and other difficulties in seeking accommodation. He saw no objection to the second amendment, which was merely a matter of drafting.

8. Mr. JESTAEDT (Federal Republic of Germany) supported the first United States amendment, which formulated a practice already followed in many countries. He proposed, however, that the words " or assist the latter in obtaining accommodation in some other way " at the end of the International Law Commission's draft of the first paragraph should be incorporated in the second paragraph.

9. Mr. DAS GUPTA (India) thought that the idea underlying the draft adopted by the International Law Commission should have been generally acceptable. Nevertheless, as the United States amendment appeared to embody the same ideas he would be prepared to support it provided it included a provision that the receiving State should help consulates to obtain suitable accommodation if they did not want to acquire property.

10. Mr. BLANKINSHIP (United States of America) said he would be ready to revise his amendment to meet the objections raised by the representatives of Romania, the Federal Republic of Germany and India; the amendment was not intended to reduce the receiving State's obligation.

11. Mr. MARAMBIO (Chile) supported the amendment proposed by the United States representative because it contained the two essential elements: the right of the sending State to acquire premises for its consulate, and the obligation of the receiving State to facilitate the acquisition of such premises. He also considered that paragraph 2 of the International Law Commission's text should be retained.

12. Mr. KONSTANTINOV (Bulgaria) was in favour of retaining the original text. It was consistent with the corresponding article in the Vienna Convention on Diplomatic Relations, it provided for a variety of methods of obtaining accommodation, and it had been drafted with great difficulty and only as a result of compromise.

The question was a very complicated one, involving the right to move about in other countries. The United States amendment sought to make such movement an absolute right without taking into account the laws of the receiving State.

13. Mr. LEVI (Yugoslavia) also preferred the text adopted by the International Law Commission. The second sentence in the first United States amendment would not be acceptable to the Yugoslav Government if it applied to renting as well as to purchase, for rents in Yugoslavia were tied to salaries and the standard of living and it would obviously be unreasonable for nationals of sending countries to expect the same benefits as Yugoslav nationals.

14. He had no objection to the proposed amendment to paragraph 2.

15. Mr. CHANG (China) supported the United States amendment, subject to the additions suggested by the representatives of the Federal Republic of Germany and India.

16. Mr. SPACIL (Czechoslovakia) endorsed the arguments advanced in favour of maintaining the original text. In addition, he saw no reason why consular staff, who were accorded special privileges and immunities as representatives of other countries, should expect to be given the same treatment as nationals of the receiving country in the matter of accommodation. The purpose of the Convention was to provide special regulations for consulates which had nothing to do with national regulations. He therefore opposed the United States amendment.

17. Mr. HARASZTI (Hungary) said that the convention on consular relations should follow the wording of the Convention on Diplomatic Relations as closely as possible. He could not support the United States amendment, which went further than the 1961 Convention in imposing obligations on the receiving State, and urged that the text adopted by the International Law Commission should be maintained.

18. Mr. BOUZIRI (Tunisia) said that he, too, found the International Law Commission's text satisfactory. It conformed with the Convention on Diplomatic Relations and with existing practice and it established reasonable obligations for receiving States. He was opposed to the United States amendment, which sought to impose obligations that would be excessive under the ordinary law. Measures could always be taken if difficulties were encountered, but it was unreasonable to impose exaggerated obligations at the outset.

19. Mr. SRESHTHAPUTRA (Thailand) supported the International Law Commission's text because he considered that it was sufficient for the purpose of helping the sending State to acquire premises for its consulate, and was also in line with the corresponding article of the Vienna Convention on Diplomatic Relations. He therefore opposed the United States amendment.

20. Mr. DEJANY (Saudi Arabia) endorsed the views of the Tunisian representative. He saw no jurtification for changing the wording which had been adopted at the Vienna Conference by a practically unanimous vote.

21. Mr. HEUMAN (France) said it was immaterial to France whether the absolute right advocated by the United States of America appeared in the convention or not, for there was no discriminatory legislation against foreigners in France. Such legislation did, however, exist in some countries and it would be well to clarify the position.

22. Adoption of the United States amendment would present some countries with an impossible alternative: to change their legislation or not to ratify the convention. The Committee should therefore think very carefully before introducing a categorical clause which would in effect be of far less value than the goodwill clause in the existing text. The assurance of help was better than a theoretical right which might be hampered by local laws. He was therefore in favour of maintaining the International Law Commission's text, but would abstain from voting because he did not object to the United States amendment.

23. Mr. AJA ESPIL (Argentina) supported the United States amendment which was merely an amplification of the existing text.

24. Mr. von NUMERS (Finland) said the Finnish law restricting the purchase of real estate by foreigners might be waived for particular cases, but it was unlikely that it would be repealed to meet the provisions of the United States amendment. He therefore opposed the amendment.

25. Mr. D'ESTEFANO PISANI (Cuba) said that he was in favour of the International Law Commission's draft. The representative of France had stated very clearly the ideas which should govern the Committee's discussion and conclusions. It should not seek to establish international standards that would compel countries to alter their national legislation. His own country offered extensive facilities to diplomatic and consular missions in obtaining suitable premises and he looked forward to the time when Cubans would receive similar facilities in other countries. He opposed the United States amendment.

26. Mr. BERGENSTRAHLE (Sweden) also preferred to leave the text unchanged, for the reasons stated by a number of representatives, in particular those of Tunisia and Finland.

27. Mr. ALVARADO GARAICOA (Ecuador) supported the United States amendment, as it provided a kind of goodwill clause ensuring co-operation and help in establishing relations between sending and receiving countries.

28. Mr. ADDAI (Ghana) said that he associated himself with the views of the representatives who preferred the original text. Adoption of the United States amendment would give the consular officials rights not enjoyed by diplomatic missions, which was not the intention under the convention.

29. Mr. KAMEL (United Arab Republic) supported the text adopted by the International Law Commission on the basis of the Vienna Convention text. He was opposed to the United States amendment.

30. Mr. VRANKEN (Belgium) thought the draft proposed by the United States representative an improvement on the existing text because it embodied a right which ought to be granted to consular officials. Since the amendment would be difficult, however, for some countries to accept he would vote for the text adopted by the International Law Commission.

31. Mr. PEREZ-CHIRIBOGA (Venezuela) said that he preferred the text adopted by the International Law Commission because his country's constitution set certain limits to the acquisition of premises. The United States amendment placed nationals and consular officials on the same footing, which was inadmissible.

32. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that article 29 as adopted by the International Law Commission was the result of very careful thought and work by experienced legal experts. Now that the United States representatives had agreed to modify his proposal to meet certain objections, his amendment would differ very little in essence from the original; in fact the wording was less satisfactory than that of the original text. He was therefore opposed to any change.

33. The CHAIRMAN said that, before proceeding with the discussion or putting the question to a vote, he wished to know whether the United States representative was ready to present the amendments he had agreed to make in response to the reservations expressed by certain representatives.

34. Mr. BLANKINSHIP (United States of America) explained that the wording of his amendment had been taken from the bilateral conventions between the United States and other countries. The amendment was not intended to lessen the obligation of receiving States to help consular officials to obtain accommodation. But since the representatives of Finland and other countries had raised objections to the second sentence of paragraph 1 he was prepared to replace it by a statement to the effect that: " The receiving State is bound to facilitate as far as possible the procurement of suitable office premises for such consulates."

35. Mr. DAS GUPTA (India) noted that the discussion had shown that some countries would have difficulty in accepting the United States amendment. As the United States representative had pointed out, there should be some reciprocity among countries with respect to the facilities provided; at the same time, the right of the government to maintain laws appropriate to the needs of its people must not be infringed. And since property tenure systems had to be devised to fit local circumstances, it would be impracticable to try to establish the principle of full reciprocity in the provision of facilities for consulate accommodation.

36. He was glad that the United States representative had agreed to withdraw the sentence in the amendment that was most open to objection. Nevertheless, he agreed with the Soviet representative that the original draft adopted by the International Law Commission was preferable, and he therefore urged that the United States amendment as a whole should be withdrawn, so as to leave the way open for the general acceptance of the original draft.

37. Mr. TILAKARATNA (Ceylon) asked whether the United States delegation would envisage reference in its amendment to the possibility of assistance to consular officials of the sending State who wished to find accommodation other than by acquiring by purchase.

38. Mr. NASCIMENTO e SILVA (Brazil) said that positions on the various texts under consideration had been made abundantly clear. He accordingly moved the closure of the discussion, under rule 26 of the rules of procedure.

39. Mr. EVANS (United Kingdom) thought the Committee should be given an opportunity to exchange views on the latest version of the United States amendment and appealed to the Brazilian representative not to press his motion.

40. Mr. KHLESTOV (Union of Soviet Socialist Republics) was also of the opinion that further discussion would be in order and would be helpful for conciliating views. Accordingly he, too, opposed the closure of the discussion.

41. Mr. NASCIMENTO e SILVA (Brazil) agreed to withdraw his motion.

42. Mr. MARAMBIO (Chile) thought the modification introduced into the United States amendment would be likely to facilitate the adoption of a generally acceptable text for article 29. The new wording for the second sentence of paragraph 1 would be still further improved, however, if the phrase " as far as possible " were replaced by the expression used in the International Law Commission's text — namely, " in accordance with its municipal law ".

43. Mr. EVANS (United Kingdom) said that the views of the United Kingdom delegation on article 29 coincided very closely with those held by the Indian delegation. The United States amendment, in its original form, would have given rise to certain legislative difficulties, not so much in the United Kingdom itself, but in some of the overseas territories for which it was responsible. The United States delegation had been most accommodating in trying to meet the views expressed in the Committee. From the United Kingdom standpoint, the substitution of the alternative formula for the second sentence of paragraph 1 would be very helpful, and his delegation agreed with the idea which it expressed. It was not satisfied, however, that any good reason existed for departing from the original text of paragraph 1 on the same point, which was the same as that of the corresponding article in the Convention on Diplomatic Intercourse and Immunities. The underlying ideas in the two texts appeared to be so similar as not to warrant a departure from the original language.

44. Turning to the first sentence of paragraph 1 of the United States amendment, he noted that it contained two phrases which might give rise to difficulty for his delegation and others as well: " acquire by purchase or otherwise " and " under such forms of property tenure as exist in the receiving State ". With regard to the second of those phrases, it was noteworthy that many differing systems of law were in force in the overseas territories for which the United Kingdom was responsible, some being of indigenous character and embodying very special forms of property tenure which might be inappropriate for the holding of land by the sending State or its consulate. Since the phrase in question appeared to add little to the main provision, he wondered whether the United States delegation would be prepared to drop it entirely.

45. It was not clear from the wording of the first of the phrases in question whether the choice between purchase or some other form of property holding would lie with the receiving or the sending State. The United Kingdom delegation could accept the addition of the first United States sentence, including that phrase and without the final phrase, to paragraph 1 of article 29 or even as a separate paragraph in that article, provided that it did not necessarily impose on the receiving State an obligation to enable property to be acquired by purchase.

46. Mr. BLANKINSHIP (United States) said he had been somewhat surprised to learn that there would be difficulty for the United Kingdom in accepting the wording " under such forms of property tenure as existed in the receiving State ", since a similar wording was embodied in the bilateral agreement in force between the United States and the United Kingdom; naturally, he was well aware that a provision that might be deemed appropriate for inclusion in a bilateral agreement need not necessarily be acceptable for inclusion in a multilateral instrument.

47. He would welcome a slight prolongation of the discussion to elicit whether further support existed for the United States position.

48. Mr. EVANS (United Kingdom) acknowledged that the United Kingdom did in fact accept provisions of the kind in some bilateral agreements but in each case a protocol of signature or an exchange of notes was appended, modifying application of the provision in so far as the United Kingdom overseas territories were concerned.

49. Mr. MARESCA (Italy) expressed appreciation of the conciliatory spirit displayed by the United States delegation; the revised wording for the second sentence of paragraph 1 of its amendment was an improvement from the legal standpoint and was more acceptable to his delegation. Yet one outstanding matter still remained to be decided: no reference was included to the right of the receiving State to lay down procedures for the acquiring of property by the sending State. Italy was extremely liberal in the matter but authorization had nevertheless to be obtained before a sending State could acquire property by purchase. His point would be met by introducing into the revised second sentence the reference to municipal law contained in the original draft of the article. Again, the use of the wording in the second sentence it.

50. Mr. HENAO-HENAO (Colombia) remarked that the article involved a deeper legal issue than had been brought out thus far in the discussion. The International Law Commission, in the draft articles adopted, had almost invariably followed the practice of defining first the right of the sending State and subsequently of specifying the obligations devolving on the receiving State. That practice had not been followed in respect of article 29, since it was recognized that the right in question derived from the agreement by which the receiving State gave its consent to the establishment of the consulate. He still believed, however, that the practice was worth maintaining and the revised wording proposed by the United States was more in keeping with it. His delegation would accordingly support the United States amendment, as modified.

51. The difficulty in regard to the acquisition of suitable premises was a very serious one; in many cases, it had become an obstacle to the exercise of consular functions and legislation to ease the existing situation was needed.

52. Mr. von NUMERS (Finland) said that he appreciated the United States action in submitting an amended formula. He was still not satisfied, however, and proposed, as a sub-amendment to the United States amendment, the following alternative version for paragraph 1:

" The sending State shall have the right in the territory of the receiving State, in accordance with the municipal law in force in the latter State, to acquire by purchase or otherwise the premises necessary for its consulate. The receiving State shall facilitate such acquisition as far as possible."

53. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that his delegation, too, appreciated the United States effort to bring the proposed amendment nearer to the original text of article 29. Despite the progress made in that direction, however, there was still some difference between the two texts. His delegation could not accept the United States amendment, either as modified by the United States or as amended by Finland, and supported the original text as it stood.

54. Mr. ALLOUANE (Algeria) observed that the Finnish sub-amendment to the United States amendment, while adding something new, namely, an obligation on the receiving State to facilitate the acquisition of consular premises, weakened the whole provision through the inclusion of the phrase " as far as possible ". His delegation would accordingly vote for article 29 as it stood.

55. Mr. DAS GUPTA (India) stated he was still convinced that there was no difference of substance between the original draft and the United States amendment as it now stood. The right embodied in that amendment was already implicit in the bilateral agreement providing for the establishment of consular services. Nothing was gained, therefore, by explicit reference to

" 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.

sovereignty of the receiving State or at any rate on the freedom of action of its authorities. The Swedish Government had grave doubts as to the advisability of extending categorical rules of the kind to bodies whose functions did not require the same absolute autonomy as embassies. He was aware that bilateral consular agreements varied on that point, but recent agreements concluded by Sweden included *force majeure* rules in the articles on the inviolability of the consular premises, similar to those advocated in a number of the amendments before the Committee. It had been for very special reasons, and out of respect for a fundamental principle of diplomatic relations, that such rules had not been incorporated in the 1961 Convention to cover the specific cases of fire or crime. His government considered that the categorical formulae thus adopted in that convention constituted the limit to what was acceptable in respect of diplomatic functions and would find great difficulty in agreeing to similar standards for consular functions.

4. The Swedish Government would therefore support the *force majeure* clauses proposed in the United States, Nigerian, United Kingdom and Japanese amendments, and would reserve its position with regard to the most appropriate among those and the remaining amendments before the Committee.

5. Mr. ANGHEL (Romania) said his delegation attached great importance to the principle of the inviolability of consular premises and deemed the International Law Commission justified in the text it had proposed. In general, the amendments before the Committee fell into two opposing groups: those advocating extension and those proposing restriction of inviolability. Among the first group, his delegation would be able to support the amendments put forward by Austria and Spain, as well as the United States proposal that the designee of the head of post might give consent to entry. On the other hand, the amendments tabled by Japan, Nigeria, United Kingdom, Greece and Mexico were not acceptable since they tended to place restrictions on inviolability, strict observance of which was essential for the exercise of consular functions. Any provision that would infringe that right would have the effect of preventing normal functioning of the consulate and would open the way to nullifying other immunities essential to its task.

6. It was noteworthy that most of the consular conventions cited in the commentary to the article, as well as the Convention regarding consular agents signed at Havana in 1928 [2] and the 1961 Convention on Diplomatic Relations, recognized the principle in question without restriction. His delegation deemed that the inviolability of the consular premises was as important for the exercise of consular functions as was the inviolability of the diplomatic mission premises for the exercise of diplomatic functions. The possibility of entry by virtue of any contract or other private right envisaged under the United Kingdom and Greek amendments was a matter that could be regulated by the terms of the lease or otherwise, but a provision of that kind should not be incorporated in a convention on consular relations, for it was essential to rule out the possibility of abuse.

7. The Romanian delegation was of the opinion that the original draft as amended by Austria and Spain was to be preferred.

8. Mr. SPYRIDAKIS (Greece) said that the Greek Government was of the opinion that the consular mission was entirely different from the diplomatic mission and hence it was unable to accept article 30 as drafted by the International Law Commission. For that reason, the Greek delegation proposed that the whole article should be replaced by the text submitted in its amendment (L.59). In so far as paragraph 1 was concerned, similar amendments had been submitted by Japan and Nigeria. In the circumstances, therefore, his delegation would be glad to support those amendments, as well as those proposed by Austria and Spain.

9. Mr. PEREZ HERNANDEZ (Spain) introduced his delegation's amendment (L.24) and said the underlying purpose was to extend inviolability to cover the residence of the head of the consular post. He was gratified at the support already expressed. Unlike the ordinary private or public employee, the consular official was obliged to use his residence as a place of work in the exercise of his consular functions — for example, for receiving officials of the local authorities to which he was accredited, as well as colleagues and compatriots. Secondly, the fact that, at its previous meeting, the Committee had approved the rule that the consul should have the right to fly the national flag on his residence automatically conferred inviolability upon the premises.

10. He would like to make it plain that there was no question of extending inviolability to the residence of the honorary consul. Under the provisions of articles 57 and 58, that was entirely ruled out.

11. Mr. BLANKINSHIP (United States of America) pointed out that two basic changes were involved in the text proposed by his delegation for paragraph 1 (L.2). In the first place, that text laid down that inviolability should extend only to premises used exclusively for the exercise of consular functions and on that point paragraph 2 of the International Law Commission's commentary appeared to be in agreement in principle. The second new provision was designed to waive consent to entry in the case of fire or other disaster requiring prompt protective action. The United States took the view that entry in the case of fire should not depend on the consent of the head of post, since the public welfare was at stake and delay occasioned by his absence might have intolerable consequences. The government might, for example, be held responsible for damages causes by outbreak of fire in the consular premises — a by no means academic consideration, since in New York City alone only two of sixty-eight consular offices were located in detached buildings used solely by them. It was accordingly a matter of general interest to protect not only the consular but adjoining premises. Moreover, under paragraph 2 of the article, the receiving

[2] League of Nations, *Treaty Series*, vol. CLV, 1934-1935, No. 3582.

State was in duty bound to protect consular premises from intrusion or damage and a literal interpretation of paragraph 1 might prevent the police from taking appropriate steps for that purpose. He noted that a concurrent principle appeared in other amendments before the Committee — namely, that protection provided by the receiving State be extended by assuming that the head of post granted authority to enter in certain circumstances.

12. Mr. DONOWAKI (Japan) introduced his delegation's amendment (L.46) to paragraph 1. The Japanese delegation at the 1961 Conference had sponsored an amendment for placing some reasonable restrictions on the inviolability of diplomatic missions. The argument then advanced that inclusion of exceptions to the traditional rule of inviolability established by international law might lead to abuse had been sufficiently convincing for Japan not to press its proposal. The question under consideration, however, was entirely different. Consular privileges, unlike diplomatic privileges, were still in a nebulous state, precisely because of the many and varying bilateral agreements governing them. The Conference, in adopting an article embodying some reasonable exceptions without restricting established rights, would be creating a new rule of international law.

13. Perusal of various bilateral conventions had led him to the conclusion that inviolability of the consular premises was invariably subject to the right of the receiving State to enter those premises in cases of emergency or fire; in addition, many of them made provision for the entry of an official of the receiving State provided that he produced the appropriate writ. Unless similar safeguards were embodied in the draft convention, many embarrassing situations might arise and adoption of the International Law Commission draft would be tantamount to establishing the inviolability of the consular premises on the same footing as for diplomatic premises — a sudden change for which his delegation saw no reasonable grounds at that stage.

14. His delegation would be able to support the Nigerian proposal on similar lines, as well as the amendments submitted by Austria and Spain.

15. Mrs. VILLGRATTNER (Austria) said that the Austrian amendment had been submitted for purely practical reasons. It could happen that in the case of an emergency, the consul might not be available; hence it would be advisable to provide for an alternative possibility for gaining consent for entry to the consular premises, through the diplomatic mission. The Austrian delegation reserved its position on the other amendments before the Committee.

16. Mr. LEVI (Yugoslavia) said that his delegation would like to see a clause in paragraph 1 providing for absolute inviolability of the consular premises. The alternative formula for " consular premises " used in the United States and United Kingdom amendments was simply a drafting change and was to be preferred as being more precise. His delegation could also accept the clause on consent by the designee of the head of post, in the United States amendment, and the clause providing for consent by the head of the diplomatic mission, proposed by Austria, as well as the Spanish amendment to extend inviolability to the residence of the head of post. It could not agree to the other amendments making exceptions to the rule.

17. Mr. HARASZTI (Hungary) deplored some of the amendments that had been tabled; the International Law Commission's draft provided the greatest measure of security for the consulate and laid down the conditions essential to its effective functioning. The difference between the functions of diplomatic and consular missions should not be exaggerated; the same degree of protection should be ensured for both. He was well aware that a number of States did not accept the rule embodied in the article in their consular conventions. It was not the task of the Conference merely to codify, but also progressively to develop universally accepted international law.

18. His delegation was not in favour of those amendments providing for entry in case of fire or disaster; trust should be placed in the consular officials to take all the precautionary measures needed against fire. The introduction of exceptions of that kind would create dangers greater by far than those they were designed to avoid.

19. He unreservedly endorsed the Chairman's views concerning the right of asylum.

20. Mr. ALVARADO GARAICOA (Ecuador) remarked that international law recognized the principle of the inviolability of the consular premises but not that of the immunity of the consular official save in the exercise of his functions within his office. He accordingly agreed that in that respect there was a difference between diplomatic and consular law. His delegation would support the Greek amendment but would like to have greater stress laid on authorization by the Minister for Foreign Affairs of the receiving State. That could be achieved by adding the words " in all cases " after the word " with ", in the fifth line of paragraph 1.

21. Since consuls also acted as commercial agents of their governments they did not enjoy the invariably immune status of diplomatic officials. Paragraph 3 of the Greek amendment which prescribed perfectly the limitation of the consular functions was important in that respect.

22. He was of the opinion that entry by the police on consular premises must be allowed in cases of crime.

23. Mr. SPACIL (Czechoslovakia) observed that the main argument of those delegations that had submitted rectrictive amendments was that the functions of consular and diplomatic missions were essentially different. That was incontestable, but there was one common factor, namely, both the consul and the diplomatic agent represented their States, and their immunities and privileges were based on that fact. It was accordingly irrational to maintain that the consul should not enjoy the same degree of inviolability as the diplomatic agent. Since these immunities admittedly infringed to some extent the sovereignty of the receiving State, it was

illogical to grant them with one hand and restrict them with the other. Accordingly, his delegation could not accept any amendment designed to restrict inviolability.

24. There was seemingly general agreement in the Committee on consent to entry by the designee of the head of post. Presumably, any consulate official on the spot would represent the head and he could accordingly accept that addition. In regard to the further exceptions proposed, a realistic view should be taken. Some person in a position to contact an official with authority to act was invariably on duty in a consulate. The argument that it might be impossible to find any person with authority was thus invalid. In drafting the Convention, every effort should be made to preclude any possible pretext for provocation on the part of the receiving State, such as might be given by the inclusion of exceptional clauses of the kind. The case of consular premises situated within a large building was a special case and presumably the head of post, in deference to his obligations towards the other tenants, might give blanket consent to entry in particular circumstances.

25. The Japanese amendment was in accordance with his delegation's views and was therefore acceptable; the same applied to the Austrian amendment. He too associated himself with the Chairman's views on right of asylum. In conclusion, he stated that his delegation attached great importance to the article and could in no case agree to any restriction of the inviolability of the consular premises. It would therefore support paragraph 1 of the original draft.

26. Mr. SICOTTE (Canada) said that the discussion on paragraph 1 of article 30 had concentrated on the need to set precise limits for applying the principle of the inviolability of consular premises. Canada accepted the principle but was also aware that there might be exceptional circumstances where the receiving State's responsibility for protecting human life and property necessitated special measures. Failure to fight a fire, for example, in a mission occupying part of a large building in the centre of a town could result in serious loss of life and property.

27. Efforts had been made in the International Law Commission and elsewhere to solve the difficulty by defining the application of the principle in case of public danger. He urged the Committee to accept the idea that in case of exceptional public emergency the receiving State should not be prevented from taking the necessary action; in that spirit he supported the United States amendment. It should of course be understood that consulates would not raise obstacles to legitimate action in case of genuine public danger.

28. Mr. JESTAEDT (Federal Republic of Germany) supported the United States amendment because it was based on sound principles and conformed with practice under national and international law. He proposed, however, as a sub-amendment, that the following phrase from the end of paragraph 1 of the United Kingdom amendment should be added to the end of the first paragraph of the United States amendment: " or if there is reasonable cause to believe that a crime of violence to person or property is being or is about to be or has been committed there ". Consular premises must be fully protected by receiving States and police should have the right to make arrests if necessary, even on consular premises. He also thought that the words " consular premises " in the International Law Commission's draft were better than the words " premises used exclusively for the exercise of consular functions " in the United States draft, since the latter might be difficult to interpret. He supported the Austrian amendment and in particular the Spanish amendment.

29. Mr. BLANKINSHIP (United States) accepted the amendment by the representative of the Federal Republic of Germany.

30. Mr. DAS GUPTA (India) observed that the proposed amendments to paragraph 1 raised two questions: the limitation of the inviolability of consulates, and the right of asylum. It was generally recognized that the principle of inviolability really applied to consular archives, with the inviolability of premises as a corollary. In that respect there would seem to be little difference between consular premises and premises used by diplomatic missions, for both were premises in which foreign missions carried out their functions. It was true that diplomatic and consular functions differed, but they also overlapped: diplomats were often required to perform consular duties and the reverse was also true. It followed, therefore, that the inviolability of consular archives or correspondence was as important as that of diplomatic archives or correspondence. It was important that the proposed convention should reflect not only the traditional idea of immunity, but also recent trends in law. Even in 1898 the Institute of International Law had recognized the inviolability of consular premises; and consular immunities had greatly increased since then and would undoubtedly go on increasing. It was true that if the receiving State had an obligation to provide adequate protection for consular premises it should not be prevented from taking the necessary action in such cases as fire. The representative of Czechoslovakia, however, had rightly drawn attention to the possibility of abuse or provocation. He thought therefore that paragraph 1 as drafted by the International Law Commission was satisfactory. If, however, the United States amendment could be accepted as an amplification without the fear that it might lead to abuse, he was prepared to accept it.

31. The second question, the right of asylum, should not be discussed at the present time. It was not provided for in the Vienna Convention on Diplomatic Relations and a provision that consulates could not offer asylum might imply that diplomatic premises could offer asylum. It would be better to say nothing.

32. Mr. HEUMAN (France) said that he was surprised that one of the principal arguments in the discussion was the supposition that the International Law Commission had placed consular rights on the same footing as diplomatic rights. That was inexact for although draft article 30 bore a superficial resemblance to article 22 of the Vienna Convention, there was a

fundamental difference. In accordance with the relevant definitions, diplomatic premises included the residence of the head of mission, whereas consular premises were those used for official purposes. In addition the diplomat enjoyed total personal inviolability, whereas under draft article 41 it was possible for a consul to be arrested. There was in fact a close connexion between draft articles 30 and 41, for if the consul's residence were inviolable, how could he be arrested ?

33. The International Law Commission had been consistent and explicit: the consul was to be given only partial inviolability. He therefore hoped that paragraph 1 would be retained essentially as drafted, although he would be prepared to accept improvements such as those contained in the Austrian amendment and in the first part of the United States amendment relating to the definition of consular premises and the inclusion of the head of posts's designee. The amendments concerning entry in case of fire or other disaster seemed valueless since the fact of establishing a consulate in a large building occupied by other offices was a tacit acceptance of restricted inviolability.

34. He agreed with the Chairman's wise suggestion that the question of asylum was outside the Committee's field of discussion.

35. Mr. EVANS (United Kingdom) said he was glad to see that Greece, Japan and Nigeria had proposed amendments similar to the United Kingdom amendment to paragraph 1. He hoped that it would be possible to produce a combined text.

36. In his opinion, the International Law Commission's draft went far beyond existing international law and practice, for its object seemed to be to assimilate the status of consulates to that of diplomatic missions: indeed the wording of paragraph 1 was identical with that of paragraph 1 of article 22 of the Vienna Convention on Diplomatic Relations. But consuls and consulates had never been regarded in international law and practice as having the same status, immunity and inviolability as diplomats and diplomatic missions. The point made by the representative of India was covered by paragraph 1 of article 17 which provided that the head of a consular post might be authorized to perform diplomatic acts where the sending State had no diplomatic mission; and paragraph 6 of the International Law Commission's commentary on that article stated that the " performance of diplomatic acts, even if repeated, in no way affects the legal status of the head of a consular post and does not confer upon him any right to diplomatic privileges and immunities ". The same principle should apply to the inviolability of premises and any proposal to assimilate consuls and consulates with diplomats and diplomatic premises should be viewed with the greatest caution. It should be constantly borne in mind that a convention would be of little value unless it was widely accepted and ratified, and the granting of new privileges and immunities for consular officials and premises might seriously prejudice the chances of ratification. Immunity from jurisdiction and inviolability was of great importance, for parliaments were very jealous of any extension of such privileges and unless they could be satisfied that the privileges and immunities in the convention were based on existing law and practice, or were necessary for the purpose of duties, it would be hard to persuade governments to ratify the convention.

37. Admittedly, a comprehensive convention on consular relations could not be simply a codification of existing international law and practice, which were far less developed for consular than for diplomatic status. The International Law Commission had rightly thought it necessary, therefore, to include certain provisions in the nature of progressive development of international law. Any proposals for new laws would, however, have to be examined very critically and with great caution to ensure the widest acceptance of the Convention.

38. Under existing international law and practice consular premises had very limited inviolability but effect had been given to the principle embodied in article 40 (Special protection and respect due to consular officials) by the device of providing that consular premises should not be entered by local authorities or agents of the receiving State except on the authority of the receiving State's Minister for Foreign Affairs, who could ensure that the rights of entry to maintain order were exercised with due regard to the rightful interests of the sending State. That was the extent to which international law and practice had hitherto recognized the inviolability of consular premises, and it was clear that the International Law Commission's draft of paragraph 1 went far beyond those limits.

39. The first part of the United Kingdom amendment to paragraph 1 was designed to ensure that where consulates occupied buildings used for other purposes or where consular offices were also used for other purposes, inviolability should only be extended to the premises or parts of premises used exclusively for the consulate's work. The same object could be achieved by amending the definition of consular premises in article 1, and either method would be satisfactory to him.

40. The second sentence of the United Kingdom amendment to paragraph 1 was designed firstly to incorporate what the United Kingdom considered should be the principles of limited inviolability for consular premises; and secondly to provide for the right of entry by local authorities in certain circumstances, which had been fully described by other representatives.

41. The United Kingdom amendment also proposed two additional paragraphs. Paragraph 4 was a provision guarding private rights. Paragraph 5 concerned the question of asylum. He was aware of the decision of the 1961 Vienna Conference concerning asylum but he recalled that the International Court had recognized a limited right of asylum in diplomatic premises under international law. As far as he was aware no such right was recognized for consular premises and he felt that the position should be made clear in the Convention.

42. Mr. NWOGU (Nigeria) said that the Nigerian amendment to paragraph 1 (L.27) was based on three considerations. The first was to ensure that the receiving State could carry out its obligations under paragraph 2 to protect consular premises, by having a limited right

of entry. The provision that premises could be entered with the consent of the Minister or Secretary of State for Foreign Affairs was a safeguard against abuse of the right. It had been pointed out during discussions that there was no comparable clause in the Vienna Convention on Diplomatic Relations, but the fact that diplomatic missions were often far away from the administrative headquarters of receiving States and had large staffs made it easier for them to protect themselves than for consulates which usually had a very small staff. A further safeguard was the proposed additional paragraph on the inviolability of consular archives.

43. He would be glad to consult with the representatives of Greece, Japan, the United Kingdom and the United States with a view to producing a combined text.

44. Mr. DE CASTRO (Philippines) said that the principle of inviolability of premises was not absolute under international law. For practical reasons it was subject to exceptions, as the United Kingdom representative had lucidly explained. The important thing, in his delegation's view, was that the exceptions should be of a practical nature. He was in favour of the proposal concerning presumed consent in the event of fire or crime. In any event, the inviolability of the premises was restricted by the fact that the principle of extra-territoriality was no longer recognized. He could not, however, agree to the proposals concerning entry in execution of a writ or process, which would not constitute an emergency; there would be time to secure consent or to settle the matter through the diplomatic channel. He supported the amendments proposed by Austria, Spain and the United States of America. He also supported the United Kingdom amendment and agreed that it should be combined with similar amendments submitted by other countries.

The meeting rose at 12.55 p.m.

SEVENTH MEETING

Friday, 8 March 1963, at 3.20 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 30 (Inviolability of the consular premises) (*continued*)

1. The CHAIRMAN invited the Committee to continue its debate on article 30 and the amendments thereto.[1] He had invited Mr. Žourek, who had been the International Law Commission's special rapporteur for the draft articles on consular relations, to explain to the Committee the circumstances which had led the Commission to submit the text of article 30 to the Conference.

2. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, said that in preparing draft article 30 the International Law Commission had had to take account of the close relationship between diplomatic and consular functions. On more than one point it had concluded that, in order to be able to exercise their functions, the consul or the consulate should enjoy the same privileges and immunities as a diplomatic agent. It had considered the question of restricting the inviolability of the consular premises, and the majority of the members had opposed such a measure. The Commission had then examined the practice of States — i.e., the relevant conventions concluded, such as the 1928 Convention regarding consular agents, signed at Havana, article 18 of which allowed no exceptions to the rule of inviolability. Some members of the Commission had pointed out that recent agreements admitted certain exceptions — for example, in the case of the enforcement of a judgement. But the Commission had wished to bear in mind the interests of both the sending State and the receiving State and had taken the view that the most serious threat of abuse might arise from the receiving State, which disposed of more direct material means than the sending State. Paragraphs 2 and 3 of draft article 55 defined what offices should not be deemed to form part of the consular premises and thus provided a guarantee for the receiving State.[2]

3. When the International Law Commission had considered the comments of governments, it had already been informed of the findings of the Vienna Conference on Diplomatic Intercourse and Immunities, and it had thought it necessary to maintain the principle of inviolability for consuls whose needs were the same as those of diplomatic agents. With regard to archives and personal documents, it had not wished to leave the way open to any controversy by establishing a distinction. The rules, however, applied only to career consuls and not to honorary consuls or consuls carrying on an additional gainful occupation.

4. Mr. AJA ESPIL (Argentina) thought that the draft article and the United States amendment thereto (L.2) were very similar. He proposed a sub-amendment to the second sentence of paragraph 1 of the United States amendment, namely, the insertion of the word " express " before the word " consent " in order to make it quite clear that, if the receiving State's agents had to enter the consular premises, they could do so only with the prior consent of the head of post. Subject to that reservation, the Argentine delegation would support the United States amendment.

5. Mr. SALLEH bin ABAS (Federation of Malaya) said that he would support the principle of inviolability, provided that it was relative. It was essential that the receiving State's agents should be allowed to enter the consular premises in cases of emergency or force majeure.

6. Mr. KONSTANTINOV (Bulgaria) said that there could be no question of fixing limits to the principle of

[1] For the list of amendments submitted to article 30, see the summary record of the sixth meeting, footnote to para. 1.

[2] For the discussion of this question in the International Law Commission, see the summary records of the 530th, 545th and 571st meetings (twelfth session) and of the 595th meeting (thirteenth session).

inviolability, and his delegation could not therefore vote for the amendments of the United States (L.2), Greece (L.59), Nigeria (L.27) and Japan (L.46). If it was desired to respect the rights of the receiving State, paragraph 2 of draft article 55 offered every guarantee. In that sense, his delegation could accept the amendments submitted by Austria (L.26) and Spain (L.24). International law had developed to such a degree that any backward step would cause serious misunderstandings and would, moreover, be contrary to the pinciples defined in the 1961 Vienna Convention on Diplomatic Relations. His delegation considered that article 30 was the best compromise solution and would vote for it.

7. The CHAIRMAN drew attention to a new amendment to paragraph 1 (A/CONF.25/C.2/L.71) submitted jointly by the delegations of Greece, Japan, Nigeria and the United Kingdom.

8. Mr. DRAKE (South Africa) said that there had been little difference between the separate amendments submitted by the delegations of Nigeria, Japan, Greece and the United Kingdom. The United States had submitted an amendment (L.2) which limited inviolability to those premises used exclusively for the exercise of consular functions. The United Kingdom amendment was on similar lines. His delegation would support the joint text (L.71) for the International Law Commission's draft seemed to him to give an excessively wide application to the principle of inviolability.

9. Mr. ROSZAK (Poland) observed that the United States and the United Kingdom amendments both limited the principle of inviolability. It might be asked which authority would be responsible for deciding what were the premises used exclusively for the exercise of consular functions and those not so used. The socialist countries unanimously respected the principle of inviolability and Poland had concluded with Belgium an agreement leaving it to the head of post himself to decide whether for any reason, such as fire or burglary, the agents of the receiving State could enter the premises. His delegation would support article 30 as drafted by the International Law Commission but would accept the amendments by Spain (L.24) and Austria (L.26).

10. Mr. RODRIGUEZ (Cuba) said that his delegation endorsed article 30 as drafted and would vote against any amendment which would derogate from the principle of inviolability. That principle had already been recognized at the end of the previous century and the Conference should not take a retrograde step. Moreover, cases of force majeure could in no way authorize certain arbitrary acts by the receiving State.

11. Mr. ADDAI (Ghana) said that he supported paragraph 1 of the International Law Commission's draft. He would also accept the Austrian amendment (L.26), which had some practical value.

12. Mr. VRANKEN (Belgium) remarked that legal theory and the practice of the courts in several countries admitted the principle of the inviolability of consular premises. Article 30 was concerned only with the premises; consular officials were dealt with in article 41. If there were any doubts about the definition of the consular premises, it was for the drafting committee to improve the text. Cases of force majeure were exceptions and should be settled in accordance with common sense and not by the law; such exceptions should not therefore be invoked in order to restrict the principle of inviolability. His delegation would be unable to support the Spanish amendment (L.24), which would extend the enjoyment of inviolability to the residence of the head of post, but it would endorse the Austrian amendment (L.26).

13. Mr. AMLIE (Norway) said that the principle of the inviolability of consular premises should be stated without reservations. That did not mean that the receiving State would not be able to intervene in cases of emergency; but such situations would have to be met with common sense; it was impossible to legislate for emergencies. If goodwill and human decency were lacking in the individual situation, difficulties were bound to arise, regardless of the provisions of the Convention. No such reservations as those proposed had been written into the Convention on Diplomatic Relations. That did not mean, however, that a diplomatic mission would be at liberty to endanger its surroundings by fire or otherwise; it merely meant that the Conference on Diplomatic Intercourse and Immunities had thought it wiser not to include such reservations in the actual convention. He would not vote for any text that contained reservations to the principle of the inviolability of consular premises.

14. Mr. SCHRØDER (Denmark) agreed that it was essential to afford consuls as wide a protection as possible in order that they might exercise their functions; he did not think, however, that the exception of force majeure derogated from the principle of inviolability.

15. Mr. PEREZ HERNANDEZ (Spain) said that it was by no means his delegation's intention to treat diplomatic functions in the same way as consular functions, but it did wish to make it easier for consuls to do their work. The responsibilities of consuls had greatly increased during recent years and their duties were not purely commercial, since they had to look after the interests of their nationals, such as commercial agents and emigrant workers, and trading companies and associations situated in the territory of the receiving State. There was a growing tendency among States to renounce a part of their sovereignty in order to integrate themselves in larger economic groups, and it could not be maintained that the inviolability of the residence of the head of consular post (L.24) would constitute a serious infringement of the rights of the receiving State.

16. Mr. NASCIMENTO e SILVA (Brazil) thanked the Chairman for having invited Mr. Žourek to address the Committee; that had made it possible to dissipate some doubts that has arisen concerning the International Law Commission's text of article 30. Examination of the various amendments had led him to the conclusion that they constituted an innovation as compared with previous conventions. The inviolability of consular premises had already been recognized in article 18 of the 1928 Havana Convention, which had been ratified by thirteen States.

17. It would be preferable to maintain article 30 as drafted and if necessary accept amendments that did not bear on the substance as, for instance, that of Austria (L.26). Both the United Kingdom amendment (L.29) and that of the United States (L.2) contained the word " exclusively ". The Brazilian delegation had submitted a similar amendment to article 1 in the drafting committee, where the matter could be decided.

18. Cases of force majeure could not be regulated by a mere text. If a fire were to break out on a public holiday, for instance, when the consular premises would be deserted, consent to enter the premises could be presumed; that was a matter of common sense. If all sorts of restrictions were permitted, the final result would be two conventions (that of 1961 and that of 1963) which would be mutually contradictory. The result might be that in case of fire the agents of the receiving State would have the right to enter the premises of an embassy, but not those of a consulate.

19. Lastly, asylum in diplomatic missions had been recognized by Latin American countries, in various conventions, but a consulate was not authorized to grant asylum. The introduction of the notion of right of asylum would, he feared, raise grave difficulties.

20. Mr. SAYED MOHAMMED HOSNI (Kuwait) considered that the Conference should concern itself with the inviolability of consular premises and not with restrictions to that principle. He shared the view expressed by the United Kingdom representative that the principle of the inviolability of consular premises was far from being a recognized practice in a number of States. He urged the retention of the phrase " consular premises shall be inviolable "; his delegation preferred the principle to be clearly stated, since any doubt on the subject would be tantamount, not only to limiting that principle, but even to eliminating it completely. The delegations of Cuba, Belgium, Norway and Brazil had energetically supported that principle, and it would be a backward step to institute restrictions on inviolability. The points raised by the United States amendment (L.2) should be settled by the drafting committee. He did not agree with the insertion of a clause authorizing access to consular premises in an emergency, and shared the view that that was a matter of common sense.

21. Mr. MORGAN (Liberia) said that it seemed quite normal that there should be access to consular premises in cases of force majeure. He would therefore prefer the International Law Commission's text to be maintained.

22. Mr. MARESCA (Italy) considered that the principle of inviolability related essentially to the archives and that it would be going too far to provide for absolute inviolability. From a legal point of view, he did not consider the complete assimilation of consular and diplomatic officials possible. However that might be, the original text seemed to him to provide a useful working basis.

23. Mr. DAS GUPTA (India) thought that the International Law Commission's text was sufficiently well balanced and should be acceptable to all. Paragraph 6 of the commentary on article 17 was very clear: " The performance of diplomatic acts, even if repeated, in no way affects the legal status of the head of a consular post and does not confer upon him any right to diplomatic privileges and immunities." There was thus a real difference between diplomatic and consular functions. The International Law Commission had therefore been perfectly justified in going as far as possible in its text on the subject of inviolability. As the Italian representative had pointed out, the main point was the inviolability of the archives, which implied the inviolability of consular premises. He shared the Norwegain representative's view that access to buildings in cases of force majeure was more or less implicitly authorized in all such cases. As the French representative had pointed out, consular officers could not by reason of the nature of their functions claim inviolability in the same way as diplomats. The International Law Commission had, moreover, already established a difference, since in the first sentence of its text it was stipulated that " The consular premises shall be inviolable ", whereas the second sentence provided that " the agents of the receiving State may not enter them ". It would be advisable to retain the International Law Commission's original wording.

24. Mrs. VILLGRATTNER (Austria) said that her delegation, in common with those of Norway, Brazil and other countries, was of the opinion that inviolability was indispensable. In cases of emergency such as those mentioned, the question did not arise where Austria was concerned, since fire and ambulance services were not controlled by the State. No clause restricting the principle of inviolability should be inserted into the text.

25. Mr. HEUMAN (France) thought there were four possible solutions. The Committee could adopt the principle of absolute and general inviolability as applying to consular premises and the residence of the head of the consular post; in other words, it would reject the four-power amendment (L.71) and adopt the original text together with the Spanish amendment (L.24) which provided a wording similar to that of the 1961 Vienna Convention and also that of the 1928 Havana Convention; or it could qualify the principle of absolute inviolability by applying it to consular premises but not to the residence of the consul; that was the wise solution adopted by the International Law Commission for which the French delegation would vote. In that case, article 30 as drafted by the Commission would then be maintained with the addition of the Austrian amendment (L.26). Again, the Committee could also decide on general but relative inviolability by voting for the four-power amendment (L.71) and for the Spanish amendment (L.24), which was a less dignified formula. Or lastly, if it voted for the four-power amendment (L.71) it would grant inviolability which was neither absolute nor general.

26. Mr. SRESHTHAPUTRA (Thailand) said that his delegation had been willing to accept the separate amendments submitted by Greece, Japan, Nigeria and the United Kingdom. But on glancing at the joint amendment (L.71) which had just been circulated he thought that his delegation would have difficulty in accepting paragraph 2, sub-paragraph (*b*), of that amendment. He therefore reserved the right to revert to that point at a later stage.

27. Mr. NWOGU (Nigeria) said that the sponsors of the four-power amendment (L.71) had tried to specify some of the circumstances in which access to premises could be authorized; he himself did not believe that there was in fact so much danger of abuse.

28. Mr. JESTAEDT (Federal Republic of Germany) moved the closure of the discussion.

The motion was rejected by 28 votes to 24, with 13 abstentions.

29. Mr. SPYRIDAKIS (Greece) explained that, with a view to facilitating the Committee's work and to enable an improvement in the wording of article 30, he had adopted a compromise solution and had agreed to join the sponsors of the four-power amendment (L.71), which largely conformed to his point of view. The only point on which his government was not in agreement was the extensive protection given to consular missions by paragraph 1 of the new amendment, which he would nevertheless support.

30. Mr. KHLESTOV (Union of Soviet Socialist Republics) proposed that discussion on that point be adjourned until the following meeting.

It was so agreed.

The meeting rose at 6 p.m.

EIGHTH MEETING

Monday, 11 March 1963, at 10.50 a.m.

Chairman: Mr. KAMEL (United Arab Republic)

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) (*continued*)

1. The CHAIRMAN invited the Committee to resume its consideration of article 30 and the amendments thereto.[1]

2. Mr. MÜNGER (San Marino) said that his delegation supported the retention of article 30 as drafted by the International Law Commission, as amended by the Spanish proposal (L.24), which would provide a text similar to the corresponding article of the 1961 Vienna Convention on Diplomatic Relations.

3. Mr. DE CASTRO (Philippines) said that he wished to submit an oral sub-amendment to the joint amendment (L.71) which would take into account what appeared to be a valuable suggestion in the United States amendment (L.2). He proposed to insert in sub-paragraph (*a*) of paragraph 2 of the joint amendment the words " his designee " after the words " head of the consular post ".

4. Paragraph 4 of the joint amendment appeared to be superfluous, for the sending State would normally be expected to request an explanation through the diplomatic channel if it was not convinced of the validity of the reasons given by the receiving State for entry into the consular premises.

5. Mr. VAZ PINTO (Portugal), said that the principle of inviolability of the consular premises was not generally admitted in customary law, which recognized only inviolability of the archives. The adoption of that principle would amount, not to a codification of customary law, but to a derogation from it. There was no need to modify the existing rules. Moreover, the 1961 Convention could not be cited in support of a principle. The diplomatic service and the consular service were not similar in every respect, as was shown by the fact that the United Nations had deemed it necessary to draw up two different conventions. From the practical point of view, there was a risk that, if paragraph 1 of the International Law Commission's draft were adopted, it would not meet with the approval of a large number of countries. His delegations was therefore unable to support paragraph 1 of the original text and would vote for the joint amendment (L.71).

6. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the inviolability of consular premises was the fundamental principle which enabled consuls to exercise their functions normally. Some of the amendments submitted would, however, derogate from that principle.

7. Taking first of all the amendments of a legal character, particularly those of the United Kingdom (L.29) and Japan (L.46), he said that the legislation of many countries laid down the principle of the inviolability of the consular premises. As the representative of Cuba had pointed out, that principle had been frequently confirmed by treaty. It was included in all the treaties signed by the Soviet Union, in article 18 of the Convention regarding consular agents, signed at Havana on 20 February 1928, and in many bilateral agreements concluded, for example, by the United States. In practice therefore the majority of States recognized the principle of the inviolability of consular premises and it would conflict with the many bilateral agreements to include in the new convention an article allowing any derogation from that principle. Many States would be unable to accept such a convention.

8. As to the practical aspect of the question, the representatives of Brazil and Norway had refuted the arguments of force majeure at the previous meeting. There was further the United Nations Headquarters Agreement, concluded in 1947 between the United Nations and the United States, under which the premises of missions accredited to the Organization were inviolable.[2] The case of fire mentioned was mainly hypothetical and, in fact, occurred only rarely; that argument was artificial.

9. Paragraph 2 of the joint amendment seemed to derogate from the principle of the respect for the sove-

[1] For the list of amendments submitted to article 30, see the summary record of the sixth meeting, footnote to para. 1. A further amendment (A/CONF.25/C.2/L.71), sponsored by Greece, Japan, Nigeria and the United Kingdom, had been submitted at the seventh meeting.

[2] Agreement regarding the Headquarters of the United Nations, signed at Lake Success on 26 June 1947: United Nations, *Treaty Series*, vol. 11, p. 26.

reignty of States laid down in the Charter. The amendment would legalize the violation of every immunity, and it would therefore be useless to speak of inviolability. Furthermore, it would be illogical if the inviolability conferred on the residence of diplomatic agents under article 30 of the 1961 Convention were to be withheld from the consular premises, which were more important than a residence. In his view, article 30 as drafted would safeguard the interests of small States, in particular those which had recently obtained their independence. For those reasons, the Soviet Union could not accept the joint amendment (L.71). It would support the amendments of Austria (L.26) and Spain (L.24).

10. Mr. SRESHTHAPUTRA (Thailand) said that his delegation's attitude towards the joint amendment (L.71) was determined by the constitution of his country under which the powers of the legislature and of the judicial and the executive authorities were completely separate. The principle of the separation of powers was inviolable. His government had on several occasions communicated its views on the desirability of a uniform standard of laws and practices in the consular field, which should be applied to all States, strong or weak, developed or under-developed. It would therefore be difficult for his government to accept sub-paragraph (*b*) of paragraph 2, which coupled the judicial and executive authorities, because the executive branch could have nothing to do with the judicial order. If that sub-paragraph were adopted, his country might be unable to ratify the convention. Moreover, the procedure for obtaining authorization to enter the consular premises would probably be lengthy and finally might serve no useful purpose as the result of possible changes in the meantime in the situation that warranted entry into the consular premises by the authorities of the receiving State. He therefore proposed to delete the words " pursuant to an order of the appropriate judicial authority and " in paragraph 2 (*b*), and to delete also paragraph 4, which seemed superfluous.

11. Mr. BLANKINSHIP (United States of America) said that two trends seemed to be taking shape in the Committee. Some members, like the representative of Norway, wished to retain the International Law Commission's text, in other words to uphold the principle of inviolability without restriction; others wished to enumerate certain exceptions. The United States position lay between those two extremes.

12. Since the submission of his amendment (L.2), minor modifications, which were acceptable to his delegation, had been proposed by the Federal Republic of Germany (sixth meeting, para. 28) and Argentina (seventh meeting, para. 4).

13. With regard to the joint amendment (L.71), his delegation was opposed to any further restrictions of the principle of inviolability, for they would make the text unacceptable to many countries.

14. The United States amendment, as amended by the Federal Republic of Germany and Argentina, stated accurately and concisely a generally recognized practice that seemed to approximate to the opinions expressed, among others, by the Norwegian and Soviet Union representatives; further, since it referred to inviolability, it was compatible with the text of the International Law Commission. The amendment should also satisfy the representatives of Norway, Czechoslovakia and the Soviet Union, who had recognized that, in case of fire, consent to enter the consular premises was presumed. It should also be acceptable to the parliaments of many countries, since it confirmed the practices in force.

15. Mr. ANGHEL (Romania) said that the four solutions proposed by the French representative showed two opposite trends: one towards safeguarding the inviolability of the consular premises, the other towards restricting that highly important privilege. He thought that the joint amendment would introduce so many exceptions that the rule laid down would be without substance and the principle of inviolability would become the exception. It would be very easy for the authorities of the receiving State to imagine that a fire had been started, or an offence committed, on the consular premises. In that event, the receiving State could readily provide an explanation to justify the fact of having entered the consular premises. Under the terms of the amendment, no consulate would have any safeguard in respect of inviolability of its premises, or even of its archives. He shared the views already expressed that the amendment would be a retrograde step so far as consular relations were concerned. Its adoption would not be in keeping with the trend towards the progressive development of international law in the field of consular relations and immunities. His delegation emphasized the importance of the principle of inviolability for the maintenance of good consular relations and thought it preferable to retain the original text of article 30.

16. Mr. EVANS (United Kingdom) explained that the joint amendment (L.71) was intended to take the place of the amendments in documents L.27, L.29, L.46 and L.59, in so far as they referred to article 30, paragraph 1.

17. The joint amendment changed only paragraph 1 of the amendment (L.27) submitted by Nigeria, and not paragraph 2, on the right of asylum, or paragraph 3 on the inviolability of archives, a principle that had long been accepted in international practice. The inviolability of archives was, moreover, expressly provided for in article 32 of the International Law Commission's draft articles and he saw no objection to the Committee writing that principle into article 30.

18. The joint amendment only modified the first paragraph of the United Kingdom amendment (L.29). The same applied to the amendments submitted by Japan (L.46) and Greece (L.59). Paragraph 1 of the joint amendment (L.71) stated the general principle of inviolability and paragraph 2 restricted its application to premises used exclusively for the work of a consulate. The drafting committee might perhaps consider the advisability of transferring the word " exclusively " to the definition of consular premises as given in article 1. Contrary to what several delegations seemed to fear, paragraph 2 (*b*) gave no arbitrary powers to agents of the receiving State. The right to enter consular premises could be exercised only under an order issued by the

competent judicial authority subject to the authorization of the Minister for Foreign Affairs or another agreed minister. The provision concerning another agreed minister was taken from the 1961 Vienna Convention (articles 13, 17 and 19). In addition to the Secretary of State for Foreign Affairs the United Kingdom had a Secretary of State for Commonwealth Relations. The provision in question was applicable only by agreement between the sending and the receiving State.

19. The sponsors of the joint amendment had provided for cases of force majeure in paragraph 3, because they considered that exception important and desired its inclusion in the Convention. Paragraph 4 had appeared in the amendment submitted by the Greek delegation (L.59) and provided a safeguard for the sending State, to which the receiving State must send a written explanation of the reasons for its action without undue delay.

20. The United Kingdom delegation had no objection to the Committee voting on those paragraphs separately.

21. The four-power proposal established a satisfactory balance between the interests of the sending State and those of the receiving State. In his opinion the inviolability proposed for consular premises in article 30 by the International Law Commission was too far-reaching. There was no rule in international law conferring the same inviolability on consular premises as on diplomatic premises. The United Kingdom had concluded no bilateral agreement which included an absolute inviolability clause for consular premises. Should some States wish to include such a clause in bilateral agreements, no provision in the Convention would prevent them.

22. If the views of the Soviet Union representative were accepted, a system of absolute inviolability would be imposed on countries that were opposed to it. Article 30 proposed by the International Law Commission constituted an innovation in international law, and would have the effect of granting consulates the same status as diplomatic missions. Mr. Žourek and the Hungarian representative had expressed the opinion that absolute inviolability of consular premises was indispensable for the exercise of consular functions, but, in his opinion, the receiving State had the right to take the measures necessary for the maintenance of public order and its safety. Hence, should the Conference introduce into the Convention the principle of complete and absolute inviolability of consular premises, some States would hesitate to establish consular relations.

23. He considered that the joint amendment (L.71) took into account both the interests of the sending and of the receiving State and urged the Committee to adopt it.

24. Mr. SPACIL (Czechoslovakia) thought that article 30, as drafted by the International Law Commission, should be maintained. The adoption of that article would enable consuls to carry out their functions under the best conditions. By authorizing the agents of the receiving State to enter consular premises under an order issued by the judicial authority and with the consent of the Minister for Foreign Affairs, the joint amendment would establish a system different from that applicable to diplomatic premises.

25. The sponsors of the amendment had not provided for the contingency of consular services being installed in a diplomatic building and thus enjoying total inviolability. Paragraph 3 of that amendment began " The consent of the head of the consular post may, however, be presumed in the case of fire . . ."; that clause was unnecessary, since no difficulty had ever arisen in case of fire or other disaster. If it was desired to legislate for all possibilities it would be necessary to provide for urgent repairs and other cases which were not covered by a multilateral convention. The same applied to offences which constituted specific cases. Should an offence be committed or be liable to be committed on consular premises, the receiving State had extensive means for making its interests respected; it could close the consulate, withdraw the exequatur, or declare a member of the consulate persona non grata. Hence, it was above all the interests of the receiving State that had to be protected. Those arguments had already been advanced in the International Law Commission, which had finally adopted the draft of article 30. During the Commission's twelfth session (530th meeting) Sir Gerald Fitzmaurice himself had recognized that there were valid arguments for an absolute inviolability of consular premises, since foreign official activities were exercised therein as on the premises of diplomatic missions. Granted that the object of the convention was to establish general rules, it should be recognized that specific cases could be met by bilateral agreements, should States so desire. The Czechoslovak delegation was therefore in favour of article 30 as drafted and was opposed to the joint amendment.

26. Baron van BOETZELAER (Netherlands) said that, in his view, the exceptions for force majeure provided in the joint amendment (L.71), and in the United States amendment (L.2), were not liable to lead to abuses by the receiving State. His delegation would be prepared to vote for the first of those proposals, but it preferred that of the United States.

27. Mr. DONOWAKI (Japan) said that the explanation supplied by the United Kingdom representative was entirely satisfactory. In his opinion, inviolability could be only relative. Diplomatic and consular missions were different, in that the latter did not enter into diplomatic negotiations with the central government of the receiving State, and were more commonly situated in the provincial towns of the receiving State. If the privilege of absolute inviolability were extended to all consulates — the number of which was constantly increasing — the authorities of the receiving State would be confronted with heavy responsibilities. He therefore urged the adoption of the joint amendment of which his delegation was one of the sponsors.

28. Mr. NWOGU (Nigeria) pointed out that consulates were called upon to deal with regional and local authorities subordinate to the government to which diplomatic missions were accredited: diplomatic and consular functions were not therefore comparable. Some degree of inviolability of premises was indispensable for the exercise of consular functions, and the safeguards provided by the joint amendment (L.71), of which the Nigerian delegation was one of the sponsors, were

adequate. It should also be noted that article 32 provided for absolute inviolability of archives and consular documents; that safeguard was more important for the satisfactory performance of consular functions than inviolability of premises.

29. Mr. MARESCA (Italy) also drew attention to the importance of article 32 under which archives and documents were inviolable at all times and wherever they might be. Article 30 might perhaps include a clause whereby the authorities of the receiving State would be placed under an absolute obligation to respect the archives and documents if they should feel themselves obliged to enter consular premises for any reason whatsoever.

30. Mr. LEVI (Yugoslavia) submitted an oral sub-amendment for the addition at the beginning of the Austrian amendment (L.26) of the words " his designee " and of the words " or his designee " after the words " head of post " in paragraph 1 of article 30. The arguments put forward by the various delegations that had proposed restrictions on the principle of inviolability were not convincing. There was no case for making a distinction between the inviolability of diplomatic and consular premises.

31. Mr. SALLEH bin ABAS (Federation of Malaya) said that the main purpose of the convention should be to protect the interests of the receiving State. Inviolability could be granted only so far as was required for the exercise of consular functions. He supported paragraph 1 and sub-paragraph (*a*) of paragraph 2 of the joint amendment (L.71), but he had difficulty in accepting sub-paragraph 2 (*g*), as he feared that by authorizing the agents of the receiving State to enter consular premises for the purpose of preserving public order, an excuse would be given for misuse on the part of the receiving State. Paragraph 3 was acceptable, but he was against paragraph 4. He was prepared to vote for paragraph 1 of the United States amendment (L.2) and asked that the Committee should vote separately on the various amendments under consideration.

The meeting rose at 1 p.m.

NINTH MEETING

Monday, 11 March 1963, at 3.25 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 30 (Inviolability of the consular premises) (*continued*)

1. The CHAIRMAN invited the Committee to continue its discussion of article 30 and the amendments thereto.[1]

[1] For the amendments submitted to article 30, see the summary records of the sixth meeting (footnote to para. 1) and the seventh meeting (footnote to para. 1).

2. Mr. OCHIRBAL (Mongolia) said that article 30 was one of the most vital articles in the draft convention. The lengthy discussion showed that the importance of the inviolability of consular premises was fully recognized and that there was wide support for the adoption of the International Law Commission's draft of paragraph 1. Consular and diplomatic functions were essentially the same and any differences would be shown in other articles. But even differences did not justify a distinction between consular and diplomatic inviolability. Other articles, such as article 40 (Special protection and respect due to consular officials), recognized the immunity of consular officials to the extent necessary for their functions, and it would be illogical not to provide the same immunity for consular premises.

3. There was no reason to include any provision for asylum, or for fire or other accidents; the Conference was concerned with establishing general principles and rights and not with particular cases. He was opposed to any limitation of inviolability, whether in the present draft convention or in any other agreements between governments. He would support the Austrian amendment (L.26), the Spanish amendment (L.24) and the amendment proposed by the Yugoslav representative at the previous meeting (para. 30) because they did not call for any such limitation.

4. Mr. TÔN THÂT ÂN (Republic of Viet-Nam) proposed that the amendments to the International Law Commission's draft should be put to the vote, each paragraph being taken separately.

5. Mr. TILAKARATNA (Ceylon) supported that proposal.

6. Mr. WASZCZUK (Poland) pointed out that paragraph 8 of the commentary on article 30 contained a list of conventions in which the principle of the inviolability of consular premises was recognized. Some of the very countries sponsoring the four-power amendment (L.71) had signed bilateral conventions recognizing the inviolability of consular premises and of the residence of the head of the consular post. He supported the Spanish proposal to include the residence of the head of the consular post (L.24) because it conformed to article 22 of the Convention on Diplomatic Relations. He was, however, opposed to the joint amendment, which was retrogressive and against the spirit of article 13 of the Charter under which the General Assembly was required to take the necessary steps to encourage the progressive development of international law and its codification. In case of fire, the head of post would obviously give his consent to the entry of firemen, but to include such an eventuality in the convention would weaken the principle of inviolability of consular premises. The United States representative had suggested that the principle could endanger the security of the receiving State. The real danger, however, lay in the application of an article such as that proposed in the joint amendment, which would open the door to possible abuse by the police of the receiving State and might cause tension between the two countries concerned.

7. He would vote for article 30 as drafted by the

International Law Commission, subject only to the Spanish and Austrian amendments.

8. Mr. SPYRIDAKIS (Greece), on behalf of the sponsors of the joint amendment (L.71), withdrew paragraph 4 of the amendment since it had encountered opposition during the discussion.

9. Mr. WALDRON (Ireland) supported the amendments the purpose of which was to restrict the absolute immunity of consular premises by granting immunity only to those parts used exclusively for consular purposes or providing for the right of entry by officials of the receiving State in certain circumstances. The arguments had been very clearly stated and he agreed particularly with those advanced by the representatives of Italy and the United Kingdom. He did not accept the much-repeated contention that progressive codification of international law was consistent with increasing immunity.

10. The CHAIRMAN invited the Committee to vote first on the Philippine oral sub-amendment to the joint amendment, submitted at the previous meeting.

11. Mr. BLANKINSHIP (United States), on a point of order, proposed that a separate vote should be taken on each paragraph and sub-paragraph of the joint amendment.

12. Mr. VRANKEN (Belgium) and Mr. KHOSLA (India) supported that proposal.

13. Mr. HEUMAN (France) proposed that the Committee should first vote on the United States amendment (L.2). In his opinion the amendments should be taken in the order in which they were submitted (rule 42 of the rules of procedure) and not according to the extent to which they differed from the original proposal (rule 41 of the rules of procedure) because in that respect there was little to choose between the joint amendment and the United States amendment.

14. The CHAIRMAN invited the Committee to vote on his ruling, which had been challenged by the representative of France.

The Chairman's ruling on the order of voting was endorsed by 62 votes to 2, with 7 abstentions.

15. The CHAIRMAN invited the Committee to vote on the United States proposal that each paragraph and sub-paragraph of the joint amendment should be voted on separately.

The proposal was approved by 42 votes to 4, with 20 abstentions.

16. The CHAIRMAN invited the Committee to vote on the joint amendment (A/CONF.25/C.2/L.71), paragraph 4 of which had been withdrawn.

Paragraph 1

Paragraph 1 was adopted by 44 votes to 15, with 13 abstentions.

Paragraph 2

The opening lines of paragraph 2 were approved by 48 votes to 11, with 9 abstentions.

Sub-paragraph 2 (a)

17. The CHAIRMAN drew attention to the oral proposal by the representative of the Philippines to insert the words " his designee " after the words " post " in the second line.

The proposal was adopted by 42 votes to 5, with 22 abstentions.

Sub-paragraph 2 (a), as amended, was approved by 45 votes to 10, with 9 abstentions.

Sub-paragraph 2 (b)

18. The CHAIRMAN drew attention to the oral proposal by the representative of Thailand: to delete the words " pursuant to an order of the appropriate judicial authority and " in the first and second lines.

The proposal was rejected by 24 votes to 10, with 35 abstentions.

Sub-paragraph 2 (b) was rejected by 31 votes to 22, with 14 abstentions.

Paragraph 3

Paragraph 3 was approved by 38 votes to 23, with 8 abstentions.

19. The CHAIRMAN invited the Committee to vote on the joint amendment to article 30 (L.71), as modified.

The joint amendment, as modified, was approved by 35 votes to 21, with 11 abstentions.

20. In reply to a question by Mr. MARESCA (Italy), the CHAIRMAN explained that the Nigerian amendment (L.27) concerning inviolability of consular archives was an addition to article 30 and would therefore be dealt with at a later stage together with other proposed additions.

21. Mr. LEVI (Yugoslavia) pointed out that the Spanish amendment (L.24) adding the words " incuding the residence of the head of the consular post " after the words " consular premises " had not been withdrawn.

22. Mr. HEUMAN (France) remarked that in approving the joint amendment the Committee had implicitly rejected the Spanish amendment. Paragraph 2 of the four-power amendment was a little ambiguous, since it could be taken as allowing the right of entry to the residence of the head of post. He suggested that the paragraph should be submitted to the drafting committee.

23. Mr. PEREZ HERNANDEZ (Spain) accepted the French representative's explanation but suggested that the Spanish amendment should nevertheless be put to the vote.

24. Mr. LEVI (Yugoslavia) agreed with the comment of the French representative concerning the Spanish amendment but also thought that it would be better for the amendment to be voted on. He too had doubts concerning paragraph 2 of the joint amendment, for it had to be remembered that the consul could also perform his consular activities in his residence. He doubted whe-

ther it was really possible to decide what was used " exclusively for the purpose of the work of the consulate ".

25. The CHAIRMAN endorsed the comment of the French representative. He explained, in addition, that he could not have put the Spanish amendment to the vote before the joint amendment, and it could not be voted on once the joint amendment had been adopted.

26. Mr. VRANKEN (Belgium) said he had voted for the four-power amendment on the understanding that it excluded the consul's residence.

27. The CHAIRMAN invited the Committee to consider paragraphs 2 and 3 of article 30.

28. Mr. DONOWAKI (Japan), introducing his delegation's amendments (L.46), said that it proposed a simpler version of paragraph 2; the International Law Commission's draft, which was very similar to the corresponding provision in the Convention on Diplomatic Relations, was excessive for consular purposes. He also wished to propose that the paragraph should be transferred from article 30 to article 40.

29. Paragraph 3 was also too far-reaching; it completely exempted consular property, furnishings and vehicles from requisition whereas he felt that they should be subject to reasonable requisition for public improvement or for national defence. He therefore proposed the deletion of the article.

30. Mr. NIETO (Mexico) said that paragraph 2 of the International Law Commission's text did not adequately reflect the extent to which the receiving State must do everything it could to protect consular premises. His delegation therefore proposed (L.43) to replace the words " appropriate steps " by " steps within its power ".

31. Mr. LEVI (Yugoslavia) expressed his delegation's preference for the revised text of paragraph 3 proposed by the Netherlands (L.13). It would, however, seem incompatible with the text of paragraph 1 as approved by the Committee to maintain the reference to " search " of consular premises. The extent of the inviolability established under paragraph 1 made it unnecessary to specify that the premises should be immune from search. His delegation therefore proposed the deletion of the word " search " as a sub-amendment to the Netherlands amendment, and if necessary to the United States amendment to paragraph 3 (L.2) or to the original International Law Commission text.

32. Mr. JESTAEDT (Federal Republic of Germany) supported the International Law Commission's text of paragraphs 2 and 3, which had been taken from article 22 of the Vienna Convention on Diplomatic Relations. The reasons given in support of that article were also valid for consular relations.

33. Mr. SPACIL (Czechoslovakia) approved the text of paragraphs 2 and 3 in the International Law Commission's draft. He proposed that the words " subject to the provisions of the foregoing paragraphs " should be deleted from the Nigerian amendments (L.27). If these sub-amendments were not acceptable to the proposer of the amendments, he would request a separate vote on the deletion of those words from the Nigerian amendments.

34. Mr. NWOGU (Nigeria) said that his delegation could not accept the proposed sub-amendments, since they would remove the only differences between the Nigerian amendments and the original text of the International Law Commission. The inclusion of the reference was desirable so as to ensure that, in any attempt to protect consular premises, the receiving State would enter the premises only in accordance with paragraph 1 as approved by the Committee.

35. Mr. EVANS (United Kingdom) said that the insertion of the reference proposed by Nigeria would be appropriate in view of the text adopted for paragraph 1 of article 30. The Mexican amendment to paragraph 2 (L.43) might, however, be interpreted as going beyond what was appropriate and necessary and his delegation would prefer to retain the original text.

36. He could not agree with the representative of the Federal Republic of Germany that considerations applicable to the corresponding paragraphs of the Vienna Convention on Diplomatic Relations were also valid with regard to paragraphs 2 and 3 of article 30. The Committee had decided not to extend to consular premises the same complete inviolability accorded to the premises of a diplomatic mission under the Vienna Convention. The International Law Commission's text of paragraph 3 must therefore be re-examined in the light of the decision on paragraph 1. Paragraph 3, as drafted, referred to immunity from " any search, requisition, attachment or execution ". The reference to " search " might have been appropriate if consular premises had been made completely inviolable, although in that case it might have been considered unnecessary to make such specific provision. It had, however, been decided that the inviolability should be limited, and that in certain circumstances the authorities of the receiving country could enter the consular premises without consent. That right of entry might be invalidated unless the local authorities could also exercise the right of search. In the view of his delegation, therefore, the reference to " search " should be deleted from paragraph 3. In so far as consular premises were inviolable they would not be subject to search.

37. In connexion with " requisition " there should be a clear distinction between temporary requisition when, for example, a State might in case of national emergency requisition property with the intention of returning it subsequently to its rightful owner, and permanent expropriation for purposes of national defence or public utility. Consular premises and property should be immune from the first type of requisition but the second case was quite different: it would not be appropriate to give such protection that a local authority wishing, for example, to construct a railway or road was hindered from doing so because it could not obtain possession of consular premises. Where such permanent expropriation or occupation was necessary the only right of the sending State should be to receive prompt, adequate and effective

indemnity. His delegation was therefore in complete agreement with paragraph 4 of the Greek amendment (L.59).

38. With regard to " attachment or execution " it was true that the 1961 Convention contained similar provisions. As had already been pointed out, however, diplomatic premises enjoyed complete inviolability whereas consular premises had not the same immunity from national jurisdiction. The properties referred to in paragraph 3 were covered by other provisions of international law concerning the immunity of the property of a foreign State from the jurisdiction of a national court, which would apply, irrespective of the provisions of the present Conference, to protect the legitimate interests of the sending State. But the reference to immunity from attachment or execution in paragraph 3 of article 30 went far beyond those provisions.

39. Paragraph 5 of the International Law Commission's commentary on article 30 stated: " If the consulate uses leased premises, measures of execution which would involve a breach of the rule of inviolability confirmed by this article must not be resorted to against the owner of the premises." A landlord might, for example, possess very valuable property and furnishings and have creditors to whom he owed large sums of money, yet because he had been fortunate enough to let his property as consular premises he would be immune from any attachment or execution in the receiving State. His delegation therefore strongly advocated the deletion of any reference to attachment or execution in paragraph 3, leaving the matter to be dealt with by the normal rules of international law concerning the immunity of a foreign State in respect of property belonging to it.

40. His delegation supported the Japanese proposal (L.46) to delete the existing text of paragraph 3 and at the same time accepted the Greek amendment (L.59, paragraph 4) which contained more precise and appropriate provisions.

41. Mr. HENAO-HENAO (Colombia) suggested that the Spanish-speaking members of the drafting committee should examine the Spanish text of paragraph 2 which did not give an adequate translation of the English text.

42. The CHAIRMAN said that if the Committee approved paragraph 2 the suggestion of the Colombian representative would be referred to the drafting committee for due consideration.

43. Mr. SPYRIDAKIS (Greece) said that his delegation had submitted amendments (L.59) to article 30, with particular reference to paragraphs 2 and 3 which had been taken *mutatis mutandis* from article 22 of the 1961 Convention, because it did not feel that the immunities and protection granted to diplomatic missions must be extended to the same degree to consular missions. The provisions of paragraph 2 as drafted by the International Law Commission seemed to go too far, and his delegation had therefore suggested that it should simply be provided that the receiving State should take "all appropriate steps to ensure the protection of the consular premises ".

44. His delegation had put forward the proposal in paragraph 4 of its amendment because more precise and detailed provisions with regard to requisition and expropriation were desirable. The amendment provided that if expropriation or occupation was necessary for purposes of national defence or public utility, all necessary steps should be taken to avoid impeding the performance of consular functions, and that a prompt, adequate and effective indemnity should be paid to the sending State. The proposed text was in accordance with the domestic legislation of many countries and would obviate any misunderstanding, while contributing to the satisfactory interpretation of international law.

45. Mr. BLANKINSHIP (United States of America) said that his delegation would prefer the deletion of paragraph 3. Should the paragraph not be deleted, however, it wished its amendment (L.2, paragraph 2) to be taken up. The International Law Commission had failed to consider the possible legal consequences of paragraph 3 as it stood. The United States amendment introduced several changes. It provided specifically that the furnishings and property which were to be immune should be on the consular premises and should belong to the sending State; reference to means of transport had been deleted. Means of transport were often the private property of consular officers and thus properly subject to attachment.

46. Mr. PEREZ HERNANDEZ (Spain) supported the suggestion by the representative of Colombia that the Spanish text of paragraph 2 should be considered by the drafting committee.

47. He had listened with interest to the comments of the representative of Greece on paragraph 3. Although not in full agreement with the Greek amendments, he proposed that paragraphs 2 and 3 of article 30 should be retained as drafted by the International Law Commission and that at the end of paragraph 3 a sentence should be added, based on the last paragraph of the Greek amendment, to the effect that if expropriation or occupation was necessary for purposes of national defence or public utility, all necessary steps should be taken to avoid impeding the performance of consular functions and a prompt, adequate and effective indemnity paid to the sending State. He proposed further that paragraph 3 of the Greek amendment (L.59) should become paragraph 4 of article 30.

48. Mr. MARESCA (Italy) said that paragraphs 1 and 2 of article 30 referred to completely different situations: paragraph 1 concerned the inviolability, with certain limitations, of consular premises but paragraph 2 was concerned with the duty of the receiving State to protect the consular premises. In his view a reference in paragraph 2 to paragraph 1 would weaken the text, and he would therefore oppose the Nigerian amendment. He felt that the deletion of the reference in paragraph 2 to the special duty of the receiving State would also weaken the text. He therefore favoured the retention of paragraph 2 as drafted by the International Law Commission. He opposed the deletion of the reference to search in paragraph 3; although it would be possible

under paragraph 1, as approved by the Committee, for authorities of the receiving State to enter consular premises in certain circumstances, it did not necessarily imply that they should have the right of search.

49. Mr. DONOWAKI (Japan) withdrew his delegation's amendment to paragraph 2 (L.46, paragraph 2) in favour of the Greek amendment (L.59, paragraph 2). His delegation maintained its proposal to delete paragraph 3.

50. The CHAIRMAN put to the vote the Greek amendment (A/CONF.25/C.2/L.59, paragraph 2).

The amendment was rejected by 32 votes to 5, with 31 abstentions.

51. After a discussion on procedure in which Mr. SPACIL (Czechoslovakia), Mr. NASCIMENTO e SILVA (Brazil) and Mr. EVANS (United Kingdom) took part, the CHAIRMAN suggested that, to simplify proceedings, he should put to the vote the Nigerian amendment (L.27, paragraph 4). Should that amendment be rejected, the original text as drafted by the International Law Commission would remain, but in any event the Mexican amendment thereto (L.43) would be put to the vote.

It was so agreed.

Paragraph 4 of the Nigerian amendment (A/CONF.25/C.2/L.27) was adopted by 31 votes to 13, with 23 abstentions.

The Mexican amendment (A/CONF.25/C.2/L.43) was rejected by 44 votes to 7, with 17 abstentions.

52. The CHAIRMAN put to the vote the Japanese proposal to delete paragraph 3 (A/CONF.25/C.2/L.46, paragraph 3).

The proposal was rejected by 41 votes to 10, with 15 abstentions.

53. The CHAIRMAN said that the proposal made by the representative of Spain constituted an amendment to the International Law Commission's draft and was not a sub-amendment to the Greek amendment to paragraph 3. He would, therefore, first put the Greek amendment to the vote. Should that amendment be rejected, he would put the Spanish proposal to the vote.

The Greek amendment (A/CONF.25/C.2/L.59, paragraph 4) was adopted by 28 votes to 19, with 19 abstentions.

54. The CHAIRMAN explained in reply to Mr. EVANS (United Kingdom) that, since the Greek amendment had been adopted, the United States (L.2) and Netherlands (L.13) amendments could no longer be considered.

55. The Committee had completed its consideration of paragraphs 2 and 3 of article 30. It remained for it to consider the proposals which had been made for the addition of new paragraphs to that article.

The meeting rose at 6.20 p.m.

TENTH MEETING

Tuesday, 12 March 1963, at 10.40 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) (*continued*)

1. The CHAIRMAN invited the Committee first, to take a decision on the new paragraph 3 proposed in the Nigerian amendment (L.27) concerning the inviolability of the consular archives and, subsequently, on the new paragraph 4 proposed in the United Kingdom amendment (L.29) concerning entry into the consular premises by any person entitled to enter by virtue of any contract or other private right.

2. Mr. NWOGU (Nigeria) said that, as sub-paragraph (*b*) of paragraph 2 of the joint amendment (L.71) had not been adopted, he would withdraw paragraph 3 of his delegation's amendment.

3. Mr. EVANS (United Kingdom) explained that his delegation had wished in the new paragraph 4 proposed in its amendment (L.29) to preserve the rights that any person had by virtue of a contract, such as a lease, or a private right such as a right of way.

4. Mr. LEVI (Yugoslavia) said that amendment would involve the insertion of a clause which might give rise to confusion; he would vote against it.

5. Mr. HARASZTI (Hungary) observed that the convention should be an instrument of international public law and should not therefore include any exception coming under private law. The United Kingdom amendment was not in conformity with the text of the previous paragraphs as already adopted by the Committee, since the Committee had rejected the amendment according to which the authorities of the receiving State would have had the right to enter the consular premises " pursuant to an order of the competent judicial authority ". In any case, the proposed provision was of no great practical value, and the Hungerian delegation would vote against it.

6. Mr. EVANS (United Kingdom) thought on the contrary that the case he had mentioned should be regulated by the convention. If a consul were to rent a building, giving the owner the right to enter the premises in order to supervise their maintenance, for example, it should be stated that such a right should be respected.

7. Mr. JESTAEDT (Federal Republic of Germany) said that he shared the opinion of the United Kingdom representative. The Committee had adopted paragraph 1 of article 30, embodying the exceptional case of force majeure, as had the 1961 Vienna Conference on Diplomatic Intercourse and Immunities. In the case of private rights, the Convention should clearly establish to what extent they should be respected, and he failed to see that

such a clause derogated from the recognized principle of the inviolability of the consular premises.

8. Mr. KHOSLA (India) said that he could not vote for the United Kingdom amendment. Restrictions had already been imposed on the principle of inviolability as formulated by the International Law Commission. The Committee had already rejected the right of any person to enter consular premises even if provided with an order of the courts; he could not see how an owner of the building could enter the consular premises without the consul's consent and without such an order.

9. The CHAIRMAN put to the vote new paragraph 4 of the United Kingdom amendment (A/CONF.25/C.2/L.29).

The proposal was rejected by 31 votes to 22, with 15 abstentions.

10. Mr. SPYRIDAKIS (Greece) said that, as indicated in paragraph 3 of his delegation's amendment (L.59), it was advisable to state explicitly in the text of the draft convention that consulates could not grant the right of asylum. The modern trend in international law was against it, because to recognize the right of asylum would be to restrict the sovereignty of the receiving State. In diplomatic missions asylum was sometimes granted in exceptional circumstances or as a result of special treaties; but that was very rarely the case in consular treaties. The Greek amendment was in line with current usage and international law.

11. The fact that the matter had not been discussed at the 1961 Vienna Conference did not mean that discussion of it should be avoided at the current conference, which was of an entirely different character. There was general agreement that the right of asylum in consulates could not be granted. A vote on the subject would be an important contribution to the development of international law, and would stress the impossibility of granting such asylum instead of restricting it to circumstances which, as the representative of Spain had pointed out, might cause misunderstanding.

12. Mr. HEUMAN (France) remarked that if it were laid down in the convention on consular relations that there was no recognition of the right of asylum it might be deduced *a contrario* that, since the 1961 Vienna Convention made no reference to it, that text implicitly admitted that such a right existed. His delegation was, of course, opposed to the right of asylum, but it considered that no reference to it should be made in the draft convention and it could not accept the Greek amendment.

13. Mr. ALVARADO GARAICOA (Ecuador) said that the question of the right of asylum should not be included in chapter II of the draft convention.

14. Mr. VRANKEN (Belgium) said that he shared the French representative's opinion that it would be dangerous to introduce a provision making any conference whatsoever to the right of asylum, which was not recognized by any country represented at the Conference.

15. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that the question was a very complicated one which should be considered on another occasion. The Committee should not take up a position different from that of the International Law Commission and of the 1961 Vienna Conference.

16. Mr. KAMEL (United Arab Republic) said that it would be worth while adding to article 30 a special paragraph on the right of asylum. The new paragraph 5 proposed by the United Kingdom (L.29) appeared to provide a satisfactory solution.

17. Mr. DE CASTRO (Philippines) said that he also would prefer that the question of the right of asylum be dealt with in another convention, since the International Law Commission was considering it. His delegation could not vote for the new paragraph 5 in the amendment of the United Kingdom (L.29), the amendments of Nigeria (L.27, part 2), or Japan (L.46, part 4), but would vote for the Greek amendment (L.59, part 3). The last-named text referred to the right of asylum in general and did not refer solely, as did the United Kingdom amendment, to " fugitives from justice ".

18. Mr. HENAO-HENAO (Colombia) endorsed the views of the representatives of Brazil (7th meeting), Ecuador and the Philippines. The right of asylum should in no case be granted on consular premises and it would be dangerous to raise the question by taking a decision one way or the other. No convention concluded between the Latin American States recognized the right of asylum on consular premises, although for humanitarian reasons Colombia allowed political refugees to be given asylum on diplomatic premises. His view was that the Committee should not be called upon to take a decision on the right of asylum.

19. Mr. WALDRON (Ireland) said that he would vote against all amendments that mentioned the right of asylum. He felt there would be a clear and possibly unanswerable case of *a contrario* with regard to the 1961 Convention if such amendments were adopted. He therefore agreed with the remarks made by the representatives of France and Belgium.

20. Mr. PEREZ-CHIRIBOGA (Venezuela) and Mr. ZEILINGER (Costa Rica) associated themselves with the statements of the representatives of Ecuador and Colombia.

21. Mr. VAZ PINTO (Portugal) said he was convinced that no risk would be incurred by the inclusion of a reference to the right of asylum. No country represented at the conference recognized the right of asylum on consular premises, but it would be better to specify in the text of the draft convention that such a right was not recognized.

22. Mr. EVANS (United Kingdom) said that, although he understood the opinions expressed by the representatives of France, Belgium and Ireland, under international law the situation was different with regard to diplomatic missions and consulates. The International Court of Justice recognized a limited right of asylum on the premises of diplomatic missions. In 1961, the Vienna

Conference had decided not to refer to the question, but there was no recognized right of asylum on consular premises and it would be advisable for the text of the draft convention to say so plainly. If his text of a new paragraph 5 (L.29) were not accepted, his delegation would vote for the Greek amendment (L.59, part 3).

23. Mr. MARESCA (Italy) said that in ignoring the right of asylum the 1961 Vienna Conference had followed a wise course. All delegations were opposed to the right of asylum on consular premises, but there would be some advantage in expressly stating that view in the convention.

24. Mr. PEREZ HERNANDEZ (Spain) remarked that every country recognizing the right of asylum on diplomatic premises had continued to apply that principle despite the silence of the 1961 Vienna Convention on the point. As to consular premises, however, a new paragraph added to article 30 might usefully indicate that such a right was not recognized. His delegation would vote for the Greek amendment, which did not refer to " fugitives from justice ".

25. The CHAIRMAN noted that there were no representatives who supported recognition of the right of asylum on consular premises. The Committee should decide whether a provision in that sense should be embodied in the text of the convention.

26. Mr. SPYRIDAKIS (Greece) said that, in view of the risk that would be run if the Committee were to take a negative position in the matter, he could not accept the Chairman's proposal.

27. Mr. von NUMERS (Finland) asked who had instructed the International Law Commission to undertake a study of the right of asylum and what was its purpose.

28. The CHAIRMAN said that the study would be undertaken under General Assembly resolution 1400 (XIV).

29. Mr. von NUMERS (Finland) said that under those conditions it would be premature for the Committee to take a decision on the point.

30. Mr. SPACIL (Czechoslovakia) supported the Chairman's proposal for an immediate vote. He did not believe that the Committee should concern itself with the question of the right of asylum.

31. Mr. VRANKEN (Belgium) also said that he was in favour of an immediate vote. The Conference had been convened under General Assembly resolution 1685 (XVI) for the purpose of drawing up a convention, but it was no part of its duties to discuss the right of asylum, which would be the subject of a special convention.

32. Mr. ANGHEL (Romania) proposed that, under rule 31 of the rules of procedure, the Committee should decide by vote whether it was competent to consider the question of the right of asylum.

33. Mr. KANEMATSU (Japan) opposed the Romanian representative's proposal, which would not give representatives an opportunity to consider the various amendments. He shared the Greek representative's views.

34. Mr. NALL (Israel) said that he believed he was right in understanding that, of the two proposed amendments, that of Greece (L.59, part 3) would have very considerable political repercussions, whereas that of the United Kingdom (L.29) would apply only to persons endeavouring to evade justice. He was therefore of the opinion that the political aspect of the matter should be left to the International Law Commission and that the Committee should confine itself to considering the other aspects.

35. Mr. EVANS (United Kingdom) said that the Romanian representative's proposal seemed entirely acceptable to him, and he asked the Japanese and Greek representatives not to maintain their opposition to it.

36. The CHAIRMAN put to the vote the Romanian representative's proposal, which was purely procedural and was to the effect that the Committee should proceed to vote on the question whether or not it should consider the question of the insertion in article 30 of a provision concerning the right of asylum.

The proposal was adopted by 66 votes to none, with 3 abstentions.

37. The CHAIRMAN said that he would accordingly put to the vote the question whether the Committee should consider including a provision concerning the right of asylum.

By 46 votes to 19 with 4 abstentions, the Committee decided not to consider the question of the insertion of a provision concerning the right of asylum.

38. The CHAIRMAN put to the vote article 30 as a whole as amended.

Article 30, as amended, was adopted by 42 votes to 16, with 12 abstentions.

39. Mr. MARESCA (Italy) said that he wished to draw the drafting committee's attention to the fact that the word " occupation " in the new paragraph 4 of article 30 seemed to him to be ambiguous.

40. Mr. HEUMAN (France) said he wished to point out that it was clear from the text and the preceding discussion that the consul's residence was outside the scope of article 30.

Article 31 (Exemption from taxation of consular premises)

41. The CHAIRMAN invited the Committee to consider article 31 and the amendments relating to it.[1]

42. Mr. BLANKINSHIP (United States of America), introducing his delegation's amendment (L.33/Rev.1) to article 31, said that his delegation shared the International Law Commission's desire to see consular premises exempted from taxation but feared that the Commission's text did not comply with the require-

[1] The following amendments had been submitted: United Kingdom, A/CONF.25/C.2/L.30; South Africa, A/CONF.25/C.2/L.31; Belgium, A/CONF.25/C.2/L.32; United States of America, A/CONF.25/C.2/L.33/Rev.1; Italy, A/CONF.25/C.2/L.37.

ments of the laws in force in certain States of the United States. The United States delegation had tried, however, to keep as close as possible to the International Law Commission's text.

43. In the United States, as in other States, taxes were levied essentially on property and not on persons. Hence, the United States delegation had considered it necessary that the article should refer to " consular premises " and not to " the head of post . . . in respect of the consular premises ". That was the object of its amendment, which did not appear incompatible with the amendment of the United Kingdom (L.30) or those of South Africa (L.31), Belgium (L.32) or Italy (L.37), since the phrase " acting for the sending State " in the United States amendment met the objections raised by the representatives of those countries.

44. The CHAIRMAN noted that a number of amendments were very similar and asked the sponsors to meet and establish, if possible, a joint text.

45. Mr. VRANKEN (Belgium) announced that the Belgian and Italian delegations had agreed on a joint text to take the place of their amendments (L.32 and L.37). The joint amendment read: " The sending State and any authorized person acting on its behalf . . ."

46. Mr. LEE (Canada) said that he was in favour of the United States proposal on the understanding, however, that the words " used exclusively for consular purposes " did not apply to the residence of the head of post.

47. Mr. ANGHEL (Romania) considered that article 31, as drafted by the International Law Commission, was satisfactory. In Romania, the principle of tax exemption was recognized both in municipal law and in bilateral conventions. Hence, he would vote for the draft article, while prepared to accept some amendments of form.

48. He did not object to the amendments by the United Kingdom (L.30) and by South Africa (L.31), nor to the joint amendment by Italy and Belgium, which were purely drafting matters. The United States amendment (L.33/Rev.1) did not seem to him to be very clear and included certain superfluous matters. The words " used exclusively for consular purposes " were not essential, and the words " situated in the territory of the receiving State " were superfluous. The United States amendment referred to the " legal or equitable " owner, which, to his mind, was not quite clear; it would be useful if the representative of the United States would explain what it meant.

49. Mr. JESTAEDT (Federal Republic of Germany) thought that the existing wording of article 31 which reproduced the provisions of the 1961 Convention, should be maintained. It should, however, be understood that tax exemption also applied to acquisitions and transfers of property.

50. Mr. HEUMAN (France) said that the International Law Commission's draft was satisfactory to him, but he was prepared to study the amendments submitted.

51. The United States amendment contained four innovations as compared with the original text. First, the addition of the phrase " used exclusively for consular purposes " did not seem to him entirely necessary, although he did not object to it. Similarly, the words " situated in the territory of the receiving State " seemed to him unnecessary, since consular premises were, by definition, situated in the territory of the receiving State. Then, the United States amendment adopted the idea expressed in the joint amendment by Italy and Belgium, an idea that the French delegation was prepared to accept; nevertheless it would have preferred reference to be made to the " head of post" rather than to " any person ", as proposed in the United Kingdom amendment (L.30). Lastly, the phrase " legal or equitable " seemed to him to be lacking in clarity; the term was peculiar to English and United States law. Like the German representative, he considered that exemption should also apply to acquisitions and transfers of property.

52. Mr. DRAKE (South Africa), explaining his delegation's amendment (L.31), said that he thought it preferable to specify that for the purpose of the articles under discussion the exemption should attach to the residence as well as to the office of the consul. The United States proposal seemed to him generally acceptable, provided that the words " used exclusively for consular purposes " and the word " equitable " were deleted. He had no objection to the Belgian and Italian amendment and shared the opinion of the German representative that exemption should apply to acquisitions of property.

53. Mr. EVANS (United Kingdom) said that the underlying principle of the article was to prevent the taxation of governments by governments. It should therefore be limited to those cases in which taxes were paid out of the funds of the sending State. The taxation of individual members of the consulate should be dealt with separately in article 48. For those reasons his delegation proposed that article 31 should be amended to apply only where consular premises were owned or leased by the sending State or by any person on behalf of the sending State. The Italian amendment (L.37) was based on the same idea, but was expressed more vaguely; that did not seem to him desirable. His delegation considered the South African amendment (L.32) to be generally acceptable. It could approve the United States amendment (L.33/Rev.1), subject to the substitution of the words " any person acting for " for the words " the head of post acting for ". On the other hand, it would not agree to the scope of article 31 being extended to cover the residences of consuls.

54. Mr. DOHERTY (Sierra Leone) said that he accepted the general principle stated in article 31. He approved of the United Kingdom amendment (L.30), and had no objection to the South African amendment (L.31).

55. Mr. ZABIGAILLO (Ukrainian Soviet Socialist Republic) considered the International Law Commission's draft of article 31 to be acceptable. The United States amendment (L.33/Rev.1) was not satisfactory,

since it imposed injustified restrictions. The term " exclusively " lacked precision; furthermore, the notion of " equitable " was badly defined and liable to give rise to mistaken interpretations.

56. After having heard the United Kingdom representative's explanations, the delegation of the Ukrainian Soviet Socialist Republic considered the United Kingdom amendment (L.30) to be acceptable. It also accepted the joint Belgian and Italian amendment.

The meeting rose at 1 p.m.

ELEVENTH MEETING

Tuesday, 12 March 1963, at 3.20 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 31 (Exemption from taxation of consular premises) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of paragraph 1 of article 31 and the amendments thereto.[1]

2. Mr. SHRESHTHAPUTRA (Thailand) said that some of the terms used in the United States amendment (L.33/Rev.1) were unfamiliar to his delegation, owing to the differences in their legal systems, and differed from the general terms used in the Vienna Convention on Diplomatic Relations. Although it had no objection in principle to the United States amendment, it would therefore prefer the United Kingdom amendment (L.30).

3. Mr. von NUMERS (Finland) asked whether the term " person " in the United Kingdom amendment was intended to mean both a natural and a juristic person. If so, the drafting committee might consider how to make the meaning clear.

4. In commenting on the United States amendment, the United Kingdom representative had said that he did not consider that the consular residence was included in the consular premises " used exclusively for consular purposes ". It would be difficult in a case, for example, where a sending State purchased a building for use as consular premises on one floor and as the consular residence on another floor, to assess the amount of exemption from taxation.

5. Mr. BLANKINSHIP (United States of America) said that the main purpose of his delegation in presenting its amendment (L.33/Rev.1) to paragraph 1 of article 31 had been to enable a federal government, such as that of the United States, not only to assume its obligations as a receiving State but to carry them out effectively. In the United States the state laws on real property taxes were interpreted very strictly. An attempt had therefore been made to draft a text suitable for inclusion in an international instrument but which would nevertheless override local laws and thus allow a more liberal interpretation of the law, as desired by the Federal Government, and still give adequate protection to consular representatives in the United States. It had, however, become clear from the discussion that the proposed wording was not entirely acceptable.

6. He would concede that, as had been suggested, the words " used exclusively for consular purposes " were unnecessary and that the point might well be covered by article 1 (Definitions). In drafting the amendment it had been thought that the inclusion of that phrase in article 31 would serve a double purpose and help to shorten the part dealing with honorary consuls.

7. The words " and situated in the territory of the receiving State " had been included so as to leave no possible grounds for challenge. It had, however, been argued that the meaning was implicit and his delegation would be willing to drop those words from the amendment.

8. The words " legal or equitable " had been included because there was in the United States law on real property a difference between the legal and the equitable owner, for example, in the case of a person buying a property on a bank loan. He accepted the fact, however, that the notion was not found in many legal systems and his delegation would agree to withdraw the words.

9. The main difference between the revised United States text and the International Law Commission draft was that the former referred to " consular premises " and the latter to " the sending State and the head of post "; his delegation maintained that part of the amendment, while accepting the United Kingdom sub-amendment. The revised text proposed by the United States delegation would therefore read:

" Consular premises of which the sending State or any person acting on behalf of the sending State is the owner or lessee, shall be exempt from all national, regional or municipal dues or taxes whatsoever, other than such as represent payment for specific services rendered."

10. The United States delegation also supported the views expressed by the representatives of France and the Federal Republic of Germany in regard to specific exemption from stamp duty, registration fees and all property transfer taxes.

11. Mr. HEUMAN (France) said that his delegation would vote for the revised United States text of paragraph 1. He suggested that it should be noted in the record that the unanimous view of the meeting was that paragraph 1 of article 31 should be interpreted as including exemption from property transfer taxes.

It was so agreed.

12. Mr. MARESCA (Italy) said that in its amendment (L.37) his delegation had desired to prevent any possibility of confusion. The text of paragraph 1 as drafted by the International Law Commission might be interpreted as meaning that the head of post should enjoy exemption from taxation on his private residence,

[1] For a list of the amendments, see summary record of the tenth meeting, footnote to para. 42.

for example. His delegation had subsequently withdrawn its amendment and joined with the delegation of Belgium in presenting an oral amendment, which in turn approached the United Kingdom amendment. The revised United States text had further bridged the gap and it would seem that general agreement could be reached.

13. Mr. SPACIL (Czechoslovakia) felt that although opinions were drawing closer together, general agreement had not yet been reached. The difference between the United States text and the International Law Commission draft lay in the subject of paragraph 1; that difference still remained. The principle that one State did not tax another State, which his delegation had welcomed in the original draft, had somehow been excluded from the United States text which was, therefore, less acceptable. His delegation would prefer a text which took due account of the consul as the official representative of a government and would therefore favour the International Law Commission draft.

14. Mr. DRAKE (South Africa) said that after hearing the persuasive arguments of the United States representative, his delegation would withdraw its own amendment (L.31) in its desire to reach agreement.

15. Mr. JESTAEDT (Federal Republic of Germany) supported the revised United States amendment. In his view, the consular residence should be exempt from taxation; that point could, however, be dealt with when examining the definition of consular premises in article 1, sub-paragraph (*j*). His delegation had submitted an amendment to that article in the drafting committee.

16. Mr. ALVARADO GARAICOA (Ecuador) supported the United States amendment.

17. Mr. EVANS (United Kingdom), replying to the representative of Finland, said that the term " person " was used in English without qualification to mean both a natural and a juristic person. He would, however, agree that the drafting committee might be asked to consider the point. In regard to the second point raised by the representative of Finland, the United Kingdom delegation thought, after consideration, it could accept that, for the purposes of article 31, the consular residence might be covered under the same conditions as other consular premises. It agreed to the suggestion made by the representative of the Federal Republic of Germany that the matter should be considered in connexion with the definition of consular premises in article 1. It must, however, be borne in mind that the Committee had decided with regard to article 30, paragraph 1, that the consular residence was not covered for the purposes of that article; that decision must be respected.

18. The CHAIRMAN put to the vote the revised United States amendment as read out by the United States representative.

The amendment was adopted by 41 votes to 3, with 17 abstentions.

19. The CHAIRMAN noted that no formal amendment had been proposed to paragraph 2 of article 31.

20. Mr. EVANS (United Kingdom) recalled that he had suggested that the adoption of a reference to " any person acting on behalf of the sending State " in paragraph 1 would require a consequential amendment to paragraph 2 to delete the words " the head of the consular post " and substitute " the person acting on its behalf ". The drafting committee might be asked to consider the matter.

21. The CHAIRMAN said that, since it was unnecessary to take a vote on paragraph 2, he would put to the vote article 31 as a whole with paragraph 1 as amended, and paragraph 2 as drafted by the International Law Commission on the understanding that its final wording would be referred to the drafting committee.

Article 31 as amended was approved by 53 votes to none, with 10 abstentions.

Article 32 (Inviolability of the consular archives and documents)

22. The CHAIRMAN invited the Committee to consider article 32 and the amendments thereto and pointed out that the amendments submitted by the Netherlands and Austria were identical.[2]

23. Mrs. VILLGRATTNER (Austria) said that her delegation would be happy to withdraw its amendment and to become a sponsor of the Netherlands amendment which had been submitted earlier.

24. Mr. DRAKE (South Africa) withdrew his delegation's amendment, and reserved the right to comment later on some of the other amendments submitted to article 32 which might go some way to meeting his delegation's requirements.

25. Baron van BOETZELAER (Netherlands) thanked the Austrian delegation for agreeing to become a sponsor of the Netherlands amendment, which had been proposed on the ground that the reference to " documents " in article 32 was superfluous and might lead to confusion. The purpose of the article was to ensure that consular archives were inviolable. The contents of the archives must be defined in article 1 and the possible confusion arose because one term had been picked out from that article and used in article 32. The reasons offered for so doing by the International Law Commission were not very convincing or clear. In the opinion of his delegation, therefore, it would improve the text if the words " and documents " were deleted.

26. Mr. KANEMATSU (Japan) introduced his delegation's amendment (L.47) and said that the inviolability of consular archives was the essence of consular immunity. Article 60 stipulated that the consular archives and documents of a consulate headed by an honorary consul must also be inviolable at any time. Since it was accepted that, except for the archives, consular premises and property were not inviolable in the strict sense of international law, his delegation would prefer the inviolability of archives to be stated as specified in its amendment. In essence, his delegation's proposal

[2] The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.14; South Africa, A/CONF.25/C.2/L.38; United Kingdom, A/CONF.25/C.2/L.39; Mexico, A/CONF.25/C.2/L.44; Austria, A/CONF.25/C.2/L.45; Japan, A/CONF.25/C.2/L.47.

was the same as the United Kingdom amendment (L.39). The Japanese delegation did not insist on the form of its proposal and, should the United Kingdom amendment be adopted, it could accept its wording.

27. Mr. NALL (Israel) said that there would appear to be some inconsistency in regard to sub-paragraph (*k*) of article 1, article 32 and article 35. In paragraph 6 of its commentary on article 1 the International Law Commission had said that correspondence which was sent by the consulate or which was addressed to it, in particular by the authorities of the sending State, the receiving State, a third State or international organizations, could not be regarded as coming within the definition if the said correspondence left the consulate, or before it was received at the consulate. At first sight the proposal to delete the words " and documents " in article 32 seemed justified. In paragraph 3 of its commentary on that article, however, the International Law Commission had said that the term " documents " meant any papers which did not come under the heading of " official correspondence " — e.g., " memoranda drawn up by the consulate ". Article 1 referred simply to " correspondence " and made no mention of " official correspondence ". Article 35 stated, in paragraph 2, that the official correspondence of the consulate should be inviolable and that official correspondence meant " all correspondence relating to the consulate and its functions ". In paragraph 10 of its commentary on that article, the International Law Commission had stated that the official correspondence was inviolable at all times and wherever it might be and " consequently even before it actually becomes part of the consular archives ". He would welcome further clarification of the matter since comparison of the different texts left some doubt as to the meaning of " documents " and " archives ". Was it to be understood, firstly, that correspondence and documents relating to civil status and other documents capable of production as documentary evidence at the behest of the interested person were to be excluded from the principle of inviolability accorded to consular archives, and, secondly, that unaccompanied correspondence could not be regarded as enjoying the privilege of inviolability ?

28. Mr. JESTAEDT (Federal Republic of Germany) agreed that there seemed to be some misunderstanding in regard to the meaning of " documents " in article 32, and that an explanation of the International Law Commission's view would be welcome.

29. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, explained that although it might appear that the definition in article 1, sub-paragraph (*k*), made the use of the expression " documents " superfluous in article 32, it should be noted that the definition referred to the papers " of the consulate ". The term " archives " implied that the papers concerned were already in the consulate's possession and that expression was officially accepted in many countries. The International Law Commission had wished to use language that could cover every possible case. It had had in mind, for example, documents which had not yet been handed over to the chancery of the consulate, but which should be given protection. The word " documents " had been inserted in article 32 to cover such circumstances. In article 1, sub-paragraph (*k*), the reference was to " correspondence " since it had been intended to avoid any restriction, whereas article 35 referred to " official correspondence ", following the example of the Vienna Convention on Diplomatic Relations, which had established certain privileges for official correspondence that could not be accorded to private correspondence. Those privileges were enumerated in the following paragraphs of article 35.

30. Mr. NALL (Israel) said that he was for the time being satisfied with that explanation.

31. Mr. EVANS (United Kingdom) said that his delegation's amendment (L.39) differed in three points from the International Law Commission draft. The words " and documents " had been omitted for the reasons stated by the representative of the Netherlands. He had, however, listened with great interest to Mr. Žourek and wished to reflect on his remarks. The second amendment made a minor drafting change: the expression " at all times " reflected the intention of the International Law Commission a little more accurately than " at any time ". His delegation attached great importance to the third point of difference, namely, the addition of a sentence to provide that the consular archives should be kept separate from any document or object relating to the private affairs of a consular officer or employee. In its view, and, probably in the view of the International Law Commission, consular officers should only be given immunity from jurisdiction in the performance of their official acts and they should not enjoy such immunity in their private affairs. Documents relating to such private affairs must therefore be kept separate.

32. Mr. NIETO (Mexico) stressed the fact that article 32 laid down one of the main principles of consular relations. It was, of course, essential that inviolability should be extended to the documents belonging to the consulate wherever they might be. To make the text clearer, however, and to avoid the implication that any document sent out from a consulate must always remain immune, even when it had passed into the possession of a private individual, his delegation had proposed an amendment (L.44) to replace the expression " consular archives and documents " by " archives and documents belonging to the consulate ".

33. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) endorsed the statement in paragraph 1 of the commentary, that article 32 " lays down one of the essential rules relating to consular privileges and immunities, recognized by customary international law ". He was opposed to deleting any reference to documents, but would support any amendment that consular archives and documents should be kept separate from personal material. For that reason, he supported the second part of the United Kingdom amendment because it was an improvement on the original article and because it stressed that the sole purpose of inviolability was to safeguard the normal exercise of consular functions. He would vote for the whole amendment if a reference to documents were included in the first part.

34. Mr. LEVI (Yugoslavia) thought that the words " and documents " should be retained. Mr. Žourek had explained the International Law Commission's reasons for including the words. Another reason was that future readers of the Conventions on Diplomatic and on Consular Relations might be puzzled to find that diplomatic papers were inviolable while consular papers were not.

35. The second United Kingdom amendment was a drafting matter. It seemed unnecessary to prescribe that consular archives and documents should be kept separate from other documents and property, as proposed in the Japanese and South African amendments and the third United Kingdom amendment, but he would not vote against the idea.

36. Mr. ALVARADO GARAICOA (Ecuador) supported the Japanese amendment since it was comprehensive and covered a number of points omitted from the International Law Commission's draft. In the interests of clarity, however, the two paragraphs should be transposed, subject to any necessary drafting corrections.

37. Mr. SPYRIDAKIS (Greece) was in favour of maintaining the International Law Commission's text, especially after hearing Mr. Žourek's explanation. He would also accept the United Kingdom amendment after hearing the comments of its sponsor; he suggested, however, that it should be combined with the Japanese amendment by transferring the words " this provision does not require the separation of diplomatic from consular archives when a consular office forms part of the diplomatic mission ", from paragraph 1 of the Japanese amendment to the United Kingdom amendment. The clause was an important one, for in many countries diplomatic missions included consular offices.

38. Mr. DAS GUPTA (India) thought that the article as drafted by the International Law Commission was entirely adequate, particularly in view of the definition of consular archives in article 1. He would, however, be prepared to accept the United Kingdom amendment, which was the same in substance but a little more comprehensive, provided a reference to documents was included; otherwise the article might be open to different interpretations.

39. Mr. HEUMAN (France) said that he supported the United Kingdom proposal to delete the reference to documents. In spite of the interesting explanation by Mr. Žourek he did not think it necessary to repeat in the operative articles parts of definitions contained in the opening article.

40. With regard to the United Kingdom proposal concerning separation of consular papers, the introduction of such a provision would place honorary consuls on the same footing as career consuls and he could not support such a proposal. If it were adopted, article 60, the corresponding article on the archives of honorary consul officials, would become redundant. He also opposed the Japanese amendment, which was similar in intent to that of the United Kingdom. He did not support the Mexican amendment, as he saw no reason to depart from the traditional language of conventions. Consequently, he was in favour of maintaining the International Law Commission's draft.

41. Mr. KANEMATSU (Japan) said that since the United Kingdom amendment was similar to his own he would be satisfied if either were adopted. He would accept the drafting revision proposed by the representative of Ecuador.

42. Mr. SERRA (Switzerland) pointed out that article 32 was dependent on a clear definition of consular archives in article 1. If, therefore, the Committee approved the article, the final version of the text should be left to the drafting committee.

43. Mr. WASZCZUK (Poland) was in favour of maintaining the article as drafted by the International Law Commission. Mr. Žourek had dispelled any doubts about retaining the word " documents " and he did not think that any of the other amendments would improve the text.

44. Mr. EVANS (United Kingdom) informed the Committee that he was prepared to accept the Ukrainian representative's proposal to reinstate the word " documents ", since his delegation had proposed the deletion of the definition of consular archives in article 1. He maintained his amendment concerning the separation of documents despite the French representative's comments on career and honorary consular officials. Although they differed in many respects, they were similar in that both had private affairs; his amendment was therefore essential.

45. Mr. MARESCA (Italy) said that the definition of consular archives in article 1 gave the impression that everything it comprised was permanently enclosed in the consulate: no provision was made for consular papers which might accompany a consular official carrying out duties away from the consulate. As long as the definition in article 1 remained, therefore, it was essential to keep the reference to documents in article 32. He could not support the proposal for a provision concerning the separation of consular papers from other material, since it was an entirely unnecessary instruction to consular officials.

46. Mr. BLANKINSHIP (United States of America) said that the inviolability of consular papers should naturally be as comprehensive as possible. As an example of the extent of the inviolability which the United States advocated, he said that his delegation understood that article 32 would provide that consular papers were inviolable even if in the possession of consular staff who were nationals of the receiving State. One difficulty might be the identification of consular papers in certain circumstances and he therefore supported the amendments for their separation from other papers. On the question of the word " documents ", although he had been instructed to support its deletion as superfluous, in the light of the definition in article 1, he was prepared to support its retention after hearing Mr. Žourek's statement.

47. Mr. VRANKEN (Belgium) said he had been prepared to accept the United Kingdom amendment in its original form, but to put back the words " and documents " was inconsistent with the second clause. It would be reasonable to stipulate that consular archives should be kept apart from other papers, but a similar provision for documents would conflict with the rule as interpreted in paragraph 1 of the International Law Commission's commentary which stated that " the papers of the consulate must as such be inviolable wherever they are, even, for example, if a member of the consulate is carrying them on his person,". He therefore supported the International Law Commission's text.

48. Mr. HENAO-HENAO (Colombia) said that the draft articles established a distinction between consular premises and consular officials, with a sub-distinction between career and honorary consuls. The difficulty was to avoid the same provisions for the two categories of consul. Article 57, however, provided that honorary consuls should have the same immunities as career consuls except for those in articles 30, 31 and 32. The adoption of the United Kingdom amendment to article 32, together with the amendments already adopted for articles 30 and 31, would render articles 58, 59 and 60 on honorary consuls redundant. The Committee should be aware that it was tending to put honorary consuls on the same footing as career consuls, though he himself would approve of it.

49. Mr. OCHIRBAL (Mongolia) said that he was in favour of maintaining the International Law Commission's text. He would, however, support the United Kingdom amendment now that the words " and documents " were to be included. The amendments concerning the separation of consular archives and documents seemed unnecessary.

50. Mr. NALL (Israel) said that his delegation, having considered all the proposals, had come to the conclusion that it could support the United Kingdom amendment in its original form, because it contained the essential elements of the other amendments and represented a step towards the progressive development of international law. The inclusion of the reference to " documents " created a difficulty for his delegation in view of the provisions of article 35 and of the definition in article 1. The United Kingdom representative had given as his reason for including the reference to documents the exclusion of a definition from article 1, which the United Kingdom was proposing in the drafting committee. That, however, seemed to be anticipating events. In order to enable his delegation to vote on the amendment in its revised form he would welcome some indication by the United Kingdom representative as to his delegation's reasons for its proposal to delete the definition of the term " consular archives " from article 1.

51. Mr. KONSTANTINOV (Bulgaria) said that he was in favour of the International Law Commission's text and was opposed to the Netherlands, Austrian and Japanese amendments, in view of the misgivings expressed by certain representatives, but he would accept the United Kingdom amendment as amended by the representative of the Ukrainian SSR.

52. Mr. NASCIMENTO e SILVA (Brazil) said he would prefer to see the International Law Commission's draft retained. He agreed, nevertheless, with the amendments for the separation of consular papers, all the more since, as the United Kingdom representative had pointed out, consuls were not immune from jurisdiction. The wording used in the United Kingdom amendment, " They shall be kept separate from any document or object relating to the private affairs of a consular officer or employee " was, however, ambiguous. If it implied that the existence of private documents in the archives would remove the inviolability of the archives, it was more appropriate as an internal national instruction for consular services. If it were adopted, he would suggest that it should be re-worded to state that private documents should be kept apart from consular documents.

53. Mr. AJA ESPIL (Argentina), referring to the United Kingdom representative's reasons for including the word " document " in his amendment, said that the Committee should base its discussions on a firm text. Since the definition which affected article 32 was being discussed by another committee, it would be better for further consideration of article 32 to be postponed until the definition had been decided upon.

54. Mr. LEVI (Yugoslavia) agreed with the representative of Brazil. There was a slight contradiction in the United Kingdom amendment between the first sentence, which implied that documents could be kept anywhere, and the second sentence, which stipulated that they should be separate from other documents. The proposal by the representative of Brazil would remove the contradiction. If it were not accepted by the United Kingdom representative he would move that the two sentences should be voted on separately.

55. Mr. EVANS (United Kingdom) accepted the suggestion of the representative of Brazil and indicated his willingness for the text of his amendment to be reviewed by the drafting committee. Replying to the representative of Israel, he said that the definition of consular archives was not considered sufficiently comprehensive and it was better to leave the words undefined (as in the Convention on Diplomatic Relations) than to include an incomplete definition.

56. Mr. ANGHEL (Romania) requested that the two sentences in the United Kingdom amendment should be put to the vote separately.

57. Mr. KANEMATSU (Japan) withdrew his amendment (L.47) in favour of the United Kingdom amendment.

58. The CHAIRMAN invited the Committee to vote on the joint Austrian and Netherlands proposal (A/CONF.25/C.2/L.14) to delete the words " anddocuments ".

The proposal was rejected by 35 votes to 7, with 17 abstentions.

59. The CHAIRMAN invited the Committee to vote on the first sentence of the United Kingdom amendment (A/CONF.25/C.2/L.39), which had been amended to include the words " and documents " after the word " archives ".

The first sentence of the United Kingdom amendment was adopted by 60 votes to none, with 4 abstentions.

60. The CHAIRMAN invited the Committee to vote on the second sentence of the United Kingdom amendment, on the understanding that if adopted it would be reviewed by the drafting committee.

The second sentence of the amendment was rejected by 22 votes to 21, with 19 abstentions.

61. Mr NALL (Israel) said he had voted for the amendment on the assumption that the definition of consular archives in article 1 would be deleted, but that if it were retained, the drafting committee would make the necessary corrections to the text.

62. The CHAIRMAN said that the Committee had thus adopted article 32 as amended by the first sentence of the United Kingdom proposal.

Article 33 (Facilities for the work of the consulate)

63. The CHAIRMAN invited the Committee to consider article 33 and pointed out that there were no amendments.

64. Mr. UNAT (Turkey) drew attention to a discrepancy between the title and the text of the article.

65. Mr. HEUMAN (France) remarked that there was no substance to the article: the International Law Commission itself, in paragraph 2 of its commentary, had said that it was difficult to define the facilities which the article had in view. He proposed that the article should be deleted and replaced by a reference to the title of chapter II. When the Committee came to discuss the title of chapter II, it could then consider whether " facilities " had any meaning and whether the word should be retained.

66. Mr. SHITTA-BEY (Nigeria) suggested that since the First Committee was discussing consular functions under article 5, the following words should be inserted at the end of article 33: " in so far as such functions are permissible under article 5."

The meeting rose at 6.5 p.m.

TWELFTH MEETING

Wednesday, 13 March 1963, at 10.40 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 33 (Facilities for the work of the consulate) (*continued*)

1. The CHAIRMAN invited the Committee to resume consideration of article 33 and the two oral amendments submitted by the French and Nigerian delegations.[1]

2. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that he did not think that article 33 had no practical value; a similar clause was included in several bilateral agreements. Article 15 of the Harvard draft also established that the receiving State should accord to a consul within its territory respect and protection adequate for the exercise of his consular functions.[2] The Nigerian amendment contributed nothing new, merely referring to article 5, which had not yet been adopted by the First Committee. If it were maintained, his delegation would ask for separate votes on the International Law Commission's text and on the Nigerian amendment. He would, however, propose a drafting amendment to replace in the title the words " Facilities for the work of the consulate " by " Assistance in the work of the consulate ".

3. Mr. ALVARADO GARAICOA (Ecuador) proposed in an oral amendment that article 33 should read: " The receiving State shall accord all indispensable facilities for the installation of the consulate and the performance of its functions." There were two distinct factors: the installation, namely, the acquisition of premises, for example, and the consular functions which implied inviolability of the premises.

4. Mr. LEVI (Yugoslavia) thought that article 33 should be retained with a few drafting amendments, including the replacement of the words " full facilities " by the words " all indispensable facilities ", as proposed by the representative of Ecuador.

5. Mr. NWOGU (Nigeria) pointed out that paragraph 2 of the commentary emphasized the difficulty of defining the term " facilities "; hence the reference in his delegation's amendment to article 5.

6. Mr. HARASZTI (Hungary) remarked that article 25 of the 1961 Vienna Convention on Diplomatic Relations contained a provision similar to that of article 33. It might be deduced from its deletion from the consular convention that the receiving State could adopt a different attitude with respect to consulates and embassies, and he would therefore prefer the retention of the text submitted by the International Law Commission.

7. Mr. SPACIL (Czechoslovakia) said the deletion of article 33 was unacceptable to his delegation, which regarded it as necessary. The draft convention could quite appropriately include provisions both of a general and a specific nature. Moreover, in that matter there should be no difference between the text as it stood and that of the 1961 Convention which, in article 25, made a similar provision.

8. Mr. JESTAEDT (Federal Republic of Germany) said that he agreed with the Hungarian representative that the International Law Commission's text should be adopted. Nevertheless, the question arose whether article 33 would not be better placed earlier in the same section, or even after article 5. That might be left to the drafting committee.

[1] See the summary record of the eleventh meeting, paras. 65 and 66.

[2] Harvard Law School. *Research in International Law, II. The Legal Position and Functions of Consuls* (Cambridge, Mass., 1932).

9. Mr. PEREZ HERNANDEZ (Spain) said that he shared the point of view of the representative of the Federal Republic of Germany both in endorsing the International Law Commission's draft and in asking that the article be given a more suitable place.

10. Mr. HEUMAN (France) said that, in view of the lack of support for his proposal to delete the article, he would withdraw it.

11. Of the amendments submitted, the Byelorussian proposal to introduce the idea of assistance seemed admirable. The Nigerian proposal, however, was dangerous, because article 5 contained a list of consular functions that was inevitably incomplete. Article 5 in the International Law Commission's text contained the words " more especially ", which obviated the danger. The adoption of the Nigerian amendment might paralyse the work of a consulate, and his delegation could neither support it nor even abstain from voting on it. As to the suggestion by the representative of the Federal Republic of Germany regarding the best place for article 33, his view was that it should be included in chapter II relating to facilities, privileges and immunities.

12. Mr. NWOGU (Nigeria) said that, in view of the fact that consideration of article 5 had not been completed, he would withdraw his amendment.

13. Mr. MARESCA (Italy) said that it was not a matter of tolerating the presence of consuls, but of assisting them as much as possible; the article should therefore be retained as drafted by the International Law Commission in order to avoid any limitation.

14. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) explained that his proposal to replace " facilities " by " assistance " referred to the title of the article. In order to facilitate the Committee's work, he would be willing to withdraw it.

15. Mr. KHLESTOV (Union of Soviet Socialist Republics), supported by Mr. BLANKINSHIP (United States of America), said that the titles were a matter for the drafting committee.

16. Mr. SPYRIDAKIS (Greece) said that he was in favour of article 33 as drafted.

The oral amendment of Ecuador was rejected by 30 votes to 14, with 21 abstentions.

Article 33 was adopted by 61 votes to 1, with 6 abstentions.

Article 34 (Freedom of movement)

17. The CHAIRMAN invited the Committee to consider article 34 and the amendments submitted by Australia (A/CONF.25/C.2/L.72) and Romania (A/CONF.25/C.2/L.99).

18. Mr. WOODBERRY (Australia) said that article 34 should safeguard the consulate from being impeded in its work and with that in mind his delegation had submitted its amendment. He thought it preferable to refer to freedom of movement in the consular district rather than in the territory of the receiving State. Further, it was to be feared that the term " ensure " might impose undue obligations on the receiving State and he therefore proposed replacing it by the word " permit ".

19. Mr. ANGHEL (Romania) said that the International Law Commission's text was acceptable to his delegation, which would vote for it provided that the term " ensure " was amended as proposed by the Australian representative. The use of the term might make the application of the text rather difficult, since it suggested some form of positive activity on the part of the receiving State, namely, an obligation to act. The receiving State, however, could undertake merely to grant freedom of movement, without ensuring the material possibility of exercising that right.

20. Mr. KONSTANTINOV (Bulgaria) supported the original draft as amended by the Romanian proposal and by part (*a*) of the Australian amendment. Part (*b*) of the Australian amendment, however, struck him as being superfluous.

21. Mr. KHOSLA (India) said that his delegation could accept the International Law Commission's text. He could not support the Romanian amendment, nor part (*a*) of the Australian amendment, but he had no objection to part (*b*) of that proposal.

22. Mr. JESTAEDT (Federal Republic of Germany) said that he could not share the Australian representative's opinion with regard to the consular district. A consul should in every circumstance enjoy the right to see his ambassador, who might well be outside his consular district, and he therefore preferred the retention of the International Law Commission's text.

23. Mr. LEVI (Yugoslavia) said he also preferred the text as it stood and would be unable to support either the Romanian or the Australian amendments.

24. Mr. BLANKINSHIP (United States of America) said that he shared the views expressed by the representative of the Federal Republic of Germany.

25. Mr. LEE (Canada) supported the views expressed by the representatives of India, the Federal Republic of Germany, the United States of America and Yugoslavia, and recalled that the International Law Commission, after consideration, had rejected the idea of including any restrictions in article 34.

26. Baron van BOETZELAER (Netherlands) proposed a sub-amendment to the Australian amendment (L.72) whereby the words " in their consular district " would be replaced by the words " in the performance of their consular functions ".

27. Mr. SAYED MOHAMMED HOSNI (Kuwait) recalled that article 34 had already been discussed at length by the International Law Commission.[3] He was not prepared to accept any restrictive provision in regard to it.

[3] See *Yearbook of the International Law Commission, 1960*, vol. I (United Nations publication, Sales No. 60.V.1, vol. I), 531st, 532nd and 572nd meetings.

28. Mr. MARESCA (Italy) pointed out that a consul's freedom of movement should not be restricted to his district; he should be in a position to visit the capital in order to contact the head of his country's diplomatic mission, and also to visit neighbouring districts for discussions with other consuls. It was not a question of an authorization which the receiving State might grant to the consul, but of a right. His delegation was therefore in favour of article 34 as drafted by the International Law Commission.

29. Mr. HEUMAN (France) said that he was opposed to both the Romanian amendment (L.99) and the Australian amendment (L.72). On the other hand, the sub-amendment submitted by the Netherlands delegation to the Australian amendment seemed to him to be acceptable. As a simple matter of arrangement, article 34 would be better placed in section II of chapter II, but that was a matter for the drafting committee.

30. He considered that reference should be made during the discussion of article 34 to article 70 (Non-discrimination). Article 47, paragraph 2, of the 1961 Vienna Convention provided: " Discrimination shall not be regarded as taking place (*a*) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State." When the time came, he would submit an amendment to the same effect *mutatis mutandis* to the convention on consular relations. If such a clause was not adopted, the French Government would interpret article 34 in the spirit of article 47, paragraph 2, sub-paragraph (*a*), of the Convention and reserve to itself the right, if a State restricted freedom of communication and movement, to apply the same treatment to the members of the consulates of that State. He wished his statement to be recorded in the summary record of the meeting. Subject to that reservation, his delegation would vote for draft article 34.

31. Mr. AJA ESPIL (Argentina) thought that the replacement of the word " ensure " by the word " permit ", as proposed in the Australian amendment would whittle down a right to a mere option, which would depend on the goodwill of the receiving State. His delegation would vote against the proposed amendments to draft article 34.

32. Mr. WOODBERRY (Australia) accepted the sub-amendment to his amendment proposed by the Netherlands.

33. Mr. ADDAI (Ghana) agreed with the representative of the Federal Republic of Germany in considering that the word " ensure " conformed to the principle contained in article 33. His delegation could not accept the Australian amendment.

34. Mr. SPYRIDAKIS (Greece) considered that the members of a consulate should be guaranteed complete freedom of movement and travel, and said he would vote for the International Law Commission's text.

35. Mr. ZEILINGER (Costa Rica) also supported the draft article, but wished to know whether the words " in its territory " referred to the territory of the receiving State.

36. The CHAIRMAN confirmed that the words applied to the territory of the receiving State.

37. Mr. RUSSELL (United Kingdom) considered that the word " ensure " might be interpreted as placing too specific an obligation on the receiving State, but the word " permit " would represent the actual meaning intended. The substitution of the word " permit " would not carry with it the implication that the consul was under an obligation to request permission to travel. With regard to the second amendment, the arguments put forward by the Australian representative seemed to him valid, in particular the argument that the article was concerned not with private travel but with travel for official consular purposes. He did not agree with the view that the proposed amendment would be inconsistent with the new article to be inserted between articles 4 and 5. The new article was an emergency measure providing for the performance of consular functions outside the consular district, in special cases and with the consent of the receiving State; the consent of the receiving State in such circumstances would automatically carry with it the right to travel. He was therefore in favour of the Australian amendment as modified by the Netherlands sub-amendment.

38. Mr. KHLESTOV (Union of Soviet Socialist Republics) noted that paragraph (*a*) of the Australian amendment and the Romanian amendment were identical. In the Russian version at all events, the word corresponding to " grant " expressed the principle more clearly. On the other hand, part (*b*) of the Australian amendment did not seem acceptable.

39. Mr. JESTAEDT (Federal Republic of Germany) referring to the French representative's statement, said that his delegation had deposited an amendment (A/CONF.25/C.1/L.44) to article 70 under which the wording of that article would be taken from article 47 of the 1961 Convention.

40. Mr. TOURE (Guinea) considered that the word " permit " would be clearer than the word " ensure "; he did not think that a consul would have to ask for a permit. He should, however, inform the Ministry of Foreign Affairs of his intention to travel to enable measures to be taken for his safety.

41. Mr. VRANKEN (Belgium) said that he was in favour of the Romanian amendment and of that of Australia, as modified by the Netherlands sub-amendment. He wished it to be recorded that he had made the same reservations as the French representative.

42. Mr. MOLITOR (Luxembourg) thought that the Netherlands sub-amendment provided a useful clarification.

43. Mr. LEVI (Yugoslavia) said that he did not consider that the Australian and Romanian amendments involved any very considerable changes. If the Committee approved of article 34, there was no reason to

believe that the receiving State would be required to provide the members of the consulate with means of transport.

44. Mr. SALLEH bin ABAS (Federation of Malaya) proposed a compromise wording for article 34 which would include neither " permit " nor " ensure ". Under his proposal, the article would read " subject to the laws and regulations of the receiving State concerning zones entry into which is prohibited or regulated for reasons of national security, all members of the consulate shall have freedom of movement and travel in the performance of their consular functions ".

45. Baron van BOETZELAER (Netherlands) and Mr. UNAT (Turkey) asked that it be noted in the summary record that their delegations made the same reservations as those of the representatives of France and Belgium.

46. Mr. Von NUMERS (Finland) said that the corresponding article of the 1961 Convention (article 26) contained the word " ensure "; he thought it undesirable that a different wording should be used in the convention on consular relations. He would accordingly vote for the article as it stood.

47. Mr. MORGAN (Liberia) also supported the article as drafted.

48. Mr. NWOGU (Nigeria) thought that the oral amendment by the delegation of the Federation of Malaya constituted a happy compromise solution and he would vote for it.

49. Mr. MARESCA (Italy) said that the Netherlands delegation's proposal would improve the article, but it would restrict its scope if the words " in its territory " were eliminated.

50. Mr. ANGHEL (Romania) agreed that his amendment should be referred to the drafting committee.

51. Mr. WOODBERRY (Australia) announced that his delegation had decided to withdraw its amendment (L.72) and to support the oral proposal made by the representative of the Federation of Malaya.

52. The CHAIRMAN pointed out that the Australian amendment could be withdrawn only if the Netherlands delegation did not maintain its sub-amendment.

53. Baron van BOETZELAER (Netherlands) said that, since the Australian delegation wished to withdraw its amendment, he was prepared to withdraw his sub-amendment.

54. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he was opposed to the Federation of Malaya's proposal and in favour of maintaining the International Law Commission's text.

The oral amendment of the Federation of Malaya was rejected by 26 votes to 17, with 22 abstentions.

55. Mr. HEUMAN (France), on a point of order, said he was opposed to the drafting committee being given a choice between the words " grant " and " ensure ", which bore on the very substance of the article.

56. The CHAIRMAN noted that the Romanian delegation had in fact withdrawn its amendment and that there was therefore only one text before the Committee — i.e., the article as drafted by the International Law Commission.

57. Mr. VRANKEN (Belgium) said that he wished to reintroduce the Romanian amendment and asked for it to be put to the vote.

The Romanian amendment (A/CONF.25/C.2/L.99), reintroduced by Belgium, was rejected by 26 votes to 21, with 19 abstentions.

Article 34 was adopted by 61 votes to none, with 6 abstentions.

The meeting rose at 12.55 p.m.

THIRTEENTH MEETING

Wednesday, 13 March 1963, at 3.15 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 35 (Freedom of communication)

1. The CHAIRMAN suggested that the Committee should consider article 35 and the amendments thereto paragraph by paragraph.[1]

Paragraph 1

2. The CHAIRMAN invited attention to the amendments submitted by Switzerland (L.42), Japan (L.55), South Africa (L.75) and Nigeria (L.108).

3. Mr. SERRA (Switzerland) explained that paragraph 1 of article 35 as drafted by the International Law Commission gave consulates the absolute right to make unrestricted use of the diplomatic or consular bag and the diplomatic or consular courier — a right which his government did not consider justified. The Swiss amendment (L.42) would subject freedom of communication to certain restrictions. Where the sending State had a diplomatic mission in the receiving State, the communications of the consular post with the government and with the diplomatic missions and consular posts of the sending State elsewhere than in the receiving State should be routed through that mission. That restriction on the use of the bag or courier (whether diplomatic or consular) was the best guarantee of their protection. If the sending State had no diplomatic representative in the receiving State, the consulate would be entitled to communicate directly as provided in paragraph 1.

[1] The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.15; Switzerland, A/CONF.25/C.2/L.42; Japan, A/CONF.25/C.2/L.55; Byelorussian Soviet Socialist Republic, A/CONF.25/C.2/L.70; Federal Republic of Germany, A/CONF.25/C.2/L.73; South Africa, A/CONF.25/C.2/L.75; Spain, A/CONF.25/C.2/L.91; Australia, A/CONF.25/C.2/L.92; Italy, A/CONF.25/C.2/L.102; Nigeria, A/CONF.25/C.2/L.108.

4. If paragraph 1 were adopted as drafted by the International Law Commission, the Swiss Government would be unwilling to apply it to honorary consuls as provided in article 57.

5. Mr. DRAKE (South Africa) said that his amendment (L.75) proposed to replace the words " free communication " by the words " freedom of communication "; it was intended to remove a possible ambiguity pointed out during the preliminary discussions. The wording of the draft might be taken as implying a guarantee of communication free of charge, whereas the International Law Commission's intention was that communication should be unrestricted, but subject to the normal charges for communications in the receiving State. He suggested that the paragraph should be referred to the drafting committee.

6. Mr. SHITTA-BEY (Nigeria) said that his amendment (L.108) to replace the last sentence of paragraph 1 by the following words: " The consulate may not, however, install and use a wireless transmitter except with the consent of the receiving State ", was more restrictive than the original version, because he did not consider that the reasons for permitting consuls to operate their own transmitters were as strong as in the case of diplomatic missions. Moreover, in countries where the sending State had a diplomatic mission, the consulate was under the diplomatic mission's supervision and could make urgent communications through the wireless transmitter authorized under paragraph 1 of article 27 of the Convention on Diplomatic Relations. The installation of consular transmitters would deprive the receiving State of revenue and would cause further congestion on already over-loaded frequencies, two factors that might be considered under article 55 as constituting an interference in the internal affairs of the receiving State.

7. Mr. WASZCZUK (Poland) said that he could not support the Swiss amendment as it restricted direct communication between consulates, which was frequently necessary to consular functions; such direct communication existed and would undoubtedly increase. He was also opposed to the Japanese amendment (L.55) for although the consular courier was not yet widely used it was impossible to foresee future developments. He supported the International Law Commission's text.

8. Mr. KANEMATSU (Japan) said that his amendment (L.55) to delete the words " or consular " was linked with the Japanese amendment to paragraph 5. In view of paragraph 4 of the International Law Commission's commentary, he considered that paragraph 5 of the text was designed to cover special cases and was not in accordance with practice. Paragraphs 2 and 3 of article 35 and articles 40 and 41 adequately safeguarded the inviolability of consular officials; the post of consular courier was entirely new and would only lead to complications. He therefore proposed to eliminate reference to consular courier from paragraphs 1 and 5.

9. Mr. SPACIL (Czechoslovakia) said that although at first sight the proposed amendments to paragraph 1 might seem an improvement on existing practice, careful examination would show that they were not. He, and doubtless other representatives who were experienced in consular functions, could give many examples to prove that the International Law Commission's draft was better and more flexible than any of the amendments. Under the Swiss amendment, for example, consulates would have to communicate with each other by means of a diplomatic courier who would have to make detours to visit the capital, and consulates would have to communicate with each other via the diplomatic courier on matters of purely consular concern. It was essential to ensure direct communication between consulates and he therefore opposed the Swiss amendment.

10. He also opposed the Japanese amendment, for although consular couriers might seem to be an innovation, it was essential to include them in the Convention for practical reasons. First, a courier carrying correspondence between the capital and a country where there was a consular but no diplomatic mission would, in effect, be a consular courier. Secondly, a head of a consular post or vice-consul carrying a bag to the capital would still be a consular and not a diplomatic courier for he did not appear on the diplomatic list. Thirdly, the representatives of the Netherlands and of the Byelorussian Soviet Socialist Republic had each proposed an amendment, which he supported, to the effect that *ad hoc* couriers appointed to carry the consular bag to the capital should be consular couriers. With regard to the Nigerian amendment, he understood the motive behind it and would be satisfied if it were submitted to the drafting committee.

11. Mr. SPYRIDAKIS (Greece) said that he was opposed to the introduction of a new element in international law and practice by the inclusion of provisions concerning the consular courier. In his opinion, articles 33, 34 and 40 provided an adequate safeguard for consular correspondence. He supported the Japanese and Swiss amendments; he also supported the South African and Nigerian amendments, but considered that they should be dealt with by the drafting committee.

12. The CHAIRMAN asked if the representative of Nigeria would agree to his amendment being submitted to the drafting committee. He pointed out that it was essentially the International Law Commission's interpretation of paragraph 1 as set out in paragraph 7 of its commentary.

13. Mr. SHITTA-BEY (Nigeria) concurred in the submission of his amendment to the drafting committee.

14. Mr. EVANS (United Kingdom) said that the Swiss amendment could cause great inconvenience and delay to the sending State's communications, for it seemed to imply that communications between consular posts could not be transmitted direct from one consulate to another, but would have to be routed via a diplomatic mission of the sending State or the capital of the sending State. It would be very awkward, for example, if communications in the United States, where the United Kingdom had many consulates, had all to be channelled through Washington.

15. The chief concern expressed in the Japanese amendment was that the draft convention should not

include a new category of courier or official to whom the immunities in paragraph 5 of article 35 would have to be accorded. The Japanese representative also considered that in so far as the courier was not a diplomatic courier he should only be treated as a consular official and given the corresponding limited inviolability and immunities. There were two objections. Firstly, couriers did not fall within the definition of consular officials in article 1. Secondly, and more important, it was essential for couriers to receive complete inviolability and not to have the limited inviolability given to consular officials. The situation that would result from the Japanese amendment — the existence of two categories of courier, with different degrees of inviolability — was neither satisfactory nor acceptable.

16. The South African and Nigerian amendments were purely drafting matters.

17. Mr. LEVI (Yugoslavia) said that he could not support the Swiss amendment. He understood the Swiss representative's point of view as he also came from a small country where there was no need for inter-consular communication. For large countries, however, he saw no reason for not allowing direct communication. He would support the Japanese amendment if it were understood that the consulate had the right to send its own diplomatic courier and did not have to rely on couriers detached from diplomatic missions.

18. Mr. WOODBERRY (Australia) pointed out that by virtue of article 57, article 35 was applicable to honorary consuls. If, therefore, it was intended that the complete inviolability proposed for consular couriers should extend to couriers appointed by honorary consuls who might be nationals of the receiving State, he could not support the idea. He would support the Japanese proposal if its intention was that, by eliminating consular couriers, consulates would use diplomatic couriers, who would be covered by diplomatic inviolability.

19. Mr. JESTAEDT (Federal Republic of Germany) endorsed the comments of the United Kingdom representative. The difference of opinion in the committee on the question of the consular courier arose because some countries were not accustomed to the common frontiers which existed between European countries, where there was no reason for couriers to call at the capital. The consular courier was accepted in practice and should be included in the Convention.

20. Mr. KONSTANTINOV (Bulgaria) opposed the Swiss amendment, which sought to eliminate an integral part of inter-consular functions. He also opposed the Japanese amendment, for without consular couriers the consuls would have to depend on diplomatic couriers, which would impede their communications. Provided the consuls had their own couriers it was unimportant whether they were called diplomatic or consular couriers.

21. Mr. MARESCA (Italy) remarked that the existence of several consulates in one receiving State implied the need for communication by correspondence and it would be unreasonable for a receiving State not to permit and protect correspondence between consulates of the same State on its territory. The Swiss amendment was satisfactory as far as it concerned consulates not in the same receiving State, but was too stringent regarding consulates in the same receiving State. He proposed, therefore, that in the second sentence of the amendment the words " and the other consulates of the sending State in the receiving State " should be inserted after the words " diplomatic missions ". With regard to the Japanese amendment, although he was in favour of any simplification of the Convention, he felt that there was a justification for consular couriers and that consuls should not be prevented from sending diplomatic bags to other consulates in the same country when necessary.

22. Mr. KHOSLA (India) shared the doubts expressed by a number of representatives on the Swiss amendment and appreciated the difficulties of which examples had been given. The International Law Commission was in favour of the principle of free and unrestricted communication which was also embodied in article 27 of the Convention on Diplomatic Relations. The consular officials knew the most efficient means of communication and it would be better as far as possible to leave it to them to decide their own methods.

23. The Italian representative's proposal would seem to provide that consulates could communicate with diplomatic missions in the receiving State but not outside it, and was therefore inconsistent with the provision regarding free communication. With regard to the Japanese amendment, it might be true that the term " consular courier " was a relatively new one, but it was a category that was going to figure increasingly in the world of consular relations and it should therefore be taken into account; it should be recognized and the consular courier himself given the privileges provided under article 35. He supported the suggestion that the South African amendment should be referred to the drafting committee.

24. Mr. SERRA (Switzerland) accepted the Italian sub-amendment to his amendment.

25. Mr. VRANKEN (Belgium) said that he could not accept the Swiss amendment even as amended by Italy. It was essential for consulates to be able to communicate direct with consulates in other countries. He supported the Japanese amendment because consular couriers were not recognized under international law. With regard to the use of a radio transmitter, he would accept the provision but pointed out that because of the limited medium and long wave frequencies allocated by the International Telecommunication Union, Belgium would not have any to spare for consulates.

26. Mr. von NUMERS (Finland) said that the essence of the question was the official bag rather than the person who carried it, for he derived his name from the kind of material he was carrying. If, therefore, it were decided to create a consular bag, it would also be necessary to create a consular courier.

27. Mr. PEREZ HERNANDEZ (Spain) supported the Swiss amendment as amended by Italy. It was an

objective and practical amendment and conformed with the principle that consular status should not be assimilated to diplomatic status. Moreover, since the First Committee had agreed to restrict consular functions to the territory of the receiving State, there was no need to extend the scope of the consular bag.

28. Mr. LEVI (Yugoslavia) supported the Italian sub-amendment as a compromise between the Swiss amendment and the opposing points of view, including his own.

29. Mr. HEUMAN (France), on a point of order, drew attention to the words " diplomatic missions " in the Swiss amendment and pointed out that there could be only one mission in one receiving State.

30. Mr. SERRA (Switzerland) proposed the insertion of the words " wherever they may be " after the words " diplomatic missions " in his amendment.

The revised Swiss amendment (A/CONF.25/C.2/L.42), as amended by the representative of Italy, was rejected by 32 votes to 17, with 17 abstentions.

31. The CHAIRMAN invited the Committee to vote on the Japanese amendment to paragraph 1.

32. Mr. LEVI (Yugoslavia), on a point of order, said that he could not vote until he knew whether a consulate had the right to have a diplomatic courier. If the answer were in the affirmative, he would vote for the amendment; otherwise he would vote against it.

33. Mr. KANEMATSU (Japan) said that the question was an important one; the answer would be found in the United Kingdom representative's interpretation of his amendment. He wished to remove the new idea of a consular courier, because in practice the function was performed by a kind of diplomatic courier between consulates.

34. Mr. LEVI (Yugoslavia) indicated his satisfaction with the explanation.

The Japanese amendment (A/CONF.25/C.2/L.55) was rejected by 38 votes to 11, with 18 abstentions.

35. The CHAIRMAN invited the Committee to vote on paragraph 1 of article 35 as drafted by the International Law Commission, on the understanding that the South African amendment (L.75) and the Nigerian amendment (L.108) would be referred to the drafting committee.

Paragraph 1 was approved by 60 votes to none, with 10 abstentions.

Paragraph 2

Paragraph 2 was approved unanimously.

Paragraph 3

36. The CHAIRMAN invited the Committee to consider paragraph 3 of article 35 and the four amendments thereto submitted by the delegations of the Federal Republic of Germany (L.73), South Africa (L.75), Spain (L.91), and Nigeria (L.108).

37. Mr. SHITTA-BEY (Nigeria) explained that the amendment submitted by his delegation had been introduced in accordance with the prevailing distinction between purely diplomatic bags and consular bags. The Committee had been working since the outset on the principle that there was a distinction between diplomatic and consular privileges. It was felt that the statement in the International Law Commission draft of paragraph 3, that the consular bag, like the diplomatic bag, should not be opened or detained, required qualification. His delegation had therefore submitted a new paragraph 3 setting certain limitations on the privileges accorded to the consular bag. The delegation of the Federal Republic of Germany had submitted a similar amendment in which the last sentence introduced the further condition that, should the request of the receiving State to open the bag be refused by the authorities of the sending State, the bag might be taken back by the sending State. His delegation was considering that addition with a view to combining its own amendment with that of the Federal Republic of Germany.

38. Mr. JESTAEDT (Federal Republic of Germany) said that his delegation had welcomed acceptance by the Committee, in article 30, of the principle that consular premises were inviolable with certain exceptions relating mainly to emergency situations. In the same spirit, it had put forward an amendment intended to rule out any possibility of the misunderstandings which sometimes arose in practice. It was, of course, desirable to establish the principle that the consular bag should be neither opened nor detained. Abuses of the consular bag did sometimes occur, however, and could be a subject of friction between States. His delegation had therefore sought a compromise and after stating the principle the amendment went on to provide that, should the competent authorities of the receiving State have serious reasons to believe that the bag contained something other than the correspondence, documents or articles referred to in paragraph 4 of article 35, they might with the authorization of the Ministry for Foreign Affairs of the receiving State request that the bag be opened in their presence by an authorized representative of the sending State. If the sending State refused the request it might take back the bag.

39. Mr. DRAKE (South Africa) withdrew his delegation's amendment in favour of the amendments submitted by the Federal Republic of Germany, Nigeria and Spain or, preferably, in favour of any joint proposal which might emerge from those amendments.

40. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that the amendments of the Federal Republic of Germany and of Nigeria allowed the consular bag to be opened in certain circumstances; his delegation found that totally unacceptable. An essential guarantee of the inviolability of consular correspondence was that the consular bag could not be opened or detained. The adoption of the proposed amendments would entirely change the situation and destroy the principle of absolute inviolability. Such phrases as " serious reasons " used in those amendments, or " cases of grave and well-founded suspicion ", used in the Spanish amendment left wide

scope for interpretation by the receiving State and could lead to abuse and the restriction of the sending State's freedom of communication. His delegation considered that the essential principle was adequately expressed in paragraph 3 as drafted by the International Law Commission, and it would vote against all the amendments.

41. The CHAIRMAN pointed out that, although there were some differences between the remaining amendments, the principle was the same in each.

42. Mr. PEREZ HERNANDEZ (Spain) said that, in order to facilitate the discussion, his delegation wished to withdraw its amendment and to become a sponsor of the amendment submitted by the Federal Republic of Germany. That amendment represented a compromise between the rights of the receiving State and those of the sending State. It was apparent that diplomatic and consular bags could not be treated in exactly the same way.

43. Mr. JESTAEDT (Federal Republic of Germany) welcomed the delegation of Spain as co-sponsor of his amendment.

44. Mr. KAMEL (United Arab Republic) said that although his delegation had supported the inviolability of consular archives and documents, it reserved its position regarding the text of paragraph 3 in the International Law Commission's draft. It would therefore vote for the joint amendment, in accordance with the position taken by the United Arab Republic at the 1961 Conference with regard to the inviolability of the diplomatic bag. Any government would exercise the right to open a consular bag in certain circumstances with the greatest care, and both sending and receiving States would benefit from the proposed provision.

45. Mr. TÔN THÂT ÂN (Republic of Viet-Nam) supported the joint amendment. The consular function was essentially administrative, and his delegation felt that the respect accorded to the consular bag should be less absolute than that given to the diplomatic bag. The amendment offered adequate safeguards to the sending State.

46. Mr. LEVI (Yugoslavia) supported the International Law Commission's draft. The adoption of the proposed amendments would imply that diplomatic officials were not suspected of violating the law of the receiving State and it was therefore unnecessary to open diplomatic bags, but that suspicion did fall on consular officials and it must therefore be possible to open consular bags. His delegation would vote against any amendment which would restrict the inviolability established in paragraph 3.

47. Mr. SPACIL (Czechoslovakia) strongly opposed all the amendments which had been submitted to paragraph 3 and which would mean the complete rejection of the principle of inviolability of the consular bag. His delegation had consistently opposed all attempts to restrict consular immunities. The proposed amendments would leave it entirely to the discretion of the receiving government when to open a consular bag, and the sending State would have no guarantee of the bag's inviolability. The situation would be particularly dangerous in periods of political tension. In practice the effect of the amendments would be to destroy inviolability of consular correspondence, since in order to determine whether the bag did, in fact, contain only official correspondence the receiving State would have to examine each document. The last sentence of the joint amendment was an attempt to compromise, but in practice the sending State would have to choose between taking back the bag unopened, which could be interpreted as an unfriendly gesture, and opening the bag with the consequent violation of its official correspondence. The principle established in the International Law Commission draft of paragraph 3, that the consular bag, like the diplomatic bag, could not be opened or detained, must be safeguarded. His delegation would therefore vote against the amendments.

48. Mr. KHOSLA (India) agreed that the consular bag should be treated like the diplomatic bag and that the International Law Commission draft should be accepted for the reasons so well expressed by the representatives of Yugoslavia and Czechoslovakia.

49. Mr. PETRENKO (Union of Soviet Socialist Republics) said that it would be preferable to adopt the International Law Commission's text since the proposed amendments would allow a partial violation of the principle that the consular bag should not be opened or detained. At the 1961 Conference a number of amendments had been introduced to restrict the inviolability of the diplomatic bag but that move had been defeated by more than a two-thirds majority of the Conference. At the thirteenth session of the International Law Commission (596th and 619th meetings), when the text now before the Committee was under consideration, a few members had favoured a limitation of the inviolability of the consular bag, but again a majority of the members had decided to uphold its absolute inviolability.[2] The proposed preamble expressed the belief that an international convention on consular relations would contribute to the development of friendly relations among nations: if it was desired to achieve that aim it would be better to exclude the possibility of friction between States which would inevitably arise if attempts were made to open diplomatic or consular bags. Soviet law and practice allowed no infringement of inviolability, and his delegation would vote for the International Law Commission draft.

50. Mr. EVANS (United Kingdom) said that in considering the amendments it was important to distinguish between the official correspondence and the consular bag. It was the official correspondence of the consulate which was given inviolability under paragraph 2 of article 35: the provision in paragraph 3 that the bag should not be opened was solely designed to protect the official correspondence. That provision was a special privilege accorded to the sending State, but

[2] For the discussion of this matter during the twelfth session, see also *Yearbook of the International Law Commission, 1960*, vol. I (United Nations publication, Sales No. 60.V.1, vol. I), 531st and 532nd meetings.

the receiving State also had an interest in seeing that the privilege was not abused. Abuses did occur, and articles were sometimes put in consular bags which had no right to be there. His delegation therefore felt it important to devise a procedure to protect the interests both of the sending State and of the receiving State. The joint amendment seemed to do so adequately. It protected the interests of the receiving State which, if it had a serious reason for doing so, and only then, could request the bag to be opened. On the other hand, the sending State retained the right to take back the bag unopened. Nothing in the amendment affected the inviolability of the official correspondence under paragraph 2. The inclusion in article 35 of the provisions proposed in the joint amendment would discourage abuse and would help to eliminate any possible cause of friction between sending and receiving States. The Nigerian amendment went rather further than the joint amendment and contained provisions to be found in a number of bilateral agreements into which the United Kingdom had entered. His delegation would therefore be able to accept that amendment. On the whole, however, it would seem that the joint amendment was a little more likely to commend itself to the Committee as a reasonable compromise. Nothing in the amendment affected the inviolability of the diplomatic bag.

51. Mr. SHITTA-BEY (Nigeria) said that, after listening to the views which had been expressed and conferring with the representative of the Federal Republic of Germany, he would withdraw his delegation's amendment (L.108, paragraph 2) in favour of a joint amendment which his delegation wished to sponsor together with the delegations of the Federal Republic of Germany and Spain. The proposed text of paragraph 3 would be that of the original amendment of the Federal Republic of Germany (L.73) with the deletion in the second sentence of the words " with the authorization of the Ministry for Foreign Affairs of the receiving State "; the last sentence would be re-drafted to read: " If the authorities of the sending State refuse this request they may take back the bag."

52. Mr. PEREZ HERNANDEZ (Spain) welcomed the delegation of Nigeria as a sponsor of the revised joint amendment.

53. Mr. KONSTANTINOV (Bulgaria) opposed the joint amendment; his delegation supported the International Law Commission's draft which embodied in a satisfactory manner the very important principle that the consular bag should be inviolable.

54. Mr. SRESHTHAPUTRA (Thailand) supported the first part of the joint amendment; but, although he appreciated its good intentions, he doubted whether the last sentence would produce the expected result of avoiding conflict. If a receiving State decided to request the bag to be opened it would be because it had serious reasons to believe that it contained something other than official correspondence. If the sending State then decided to take the bag back, the doubts of the receiving State would be reinforced and the bad feeling between the receiving and the sending States which had already arisen since the receiving State made the request would remain. With the exception of the last sentence, however, his delegation would support the joint amendment.

55. Mr. SERRA (Switzerland) asked for an expert opinion on the introduction of the consular bag which for many countries was a new idea.

56. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, said that his reply was based on the International Law Commission's commentary on paragraph 3. The consular bag might take the form of a sack, box, envelope or any sort of package, but the essential criterion was that it should contain the official correspondence, documents or articles intended for official use. It must also bear visible external marks of its character.

57. Mr. SERRA (Switzerland) asked what distinction should be made between diplomatic and consular bags.

58. Mr. ŽOUREK (Expert) replied that the consular bag was a bag sent by a consulate. In practice a consulate often sent its bag to a diplomatic mission or to a central point from which it was transported jointly with other diplomatic or consular bags to its destination. By reason of its geographical position, a consulate might have to send a consular courier to the seat of the diplomatic mission in the receiving State or directly to the Ministry for Foreign Affairs in the sending State. The International Law Commission had felt that the consular bag should have the same inviolability as the diplomatic bag, whether it was carried by a consular courier or sent through the intermediary of the diplomatic mission or an intermediate post.

59. Mr. HARASZTI (Hungary) said that if the Committee admitted that the consular bag could be opened, it would be recognizing the right of the receiving State to examine official correspondence, which could not be identified without examining all the documents in the bag. The principle of the inviolability of official correspondence would therefore be completely invalidated and freedom of communication would be hampered. His delegation believed that consulates and diplomatic missions should be treated equally in that respect and would therefore vote against the joint amendment and in favour of the original text.

60. Mr. WASZCZUK (Poland) said that the amendment, which dealt with very exceptional situations, was totally unacceptable to his delegation, which would vote for the International Law Commission's text.

61. Mr. ZEILINGER (Costa Rica) pointed out the practical difficulty that if the consular courier was asked to open the bag he could not do so, since he never carried the key.

62. Mr. LEVI (Yugoslavia) stressed the fact that consular and diplomatic bags must be given the same degree of inviolability. The adoption of the joint amendment would mean that the consular courier would have the right to take back the bag if challenged. The diplomatic courier would be in a less favourable position should a receiving State decide to violate the Vienna Convention and open a diplomatic bag.

63. Mr. MARESCA (Italy) considered that the joint amendment was a well-balanced text. He proposed that the drafting committee should be requested to include in article 1 a definition of " consular bag ".

64. Mr. DEJANY (Saudi Arabia) said that he had difficulty in accepting the principle of the joint amendment, but he regretted that in its latest revision the authorization of the Ministry for Foreign Affairs of the receiving State had been omitted. The retention of that reference might make the text more acceptable to those anxious to safeguard inviolability; it would help also if the reasons for which the receiving State might request the opening of the bag were stated to be " very serious ".

65. Consular and diplomatic bags were sometimes sent through the regular mail. In such circumstances a bag could not be taken back by the sending State should the request to open it be refused since the bag would still be in the custody of the postal authorities. It might make the text more generally applicable if it were provided that, were the request to open the bag to be refused by the authorities of the sending State, the bag should be returned to its place of origin.

66. Mr. BOUZIRI (Tunisia) recalled that only after lengthy discussion had the 1961 Conference finally agreed that the diplomatic bag should be accorded complete inviolability. It would be difficult to grant the same degree of inviolability to the consular bag. The opening of a consular bag would not necessarily mean that the correspondence it contained would be read. It would be relatively easy to detect any unauthorized contents and to ascertain whether the bag contained only official correspondence. His delegation saw the practical necessity for the amendment which would provide that in certain cases — which, moreover, would be very exceptional — the consular bag could be opened. The authorities of the receiving State would unquestionably be wary of acting without due consideration and opening the bag without serious reasons to do so, for that would be a very grave matter and might involve the rupture of relations between the States concerned. His delegation would vote for the amendment but felt that the text might be further improved, particularly in the last sentence, which was slightly ambiguous.

67. Mr. AMLIE (Norway) said that his delegation strongly opposed the joint amendment. The Committee was treading a very dangerous path in contemplating its acceptance. Similar amendments had been before the 1961 Conference but had been rejected. Many excellent arguments had been put forward against the present amendment and he would draw attention only to one additional factor. The competent authorities of a receiving State could ascertain whether or not the correspondence contained in a consular bag was official correspondence only by reading it. Article 5 (*c*), however, listed among the consular functions " ascertaining conditions and developments in the economic, commercial, cultural and scientific life of the receiving State, reporting thereon to the government of the sending State and giving information to persons interested ". The consular bag might contain, quite legitimately, an uncomplimentary report on the economic, scientific or cultural life of a country. Rather than allow the authorities of the receiving State to see that report the sending State might prefer to take back the consular bag, thus creating great embarrassment, although the bag contained no unauthorized article. The provision introduced by the amendment added no clarity and would not help to avoid friction. It would, on the contrary, only add to the possibility of friction, suspicion and misunderstanding. Although the intentions and fears of the amendment's supporters were understandable, the solution to the problem could not be found by a formula such as the one proposed.

68. Mr. MOUSSAVI (Iran) said he would vote for the joint amendment because he believed in the principle of relative rather than absolute inviolability.

69. Mr. DE CASTRO (Philippines) said he did not believe there was any real difference of opinion in the Committee, for he was sure that no one had any intention of using the consular bag for anything other than official matters. There was no reason for concern about the proposed amendments for he was convinced that governments which signed the convention would observe it in good faith.

70. Mr. SHITTA-BEY (Nigeria) recalled that the representative of Thailand had expressed doubts concerning the effect of the last sentence of the joint amendment. He had listened carefully to the discussion on the principle of complete inviolability as opposed to limited inviolability for the consular bag and believed that a balance between the two views would be achieved if the last sentence were re-drafted to read " If this request is refused by the authorities of the sending State the bag shall be returned to its place of origin."

71. The CHAIRMAN stated that if the representatives of Spain and the Federal Republic of Germany accepted the amendment it would be considered as a revision and not a sub-amendment of the joint amendment.

72. Mr. JESTAEDT (Federal Republic of Germany) and Mr. PEREZ HERNANDEZ (Spain) indicated their acceptance of the Nigerian proposal.

73. Mr. TOURE (Guinea) asked what would be the position of the receiving State in the eventuality provided for by the Nigerian amendment.

74. Mr. SHITTA-BEY (Nigeria) said he had proposed his amendment as a guarantee of the principle of inviolability. If the authorities of the sending State knew that there was nothing in the consular bag that would contravene the Convention, they would open the bag on request. But regardless of the attitude of the receiving State, they should be given the opportunity to refuse in accordance with the principles of international law.

75. The CHAIRMAN said that he would put the joint amendment to the vote.

76. Mr. SRESHTHAPUTRA (Thailand) requested a separate vote on the first and last sentences of the amendment.

77. The CHAIRMAN put to the vote the first sentence of the revised joint amendment by the Federal Republic of Germany, Spain and Nigeria.

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

The United Kingdom, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Republic of Viet-Nam, Algeria, Argentina, Australia, Belgium, Brazil, Canada, China, Colombia, Congo (Leopoldville), Denmark, Federation of Malaya, Federal Republic of Germany, Ghana, Greece, Indonesia, Iran, Ireland, Israel, Italy, Republic of Korea, Liberia, Libya, Liechtenstein, Mexico, Morocco, Netherlands, Nigeria, Pakistan, Philippines, Portugal, San Marino, Saudi Arabia, South Africa, Spain, Switzerland, Syria, Thailand, Tunisia, Turkey, United Arab Republic.

Against: Yugoslavia, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, France, Hungary, India, Japan, Mongolia, Norway, Poland, Romania, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Abstaining: Austria, Cambodia, Finland, Guinea, Kuwait.

The first sentence of the joint amendment to paragraph 3 was adopted by 44 votes to 15, with 5 abstentions.

78. The CHAIRMAN invited the Committee to proceed to a vote on the second sentence of the revised amendment.

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

Mali, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Mexico, Morocco, Netherlands, Nigeria, Norway, Pakistan, Philippines, San Marino, Saudi Arabia, South Africa, Spain, Switzerland, Syria, Tunisia, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Republic of Viet-Nam, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Denmark, Federation of Malaya, France, Federal Republic of Germany, Ghana, Indonesia, Iran, Ireland, Israel, Italy, Japan, Republic of Korea, Kuwait, Liberia, Libya, Liechtenstein.

Against: Mongolia, Poland, Portugal, Romania, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Guinea, Hungary.

Abstaining: Sweden, Cambodia, Congo (Leopoldville), Finland, Greece, India.

The second sentence of the joint amendment to paragraph 3 was adopted by 45 votes to 13, with 6 abstentions.

79. The CHAIRMAN put to the vote the joint amendment in document A/CONF.25/C.2/L.73, as orally revised, as a whole.

The amendment was adopted by 46 votes to 15, with 3 abstentions.

The meeting rose at 7 p.m.

FOURTEENTH MEETING

Thursday, 14 March 1963, at 10.45 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 35 (Freedom of communication) (*continued*)

Paragraph 4

1. The CHAIRMAN drew attention to an amendment by South Africa (L.75) to paragraph 4 of article 35.[1]

2. Mr. DRAKE (South Africa) explained that in proposing the insertion of the word " exclusively " after the word " intended ", his delegation had wished to emphasize the official nature of documents or articles contained in the consular bag.

The South African amendment (A/CONF.25/C.2/L.75) was adopted by 39 votes to none, with 16 abstentions.

3. The CHAIRMAN noted that the Committee had thus approved paragraph 4.

Paragraph 5

4. The CHAIRMAN announced that the Japanese amendment to paragraph 5 (L.55) had been withdrawn. The Committee still had before it an amendment by Australia (L.92).

5. Mr. WOODBERRY (Australia) said that, by the terms of article 57 (Regime applicable to honorary consular officials), article 35 should apply to honorary consuls. His delegation wished to draw the Committee's attention to the position that would arise should those two articles be adopted. In that case, the honorary consul might be a citizen of the receiving State and appoint another citizen of the receiving State as consular courier, who would have inviolability in his own country. That was unacceptable to the Australian Government.

6. To solve the difficulty, the Australian delegation proposed an oral amendment to add in article 35, paragraph 5, after the words " consular courier ", the words " who shall be neither a national of the receiving State nor a permanent resident thereof ". Another solution would be to amend article 1 in such a way that, through article 41, paragraph 1 (Personal inviolability of consular officials) a consular courier who was a national of the receiving State could not have inviolability. Or again, it would be possible to amend article 57 by specifying

[1] For a list of the amendments to article 35, see the summary record of the thirteenth meeting, footnote to paragraph 1.

that paragraph 5 of article 35 did not apply to honorary consuls. Since the decision that the drafting committee and the Committee would take when considering article 57, paragraph 1, should not be anticipated, he wished his oral amendment to be put to the vote.

7. Mr. DEJANY (Saudi Arabia) thought it desirable that the Committee should take a decision on the amended article.

8. Mr. JESTAEDT (Federal Republic of Germany) said that he would like Mr. Žourek, the Conference's expert adviser, to explain to the Committee what was meant by personal inviolability; the Committee would then be in a better position to consider article 41 when the time came.

9. Mr. NASCIMENTO e SILVA (Brazil) said that he accepted the principle stated by the Australian delegation in its oral amendment, but considered that the matter should be settled when the time came to discuss article 69 or article 57. The Brazilian delegation would vote against the oral amendment because it considered it to be out of place in article 35.

10. Mr. JESTAEDT (Federal Republic of Germany) pointed out that no definition of inviolability was given in article 41, and he therefore thought that Mr. Žourek's explanations would be of great value.

11. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, agreed that the term " personal inviolability " was not defined in article 41, but the context showed that it referred to the restricted inviolability granted to a consul. The consul could not be subjected to any restriction of his personal freedom. When the time came for the Committee to consider article 41, he would explain the circumstances in which the International Law Commission had been led to adopt the wording of that article. When studying article 35 the International Law Commission had unanimously considered it essential to state specifically that a consular courier enjoyed personal inviolability and should not be liable to any form of arrest or detention and thus to give him all the necessary safeguards for carrying out his work. Admittedly, consulates for the most part used diplomatic couriers, but it might happen that the consul's district was too remote from the capital or that there was no diplomatic mission accredited to the receiving State.

12. Mr. JESTAEDT (Federal Republic of Germany) asked whether it would not be sufficient to say that the consular courier could not be subjected to arrest or detention without making any mention of personal inviolability.

13. Mr. ŽOUREK (Expert) replied that in using those terms the International Law Commission had wished to emphasize the analogy that existed, having regard to the nature of their mission, between the diplomatic courier and the consular courier; it had intended to give the consular courier the same inviolability as that enjoyed by the diplomatic courier.

14. Mr. SAYED MOHAMMED HOSNI (Kuwait) considered that the Australian oral amendment served a very useful purpose in drawing attention to an important question, that of the application of personal inviolability to nationals of the receiving State. When the time came to ratify the Convention, some States might well hesitate to accept such a principle. Of the various solutions proposed by the Australian representative, the best seemed to him to be an amendment to article 57.

15. Mr. PEREZ HERNANDEZ (Spain) said that the drafting committee should study the term " consular courier " which in Spanish might lead to confusion. The delegations of the Spanish-speaking countries should, moreover, meet to study that question.

16. Mr. KHOSIA (India) said that in his view the Australian oral amendment did not serve a very useful purpose.

17. Mr. TILAKARATNA (Ceylon) agreed with the representative of Kuwait. His delegation also thought that article 57 should be amended and had grave doubts as regards the application of personal inviolability to honorary consuls.

18. Mr. SALLEH bin ABAS (Federation of Malaya) said that the Australian oral amendment would not limit the application of inviolability to the consular courier, but would restrict the number of persons that might be appointed consular couriers. His delegation would support the proposal.

19. Mr. JESTAEDT (Federal Republic of Germany) proposed that the words " shall enjoy personal inviolability and " should be deleted from paragraph 5 of article 35.

20. Mr. LEVI (Yugoslavia) said he would welcome the inclusion in the convention of a provision to the effect that a national of the receiving State could not be appointed a consular courier.

21. Mr. WOODBERRY (Australia) stated that if his oral amendment were adopted, he would withdraw the amendment previously submitted by his delegation (L.92).

22. Mr. BLANKINSHIP (United States of America) thought that article 35 should not apply to honorary consuls, who came under article 57. The oral amendment of the representative of the Federal Republic of Germany went a little too far and he would propose that the two parts of the last sentence should be combined in a single sentence, a task that might be left to the drafting committee. It was essential that the correspondence entrusted to the consular courier should not fall into other hands, and there should therefore be no difference of treatment between the consular courier and the diplomatic courier.

23. Mr. ALVARADO GARAICOA (Ecuador) said that he supported the solution proposed by the representative of the Federal Republic of Germany because

the principle of inviolability was implicit in the proposed formula and there was no point in stating it more plainly.

24. Mr. EVANS (United Kingdom) said he had listened with interest to the statements of the German and United States representatives. He was doubtful whether the adoption of the German oral amendment would provide a sufficient guarantee of inviolability for the consular courier. In the United Kingdom the Queen's Messengers were both diplomatic and consular couriers; they enjoyed complete personal inviolability. The establishment of a distinction between diplomatic and consular couriers with regard to the degree of inviolability enjoyed by them would place the United Kingdom — and doubtless other countries — in some difficulty. There was also the point that the words " arrest " and " detention " did not cover all the possibilities; it was, for instance, also necessary to give the courier immunity from search.

25. The arguments advanced by the representative of Australia in support of his amendment were very convincing, but he shared the view of the Brazilian representative that that difficulty could be solved when the Committee came to consider article 69. A provision might be added to paragraph 5 to the effect that a consular courier could not be a national of the receiving State nor a person permanently residing on the territory of that State without the consent of the receiving State. If the Committee accepted the principle of such a provision, the drafting committee might include it either in article 35 or article 69.

26. Mr. WOODBERRY (Australia) said that the oral amendment to his proposal submitted by the United Kingdom representative was acceptable to his delegation.

27. The CHAIRMAN invited the Committee to vote on the oral amendment of Australia, as amended by the United Kingdom to read " who shall, except with the consent of the receiving State, be neither a national of the receiving State nor a permanent resident thereof ".

28. Mr. HEUMAN (France) remarked that, if the proposed sentence were to come at the beginning of the paragraph, it might lead to misunderstanding.

29. The CHAIRMAN said that if the Committee approved the principle of the amendment, the drafting committee would be requested to draw up a text.

The oral proposal by Australia, as amended by the United Kingdom, was adopted by 43 votes to 2, with 26 abstentions.

30. Mr. BLANKINSHIP (United States of America) explained that he had voted for the amendment on the understanding that the provision adopted would be contained not in article 35, but elsewhere in the draft convention, perhaps in article 69.

31. Mr. VRANKEN (Belgium) said that he shared the view that the question of nationals of the receiving State should be dealt with under article 69. He regretted that the expression " nor a permanent resident thereof " was unacceptable to his delegation.

32. The CHAIRMAN said that as the Australian representative had withdrawn his amendment (L.92), there remained the amendment submitted orally by the delegation of the Federal Republic of Germany to delete the last sentence of paragraph 5, which would then read: " He shall not be liable to any form of arrest or detention."

The oral amendment by the Federal Republic of Germany was rejected by 27 votes to 14, with 29 abstentions.

Paragraph 5, as a whole, as amended, was adopted by 55 votes to 1, with 15 abstentions.

33. The CHAIRMAN, in reply to Mr. SHITTA-BEY (Nigeria), explained that, even though the drafting committee might decide to embody in another article the ideas in the amendment that had just been adopted, it would, in any case, be included in the draft convention.

New paragraph

34. The CHAIRMAN said that the Committee had before it proposals by the Netherlands (L.15) and by the Byelorussian SSR (L.70) to insert a new paragraph between paragraphs 5 and 6. Those proposals were very similar and might well be combined in a joint text.

35. Baron van BOETZELAER (Netherlands), introducing his amendment, said that, generally speaking, he did not consider that the draft convention should follow exactly the 1961 Vienna Convention on Diplomatic Relations, but in that particular case he saw no reason for any difference between the two texts. His delegation was prepared, in collaboration with the Byelorussian representative, to submit a joint proposal in which the beginning of his amendment — i.e., " The sending State may . . ." would be replaced by the beginning of the Byelorussian amendment — namely, " The sending State, its diplomatic mission and its consulate may . . ."

36. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that the opening phrase, as drafted in his delegation's amendment, was required for practical considerations. He agreed that the two texts should be combined in the manner suggested by the Netherlands representative. The differences of drafting in the second sentence could be left to the drafting committee.

37. Mr. LEVI (Yugoslavia) said that he had listened with interest to the Byelorussian representative's statement but he would find it difficult to accept the new joint amendment.

38. Mr. SERRA (Switzerland) said that he assumed that the amendments had been submitted before the Committee had reached agreement on paragraph 1 of the article, and he asked whether the use of the singular " courier " in the amendment was deliberately vague.

39. Baron van BOETZELAER (Netherlands) replied that his amendment had followed the text of article 27, paragraph 6 of the 1961 Convention. Moreover, the singular was already used in paragraph 6, but he had no objection to the phrase being put in the plural, a matter which might be left to the drafting committee.

The joint amendment submitted by the delegations of the Netherlands and the Byelorussian Soviet Socialist

Republic was adopted by 57 votes to 2, with 8 abstentions.

Paragraph 6

40. The CHAIRMAN invited consideration of paragraph 6 of article 35 and of the amendments by South Africa (L.75) and Italy (L.102).

41. Mr. DRAKE (South Africa) said that his delegation found the first part of the Italian amendment acceptable. It was not the purpose of his amendment to restrict the right of the consulate to make arrangements for the collection of the consular bag upon its arrival in the territory of the receiving State; on the contrary, the amendment was designed to facilitate the exercise of that right, in an orderly manner. He would be prepared to accept any other drafting amendment conveying the same sense.

42. Mr. HENAO-HENAO (Colombia) wondered whether the new paragraph was really necessary, in view of the adoption of the joint amendment by the Byelorussian SSR and the Netherlands.

43. Mr. MARESCA (Italy) explained that the first part of his amendment had a practical purpose since it extended the application of paragraph 6 to the captain of a passenger vessel, in view of the fact that delivery by sea was cheaper than carriage by air. The second part of the amendment was based on equity: the captain of a ship or an aircraft undertaking such responsibilities should be protected by certain safeguards.

44. Mr. NASCIMENTO e SILVA (Brazil) said that the amendments indicated that paragraph 6 of the International Law Commission's text was unsatisfactory. He was prepared to accept the basic idea of the South African amendment and he found the Italian amendment perfectly acceptable. But the drafting committee should have a certain latitude in settling the text of paragraph 6; for example, the adjective " commercial " was perhaps unsuitable, since a consular bag might be entrusted to a military aircraft.

45. Mr. MARAMBIO (Chile) submitted an oral amendment to paragraph 6 calling for the insertion for practical reasons, after the word " captain " of the words " or an authorized official ".

46. Mr. SPYRIDAKIS (Greece) stated that his delegation did not approve the principle of consular couriers. Nevertheless, since the Committee seemed in agreement on that point, he accepted the first part of the Italian amendment, but not the second part. His delegation was opposed to the South African amendment because it might create obstacles to consular services. He therefore proposed the addition at the end of paragraph 6 of the words " provided he carries a letter from the head of the consular post or his representative ".

47. Mr. NALL (Israel) said that the South African amendment was declarative of a well-established practice, and his delegation would not oppose it. He found the second part of the Italian amendment acceptable, but was in a difficulty so far as the first part was concerned. He thought that the representative of Italy had used the term " merchant marine ", whereas the text before him referred to " passenger vessels " only. He would be glad of an elucidation.

48. Baron van BOETZELAER (Netherlands) said that he was unable to support the Italian amendment, which might cause confusion. In the first part of that amendment it was proposed to add the words " of a passenger vessel or ", but he would point out that the purpose of the new paragraph inserted between paragraphs 5 and 6 had been to enable the captain of a vessel to be designated an *ad hoc* courier. It might be rather unwise to refer to both possibilities. With regard to the second part of the Italian amendment, he reminded the Committee that the diplomatic bag could be entrusted to the captain of an aircraft; but article 27, paragraph 7, of the Vienna Convention on Diplomatic Relations expressly stated that he would not be considerd to be a diplomatic courier. What then would be the captain's position if he were carrying both a diplomatic bag and a consular bag ? It would be preferable not to adopt the Italian proposal to delete the words in question, since they appeared in the 1961 Convention. Although the South African amendment appeared to be somewhat superfluous, he was prepared to vote for it.

49. Mr. JESTAEDT (Federal Republic of Germany) accepted the first part of the Italian amendment; he was surprised that the 1961 Convention did not contain a similar provision. With regard to the second part of the amendment, he agreed with the Netherlands representative.

50. Mr. PEREZ HERNANDEZ (Spain) supported both the Chilean oral proposal, which seemed logical since the captain of an aircraft had doubtless many other responsibilities, and the second part of the Italian amendment which applied not to the person entrusted with the consular bag, but to the transport of the bag, and so was in accordance with the intention of protecting the consular mail. He also supported the Brazilian representative's suggestion that the term " commercial " was too restrictive.

51. Mr. DAS GUPTA (India) thought that the International Law Commission's text was satisfactory and in harmony with the corresponding article of the 1961 Convention. He could, however, support the South African proposal if, before the words " local airport authorities ", the word " competent " were inserted. He found the first part of the Italian amendment acceptable but thought it undesirable to adopt the second part, which might lead to confusion.

52. Mr. LEVI (Yugoslavia) said that he accepted the Chilean representative's oral proposal. On the other hand, he could not accept the second part of the Italian amendment and, rather than delete the phrase in question, he proposed to replace it by the words " but he shall be considered to be a consular courier *ad hoc* ".

53. Mr. EVANS (United Kingdom) agreed almost entirely with the Indian representative regarding paragraph 6 and, in particular, the second part of the Italian amendment; he found the first part of that amendment

satisfactory. He regretted he could not accept the Chilean proposal. His delegation could support the South African amendment, as amended by the Indian representative.

54. Mr. ADDAI (Ghana) did not agree that the adoption of the joint amendment of the Byelorussian SSR and the Netherlands had rendered paragraph 6 superfluous. His delegation would vote for the first part of the Italian amendment and against the second part. Moreover, as it considered that the last sentence of paragraph 6 should be a corollary to the first part of the Italian amendment, his delegation proposed that the sentence be amended to read " to take possession of the consular bag directly and freely from the captain of the passenger ship or aircraft ".

55. Mr. SALLEH bin ABAS (Federation of Malaya) thought that paragraph 6 dealt with a mere question of procedure and that the first part of the Italian amendment was perfectly satisfactory.

56. Mr. MARESCA (Italy) pointed out that the Conference had been called to bring out the differences between diplomatic and consular services and not purely and simply to repeat the 1961 Convention.

57. Replying to the representative of Israel, he said that his delegation was prepared to revise the first part of its amendment to read " of a ship or ". The Yugoslav sub-amendment to the second part of the Italian amendment was more consistent with the purport of the article as it stood, and the Italian delegation would therefore accept it.

The meeting rose at 1.5 p.m.

FIFTEENTH MEETING

Thursday, 14 March 1963, at 3.15 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 35 (Freedom of communication) (*continued*)

Paragraph 6

1. The CHAIRMAN invited the Committee to continue consideration of the International Law Commission's draft of article 35, paragraph 6, and the amendments thereto.[1]

2. Mr. DAS GUPTA (India) said that in view of the statement made at the 14th meeting by the representative of Italy he wished to make his position clear. In practice, although not technically, the present conference was bound by the decisions of the 1961 Conference, in which the Member States of the United Nations had met to ascertain to what extent diplomatic privileges could be accorded in their mutual interest. Since it was universally recognized that the diplomatic service was of a higher category than the consular service, any consular privileges granted could not be greater than the diplomatic privileges established by the 1961 Conference.

3. The Yugoslav sub-amendment had not improved the Italian amendment, but had made explicit what had merely been implied. The revised amendment would lead to great confusion and was quite unacceptable to his government. In no circumstances could personal inviolability or immunity be extended to the captain of a commercial aircraft or the master of a ship, who was guided by the international laws on aviation or navigation. Under those laws he had many civil liabilities and responsibility for the safety of his passengers and cargo. The fact that he came entirely under the jurisdiction of national rules and regulations so soon as he entered the territorial jurisdiction of a country could not be changed by anything the conference could do. It would be a contradiction in law, and completely impracticable, to give a captain the immunities and inviolability of a consular courier simply because he was carrying a consular bag: to do so would mean that he would be unable to discharge his main responsibility as the commander of the vessel or aircraft. The question of inviolability arose in respect of the consular bag itself, which remained immune wherever it was. Since the principle of the inviolability of consular archives and documents always applied there was no reason to confer immunity on the captain, who was merely the carrier in the same way as his aircraft or vessel. In 1961 and 1962 there had been occasion in India to arrest at least six captains of aircraft and several ships' captains for smuggling gold into the country.

4. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that there was no reason to oppose the first part of the Italian amendment. Although the aircraft, as the fastest means of transport, was in widespread use for carrying consular correspondence, some countries also considered it necessary to use ships for that purpose. The second part of the Italian amendment, however, might give rise to difficulties. Article 27, paragraph 7, of the Vienna Convention on Diplomatic Relations provided that although a diplomatic bag might be entrusted to the captain of a commercial aircraft he should not be considered to be a diplomatic courier. If the captain of an aircraft carrying diplomatic correspondence was not given the privileges of a diplomatic courier it would be illogical to give a greater degree of immunity to a captain carrying consular correspondence. His delegation could not, therefore, accept the second part of the Italian amendment.

5. The term " commercial aircraft " used in the International Law Commission text of paragraph 6 was not the customary term used in international agreements such as the Warsaw Convention of 1929. If the word " commercial " were deleted the reference would be merely to " aircraft " in accordance with usage.

6. Mr. HERNDL (Austria) said that, as had been convincingly argued by the representative of India, the chief responsibility of the master of a vessel was for the

[1] Amendments had originally been submitted by South Africa (A/CONF.25/C.2/L.75) and Italy (A/CONF.25/C.2/L.102). For the oral amendments submitted subsequently, see the summary record of the fourteenth meeting, paras. 45-56.

safety of his ship and passengers in accordance with regulations which were sometimes very strict. It would be impracticable, and might be dangerous, to consider him as a consular courier. The essential point was that the inviolability of the consular bag was ensured under article 35, and there was therefore no need to confer on the captain the immunities of a consular courier. His delegation could not support the revised amendment.

7. Mr. von NUMERS (Finland) said that the consular bag and the consular courier were two innovations and should be clearly defined. Definitions of those terms might be included in article 1.

8. The CHAIRMAN said that he would draw the attention of the drafting committee to the suggestion.

9. Mr. TILAKARATNA (Ceylon) endorsed the views of the representative of India, who had spoken from practical experience. In Ceylon too there had been occasions when captains had been caught smuggling. The main issue was the inviolability of the consular bag, and not of the vessel carrying it. That had been in the mind of the International Law Commission for the last sentence of paragraph 6 stated that the consulate might send one of its members " to take possession of the consular bag directly and freely from the captain of the aircraft ".

10. Mr. HEUMAN (France) said that at the previous meeting the representative of Colombia had proposed, although not formally, that the whole of paragraph 6 should be deleted. He would suggest that the proposal should be put to the vote first, as the farthest removed from the original text.

11. Mr. HENAO-HENAO (Colombia) said that he had suggested that paragraph 6 would become redundant on the adoption of the Netherlands amendment (L.15); that would mean that the Committee had already taken a decision on *ad hoc* consular couriers. The acceptance of the Yugoslav sub-amendment to the Italian amendment (L.102) had made his point more valid. The adoption of the new provision in paragraph 5, that the consular courier could not be a national or a permanent resident of the receiving State, would create further difficulty since captains were almost always nationals of the receiving State. He would therefore formally propose that the International Law Commission text of paragraph 6 should be deleted.

12. Mr. HERNDL (Austria) said that his delegation strongly opposed the proposal. The deletion of paragraph 6 from the amended article 35 would mean that a captain could not carry a consular bag unless he was formally appointed as an *ad hoc* consular courier.

13. Mr. DAS GUPTA (India) and Mr. TILAKARATNA (Ceylon) endorsed that view.

14. Mr. SPYRIDAKIS (Greece) asked whether the South African amendment to the effect that the consulate might send one of its members to take possession of the consular bag " by arrangement with the local airport authorities ", would mean that the airport authorities were prohibited from handling the bag, and whether it would be necessary to make a separate arrangement with the airport authorities each time a consular bag arrived or a continuing arrangement agreed upon between the consular authorities and the airport authorities.

15. Mr. DRAKE (South Africa) explained that such arrangements as might be made between a consulate and the local authorities would depend on the local conditions. They might, perhaps, arrive at a blanket arrangement or, although that seemed unlikely, there might be a system of *ad hoc* permits. The amendment was not intended to hamper the arrangements in any way but merely to ensure that collection took place in an orderly fashion, and that the representative of the consulate should, for example, know where to go to collect the bag and need not enter areas where customs, immigration or health inspections were taking place.

16. Mr. SPYRIDAKIS (Greece) said that in the light of that explanation he would withdraw the oral sub-amendment submitted by his delegation at the previous meeting.

17. The CHAIRMAN put to the vote the proposal by Colombia to delete the whole of the International Law Commission's draft of paragraph 6.

The proposal was rejected by 59 votes to 2, with 9 abstentions.

18. The CHAIRMAN put to the vote the second part of the Italian amendment (A/CONF.25/C.2/L.102), as orally revised, to delete the words " but he shall not be considered to be a consular courier " in the second sentence of paragraph 6 and to replace them by the words " but he shall be considered to be a consular courier *ad hoc* ".

The second part of the amendment as orally revised was rejected by 42 votes to 6, with 22 abstentions.

19. The CHAIRMAN put to the vote the first part of the Italian amendment (A/CONF.25/C.2/L.102) as revised, to add after the words " entrusted to the captain " the words " of a ship or ".

The amendment was adopted by 57 votes to none, with 11 abstentions.

20. The CHAIRMAN suggested that the oral amendment to the last sentence of paragraph 6 introduced by Ghana at the previous meeting would be taken into account by the drafting committee as a consequence of the adoption of the revised Italian amendment, and that it would therefore be unnecessary to take a vote on it.

21. Mr. SHITTA-BEY (Nigeria) pointed out that the proposal of Ghana had been to amend the lost sentence of paragraph 6 to read ". . . to take possession of the consular bag directly and freely from the captain of the passenger ship or aircraft ". In the Italian amendment as adopted by the Committee, however, the word " passenger " had been omitted.

22. Mr. ADDAI (Ghana) said that he did not insist on the word " passenger " and would suggest, in the light of the text adopted by the Committee, that the last

sentence of paragraph 6 might read ". . . to take possession of the consular bag directly and freely from the captain of the ship or aircraft ".

23. Mr. EVANS (United Kingdom) said that a fairly important drafting point was involved. It might be better to refer to " merchant ship ". He would suggest that the drafting committee should be asked to consider the matter.

24. The CHAIRMAN said that the drafting committee would bring the whole article into agreement with the amendments adopted by the Committee.

25. He put to the vote the oral amendment submitted by the delegation of Chile, to add after the word " captain " in the first sentence of paragraph 6 the words " or an authorized official ".

The amendment was rejected by 39 votes to 13, with 18 abstentions.

26. The CHAIRMAN put to the vote the South African amendment to paragraph 6 (A/CONF.25/C.2/L.75) as orally revised.

The amendment was adopted by 26 votes to 10, with 34 abstentions.

27. The CHAIRMAN put to the vote paragraph 6 as amended, which would become the new paragraph 7.

Paragraph 6, as amended, was adopted by 66 votes to none, with 5 abstentions.

Article 35 as a whole, as amended, was approved by 52 votes to 1, with 17 abstentions.

Article 36 (Communication and contact with nationals of the sending State)

28. The CHAIRMAN invited the Committee to consider article 36 and the amendments presented to it.[2] He announced that the amendment submitted by the delegation of Thailand (L.65) had been replaced by an amendment (L.101) to delete sub-paragraph (*b*) of paragraph 1. In addition to the written amendments, two further amendments had been presented to the Chair. The first, submitted by the delegation of India, was to delete the words " in appropriate cases " in paragraph 1, sub-paragraph (*a*). The second, submitted by the delegation of Australia, was to delete the same words in that sub-paragraph and to insert the words " subject to the wishes of the person concerned ".

29. In the interests of orderly discussion, he suggested that article 36 should be examined paragraph by paragraph and that paragraph 1 should be examined sub-paragraph by sub-paragraph.

It was so agreed.

[2] The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.3; Belgium, A/CONF.25/C.2/L.25; Japan, A/CONF.25/C.2/L.56; Thailand, A/CONF.25/C.2/L.65; Federal Republic of Germany, A/CONF.25/C.2/L.74; Switzerland, A/CONF.25/C.2/L.78; Venezuela, A/CONF.25/C.2/L.100; United Kingdom, A/CONF.25/C.2/L.107; Spain, A/CONF.25/C.2/L.114; Greece, A/CONF.25/C.2/L.125. As explained above (para. 28), the amendment by Thailand was replaced by the amendment contained in document A/CONF.25/C.2/L.101.

Paragraph 1 (a)

30. The CHAIRMAN invited the Committee to consider the International Law Commission's text of paragraph 1, sub-paragraph (*a*), together with the amendment presented by the delegation of Venezuela (L.100), and the oral amendments submitted by the delegations of Australia and India.

31. Mr. ALVARADO GARAICOA (Ecuador) suggested that the text of paragraph 1, sub-paragraph (*a*), would be improved by the deletion of the redundant word " consular " in the phrase " the consular officials of that consulate ".

32. Mr. PEREZ-CHIRIBOGA (Venezuela) explained that in presenting its amendment (L.100), his delegation had no intention of interfering in any way with the right of consular officials to have access to the nationals of the sending State. The objection to the International Law Commission draft was mainly one of form. The opening statement of sub-paragraph 1 (*a*), concerning the right of the nationals of the sending State to communicate with and to have access to the competent consulate, was inappropriate in a convention on consular relations. The Government of Venezuela considered that foreign nationals in the receiving State should be under the jurisdiction of that State and should not come within the scope of a convention on consular relations. The proposed amendment would not weaken the text of sub-paragraph (*a*) but would overcome the formal difficulties which arose from the International Law Commission text.

33. The drafting committee might perhaps consider whether the English phrase " have access to " and the Spanish translation were exactly equivalent.

34. Mr. WOODBERRY (Australia) said that the principle set out in paragraph 1, sub-paragraph (*a*), of article 36 — the right of communication and access of consuls to their nationals and *vice versa* — was a very important consular function, and particularly so in countries where there were a large number of foreign nationals. His delegation believed, however, that the fundamental right must be qualified with regard to the wishes of the individual. In its view, particular care must be taken in expressing the principle, and the International Law Commission draft left something to be desired. In particular, the phrase " in appropriate cases " in paragraph 1, sub-paragraph (*a*), was unduly vague and his delegation therefore proposed an oral amendment, to delete those words and replace them by the words " subject to the wishes of the person concerned ". That amendment, in effect, extended to sub-paragraph (*a*) the essence of the amendment to sub-paragraphs (*b*) and (*c*) proposed by the delegation of Switzerland (L.78), which the Australian delegation would support. There was no need to stress the extreme importance of not disregarding, in the present or any other international document, the rights of the individual. Those rights were all-important, and were embodied in the principle upon which the United Nations was based. It seemed to his delegation that it would be a serious departure

from those principles to deny to the individual his right to say whether or not he wished to be approached by consular officials. In that, as in other respects, as provided by the Swiss amendment, he must be treated as a free agent. That was a fundamental matter.

35. Mr. PEREZ HERNANDEZ (Spain) supported the representative of Ecuador's drafting amendment and suggested that it should be referred to the drafting committee.

36. He did not fully agree with the arguments on which the Venezuelan amendment was based. The right of the nationals of a sending State to communicate with and have access to the consulate and consular officials of their own country, established by the International Law Commission's draft, was one of the most sacred rights of foreign residents in a country. The fact that it was established under national law in no way conflicted with the need to establish it under international law.

37. Mr. SAYED MOHAMMED HOSNI (Kuwait) remarked that in essence his argument had already been stated by the representative of Spain. He supported the Venezuelan amendment because the International Law Commission's text introduced a novelty to the convention by defining the rights of the nationals of the sending States and not, as stated in paragraph 1 of the commentary, the rights of consular officials. The International Law Commission's draft was, in fact, defining rights which were not established under international law, and it might follow that those rights would have to be established. In his view, the Venezuelan amendment was more in keeping with the intentions of the International Law Commission. As representative of a country with many aliens on its territory, he fully believed in the rights of nationals of sending States and was against restricting them; but they were irrelevant to the convention under discussion.

38. Mr. PEREZ-CHIRIBOGA (Venezuela) assured the representative of Spain that his amendment was not intended as an encroachment on the right of nationals of the sending State to communicate with their consulates. His objection to the International Law Commission's draft was that an article in a convention on consular relations should not start by referring to the nationals of the sending State. He was ready to accept any modification to this amendment that would make its purpose clear.

39. Mr. DAS GUPTA (India) noted that his amendment was in part similar to that submitted by Australia. He proposed the deletion of the words " in appropriate cases " because they would restrict the functions of the consular service and it would be necessary to decide what were appropriate circumstances. In order to carry out its responsibilities for the welfare of the nationals of the sending State, the consulate must have the right of access and communication. Similarly, residents abroad should have free access to their national consulates. The three words in question would curtail, if not remove, a government's inherent right to maintain contact with its nationals, and it would become questionable whether there was any need for consulates. He could not accept the additional words proposed by the Australian representative.

40. Mr. HEUMAN (France) said the Venezuelan representative had raised a very interesting point of international law. At first sight it seemed that the principle of freedom of communication between consuls and nations abroad arose out of conventions on establishment of residence, but a closer look would show that it was based on an overlap between conventions on establishment and on consular conventions. The representative of Spain, whose views he supported, would confirm that the Franco-Spanish Treaty, which had existed for over 100 years, was made up of a mixture of consular and establishment clauses. The Venezuelan amendment had a strictly legal basis and had there been a universal convention on the establishment of residence he would have supported the amendment as falling in the province of that convention. As it was, however, the right of communication was guaranteed only by bilateral conventions and the draft convention on consular relations would have to fulfil not only its own functions but those of an international convention on establishment. He therefore supported the International Law Commission's draft, even though it was theoretical rather than practical.

41. With regard to the Australian amendment, which subordinated the right of access to a national abroad to his willingness or otherwise to accept it, he appreciated its respect for the rights of the individual but questioned its applicability to a free person. Any free national had the right not to accept a visit from a consul if he did not wish to; there was no need to make it a subject of an article in a convention. It might be possible to introduce the amendment under sub-paragraph (*b*) or (*c*) dealing with arrested persons, but he would prefer to abstain from voting on it.

42. Baron van BOETZELAER (Netherlands) favoured the Australian amendment but, like the representative of France, doubted the need for it. If it were included at all, it would be better in negative form. The Australian representative might consider re-drafting it on the following lines: " unless the person concerned objects to it ".

43. Mr. JESTAEDT (Federal Republic of Germany) said that the International Law Commission's draft presented no difficulty. Article 27, paragraph 1, of the Vienna Convention on Diplomatic Relations provided that the receiving State " shall permit and protect free communication on the part of the mission for all official purposes "; and a similar provision had been approved in article 35 of the draft convention under consideration. In the International Law Commission's draft, free communication was interpreted as including free access for nationals of a sending State to its diplomatic missions, but no provision for free access to diplomatic missions had been included in the Vienna Convention. The principle was, however, particularly important to consular functions, and he welcomed its inclusion in the present draft.

44. The Australian amendment was important and he agreed with the representative of France that it might be dealt with under sub-paragraphs (*b*) or (*c*). He was unable to vote in favour of any reference to the wishes of the person concerned since it was a matter that could cause diplomatic friction between the receiving and the sending State.

45. Mr. MARAMBIO (Chile) said that, since the subject of chapter II, section I, was the facilities, privileges and immunities relating to a consulate, it would be better and more logical to begin the paragraph in the way proposed in the Venezuelan amendment, which might be supplemented. The Indian amendment was constructive and would render the paragraph less restrictive. The same train of reasoning led him to oppose the Australian amendment.

46. Mr. SHITTA-BEY (Nigeria) found the Australian amendment unacceptable, for the reasons advanced by the representatives of the Federal Republic of Germany and of Chile. He supported the Venezuelan amendment (L.100) because the convention was concerned primarily with consular functions. The nationals of sending States would be adequately protected by article 36 without the emphasis being placed on them in paragraph 1 (*a*). He suggested, however, that the Venezuelan amendment would be improved by the deletion of the words " if necessary ". He agreed with the reasoning of the representative of India, but thought his amendment unnecessary.

47. Mr ALVARADO GARAICOA (Ecuador) said that the freedom of nationals to communicate with and have access to their consulates came within the scope of the Declaration of Human Rights rather than of a convention on consular relations. He suggested the deletion of the words " The competent consulate and " and " if necessary " from the Venezuelan amendment.

48. Mr. BOUZIRI (Tunisia) said that he would abstain from voting on the Indian amendment because he was not convinced that the words which it was proposed to delete would in fact limit the freedom of consulates to communicate with their nationals. He understood paragraph 1 (*a*) to mean that the consular officials should be free to communicate with their nationals and to visit them when necessary. It was, he believed, linked with freedom of movement under article 34. He would vote against the Venezuelan amendment because it seemed ambiguous and he did not fully understand its purpose. He would also vote against the Australian amendment, though reluctantly, because he believed that it was well intentioned. A consul was free to visit his nationals just as the nationals were free not to receive him; a provision of the kind proposed would only be necessary in the case of a person detained or in prison.

49. Mr. SALLEH bin ABAS (Federation of Malaya) said that he did not support the Venezuelan amendment, since he did not agree that there was a conflict between the recognition of rights for the nationals of sending States under international law and the practice of establishing those rights under national law. Further, the words " if necessary " would give rise to the difficulty of deciding in what circumstances consular officials should have access to their nationals. The Australian amendment had been submitted for humanitarian reasons; nevertheless he agreed with the representative of the Federal Republic of Germany that it might prove controversial. He might be able to support it if its sponsor could produce satisfactory explanations. The Indian amendment was the best; it would widen the range of a consular official's freedom of access to the sending State's nationals to include nationals in detention or in prison.

50. Mr. DAS GUPTA (India) maintained his amendment. The International Law Commission's draft, with the words " in appropriate cases " deleted, would ensure unrestricted two-way communication between consulates and their nationals. He could not accept the Venezuelan amendment, even with the change suggested by the Nigerian representative, for it only ensured communication and access by the consulate. Moreover, he did not agree that the International Law Commission's draft established a new right, for the right given to consulates implied a corresponding right for nationals.

51. Mr. PEREZ-CHIRIBOGA (Venezuela), commenting on the Malayan representative's remarks, insisted that he did not wish to limit the normal relations that existed between the consular officials and the nationals of sending States, or to deny that international agreement could be reached on the rights and duties of nationals. He merely wished to make it clear that the draft convention was not the appropriate instrument. He agreed to the sub-amendments to his proposal suggested by the representatives of Ecuador and Nigeria.

52. Mr. MARESCA (Italy) supported the Venezuelan amendment in its new form, since it correctly emphasized the consulate, which was the main subject of article 36. To enable consuls to meet their nationals, however, was only one side of the question, and he hoped that the representative of Venezuela would agree to provide in his amendment for nationals to meet their consuls. He supported the Indian amendment, for it was essential not to restrict communication between consuls and their nationals. He could not support the Australian amendment, although he appreciated the motives behind it, for it would restrict normal consular activities.

53. Mr. PEREZ HERNANDEZ (Spain) said that, as a former head of the Spanish diplomatic mission in Caracas, he was fully aware of Venezuela's reespect for the interests and rights of foreigners. In spite of national legislation, however, circumstances sometimes arose where foreign nationals — possibly through differences of language or customs — might have a peculiar status and might need consular protection. But consular protection could only be provided if it were asked for, and two-way communication between consulates and their nationals was therefore essential. To meet the differences of opinion that had emerged during the discussion, he suggested that paragraph 1 (*a*) should be drafted on the following lines: " Nationals of the sending State as such, and in order, if necessary, to ensure protection and assistance by consular officials, shall be free to communicate . . ."

54. Mr. ALVARADO GARAICOA (Ecuador) proposed the addition to the Venezuelan amendment of the words " nationals of the sending State shall have the same rights ".

The meeting rose at 5.45 p.m.

SIXTEENTH MEETING

Friday, 15 March 1963, at 10.45 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 36 (Communication and contact with nationals of the sending State) (*continued*)

Paragraph 1 (a)

1. The CHAIRMAN invited the Committee to continue its consideration of article 36, paragraph 1 (*a*), and amendments relating to it.[1]

2. Mr. PEREZ-CHIRIBOGA (Venezuela), announcing the withdrawal of his delegation's amendment (L.100), said that Venezuela would instead submit, jointly with Ecuador, Spain, Chile and Italy, an alternative text for paragraph 1 (*a*) in the following terms:

" Consular officials shall be free to communicate with the nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officials of the sending State."

3. Mr. AJA ESPIL (Argentina) referred to the two important oral amendments proposed at the previous meeting, one by India (omission of the words " in appropriate cases ") and the other by Australia to delete those words and to insert the words " subject to the wishes of the person concerned ". He agreed to the first of those proposals, inasmuch as paragraph 1 (*a*) laid down a general principle which should not be weakened. The Australian amendment likewise appeared appropriate. The object was to lay down a right exercisable by a consular official vis-à-vis the receiving State, but not vis-à-vis a national of the sending State; the consent of the national in question was required.

4. Mr. LEVI (Yugoslavia) proposed two sub-amendments to the joint oral amendment just submitted: in the first sentence the words " in the exercise of their functions " should be added, and in the second sentence the words " for the same purposes " should be added.

5. Mr. EVANS (United Kingdom) said that article 36 was an important provision and should be drafted in unambiguous terms; it dealt with a matter which was all the more delicate in modern times when means of transport and travel were developing steadily. On the other hand, it should be noted that the scope of the article was limited by the opening words: " with a view to facilitating the exercise of consular functions ". His delegation supported the Indian amendment to omit the words " in appropriate cases ". If those words were left in the text it would remain an open question who would decide in what cases there should be freedom of communication. Some such phrase as " subject to the express wish of the person concerned " would be preferable to " in appropriate cases ". He realized the motives underlying the amendments before the Committee. In particular, he wished to mention that cases had occurred in which political refugees had been molested by consular officials of their State of origin. That was not a proper exercise of consular functions and his government had made it clear that it would not permit it. However, his delegation and others would propose a separate article of more general scope to deal with the broader question of political refugees.[2] For that reason, and because the Australian delegation's amendment, though attractive, introduced an element of uncertainty into article 36 and was open to certain technical objections, he thought it would be better simply to omit the words " in appropriate cases " without substituting the phrase proposed by Australia. He would prefer the text as drafted by the International Law Commission (without the words " in appropriate cases ") to the joint amendment just submitted.

6. Mr. TILAKARATNA (Ceylon) supported the Australian delegation's amendment. He also supported the Swiss delegation's proposal (L.78) that another paragraph should be added. He agreed with the Italian delegation that the article should stress consular functions and that the drafting committee should be instructed accordingly.

7. Mr. SHITTA-BEY (Nigeria) said that the Indian delegation's amendment was acceptable to him. With reference to the Australian delegation's amendment and the United Kingdom's suggestion, he thought it would not be excessive to qualify the clause by some such phrase as " subject to the wishes of the person concerned ". He thought there was little difference in substance between the new joint amendment and the original draft as amended by India.

8. Mr. ADDAI (Ghana) associated himself with the remarks of the United Kingdom representative.

9. Mr. WOODBERRY (Australia) said that article 36 suffered from the defect that it empowered the consul to get into touch with the nationals of the sending State regardless of their wishes. He opposed the Indian amendment, which would in effect strengthen the language of the existing text.

10. Mr. SRESHTHAPUTRA (Thailand) said that his delegation attached great importance to article 36. With regard to sub-paragraph (*a*) of paragraph 1, he shared

[1] At the fifteenth meeting, an amendment had been submitted by Venezuela (A/CONF.25/C.2/L.100) and oral amendments by Australia and India. For the full list of amendments to article 36, sea the summary record of the fifteenth meeting, footnote to para. 28.

[2] See document A/CONF.25/C.1/L.124.

the opinion of the Australian representative that the wishes of the persons concerned should be considered.

11. Mr. SERRA (Switzerland) said that, after listening to the debate on paragraph 1 (*a*) of article 36, he noted that many amendments reflected an identical concern. The freedom of the human person and the expression of the will of the individual were the fundamental principles which governed instruments concluded under the auspices of the United Nations. The text being drafted by the Conference should likewise reflect those principles. The Swiss delegation was prepared to agree to any proposal which referred to the freely expressed wish of the person concerned. That was the object of its amendment for the addition of a new paragraph, but it would not oppose the suggestion that the same idea should be reflected in a passage appearing at the beginning of paragraph 1, or in each of its sub-paragraphs, or at the end of paragraph 2. What mattered was that the essential principle which he had mentioned and which was laid down in a number of bilateral conventions should be stated in the text being prepared by the Conference. He would be unable to accept any formula which ignored the will of the persons concerned.

12. Mr. N'DIAYE (Mali), referring to article 36 as a whole, said that the protection of nationals of the sending State was the principal function of consulates, as was expressly provided in many bilateral consular conventions. The natural protector of a person abroad was undoubtedly his country's consul. In the case of an arrest, for example, the consul should be notified immediately so that he could take whatever action was needed under article 5 which had already been adopted by the First Committee.

13. He could not agree to the amendment submitted by Japan (L.56) or to that submitted by Switzerland (L.78), for under the first of those amendments there had to be an express request by the person in custody before the consul could be notified, while under the other the operation of sub-paragraphs (*b*) and (*c*) would be subject to the express wish of that person. Similarly, he would oppose the United States amendment (L.3), under which the consul would not be notified except in cases where the person detained suffered from some physical or mental incapacity. He would be unable to vote for the amendment submitted by Thailand (L.101) for if sub-paragraph (*b*) were omitted, article 36 would lose much of its substance. Nor could he agree to the amendment submitted by Spain (L.114). On the other hand he could accept the joint amendment which was more concise than the International Law Commission's draft.

14. His delegation might, however, be prepared to vote for the United Kingdom amendment (L.107) under which the authorities of the receiving State would be bound to notify the consul forthwith; the amendment of the Federal Republic of Germany (L.74) which stipulated a specific period beyond which a national of the sending State could not be held *incomunicado*, which would normally be the period necessary for the preliminary investigation; and the Belgian amendment (L.25) under which the consul would be authorized not only to converse with the person in custody, but also to write to him.

15. Mr. PEREZ HERNANDEZ (Spain) said that the object of the joint amendment, of which his delegation was one of the sponsors, was to offer a compromise. It guaranteed freedom of communication between nationals of the sending State and its consular officials, in keeping with the principle laid down in article 36. Naturally if the person concerned declined to receive the consul's visit, he could hardly claim the benefit of protection by the sending State.

16. Mr. SPYRIDAKIS (Greece) said that the article under discussion was of particular interest to his country because many Greek nationals lived abroad. He preferred the joint amendment to the original draft and would vote for it. The principle on which the Swiss amendment was based was sound, but might not be easy to apply in practice.

17. Mr. BOUZIRI (Tunisia) pointed out that the Swiss delegation's amendment was not concerned with sub-paragraph 1 (*a*) of article 36.

18. The CHAIRMAN said that it was quite correct that the amendment in question did not affect sub-paragraph (*a*), but it laid down a general principle which had a bearing on the article as a whole. The substance of the amendment would, of course, be discussed in connexion with sub-paragraph (*b*).

19. Mr. DAS GUPTA (India) said that a person, even though abroad, still remained subject to the jurisdiction of his country of origin; accordingly that country's consul should be empowered to communicate with him in any case. What was really at stake was an undeniable right vesting in the sending State. So far as substance was concerned, the joint amendment was consistent with the International Law Commission's draft, but he did not think that the amendment was drafted in formal legal terms.

20. Mr. PEREZ-CHIRIBOGA (Venezuela) said that the joint amendment, if adopted, would no doubt be referred to the drafting committee for final drafting. He thought it logical that in chapter II, entitled " Facilities, privileges and immunities of career consular officials and consular employees ", a provision concerning consular officials should precede a clause relating to nationals of the sending State.

21. The CHAIRMAN put to the vote the Australian delegation's amendment replacing the words " in appropriate cases " in paragraph 1 (*a*) by the words " subject to the wishes of the person concerned ".

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

Peru, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Thailand, Argentina, Australia, Canada.

Against: Philippines, Poland, Portugal, Romania, San Marino, Saudi Arabia, Sierra Leone, South Africa, Sweden, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Congo

(Leopoldville), Cuba, Czechoslovakia, Denmark, Finland, Federal Republic of Germany, Ghana, Greece, Hungary, India, Indonesia, Kuwait, Laos, Liberia, Libya, Luxembourg, Mali, Mexico, Mongolia, Morocco, Norway, Pakistan.

Abstaining: Spain, Switzerland, Syria, United States of America, Venezuela, Republic of Viet-Nam, Yugoslavia, Austria, Chile, China, Colombia, Ecuador, Federation of Malaya, France, Holy See, Iran, Ireland, Israel, Italy, Japan, Republic of Korea, Liechtenstein, Netherlands, New Zealand, Nigeria.

The Australian delegation's oral amendment was rejected by 44 votes to 5, with 25 abstentions.

22. The CHAIRMAN put to the vote the joint oral amendment submitted by Chile, Ecuador, Italy, Spain and Venezuela.

At the resuest of the representative of Thailand, a vote was taken by roll-call.

Brazil, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Columbia, Czechoslovakia, Ecuador, France, Federal Republic of Germany, Greece, Guinea, Holy See, Hungary, Ireland, Italy, Japan, Republic of Korea, Kuwait, Laos, Liberia, Libya, Luxembourg, Mali, Mexico, Mongolia, Morocco, Pakistan, Poland, Portugal, Romania, San Marino, Sierra Leone, South Africa, Spain, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Republic of Viet-Nam, Yugoslavia, Argentina, Australia, Belgium.

Against: Ceylon, Ghana, India.

Abstaining: Cambodia, Congo (Leopoldville), Cuba, Denmark, Federation of Malaya, Finland, Indonesia, Iran, Israel, Liechtenstein, Netherlands, New Zealand, Nigeria, Norway, Philippines, Saudi Arabia, Sweden, Switzerland, Syria, Thailand, United Arab Republic, Austria.

The joint amendment was adopted by 48 votes to 3, with 22 abstentions.

23. Mr. JESTAEDT (Federal Republic of Germany) said that paragraph 1 (*a*) of article 36 did not debar consulates from having access to persons who were not nationals of the sending State and who wished to talk to consular officials.

24. Mr. BLANKINSHIP (United States of America) said that his delegation's abstention on the Australian amendment should not be construed as meaning that the United States in any way admitted that consular officials had the right to exert any pressure on their compatriots who were political refugees.

25. Mr. SHARP (New Zealand) said that, despite the close bonds and numerous interests in common between Australia and New Zealand, he had had to abstain on the Australian amendment. New Zealand, like Australia, was a country of immigration which had admitted a large number of political refugees. It would be most undesirable if consular officials of the countries of origin of such persons should enter into contact with them despite objections on their part. The United Kingdom proposal for adding a new article concerning political refugees would partly dispel the New Zealand delegation's concern in that respect. The convention did not, of course, diminish in any way the rights of the nationals of the sending State, and New Zealand would not interpret paragraph 1 (*a*) of article 36 as empowering consular officials to persist in a course of conduct which was repugnant to the wishes and freedoms of the individuals concerned.

26. Mr. BOUZIRI (Tunisia) thanked the delegation of Venezuela for having agreed to sponsor a compromise text in lieu of its own earlier amendment. The joint compromise text hardly differed from the text as originally drafted by the International Law Commission, and accordingly Tunisia had been able to vote in its favour.

27. Mr. DAS GUPTA (India) said that the joint amendment in substance resembled the original draft but, for stylistic reasons and because it was drafted in more precise legal language, he would have preferred the original text. Accordingly, he had voted against the joint amendment.

28. Mr. DE CASTRO (Philippines), explaining his abstention, said that the original draft of the International Law Commission was fully satisfactory to his delegation.

29. Mr. WALDRON (Ireland) explained that he had been unable to vote for the Australian amendment because it qualified the right of consular officials to communicate with their fellow-nationals.

30. Mr. WOODBERRY (Australia) stated for the record that his government would interpret the expression " freedom " in the sense of " optional ".

31. Mr. RODRIGUEZ (Cuba) said that he had felt obliged to abstain on the joint amendment because it introduced no innovations.

32. Mr. ADDAI (Ghana) said he had voted against the joint amendment because the original was preferable from the drafting point of view.

Paragraph 1 (b)

33. The CHAIRMAN invited debate on article 36, paragraph 1 (*b*), and drew attention to the amendments thereto.[3]

34. Mr. SRESHTHAPUTRA (Thailand) said that the reasons for proposing the deletion of paragraph 1, sub-paragraph (*b*), had been stated in his government's comments on the draft. There were over four million aliens in Thailand, and they were free to live in any part of the territory — an area of 500,000 square kilometres — except for the areas which were prohibited

[3] Amendments to paragraph 1 (*b*) had been submitted by the United States of America, Japan, the Federal Republic of Germany, Thailand, the United Kingdom and Greece.

on security grounds; some of them resided in very remote districts. Sub-paragraph (*b*) imposed an obligation which his government would be unable to fulfil, and he would therefore oppose it.

35. Mr. KANEMATSU (Japan) said that the interests of the sending State were not so great that it was necessary to provide for the receiving State's obligation to inform the consulate of the detention of a national of the sending State. That obligation was owed only if the person concerned wished the consulate to be informed. The provision proposed by Japan (L.56) was very close to that proposed by Switzerland (L.78) [4] and accordingly the Japanese delegation would, if the Swiss amendment was adopted, withdraw its amendment.

36. Mr. LEE (Canada) said that he likewise regarded the obligation stipulated in paragraph 1 (*b*) as excessive; besides, what would be the position if a person had double nationality ? Other possible cases which illustrated his point were, for example, those where a person was arrested for a minor offence during a short stay in a neighbouring country; so strict a rule as that laid down in paragraph 1 (*b*) should surely not be applicable in such cases. He would accept the proposals of the United States (L.3), the United Kingdom (L.107) and Greece (L.125).

37. Mr. KAMEL (United Arab Republic) proposed the deletion of the first sentence of paragraph 1 (*b*) and the amendment of the second sentence by the deletion of the word " undue ", as proposed by the United Kingdom.

38. Mr. JESTAEDT (Federal Republic of Germany) referring to his delegation's amendment (L.74), under which the receiving State would have one month's time limit by which to inform the consulate of the sending State of the arrest or detention of a national of that State, said that he would be prepared to accept a shorter time limit.

39. Mr. BLANKINSHIP (United States of America) said that under his delegation's amendment (L.3) the receiving State would not be bound to notify the consulate of the sending State of the arrest of one of the nationals of that State who did not wish to have his name notified to the authorities of the sending State. The object of the amendment was to protect the rights of the national concerned. His delegation's purpose should not be misconstrued. As the Canadian representative had said, a person spending a short period in a neigbouring State might commit a trivial offence of which, for very understandable reasons, he might not like his consulate to be informed. To avoid such situations the United States proposed that the words " at the request of a national of the sending State " should be added. In addition, in referring to the cases of persons suffering from some physical or mental incapacity, the amendment filled a gap in the original draft.

40. While recognizing the force of the argument of the representative of Thailand, he said that no country could disregard its obligation in certain circumstances to inform the sending State's consulate of the arrest of one of the nationals of that State. The United Kingdom amendment (L.107) was acceptable to the United States.

The meeting rose at 1.10 p.m.

[4] The Swiss amendment proposed the insertion of a new paragraph 2.

SEVENTEENTH MEETING

Friday, 15 March 1963, at 3.15 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 36 (Communication and contact with nationals of the sending State) (*continued*)

Paragraph 1 (b)

1. The CHAIRMAN invited the Committee to continue consideration of paragraph 1 (*b*) of article 36 and the relevant amendments.[1]

2. Mr. HEUMAN (France) said that article 36 was one of the most important in the whole draft. For theoretical purposes, the International Law Commission's formulation of the principle stated in paragraph 1 (*b*) could not be improved on. The absolute and unconditional obligation of the authorities of the receiving State to notify the sending State's consul if a national of that State was committed to prison or detained in custody was included whenever possible in bilateral conventions signed by France, and he had been glad to see it included in the draft convention.

3. It must be recognized, however, that principles were often very different from practical possibilities. Many countries, such as Thailand and Canada, had a large number of permanent foreign residents; others, such as his own, had a large seasonal influx of foreign tourists and week-end visitors. In both cases paragraph 1 (*b*) would impose an impossible task on the authorities of the sending State, and it would not be wise or reasonable, or even honest, to approve an article which could not be complied with. A less ambitious solution must be found, even if it were an inferior one, to meet the facts of the situation.

4. He was therefore forced to compromise by accepting the idea, supported by many representatives at the previous meeting, that consuls should be notified only when the person concerned so requested. Of the various amendments before the Committee, that submitted by the United States of America (L.3) offered the best solution. It was based on the idea that the person detained should take the initiative, unless he was prevented from doing so by mental or physical incapacity, in which

[1] For the full list of amendments to article 36, see the summary record of the fifteenth meeting, footnote to para. 28; for the amendments to paragraph 1 (*b*), see the summary record of the sixteenth meeting, footnote to para. 34. An oral amendment to paragraph 1 (*b*) had also been proposed by the United Arab Republic.

case the authorities of the receiving State must notify the competent consulate.

5. He regretted that Canada had withdrawn an excellent earlier proposal to the effect that the authorities of the receiving State should be obliged to notify the consuls if one of his country's nationals were arrested. In the circumstances, he would vote for the United States amendment, though he wished to point out two shortcomings. First, the International Law Commission's draft and all the amendments, including that of the United States, referred to detention or committal to prison or to custody pending trial, but none of them mentioned arrest. He might at a later stage propose the addition of the word " arrested " to the United States amendment. Secondly, many of his own country's bilateral agreements, especially those with African countries, contained a clause on the lines of the United States amendment, but with an additional provision giving the consul the right to receive periodically a list of nationals of the sending State in prison or custody or under detention. He might at a later stage propose as a sub-amendment to the United States amendment an additional sentence on the following lines:

" The competent authorities shall further be required, on request by the competent consulate of the sending State, to communicate to it periodically a list of the nationals of that State who are detained, except for those who object to such information concerning them being communicated to the consulate." [2]

6. To sum up, he fully supported the United States amendment, but reserved the right to propose two sub-amendments.

7. Mr. MARESCA (Italy) said that freedom was an essential part of human dignity. If consuls were not informed of restrictions on the personal freedom of nationals abroad they would be unable to carry out their task of protecting the interests of those nationals and looking after their welfare. It was therefore the responsibility of the receiving State's local authorities to inform the consul of the imprisonment, detention or holding in custody of any national of the sending State. He was therefore strongly opposed to the deletion of paragraph 1 (*b*). He could accept the idea of notification being dependent on the wish of the person concerned, provided that it would always take place if that person did not object. He supported the Greek amendment (L.125), which was constructive and improved the International Law Commission's text; but he could not support the amendment by the Federal Republic of Germany (L.74), because it would invite delay in notification.

8. The CHAIRMAN invited Mr. Žourek to explain why the International Law Commission had included the words " without undue delay " in its draft, as they had given rise to considerable comment at the previous meeting.

9. Mr. ŽOUREK (Expert) said that the words had not appeared in the original draft but had been added after long discussions both in plenary meetings and in the drafting committee.[3] They were intended to allow for cases in which the receiving State's police might wish to held a criminal in custody for a time. For example, if a smuggler was suspected of controlling a network, the police might wish to keep his arrest secret until they had been able to find his contacts. Similar measures might be adopted in case of espionage. The International Law Commission had felt that if the provision was to be capable of application and to be applied, such cases would have to be taken into account because they arose in practice.

10. Mr. LEVI (Yugoslavia) said that he could not support the representative of Thailand's proposal (L.101) to delete paragraph 1 (*b*), because that paragraph recognized an obligation that was already fulfilled in many countries. After hearing the explanation given by Mr. Žourek, he was not greatly in favour of the United Kingdom amendment (L.107). He could not accept the United States amendment (L.3), because it weakened the receiving State's obligation. The examples of detention overnight for drunkenness suggested by the representatives of Canada and the United States were not really valid, for the clause under discussion was applicable to much more important cases. He saw no objection in principle to the amendment by the Federal Republic of Germany (L.74), but thought it would be unsatisfactory in practice. A provision that the consul of the sending State should be informed at the latest within one month would not be practicable in Yugoslavia. The Greek proposal (L.125) was a wise one, but would be difficult to implement. In practice, it was not always easy to state the reasons for detention immediately. The amendment would be acceptable only if the reasons could be given in general terms: for example, by citing the article of the criminal code under which a person had been detained. He opposed the Japanese amendment (L.56) for the same reasons as he opposed the United States amendment.

11. Mr. CHIN (Republic of Korea) said that the receiving State's obligation under paragraph 1 (*b*) was extremely important, because it related to one of the fundamental and indispensable rights of the individual. Korea was a country in which there were many aliens, and his government recognized the need for that obligation to be faithfully fulfilled in order to protect their interests. He therefore opposed the amendment submitted by Thailand. He was against any limitation of the obligation, but agreed with the United States, Canadian and other representatives that the burden of the receiving State could be reduced. He supported the United States amendment, but would prefer to see the words " without undue delay " replaced by the stipulation of a specific period, as proposed in the amendment by the Federal Republic of Germany, which conformed with practice in his country. His views on the other amendments were implicit in the comments he had just made.

[2] See document A/CONF.25/C.2/L.131, in which, however, France proposed that the words in question should form a new sub-paragraph between paragraphs 1 (*b*) and 1 (*c*). This proposal was discussed at the eighteenth meeting (paras. 17-45).

[3] See *Yearbook of the International Law Commission, 1960*, vol. I (United Nations publication, Sales No. 60.V.I, vol. I), summary records of the 534th to 537th metings).

12. Mr. KRISHNA RAO (India) said that paragraph 1 (*b*) contributed to the progressive development of international law. He had serious doubts about the United States and Japanese amendments, which made the receiving State's obligation dependent on the wish of the person concerned, for if that person was in prison there was no way of knowing whether he had asked for his consul to be informed or not. Such a provision could only lead to difficulties, for disputes would arise between the receiving and the sending States as to whether the prisoner had or had not made a request. Paragraph 1 (*b*) merely required the competent authorities to inform the competent consulate; if the person concerned did not wish to see his consul he need not do so, for the other paragraphs of the article gave him the right to refuse. The reasoning of the United States and Japanese representatives was understandable, but their views were adequately covered by the Swiss amendment (L.78). He could not support the amendment by the Federal Republic of Germany, because authorities would naturally tend to postpone notification until the end of the time limit. He would vote against the Greek amendment because its adoption would oblige some countries represented at the Conference to make radical changes in their consular regulations and criminal codes, but he supported the United Kingdom amendment (L.107).

13. Mr. SPYRIDAKIS (Greece) said that his country had a large number of nationals in different parts of the world and was anxious to safeguard their rights. The Conference, in its task of codifying international law and customs on consular relations, was also following the present-day trend of promoting and protecting human rights, for which future generations would be grateful. Greece therefore attached very great importance to article 36, and was proposing to add one more to the safeguards it embodied.

14. The Greek amendment (L.125) was based on the experience of Greek nationals abroad, who had sometimes been arrested and confined for long periods without being allowed to contact their consulates. The International Law Commission's draft, with the addition proposed by Greece, would constitute an advance in protecting aliens, particularly nationals of small countries.

15. With regard to the other amendments, he could not support the United States amendment, which weakened the safeguards in paragraph 1 (*b*); he could support the amendment by the Federal Republic of Germany if the time limit were reduced to, say, ten days; and he could accept the United Kingdom amendment if it did not weaken the guarantees in paragraph 1 (*b*), though, bearing in mind Mr. Žourek's explanation, the International Law Commission's wording might be better.

16. Mr. TÔN THÂT ÂN (Republic of Viet-Nam) said that paragraph 1 (*b*) placed too great an obligation on the receiving State. The representative of Thailand had shown, at the previous meeting, what a heavy burden it would represent for his own country. In drafting universal provisions, it was important not to overlook legitimate exceptions and he therefore supported the amendment submitted by Thailand; if it were not adopted he would support the Japanese amendment, which lessened the receiving State's obligation.

17. Mr. BOUZIRI (Tunisia) said that he regarded paragraph 1 (*b*) as one of the most important in the draft. It was related to article 5 (Consular functions), approved by the First Committee, and as the representative of Italy had pointed out, one of the essential functions of a consul was to help and protect the nationals of the sending State. Detention (and he agreed with the French representative that arrest should also be included) was a serious infringement of the freedom and dignity of the individual. It was therefore unthinkable that the consul of the sending State should not be notified, and the obligation of the receiving State to notify him should be firmly established, for it was possible that in certain circumstances the foreign national might be unable to inform the consul and ask him for help and protection.

18. Objections had been raised at the previous meeting, and examples had been given of the difficulties which might arise in countries visited by thousands of foreign tourists. He did not deny the circumstances, but was sure that the proportion of arrests or detentions among tourists would be too small to justify the argument. The measures provided for in paragraph 1 (*b*) were necessary to protect the rights of foreigners, though, bearing in mind the difficulties mentioned by the French representative, notification need not be made immediate. The United States representative's apt reference to the possibility of a person refusing to see his consul was an exceptional case and did not affect the principle that an alien needed protection and his consul must give it. The United States representative wished notification to be made only on the request of the person detained; he himself would prefer the obligation to stand unless that person expressly objected. The same objection applied to the Swiss and Japanese amendments. The amendment submitted by Thailand conformed neither to international law nor to the facts. He would vote against the United States amendment unless it could be altered as he had suggested and could include a reference to arrest. He agreed with the idea contained in the amendment by the Federal Republic of Germany, but could only support that amendment if the time limit were reduced. He would vote in favour of the United Kingdom amendment.

19. Mr. EVANS (United Kingdom) fully agreed with the Tunisian representative's remarks. The rights of communication and contact with the nationals of sending States defined in article 36 were especially important for the persons under detention referred to in sub-paragraph (*b*). Such persons were obviously in very special need of consular help and the notification stipulated in sub-paragraph (*b*) was in many cases a necessary condition for providing it. It was essential to retain sub-paragraph (*b*) and he would therefore be obliged to vote against the amendment submitted by Thailand.

20. There should be a clear obligation to inform the competent consul in any case in which a national of the sending State was detained in the receiving State, and

to do so promptly. Only if the obligation were so framed could it really fulfil its purpose in all cases. That was why he had proposed that the word " undue " should be deleted; the wording of the draft implied that some delay was permissible. His government consistently used the words " without delay " and " promptly " in bilateral agreements and he was aware of no resultant difficulties. The amendment by the Federal Republic of Germany would allow far too long a delay; if the Committee wished to allow some latitude the most he could accept would be about 48 hours.

21. He had serious misgivings about the amendment advocated by the United States and Japanese representatives. The experience of his own country showed that such a provision might give rise to misunderstanding and uncertainty in practice. An important consideration was the language difficulty for persons travelling abroad. That might well have been the cause of misunderstanding in a recent case in which a United Kingdom national had been detained; the authorities of the receiving State had maintained that he had made no request for the consul to be informed, but when released a few days later he had said that he had asked to be allowed to communicate with his consul several times. It was better to lay down a clear and straightforward obligation which left no room for misunderstanding and he would prefer the International Law Commission's text as it stood. He recognized the possibility of special problems, as in the case of neighbouring countries where people crossed the border frequently for work or pleasure; but he suggested that those problems could be solved by other means than weakening the obligation under sub-paragraph (*b*). States with such problems might, for example, make bilateral arrangements to waive or limit their respective rights under the article to suit their mutual convenience. Another solution would be to add a sentence to the effect that the obligation applied only where persons were detained for more than 48 hours. He supported the Greek amendment, which was an improvement on the original draft.

22. Mr. AMLIE (Norway) referred to the arguments advanced by the representatives of Canada and the United States at the previous meeting to justify their desire for caution. He realized that there were strong reasons for caution; but there were even stronger reasons for imposing an absolute obligation. He too could give examples. Norway possessed a large merchant navy and its seamen, especially on their first visit abroad, were often faced by dangers and temptations. That was why Norway maintained so many consulates abroad. His own experience in Brazil had shown that with police co-operation, and provided the consul was notified immediately, many seamen could be saved from trouble and the trouble-makers speedily removed. In countries where such immediate notification and co-operation were not the general practice seamen could be arrested; the receiving State's authorities could say that they did not want consular help, and the sending State could never prove the contrary. As the Indian representative had pointed out, such situations could cause endless strife and argument between the receiving State and the sending State.

23. As legislators (for the Conference was engaged in laying down international law), the drafters of the convention could not deal with minor cases; they must establish basic rules. The only basic rule to be adopted in the present case was the one drafted by the International Law Commission, without reference to the will or desire of the person detained.

24. Mr. SRESHTHAPUTRA (Thailand) stressed that his delegation had proposed the deletion of sub-paragraph (*b*) not because it was not in agreement with the principle of the sub-paragraph, but because, as he had explained at the previous meeting, his government could not accept any obligation which it knew it would be unable to fulfil for practical reasons. He did not understand how his statement of fact concerning the special position of his country could be interpreted as a defiance of international law, as certain representatives appeared to have suggested.

25. Mr. BOUZIRI (Tunisia) suggested that if a country was unable to accept a particular provision it was open to it to make a reservation regarding the article concerned, rather than propose the omission from the convention of a principle which could be applied by other countries.

26. Mr. DE CASTRO (Philippines) said that the amendment proposed by the Federal Republic of Germany and the United Kingdom approached the problem from the standpoint of the sending State, as did the International Law Commission's draft, whereas the amendments submitted by Japan, Thailand and the United States represented the approach of the receiving State. When an alien entered a country, he accepted its jurisdiction. In his delegation's view the alien should not be denied the same protection as the nationals of the receiving State, but should nevertheless not be granted a higher degree of protection. The Japanese and United States amendments, therefore, appeared to embody the principle which would be most generally acceptable — that the consulate should be notified by the authorities of the receiving State when they were so requested by the person concerned. The word " reason " in the Greek amendment seemed to imply that some explanation should be provided by the authorities of the receiving State in addition to a statement of the charge made; that might give rise to some difficulty. He would therefore suggest that the competent authorities should be required to state " the charge or cause of his being deprived of his liberty ".

27. Mr. PEREZ HERNANDEZ (Spain) said that the right of the consulate to be informed so that it might protect the detained person was clearly stated in the International Law Commission's draft. His delegation favoured those amendments which were designed to improve, and not restrict, the draft, such as the proposal by the Federal Republic of Germany that the period within which the consulate must be notified should be specified. A time-limit of one month seemed unduly long, however, since during that period the situation of the detained person might worsen considerably. His delegation would prefer a shorter period, but perhaps

rather longer than the forty-eight hours suggested by the United Kingdom representative. His delegation would vote in favour of the Greek amendment; it was vital that the consulate should be informed of the reasons for which a person was being detained. Such a provision would also assist the local authorities in their task.

28. He could not support the Japanese and United States amendments, which were restrictive. Only after the consulate had been informed of his detention should the person concerned have the right to request, if he so wished, that the consulate should refrain from taking any action on his behalf. Adoption of the International Law Commission's draft would remove the necessity for the proposal in the third paragraph of the United States amendment, since the competent authorities would automatically inform the consulate of the detention of a physically or mentally handicapped person. The oral amendment proposed by France was a drafting point rather than a statement of a legal principle. His delegation would prefer a simple statement of the principle that the consulate must be informed when any of its nationals was " deprived of his liberty ".

29. He proposed that the meeting be suspended for a short time, so that delegations with similar views could try to reach agreement.

The motion for the suspension of the meeting was carried by 29 votes to 8, with 17 abstentions.

The meeting was suspended at 5.10 p.m., and resumed at 5.50 p.m.

30. Mr. BLANKINSHIP (United States of America) announced that after consultation during the suspension of the meeting, the delegations of Canada, Japan, Kuwait, Thailand, the United Arab Republic and the United States of America had agreed to submit a joint amendment to sub-paragraph (*b*), reading as follows:

" A consular official shall be informed without delay by the competent authorities of the receiving State if a national of the sending State who is arrested, committed to prison or detained in any other manner so requests. Any communications addressed to the consulate by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay."

31. The amendments previously submitted by the delegations of Japan (L.56), Thailand (L.101) and the United States of America (L.3), and the oral amendment proposed by the United Arab Republic had been withdrawn.

32. Mr. JESTAEDT (Federal Republic of Germany) said that in the light of the comments made on his delegation's amendment, he had decided to accept the United Kingdom suggestion that the consulate should be informed " at the latest within 48 hours ", and to revise the amendment further by proposing the deletion of the word " undue " before " delay " in the first sentence of sub-paragraph (*b*).

33. His delegation could not support the joint amendment just introduced because it did not differ in essence from the original United States amendment. The provision that the competent authorities should only inform the consulate at the request of the person detained might be the cause of grave friction between States.

34. His delegation would vote in favour of the Greek amendment.

35. Mr. NEJJARI (Morocco) said that if the consulate was to be given the onerous task of protecting its nationals it must be given the means to do so effectively, and must therefore be informed. His delegation could not accept the new joint amendment, but would support the International Law Commission draft. The time-limit within which the consulate must be informed should be short but reasonable — perhaps one or two weeks; forty-eight hours seemed too short.

36. Mr. HEUMAN (France) welcomed the inclusion in the joint amendment of his suggestion that reference should be made to arrest. If the joint amendment was rejected, he would ask for a separate vote on his proposal to insert the word " arrested " in the first sentence of the International Law Commission's draft, before the words " committed to prison ", and in the second sentence before the words " in prison ".

37. The discussion had centred on the question of whether a consulate should be informed automatically or only at the request of the person detained. It was true that in the case of minor offences, such as drunkenness or student brawls, there would be no desire to inform the consulate. Much more serious consideration must be given, however, to the interests of political refugees. It would be very undesirable if a receiving State was obliged, for example, to inform the consulate of a sending State immediately in a case where one of its nationals, wishing to break off relations with his country, had crossed the frontier clandestinely, since such a person could not be accorded refugee status overnight and would still come within the scope of the provision as drafted by the International Law Commission. The International Law Commission's draft of sub-paragraph (*b*) would be inapplicable under French law, and his delegation would support the joint amendment.

38. Mr. PEREZ HERNANDEZ (Spain) said that it was difficult to find the exact equivalent of " arrested " in Spanish and suggested that it might be preferable to refer simply to nationals being " deprived of liberty ".

39. The CHAIRMAN said that it was for the drafting committee, which had Spanish-speaking members, to ensure that the texts in all languages corresponded exactly.

40. Mr. SPYRIDAKIS (Greece) welcomed the revised amendment by the Federal Republic of Germany, which his delegation would support. He did not feel that there were sufficient grounds for the sub-amendment to his delegation's amendment suggested by the representative of the Philippines. " Reason " was a general term and might include a statement of the charge against the national concerned. The matter might perhaps be left to the drafting committee.

41. The CHAIRMAN invited the Committee to vote on the joint oral amendment presented by the delegations of Canada, Japan, Kuwait, Thailand the United Arab Republic and the United States of America.

42. Mr. KONSTANTINOV (Bulgaria), asked that the words " who . . . so requests " in the first sentence of the joint amendment should be put to the vote separately.

43. Mr. HEUMAN (France) objected to the request for a separate vote, under rule 40 of the rules of procedure. The words on which a separate vote had been requested were the essential point of the amendment and their removal would leave a text which had little meaning.

44. Mr. SPACIL (Czechoslovakia) said that the text of the amendment would stand on its own after the removal of the words on which a separate vote had been requested. His delegation believed that the request for a separate vote was justified.

45. Mr. BLANKINSHIP (United States of America) opposed the motion for division. The proposed vote would set an unfortunate precedent. It would lead to further delay in the Committee's work if representatives were to single out a few words from any proposal for a separate vote. The purpose of the Bulgarian delegation could be attained simply by voting against the whole joint amendment which was in opposition to the International Law Commission's text.

46. Mr. BOUZIRI (Tunisia) supported the motion for division because under rule 40 of the rules of procedure the representative of Bulgaria had the right to request that a separate vote should be taken. The joint amendment did not differ from the original United States amendment. A separate vote was an accepted way of allowing delegations to show that they considered the inclusion of particular words to be undesirable. Accordingly, if the motion for division was carried, his delegation would take the opportunity to vote against the inclusion of the words " who . . . so requests ".

The motion for division was rejected by 45 votes to 15, with 8 abstentions.

47. The CHAIRMAN put to the vote the joint oral amendment as a whole.

The amendment was rejected by 33 votes to 27, with 9 abstentions.

The amendment by the Federal Republic of Germany (A/CONF.25/C.2/L.74), as revised, was rejected by 33 votes to 11, with 24 abstentions.

The United Kingdom amendment (A/CONF.25/C.2/L.107) was adopted by 37 votes to 2, with 28 abstentions.

The Greek amendment (A/CONF.25/C.2/L.125) was adopted by 39 votes to 13, with 16 abstentions.

48. The CHAIRMAN put to the vote the oral amendment submitted by the delegation of France, to insert the word " arrested ", in sub-paragraph (*b*).

The amendment was adopted by 42 votes to 5, with 21 abstentions.

Paragraph 1, sub-paragraph (b) as a whole, as amended, was adopted by 43 votes to 6, with 21 abstentions.

49. Mr. HEUMAN (France) explained that he had abstained from voting on sub-paragraph (*b*) as a whole since it was contrary to French law to communicate to a third person — even a consul — the name of a detained person without the latter's consent.

50. Mr. SPACIL (Czechoslovakia) asked that it should be placed on record that, in accordance with the rules of procedure, any representative had the right to move that parts of a proposal or of an amendment should be voted on separately. The argument of the United States representative that the practice of voting separately on certain words should be avoided was in contravention to the rules of procedure and was against normal practice in the United Nations where separate votes were one of the means at the disposal of representatives for expressing their opinion on particular parts of proposals or amendments.

51. Mr. SRESHTHAPUTRA (Thailand) explained that he had voted against the International Law Commission's draft of sub-paragraph (*b*), not because his government was opposed to the principle but because it would find some difficulty in applying it.

The meeting rose at 6.55 p.m.

EIGHTEENTH MEETING

Monday, 18 March 1963, at 10.45 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*)

Statement by the Chairman

1. The CHAIRMAN said that, in order to speed up the Committee's work, he proposed to enforce stricter compliance with rule 30 of the rules of procedure, which provided that amendments should normally be introduced in writing and circulated to all delegations on the day preceding the meeting. In future, he would exercise less freely the discretion given to the Chair by that rule to permit the discussion of proposals that had only been circulated on the day of the meeting concerned. Furthermore, oral amendments would not be permitted unless they took the form of joint amendments accepted by the sponsors of one or more of the written amendments before the Committee; the introduction of oral amendments had been the principal source of delay to the Committee's proceedings, since they very frequently led to a reopening of the debate on the topic in question. Points of drafting for submission to the drafting committee would of course be accepted. No representative would speak more than once on the topic under discussion, but sponsors of written amendments would be permitted to speak before the vote in order to clarify points that had arisen during the debate or to propose a compromise solution. He hoped that the Committee would accept his proposals, which would be to the advantage of all delegations.

Article 36 (Communication and contact with the nationals of the sending State) (*continued*)

Paragraph 1 (b)

2. Mr. KANEMATSU (Japan) explained that he had voted in favour of paragraph 1 (*b*) as adopted at the 17th meeting on the understanding that it applied to normal cases where the aliens under detention or arrest possessed passports, travel documents or other identity papers. But the large number of persons who attempted to enter Japan illegally and did not possess any papers constituted a great difficulty. In those cases the authorities could not ascertain the nationality of persons detained and arrested, and therefore could not comply with the provisions of paragraph 1 (*b*) by notifying the consular authorities immediately.

3. He understood that the United Kingdom would be proposing a new article on political refugees which might cover Japan's difficulty. Meanwhile, his delegation was asking its government for instructions on how to vote on the subject in the plenary meeting.

Paragraph 1 (c)

4. The CHAIRMAN invited the Committee to consider paragraph 1 (*c*) and the amendments submitted by Belgium (L.25), the Federal Republic of Germany (L.74) and Spain (L.114).

5. Mr. JESTAEDT (Federal Republic of Germany) introduced his amendment, which was intended to safeguard the interests of nationals of the sending State detained in mental institutions. For such cases, his government considered that a social worker would be more suitable than a consul.

6. Mr. PEREZ HERNANDEZ (Spain) supported the amendment.

7. Mr. RUSSELL (United Kingdom) said that he did not find the Federal German amendment fully acceptable. It was quite in order for a consul to be accompanied by any person when visiting a detained national; it was not in order for him to delegate to someone else the rights vested in him under article 36.

8. Mr. HARASZTI (Hungary) said that the extension of paragraph 1 (*c*) as proposed by the Federal Republic of Germany was not compatible with the draft convention. The facilities, privileges and immunities conferred by the Convention were for consular officials and could not be transferred to others — certainly not to nationals of the receiving State. The grounds stated by the representative of the Federal Republic of Germany were not convincing, for the additional phrase he proposed could also be interpreted as applying to lawyers acting for the consul. In Hungary only nationals of the receiving State could practise as lawyers and the rights and duties of lawyers were governed solely by Hungarian law. The amendment would therefore conflict with his country's laws concerning aliens, and he would vote against it.

9. Mr. SHITTA-BEY (Nigeria) said he understood the motive for the Spanish amendment (L.114) but the wording was ambiguous and might lead to complications. It was not at all clear, for example, to whom the national concerned could " expressly oppose " action on his behalf by consular officials. The amendment seemed to be reopening a question which had been very fully dealt with under other sub-paragraphs — namely, should the person concerned tell the receiving State's authorities that he did not want his consul to be called, or should he refuse to see the consul when he arrived ?

10. Mr. MARESCA (Italy) said that he saw some advantage in the amendment by the Federal Republic of Germany since the consul himself, with his many duties, would obviously be unable to see every national detained or imprisoned. He could accept the amendment if the other persons were clearly understood to be members of the staff of the consulate.

11. Mr. VRANKEN (Belgium) introduced his amendment (L.25) which stipulated that a consul should have the right to correspond with the national concerned. The consul might not always be able to visit nationals in prison or under detention, and there might also be circumstances where he would prefer to communicate by letter.

12. Mr. PEREZ HERNANDEZ (Spain) presented his delegation's amendment (L.114), which provided that consular protection should not be given against the wishes of a national. It was essential for the law to allow for the free will of the individual. In article 19 of the Argentine Constitution, respect for the free will of the individual was expressed in such fine literary Spanish that he would like to read it aloud. The individual had the right to protection but was not under an obligation to receive it. Protection was ensured by paragraph 1 (*a*), which prescribed freedom of communication between consul and national, and paragraph 1 (*b*), which prescribed that the consul should be informed of a national's detention or imprisonment; but neither took account of the individual's wishes. There might be cases of purely private concern where an individual would prefer legal proceedings to the intervention of the consul, and the Spanish amendment was designed to safeguard the individual's wishes. It was important for the article to stipulate clearly the individual's expressed opposition, to ensure that he was not subjected to moral pressure from the authorities. It was clear that the amendment did not, as the Nigerian representative had suggested, cover the same ground as other sub-paragraphs.

13. Mr. SRESHTHAPUTRA (Thailand) opposed the amendment by the Federal Republic of Germany because he considered that the rights vested in consuls under the convention should not be extended to persons other than consular officials. The amendment went even further, in proposing to extend the right referred to in paragraph 1 (*c*) to other persons, regardless of nationality. It was sometimes difficult for the receiving State to verify the authority of persons claiming to act on behalf of consuls.

14. Mr. ALVARADO GARAICOA (Ecuador) supported the Spanish amendment because it established the freedom of action of the individual.

15. Mr. LEVI (Yugoslavia) opposed the amendment by the Federal Republic of Germany because it was too wide in scope and because it was not compatible with national law which allowed prisoners to be visited by members of their families, their lawyers and their consuls, but by no one else. He did not think the amendment could be interpreted in the way the representative of Italy had suggested; in any case, an explanation would not suffice: the amendment would have to be more clearly drafted. The Spanish amendment was logical but unnecessary, for if the national concerned did not wish to see his consul, the consul would not obtain the necessary permission from the competent authorities. He would not vote against the amendment, but would prefer to see it withdrawn.

The amendment by the Federal Republic of Germany (A/CONF.25/C.2/L.74) was rejected by 37 votes to 11, with 18 abstentions.

The Spanish amendment (A/CONF.25/C.2/L.114) was adopted by 18 votes to 16, with 33 abstentions.

The Belgian amendment (A/CONF.25/C.2/L.25) was adopted by 38 votes to 8, with 19 abstentions.

Paragraph 1 (c), as amended, was adopted by 57 votes to none, with 13 abstentions.

16. Mr. BLANKINSHIP (United States of America) inquired if it would be in order to propose the insertion of the word " prison " before " custody " in the last sentence of paragraph 1 (*c*) so that it should conform to the first two sentences.

17. The CHAIRMAN assured the United States representative that the point would be considered by the drafting committee.

New sub-paragraph

18. The CHAIRMAN invited the Committee to consider an amendment by France (L.131) for the insertion of a new sub-paragraph between sub-paragraphs (*b*) and (*c*).

19. Mr. HEUMAN (France) said that the effect of sub-paragraph (*b*) as drafted would be that although the consul was informed of nationals in prison he would not be notified of their release. He was therefore proposing that in addition to the receiving State's obligation under sub-paragraph (*b*), consuls should be entitled to request periodically a list of nationals of the sending State under detention. The new sub-paragraph could equally well be placed at the end of paragraph 1 and he would be open to suggestion on that point.

20. The most important part of his amendment, and no doubt the most controversial, was the last phrase: " except for those who object to such information concerning them being communicated to the consulate." In that respect its motives were similar to those of the Australian amendment to sub-paragraph (*a*), the United States amendment to sub-paragraph (*b*), the Spanish amendment to sub-paragraph (*c*) and the Swiss amendment which would be discussed under paragraph 2. The adoption of the Spanish amendment and the rejection of the others was a remarkable contradiction. If any representative wished to propose a separate vote on the last part of his amendment he would not oppose it.

21. Mr. LEVI (Yugoslavia) supported the first part of the French amendment but opposed the second part because it contained a principle which had been discussed but rejected in connexion with sub-paragraph (*b*). He asked for a separate vote on the last phrase of the French amendment.

22. Mr. PEREZ HERNANDEZ (Spain), referring to the French representative's comments, did not agree that the Committee had acted inconsistently. His own amendment was concerned with the freedom of the individual; the others related to the safeguards which provided the essential basis of protection for a national abroad. He would accept the first part of the French amendment because it strengthened the safeguards, but he could not accept the second part because it would hinder actions that were prerequisites to protection. He therefore supported the request for a separate vote.

23. Mr. BOUZIRI (Tunisia) supported the first part of the French amendment. He opposed the second part because it conflicted with the other sub-paragraphs which had been adopted. Moreover, it raised the question of proof that the national concerned really objected to information being given concerning himself.

24. Mr. MARESCA (Italy) said that the French amendment was a necessary addition to article 36; the consulate would be supplied with complete information. The periodical list would show not only which nationals had been detained but whether or not they were still under detention. It would also allow consuls to assess the standard of behaviour of the nationals of the sending State in the receiving country. The second part of the French amendment would, however, nullify the principle that the authority of the consulate must be recognized by its nationals in the receiving State. His delegation would oppose the second part of the amendment, and would support the motion for division of the vote.

25. Mr. RUSSELL (United Kingdom) said that his delegation supported the first part of the amendment, which would be a valuable addition to article 36. A periodical list would be in the interests of the individual, and conducive to the effective conduct of consular business. His delegation would, however, oppose the second part of the amendment because the principle it contained was in itself undesirable, and because it was clearly inconsistent with sub-paragraph (*b*) as approved by the Committee at its previous meeting. He therefore supported the motion for a separate vote.

26. Mr. SALLEH bin ABAS (Federation of Malaya) said that the amendment would place too heavy an obligation on the authorities of the receiving State in addition to their responsibilities under sub-paragraph (*b*). It would not be difficult for the consulate itself to prepare a list if it wished to do so, since it would in any event be notified of the persons detained. There seemed no reason to transfer the responsibility for compiling the list to the competent authorities of the receiving country.

27. Mr. LEE (Canada) expressed his entire agreement with that view. Although the French amendment perhaps represented an ideal objective, there were a number of practical objections to it. The obligations imposed on the receiving State by sub-paragraph (*b*) were quite sufficient. The additional responsibility proposed by France would require special police clerks to keep the list up to date. The receiving State would have no control over the frequency with which lists could be requested by the consulate since the period was not specified. A further difficulty arose from the fact that " the nationals of that State who are detained " could be interpreted to mean all such nationals in the receiving State, including those outside the consular district of the consulate concerned. A consulate in a capital could, for example, request a list of all nationals detained throughout the territory of a receiving State in which the sending State maintained several other consulates. The inclusion of the proviso at the end of the paragraph would mean, moreover, that a check would have to be made each time in case any detained person had changed his mind, since the last list was submitted, about the communication to the consulate of information concerning him.

28. Mr. SRESHTHAPUTRA (Thailand) shared the views expressed by the representatives of the Federation of Malaya and Canada. His delegation could not accept the French amendment for the same reason as he had given when sub-paragraph (*b*) was under discussion — namely, that his government would have practical difficulties in carrying out such an obligation.

29. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) asked whether it was in order for the Committee to discuss the insertion of a new sub-paragraph between sub-paragraphs (*b*) and (*c*), which had already been approved.

30. The CHAIRMAN replied that it would be for the drafting committee, in considering article 36 as a whole, to decide on the order of the sub-paragraphs, including that proposed by France should it be approved.

31. Mr. KONSTANTINOV (Bulgaria) said that it would be excessive to require the authorities of a receiving State to furnish a list of nationals of whose detention the consulate would have been informed already under sub-paragraph (*b*). The second part of the French amendment contained a proposal already rejected by the Committee in the Australian oral amendment to sub-paragraph (*a*) and in several amendments proposed to sub-paragraph (*b*). The Swiss proposal to insert a new paragraph providing that the application of sub-paragraphs (*b*) and (*c*) should be subject to " the freely expressed wish of the national of the sending State who is in prison, custody, or detention " again sought to insert that same rejected notion in the text of article 36. Unless the rules of procedure could be applied to prevent the constant rediscussion of proposals which had been considered and rejected, the work of the Committee would never end.

32. The CHAIRMAN said that he had been giving serious consideration to the point raised by the representative of Bulgaria. Rule 33 of the rules of procedure provided that when a proposal had been adopted or rejected it might not be reconsidered unless the Conference decided to do so by a two-thirds majority of the representatives present and voting. That rule did not, however, apply to the French amendment since the suggestion in question had first been rejected by the Committee in connexion with sub-paragraph (*b*), and subsequently accepted in sub-paragraph (*c*) by the adoption of the Spanish amendment. He would, however, rule that in so far as it concerned sub-paragraph (*b*), the Swiss amendment (L.78) would amount to the reconsideration of a proposal, and could not therefore be discussed by the Committee unless it decided to do so by a two-thirds majority; in so far as the Swiss amendment concerned sub-paragraph (*c*) it should be considered by the drafting committee, since there was in his view no fundamental difference between the Swiss amendment and the Spanish amendment to sub-paragraph (*c*) which had been adopted by the Committee.

33. Mr. BOUZIRI (Tunisia) said that the Spanish amendment was fundamentally different. It presupposed that the detention was known to the consulate, and did not affect the principle that the consulate must be informed by the consular authorities of the receiving State: only after that information had been communicated could the detained person exercise his right, in accordance with the principle of the freedom of the individual, to refuse to allow the consular officials to take action on his behalf. The French amendment, on the other hand, would allow the names of detained persons to be withheld from the consulate.

34. Mr. SERRA (Switzerland) said that his delegation had noted the Chairman's views on the decisions taken by the Committee in regard to sub-paragraphs (*b*) and (*c*) of article 36 and the conclusions he had drawn from those decisions. Although the proposals approved by the Committee were closely related to the intention of his delegation in submitting its amendment, the principle that his delegation has wished to see affirmed in the draft convention had been only partly covered. In conformity with the Chairman's ruling, his delegation withdrew its amendment (L.78). It requested, however, that it should be noted in the summary record that the Swiss authorities, desirous of continuing their past and present practice, could not accept any undertaking whereby due account was not taken of the freely expressed wish of the persons concerned.

35. With regard to the French amendment he would welcome further explanation of the word " periodically ". If the period between reports was too long the proposed provision would be made inoperative.

36. Mr. SPYRIDAKIS (Greece) said that the first part of the French amendment was logical and would assist consulates in their work. It would improve the draft by strengthening the protection which could be afforded to detained persons. The administrative difficulties which it might create for certain countries did not constitute a sufficient reason for opposing the amendment, which it was essential to include in the text of the convention. His delegation supported the motion for a separate vote.

37. Mr. DAS GUPTA (India) supported the view of the representatives of Canada and the Federation of Malaya that the French amendment as drafted was unacceptable, because the first part would lay an onerous and unnecessary administrative burden on the authorities of the receiving country without in any way improving the situation, already covered by sub-paragraph (*b*); it would also create difficulties with regard to the jurisdiction of the consulate, which was established to look after nationals in a particular area and not throughout the territory of a receiving State. It was possible that detained persons might be moved from one prison to another in a different consular district, and it would be superfluous to have to notify the consulate each time. The second part of the amendment was in opposition to the first part and contradicted the provisions of sub-paragraph (*b*). Friction would arise between States as to who was to judge, and who to verify, whether the persons concerned had objected to information concerning them being communicated to the consulate.

38. Mr. PETRENKO (Union of Soviet Socialist Republics) agreed with those representatives who had pointed out the extra administrative work the French proposal would entail; it might be particularly onerous for federal States such as the Union of Soviet Socialist Republics and the United States of America. The duty of the competent authorities to notify the consulate was clearly stated in sub-paragraph (*b*). It was unnecessary to go further and undesirable to introduce contradictions in the text. The second part of the amendment would open the way to abuse and should be rejected for the same reasons as those for which the similar amendments to sub-paragraph (*b*) had been rejected.

39. Mr. MOUSSAVI (Iran) said that his delegation would vote for the first part of the French amendment, but opposed the second part. There was a considerable difference between the Spanish amendment, the principle of which had been approved by his delegation, and the second part of the French amendment.

40. Mr. SHITTA-BEY (Nigeria) supported the first part of the French amendment; it signified an additional obligation on the receiving State, but would make for accuracy and administrative convenience. It would enable the sending State to request a periodical list of detained persons even although there had been failure on the part of the receiving State to discharge its obligations under sub-paragraph (*b*). His delegation could not support the second part of the amendment.

41. Mr. HEUMAN (France) said that reference to " arrest ", which was usually of brief duration, had been specifically avoided in the proposed new sub-paragraph which concerned detention, usually more permanent: the extra administrative work which some members feared would accordingly be reduced. The possibility of allowing the consulate itself to compile the list, as the representative of the Federation of Malaya had suggested, had been considered. But the burden placed on the competent authority by sub-paragraph (*b*) was so great that it could not be carried out adequately; a list compiled by the consulate from the information received under that sub-paragraph would therefore be incomplete, and could not be kept up to date, since there was no obligation on the receiving State to notify the consulate of the release of detained persons. As for the objection that the proposed sub-paragraph would extend beyond the boundaries of a consular district, it was intended that the paragraph should be inserted after sub-paragraph (*b*); it would therefore be governed by that sub-paragraph, which referred to " district ". His delegation would, however, have no objection to the addition of the words " within its district " in the proposed new sub-paragraph.

42. It was true that the word " periodically " was vague, but a definition of the period between reports was a matter for agreement between the local authorities and a particular consulate rather than for an international convention. His delegation would, however, have no objection to the deletion of the word "periodically".

43. The CHAIRMAN said that since no objection had been raised to the motion for division of the vote on the French amendment (A/CONF.25/C.2/L.131), he would put the first part of the amendment to the vote:

" The competent authorities shall further be required, on request by the competent consulate of the sending State, to communicate to it periodically a list of the nationals of that State who are detained."

The first part of the amendment was adopted by 31 votes to 29, with 7 abstentions.

44. The CHAIRMAN put to the vote the second part of the French amendment: " except for those who object to such information concerning them being communicated to the consulate ".

The second part of the amendment was rejected by 45 votes to 9, with 15 abstentions.

45. Mr. PEREZ-CHIRIBOGA (Venezuela) explained that his delegation had voted against the whole French amendment for the reasons given by the representatives of Canada and the Federation of Malaya.

Paragraph 1

46. The CHAIRMAN invited the Committee to consider paragraph 2 of article 36 and the amendment to it submitted by the United Kingdom (L.107).

47. Mr. EVANS (United Kingdom) said that, in the discussion of article 36, he had already indicated the importance attached by his delegation to the statement of clear and unequivocal obligations, and on the whole the Committee had supported that idea. Paragraph 2 began by stating that the rights referred to in paragraph 1 " shall be exercised in conformity with the laws and regulations of the receiving State " but then went on to the proviso that the said laws and regulations " must not nullify these rights ". In his delegation's view, the terms of the proviso were very unsatisfactory. It was obviously important that nothing should be said in paragraph 2 which would render ineffective the provisions already agreed to in paragraph 1. The words in question would, however, appear to be open to the literal interpretation that the laws and regulations of the receiving State could be allowed to impair the rights referred to in paragraph 1, and that the only proviso

was that they must not render those rights completely inoperative. It was realized that consulates must comply with laws and regulations on such matters as prison visiting and what might be given to the prisoner. It was of the greatest importance, however, that the substance of the rights and obligations in paragraph 1 must be preserved. His delegation had therefore proposed in its amendment that the proviso at the end of paragraph 2 should be re-drafted to provide " that the said laws and regulations must enable full effect to be given to the purposes for which the rights agreed under this article are intended ".

48. Mr. AVAKOV (Byerolussian Soviet Socialist Republic) said that the International Law Commission's draft of article 36 represented a reasonable compromise between the interests of the sending State, with the duty of its consulates to protect its nationals, and those of the receiving State, concerned with the safeguarding of its own country. The United Kingdom amendment to paragraph 2 was not acceptable as it was less clear than the International Law Commission's draft; it would weaken the text by making it less imperative and introduce the idea that a government should exercise limitation of its own laws and regulations.

The meeting rose at 1.5 p.m.

NINETEENTH MEETING

Monday, 18 March 1963, at 3.20 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 36 (Communication and contact with nationals of the sending State) *(continued)*

Paragraph 2

1. The CHAIRMAN invited the Committee to continue its consideration of article 36, paragraph 2, and of the United Kingdom amendment (L.107) to that paragraph.

2. Mr. DAS GUPTA (India) said that the second part of paragraph 2 might raise difficulties of interpretation. He would prefer the wording proposed by the United Kingdom in its amendment (L.107), which was an improvement on the International Law Commission's draft.

3. Mr. ANGHEL (Romania) said that he agreed with the principle stated in article 36, paragraph 2, but considered the wording obscure and difficult to interpret, especially in view of the differences in existing legislation. The two phrases contained two different criteria. The United Kingdom amendment did not improve the text. Did it mean that States signing the Convention would have to change their laws in order to permit the full exercise of the rights in question ? He did not think that was meant by either the United Kingdom amendment or the International Law Commission's draft. Under the legislation of various countries, aliens were subject to the penal laws of the receiving State in the same way as nationals of that State. The law differed from country to country, and the receiving State could hardly be expected to accord privileged status to aliens. The second part of paragraph 2 should preferably be deleted.

4. Mr. MARESCA (Italy) said that the second part of paragraph 2 contained a recommendation that was difficult to interpret. The United Kingdom amendment proposed a more precise wording for which the Italian delegation would be prepared to vote.

5. Mr. PEREZ HERNANDEZ (Spain) likewise expressed support for the United Kingdom amendment, which conformed to the principle that international law prevailed over municipal law. There was no intention, as feared by the Romanian delegation, of according a privileged status to aliens. In all the countries represented at the Conference, citizens were equal before the law, but by reason of his status the alien needed the assistance and protection of a consul in certain respects. The United Kingdom amendment expressly safeguarded the exercise of the rights referred to in article 36, paragraph 1, and should therefore receive the Committee's assent.

6. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that sub-paragraphs *(a)*, *(b)* and *(c)* of article 36, paragraph 1, specified in what circumstances consular officials and nationals of the sending State could best communicate with each other. Paragraph 2 stipulated that the exercise of the rights conferred by paragraph 1 was subject to the laws and regulations of the receiving State, a provision fully consistent with accepted international practice, but the usefulness of the last part of the paragraph was debatable.

7. The United Kingdom amendment tended to weaken paragraph 2 still further, but did not provide for the case of a conflict between the rights defined in paragraph 1 and the laws and regulations of the receiving State. Would the consul's rights be violated, for instance, if he wished to pay a visit to one of his nationals in prison on a day on which the prison rules obtaining in the receiving State did not allow visits? The Ukrainian delegation was unable to support the United Kingdom amendment.

8. Mr. PETRENKO (Union of Soviet Socialist Republics) said that paragraph 2 was an important provision, for it laid down the conditions under which the rights conferred by paragraph 1 could be exercised. From the summary records of the twelfth and thirteenth sessions of the International Law Commission, it was clear that its object had been to safeguard the interests of the sending State and of its consular officials without infringing the respect due to the sovereignty of the receiving State. Those discussions had resulted in the unanimous adoption of a compromise provision, which should be acceptable to the great majority of States. Admittedly, paragraph 2 did not solve all the problems which might arise, but he considered that the International Law Commission's draft offered the most satisfactory wording.

9. The object of the United Kingdom amendment seemed to be to relieve consular officials of their duty to conform to the laws and regulations of the receiving State; yet surely, it was patent that laws and regulations varied from country to country. The Commission on Human Rights was currently drafting an instrument on arbitrary arrest, one of the most interesting features of which was that it took account of the differences in law as between States. The Romanian representative had quite rightly pointed out that aliens should not enjoy a status more favourable than that of citizens; the United Kingdom amendment, if adopted, would in effect restore the system of capitulations.

10. Mr. EVANS (United Kingdom), replying to the various criticisms relating to his delegation's amendment, said that the new provision proposed was longer than that in the draft article because his delegation considered clarity to be preferable to conciseness. The Romanian representative had expressed the fear that the effect of the amendment would be to give a privileged status to aliens; but after all it was precisely with aliens and their rights that article 36 was concerned. The Ukrainian delegation had implied that municipal law should prevail over international law; but that objection could not apply to the rights recognized in paragraph 1 of article 36.

The United Kingdom amendment (A/CONF.25/C.2/L.107) was adopted by 42 votes to 14, with 11 abstentions.

Paragraph 2, as amended, was adopted by 47 votes to 10, with 12 abstentions.

11. Mr. JESTAEDT (Federal Republic of Germany) said that he had voted against the United Kingdom amendment, not because he opposed its underlying principle, but because he considered that the International Law Commission's wording provided better safeguards for the principles stated in article 36, paragraph 1.

12. Mr. ANGHEL (Romania) said he had voted against the second part of article 36 as it stood, for the reasons he had already explained.

13. Mr. KANEMATSU (Japan) said that his delegation had abstained because it considered that, in so difficult a technical problem, the United Kingdom amendment might give rise to misunderstanding, since it did not make it clear whether national or international law was to prevail.

Article 36 as a whole, as amended, was adopted by 42 votes to none, with 27 abstentions.

14. Mr. WOODBERRY (Australia), explaining his delegation's abstention, pointed out that neither in sub-paragraphs (*a*) or (*b*), nor in the new sub-paragraph of paragraph 1, was any specific reference made to the right of an individual to decide on the extent of his relations with the consular representatives of the State of nationality, although paragraph 1 (*c*) contained what might be interpreted as such a provision. Secondly, the Australian delegation wished to reiterate its understanding that the word " freedom " in paragraph 1 (*a*) should be construed in the sense of " option ". Thirdly, in introducing his proposal for a new sub-paragraph between sub-paragraphs (*b*) and (*c*), the French representative had led the Australian delegation to understand that the object of the proposal was not to place an additional burden on receiving States, but rather an obligation on those receiving States which thought themselves unable to comply with the provisions of sub-paragraph (*b*).

15. Mr. HEUMAN (France) said that his delegation had abstained for the reasons already explained when the Committee had voted on paragraph 1 (*b*). Furthermore, it was paradoxical that the Committee should have rejected the right to refuse in sub-paragraph (*b*) and in the second part of the French amendment, but not in sub-paragraph (*c*). Thirdly, paragraph 2, as amended by the adoption of the United Kingdom amendment, was unacceptable to the French delegation because it set too strict a limitation on national law.

Article 37 (Obligations of the receiving State)

16. The CHAIRMAN invited debate on draft article 37 and on the amendments thereto.[1] In view of the fact that the amendments by the United States of America (L.4) and Thailand (L.66) were identical, he suggested that the sponsors might agree to treat them as a joint amendment.

17. Mr. SRESHTHAPUTRA (Thailand) accepted that suggestion.

18. Mr. BLANKINSHIP (United States of America), also agreeing, said that his delegation proposed the deletion of sub-paragraph (*a*) on the ground that it was unnecessary to impose on the receiving State the duty to inform the consulate of the death of a national of the sending State. That would be an excessive obligation and of no practical value. The question of reporting deaths to the consulate was not so serious as to require an express provision in the convention. In the United States, for example, at least in some States, there were no means of tracing the movements of aliens and hence it might be difficult to notify the consulate. In view of those considerations, sub-paragraph (*a*) was unacceptable to his delegation. For similar reasons, sub-paragraph (*b*) was superfluous; a reference to the appointment of a guardian or trustee for a national who was a minor would be out of place in the convention.

19. Mr. WASZCZUK (Poland) said that his delegation attached great importance to the provision concerning the notification of deaths. The deceased's family, who were usually in the country of origin, had be to informed. Moreover, the obligation was laid down in many bilateral conventions, in particular in article 10 of the Consular Convention of 30 December 1925 between Poland and France.[2] His delegation had origi-

[1] The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.4; Austria, A/CONF.52/C.2/L.49; Brazil, A/CONF.25/C.2/L.63; Thailand, A/CONF.25/C.2/L.66; Federation of Malaya, A/CONF.25/C.2/L.76; Ireland, A/CONF.25/C.2/L.77; Switzerland, A/CONF.25/C.2/L.79; Romania, A/CONF.25/C.2/L.93; Poland, A/CONF.25/C.2/L.94; India, A/CONF.25/C.2/L.113; Australia, A/CONF.25/C.2/L.144.

[2] League of Nations, *Treaty Series*, vol. LXXIII, No. 1719.

nally thought of proposing a time-limit of thirty days within which the death should be reported, but had dropped the idea on account of the difficulties that might arise for certain very large countries. Nevertheless, the basic principle set out in sub-paragraph (*a*) should be retained. Naturally, the obligation in question would exist only in cases where the authorities were aware of the deceased's nationality. Moreover, sub-paragraphs (*b*) and (*c*) of the International Law Commission's text provided that in the cases there dealt with the consulate should be informed " without delay ", and that expression should be included in sub-paragraph (*a*) also.

20. Mr. WALDRON (Ireland) said that the article should not raise as many difficulties as the three preceding articles, but perhaps it was not in its proper context in the draft; he suggested that that question might be referred to the drafting committee. The purpose of his delegation's amendment (L.77) was to include in the text a point indicated in the International Law Commission's commentary, but he would be prepared to accept an alternative text along the same lines. He considered his proposal a reasonable compromise between the rather demanding form of the article as it stood and the solution proposed by Thailand and the United States, namely, the deletion of sub-paragraphs (*a*) and (*b*).

21. Mr. WOODBERRY (Australia) said that the scope of the article should be narrower. He could not entirely share the opinion of the United States representative, nor that of the representative of Ireland; the Australian delegation's amendment (L.144) might be regarded as a compromise.

22. Mr. SRESTHAPUTRA (Thailand) said that his statement on article 36 would also apply to sub-paragraph (*a*) of article 37, which his delegation proposed to delete (L.66). There were about four million foreign residents in Thailand who in some cases moved from place to place without reporting to the competent authorities; accordingly it would be impossible for his government to assume the obligation in question. In his delegation's view, sub-paragraph (*b*) should also be omitted, not only for the reasons just stated, but also because the laws and regulations governing guardianship or trusteeship varied from country to country; so far as his country was concerned, the institution of trust was not recognized and would have no effect as such under the civil and commercial code of Thailand. Furthermore, there was no need to provide in the article that the consul should be informed of the appointment of a guardian by the court, because all court orders were published in the Official Gazette.

23. Mr. ANGHEL (Romania) said that the inclusion in the convention of the text of article 37 as drafted by the International Law Commission was fully justified by its practical interest. On the other hand, the words " appointment of a guardian or trustee " in the case of a minor or other person lacking full capacity were not sufficiently precise, and failed to take account of the great mass of legislation on the subject. According to some legal systems trusteeship was not confined to persons lacking full capacity from the legal standpoint; it also applied to other persons who did not lack full capacity but whose interests had to be protected because of illness or infirmity. With a view to improving sub-paragraph (*b*), and because there was a variety of laws concerning guardians and trustees, he proposed that the words " a minor or other person lacking full capacity who is " should be omitted (L.93) so that the text should also apply to other persons requiring protection and thus be fully effective.

24. Mrs. VILLGRATTNER (Austria) said that the reason for her delegation's amendment (L.49) to sub-paragraph (*a*) was that aliens resident in a country frequently left incorrect addresses, and the duty to inform the consulates concerned of a death would be the best means of informing the deceased's families. Austria further proposed to provide for the transmission of a certificate of death.

25. Mr. SALLEH bin ABAS (Federation of Malaya) said that, in the light of the Australian representative's explanations of his delegation's amendment and in order to facilitate the Committee's work, he would withdraw the amendment submitted by the Federation of Malaya (L.76). Sub-paragraphs (*a*) and (*b*) might give rise to difficulties, in particular for newly independent countries in which persons were living whose nationality had not yet been determined. He would support the joint amendment by the United States and Thailand, but if it was rejected he would accept the Australian amendment, limiting the obligation to inform the consulate of deaths to cases in which the whereabouts of the next-of-kin or close relatives were not known. He hoped that the Australian representative would agree to extend his amendment also to sub-paragraph (*b*).

26. Mr. DAS GUPTA (India) said he appreciated the motives underlying the joint amendment and the practical difficulties raised by sub-paragraph (*a*). It would be asking the impossible to impose the obligations laid down in the International Law Commission's text. India was so vast, the number of aliens living in India so large and communications so difficult that his government would find it hard to assume the obligations in question. Those were reasons for his delegation's amendment (L.113). He would not oppose the Irish amendment (L.77).

27. Mr. PEREZ-CHIRIBOGA (Venezuela) said that obligations which were thereoretically defensible but inoperative in practice should not be imposed upon the receiving State. His delegation would support the joint amendment deleting sub-paragraphs (*a*) and (*b*). Like all countries of immigration, Venezuela would have some difficulties in assuming the duty to report the deaths of aliens to their consuls. Moreover, if deaths were to be reported to the consulate, why not marriages and births as well ? The International Law Commission, realizing that that would be excessive, had wisely refrained from providing for such cases. With regard to sub-paragraph (*b*) he said that the clause did not apply to Venezuela, because the statutory provisions concern-

ing the appointment of tutors for minors were applicable equally to citizens and to aliens.

28. Mr. LEE (Canada) said that the article would create an imbalance between the obligations of the receiving State and the benefits accruing to the sending State. He would therefore vote for the joint amendment deleting both sub-paragraphs.

29. Mr. SPACIL (Czechoslovakia) said he agreed with the delegations which thought that the principles laid down in the draft should be strengthened. The consul's essential function was to assist the nationals of the sending State, which implied that the consular authorities should be kept informed of everything affecting their nationals. In countries of vast size or in those with large numbers of immigrants it might admittedly be very difficult for the local authorities to provide the consular authorities with accurate information. Such cases, however, were not in the majority; he thought that the Irish and Indian amendments offered a satisfactory solution. Incidentally, those proposals were not incompatible with that of Poland (L.94) and, if the sponsors were agreeable, the different proposals could be easily combined. The Austrian amendment expressed the general idea of the original draft in more concrete terms and was in keeping with general practice. The Australian amendment was unacceptable because it would involve a heavy administrative burden.

30. Mr. KAMEL (United Arab Republic) expressed support for the Irish amendment. Agreeing with the representatives of the United States, Thailand, India and the Federation of Malaya, he thought that it might be difficult to obtain all the necessary particulars in countries with a large number of resident aliens. The particulars should, however, be communicated wherever they existed. He would also support the Polish amendment and would vote for the draft text as amended by both proposals.

31. Mr. SPYRIDAKIS (Greece) agreed with the principle that the authorities of the receiving State should inform the consulate of the sending State of the death of any of the nationals of that State, for that would considerably facilitate the consul's work. He appreciated the force of the objections raised by the representatives of the United States and Thailand. He fully supported the Austrian amendment and paid tribute to the Austrian authorities for their promptness and efficiency in communicating the death certificates of Greek nationals to the Greek consular authorities in Austria. If the Committee preferred to omit sub-paragraph (*a*) of article 37, his delegation would support the Australian amendment as a compromise solution. It would also support the Irish amendment.

32. Mr. EVANS (United Kingdom) said that the bilateral conventions of which the Polish representative had spoken, and particularly those to which the United Kingdom was a party, contained no provision exactly identical with those in sub-paragraphs (*a*) and (*b*) of draft article 37. Where they contained analogous provisions, they did not require the communication of information by the authorities of the receiving State, except where the information had been brought to their knowledge. Actually, United Kingdom practice was close to the sense of the Irish amendment. If amended in that sense, sub-paragraphs (*a*) and (*b*) lost a great deal of their meaning and, after listening to the forceful case presented by the representatives of the United States and Thailand, he thought there would be little point in retaining them. Hence, he would vote for the joint United States-Thailand amendment; if that amendment should be rejected, he would vote for the Irish amendment (L.77). He would also vote for the Austrian amendment (L.47), that of Switzerland (L.79) and of Australia (L.144), but he would vote against the Romanian amendment (L.93), which would broaden the scope of the provision so much that it would become impracticable in the United Kingdom. The Polish amendment (L.94) and that of India (L.113) were to a great extent covered by the Irish amendment.

33. Mr. MARESCA (Italy) said that sub-paragraphs (*a*) and (*b*) of draft article 37 could not be dissociated from article 5. One of the consul's main functions was to protect minors and persons lacking full capacity and to safeguard rights in the estate of deceased persons. Hence, the two sub-paragraphs were indispensable, and rightly reaffirmed the principle of collaboration between the sending and the receiving States. Accordingly, he would support all the amendments, including that of Austria, which tended to strengthen the draft article.

34. Mr. VAZ PINTO (Portugal) said that sub-paragraphs (*a*) and (*b*) should stand. They were based on a sound principle, and to drop them would be a retrograde step in consular law; besides, they reflected a very widespread practice. If some of the great powers should find it difficult to conform to the proposed provisions, it was to be hoped that they would find means proportionate to the scope of the problem affecting their territory. In any case, impossibility of performance would be excusable on grounds of force majeure.

35. Mr. NWOGU (Nigeria) said that both the arguments for and those against the omission of sub-paragraphs (*a*) and (*b*) had been presented with much force. It should be noted, however, that in some newly independent States it was not obligatory to report deaths, and as a consequence it would be very difficult to apply the provisions in question in those cases. For that reason the Indian and Australian amendments seemed to him to offer an acceptable compromise. The idea that the death should be reported to the consulate only if the whereabouts of the next-of-kin of the deceased was unknown seemed sound. Sub-paragraphs (*a*) and (*b*), as so amended, and with the Irish amendment, would be prefectly acceptable to the Nigerian delegation.

36. Mr. SERRA (Switzerland) said that his country had very strict laws regarding trusteeship and guardianship; the reason behind the amendment submitted by his delegation (L.79) was that the powers of the authorities responsible for applying those laws should not be impaired.

37. Mr. DAS GUPTA (India) said that he recognized that the amendments of the United States, Thailand,

India, Ireland and Australia largely reflected a common concern. Yet the difficulties should not be over-estimated, nor should the Committee go to the other extreme and simply delete the sub-paragraphs in question. A person's death produced certain important consequences which the Committee should not ignore. The Indian amendment tried to offer a practical solution to the problem by simplifying sub-paragraph (*b*). The Polish and Irish amendments were based on the same idea. On the other hand, he thought that the Australian amendment would put the local authorities to a great deal of trouble, for apparently it meant that the receiving State would be expected to institute inquiries for the next-of-kin of the deceased, even in the sending State.

38. Mr. WOODBERRY (Australia) said he could not agree to the scope of his amendment being extended to cover sub-paragraph (*b*), as had been suggested by the representative of the Federation of Malaya.

39. Mr. BLANKINSHIP (United States of America) said that he recognized that the receiving State had a moral duty to communicate particulars to the consulate of the receiving State in the cases contemplated. Indeed, the United States scrupulously conformed to existing practice in that respect. The United States was, moreover, at one and the same time a sending and a receiving State, and he was glad to say that the attitude of the authorities of States in which American citizens were residing was admirable. Nevertheless, he did not think that a moral duty should be transformed into a legal obligation without qualification.

40. Mr. WASZCZUK (Poland), replying to the representative of the United Kingdom, said that the conventions to which he had referred mentioned at least the obligation to inform the consular authorities of the sending State in cases of death.

41. Mr. ANGHEL (Romania) said that his delegation's amendment (L.93) was not incompatible with the Indian, Australian, Swiss, Polish, Irish and Austrian amendments which, in the final analysis, had the same purport.

42. Mr. HEUMAN (France) moved the closure of the debate under rule 26 of the rules of procedure.

43. In the absence of objection, the CHAIRMAN declared the discussion closed. He then put to the vote the various amendments relating to paragraphs (*a*) and (*b*) of draft article 37.

The United States amendment (A/CONF.25/C.2/L.4) and the Thailand amendment (A/CONF.25/C.2/L.66) were rejected by 46 votes to 11, with 10 abstentions.

The Irish amendment (A/CONF.25/C.2/L.77) was adopted by 32 votes to 12, with 19 abstentions.

The Polish amendment (A/CONF.25/C.2/L.94) was adopted by 40 votes to 10, with 15 abstentions.

The Australian amendment (A/CONF.25/C.2/L.144) was rejected by 33 votes to 18, with 16 abstentions.

The Austrian amendment (A/CONF.25/C.2/L.49) was adopted by 35 votes to 12, with 19 abstentions.

The Indian amendment (A/CONF.25/C.2/L.113) was rejected by 38 votes to 7, with 24 abstentiond.

The Romanian amendment (A/CONF.25/C.2/L.93) was rejected by 29 votes to 12, with 26 abstentions.

The Swiss amendment (A/CONF.25/C.2/L.79) was adopted by 35 votes to 14, with 19 abstentions.

The introductory sentence and paragraphs (a) and (b) of article 37, as amended, were adopted by 56 votes to 3, with 10 abstentions.

44. Mr. BOUZIRI (Tunisia) explained that he had voted against the United States amendment which went too far and did not correspond either to existing practice or to any desirable practice. On the other hand, he had voted for the Irish amendment, which established a judicious balance between the rights of the sending State and the obligations of the receiving State.

45. Mr. CHIN (Republic of Korea) said that he had voted against the United States and Thailand amendments because a large number of Koreans, students in particular, were living abroad and their families as well as the Korean authorities were anxious to know where they were living and under what conditions.

The meeting rose at 6.35 p.m.

TWENTIETH MEETING

Tuesday, 19 March 1963, at 10.40 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 37 (Obligations of the receiving State) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 37.

2. Mr. BLANKINSHIP (United States of America) explained that his delegation had abstained at the previous meeting from voting on paragraphs (*a*) and (*b*) of article 37 because it wished to evaluate fully, before the final vote, the new obligations imposed by those paragraphs in conjunction with the additional obligations imposed by article 36 as approved by the Committee. The obligations placed upon the receiving State, for example, to communicate periodical lists of detained foreign nationals and to report all deaths of foreigners, extended well beyond the existing rules of international law. The implications of the new obligations were far-reaching and the manner in which they could be put into effect in many of the contracting States was doubtful. The United States wished to avoid undertaking obligations it would be unable or unwilling to carry out fully in practice.

3. The CHAIRMAN invited the Committee to consider sub-paragraph (*c*) of article 37, the amendment thereto by Austria (L.49), and the proposals for new sub-paragraphs by Brazil (L.63) and the Federation of Malaya (L.76).[1]

[1] For the list of amendments to article 37, see the summary record of the nineteenth meeting, footnote to para. 16.

4. Mr. SALLEH bin ABAS (Federation of Malaya) said that, in view of the rejection by the Committee of the amendments proposed to paragraph (*a*) by Australia, the United States and Thailand, it seemed likely that his delegation's amendment to paragraph (*c*) would be rejected automatically. He would therefore withdraw his amendment in order to facilitate procedure, although the text of paragraphs (*a*) and (*b*) as approved by the Committee was not acceptable to his delegation.

5. Mrs. VILLGRATTNER (Austria) said that in view of the decision taken by the First Committee at its 13th meeting with regard to the definition of " vessel " in article 5, and in a spirit of compromise she would withdraw the amendment (L.49) submitted by her delegation.

6. The CHAIRMAN said that, since all the amendments to sub-paragraph (*c*) had been withdrawn, he would consider that the Committee had adopted the International Law Commission's text of that sub-paragraph.

7. There remained for consideration the Brazilian proposal (L.63) for a new sub-paragraph (*d*).

8. Mr. NASCIMENTO e SILVA (Brazil) said that his delegation's proposal was self-explanatory. By informing the competent consulate as soon as possible of the names of the nationals of the sending State who had acquired the nationality of the receiving State, the authorities of the receiving State would be co-operating with the sending State and helping to avoid possible friction. It was realized that, once again, the proposal might involve additional administrative work for the authorities of the receiving State. It would not, however, impose such a heavy burden as the other obligations which the Committee had decided should be imposed on the receiving State under articles 36 and 37. When the receiving State granted naturalization to a foreign national it was automatically aware of the change of citizenship and of the previous nationality of the person concerned. To furnish the required information would be merely a routine addition to such duties as, for example, supplying the consulate with information on persons who were detained or had died. The proposed text provided that the information should be supplied " as soon as possible ", and therefore at the convenience of the receiving State. According to the laws of certain States, a citizen who acquired the nationality of another State automatically lost his original nationality. It was in the interests of the sending State to know which nationals could still ask the consulate for protection and which were no longer entitled to do so. The proposed addition would have the advantage of clarifying the situation for the receiving State and of eliminating sources of friction. Even if the laws of the sending State did not automatically deprive the person concerned of his original nationality, it was a well-established rule of international law, substantiated by The Hague Protocol of 1930, that the sending State could not exercise protection in the case of persons who also possessed the nationality of the receiving State. His delegation was, however, anxious to compromise and would welcome the views of other delegations on the matter. Whatever the decision of the Committee, the Brazilian authorities would continue their practice of informing the competent consulate when one of its nationals acquired Brazilian nationality.

9. Mr. HART (United Kingdom) said that although it might be convenient in some circumstances to have the information proposed in the Brazilian amendment, the obligation to provide it would add unnecessarily to the administrative burden of the receiving State. It might not be too inconvenient to inform the consulate where a person had received the nationality of the receiving State by naturalization, but it would be difficult to do so in cases where nationality was not acquired formally but automatically, by the operation of law, as occurred, for example, by marriage in many countries, although not in the United Kingdom. Under United Kingdom law, citizenship of the United Kingdom and colonies was acquired automatically by a child who was adopted by a citizen of the United Kingdom and colonies and in some cases citizenship depended on the birth being registered at a British consulate. In such cases it would be difficult to supply the required information. The subject of the Brazilian amendment was, moreover, rather a matter for agreement between two States than a specifically consular matter. The words " the competent consulate " in the Brazilian amendment illustrated how inappropriate it would be to introduce the provision into a consular convention. The nationality of the receiving State might be acquired quite irrespective of any particular geographical area — for example, by marriage in the sending State or in a third country, and in such cases the matter would be outside the competence of any consulate. Should any serious practical difficulty arise in a particular country it would be preferable to deal with it by bilateral agreement between the States concerned. His delegation hoped, therefore, that the Brazilian delegation would not press its amendment.

10. Mr. MARESCA (Italy) supported the amendment, which offered a practical solution to an important question. Unless a consulate was able to ascertain whether or not a person possessed the nationality of the sending State, it was deprived of the very basis on which it carried out its functions. It was true that there might be a certain limitation of the information available in regard to such cases as nationality acquired by marriage, for example, but in the case of formal acquisition of nationality it was the duty of the receiving State to communicate the information to the State of origin, and the natural channel for communicating that information was the competent consulate.

11. Mr. JESTAEDT (Federal Republic of Germany) supported the Brazilian amendment. His country had found that the matter was of great importance in the work of consulates, and satisfactory bilateral agreements had been concluded with a number of States.

12. Mr. PEREZ-CHIRIBOGA (Venezuela) opposed the amendment on the same grounds as those on which his delegation had already objected to certain provisions of articles 36 and 37 which would place an excessive administrative burden on the receiving State. Venezuelan

nationality was acquired only after certain legal formalities had been completed and notice of the acquisition was published in the daily Official Gazette. It did not seem too much to ask that consulates should consult the official gazette in order to ascertain whether any of their nationals had acquired Venezuelan nationality.

13. Mr. KHOSLA (India) said that a provision which concerned the acquisition of nationality by a national of the sending State had no place in an article defining the obligations of a receiving State. The matter should be governed by bilateral agreements between States, as had been done in many cases in accordance with the widely varying national laws. It would, moreover, be impossible to give effect to the Brazilian amendment since the persons concerned might be unaware that they had acquired a new nationality under the law of the receiving State, for example, by marriages; it would be too onerous for the receiving State to trace all such cases.

14. Mr. BOUZIRI (Tunisia) supported the amendment, which seemed opportune and useful. It was designed to facilitate the work of the consulate which must be informed if a national under its protection changed his nationality. The provision would obviate friction in certain cases. It would, for example, render unnecessary the intervention of the consulate in a case where an arrested person whom it sought to protect was found to have changed his nationality. There was also the possibility that a person might have acquired the nationality of the receiving State and yet continue to benefit from assistance from the consulate, which was unaware of the change. It was true that in Tunisia the name of a person who adopted Tunisian nationality was published in the Official Gazette, but that practice might not obtain in all countries.

15. Mr. LEVI (Yugoslavia) supported the amendment. It was true that the laws of nationality throughout the world were extremely complex. Some of the difficulties mentioned by the representative of the United Kingdom might, however, be avoided in view of the adoption by the Committee of the amendment by Ireland to the opening phrase of article 37, which would govern the proposed new paragraph; under that proviso it would be the duty of the authorities of the receiving State to furnish the information only if it was obtainable by them.

16. Mr. MOUSSAVI (Iran) welcomed the Brazilian amendment as a valuable addition to the provisions of article 37.

17. Mr. SALLEH bin ABAS (Federation of Malaya) said that, although his delegation appreciated the spirit of the amendment, the obligation on the receiving State was far too onerous. The purpose of the Conference was to codify existing rules of international law and not the special rules which certain countries found it convenient to adopt in bilateral agreements. The subject of the Brazilian amendment would be covered more appropriately by such special arrangements, as would be allowed under article 70 of the draft convention.

18. Mr. BLANKINSHIP (United States of America) opposed the amendment. The laws of nationality were so complex that it would be impossible to make adequate provision in a brief text as proposed by the Brazilian delegation. In certain cases bilateral agreements between States could allow useful exchanges of information. In recent years extensive studies had been made by governments and by international organizations, such as UNESCO, of methods of exchanging vital statistics between governments and of making such statistics readily available to the countries of the world. It would be in the interests of all to continue that work. It was realized that the intention of the amendment was to facilitate the task of the consulate in such matters as the payment of social security and the granting of assistance to the nationals under its protection. In each case, however, it was incumbent on the consular authorities that offered help to discover whether or not the person concerned was a national of the sending State. Such a procedure seemed normal and would provide ample protection for the States concerned. To add to the obligations already placed on the receiving State might ultimately prevent a wide acceptance of the convention. The purpose of the Brazilian amendment could best be accomplished in other ways and his delegation would strongly oppose it.

19. Mr. JAMAN (Indonesia) said that in view of the great differences in the laws of the various countries the acquisition of nationality was not a suitable subject for inclusion in article 37. In Indonesia, consulates could ascertain from the official gazette whether any of their nationals had acquired Indonesian nationality. His delegation would vote against the amendment.

20. Mr. ADDAI (Ghana) said that the amendment as drafted would impose too great a burden on the receiving State. His delegation would, however, be able to accept the amendment if it was modified to indicate that the receiving State need furnish the relevant information only if it was readily available, in accordance with the amendment already adopted by the Committee to the opening phrase of article 37.

21. Mr. NASCIMENTO e SILVA (Brazil) said that in view of the support expressed for the amendment, his delegation would press it to a vote. The most serious criticism had been that the proposal would create an additional burden for the receiving State. The provisions already accepted by the Committee in paragraphs (*a*) and (*b*) of article 37 would, however, impose much more difficult obligations than the Brazilian amendment. In reply to the representative of Ghana, he pointed out that the words " if the relevant information is available to the competent authorities " were already contained in the opening phrase of the article, as amended, and would consequently govern the proposed additional paragraph. The relevant information was in fact almost always available, for example, in the Official Gazette of the country in question, and an extract from that information would involve very little extra work for the competent authorities.

22. The amendment was based not on the provisions of bilateral agreements but on practice in countries such

as Brazil, where the information was supplied to the competent authorities of the sending State. There was no intention of including rules concerning the acquisition or loss of nationality. The sole purpose of the amendment was to facilitate a consulate's performance of its duty to protect the nationals of the sending State.

23. The CHAIRMAN put the Brazilian amendment (A/CONF.25/C.2/L.63) to the vote.

The amendment was rejected by 21 votes to 20, with 18 abstentions.

Article 37 as a whole, as amended, was adopted by 53 votes to 1, with 5 abstentions.

24. Baron van BOETZELAER (Netherlands) explained that his delegation had voted against the Brazilian amendment, not because it was opposed to the principle, but because being limited to the acquisition of nationality by naturalization it would have been almost impossible to apply. It was more a subject for bilateral agreement.

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

25. The CHAIRMAN said that the amendments submitted by Japan (L.57), the Byelorussian Soviet Socialist Republic (L.103), Poland (L.111) and Belgium (L.129) had been withdrawn in favour of an amendment jointly proposed by those delegations (A/CONF.25/C.2/L.145).

26. Mr. VRANKEN (Belgium) said that the International Law Commission's draft of article 38 seemed to avoid specifying the rights of consular officials to address themselves to the local authorities of their district and the central authorities of the receiving State. The proposed amendment was in accordance with existing international law and practice and drew a clear distinction between the right of consular officials to address the local authorities of their district, which was recognized under existing international law, and the right of consular officials to address the central authorities of the receiving State, which existed only in so far as it was allowed by the laws, regulations and usages of the receiving State and by the relevant international agreements.

27. One small drafting point arose as a result of the non-restrictive text of article 5 approved by the First Committee. It might be left to the drafting committee to decide whether the phrase " in the exercise of the functions specified in article 5 " should be retained.

28. The CHAIRMAN said that if the joint amendment was adopted the point would be referred to the drafting committee.

29. Mr. WASZCZUK (Poland) said that the right of consular officials to address themselves to the local authorities of their district had been established in several bilateral agreements and was mentioned, for example, in article 24 of the consular convention concluded between France and Sweden on 5 March 1955 and in a number of consular conventions concluded between Poland and other States. In certain countries consular officials might address the local authorities but not the central authorities unless the sending State maintained no diplomatic mission in the receiving State or unless the diplomatic mission was unable to act. Under the terms of a recently concluded agreement, consular officials had the right to address both local and central authorities with the exception of the Ministry for Foreign Affairs, which must be approached by the diplomatic mission.

30. Mr. HEUMAN (France) questioned the Belgian representative's contention that the reference to article 5 was a matter of drafting. It was on the contrary a fundamental question. He reminded the Committee that, at the 12th meeting, he had objected to a verbal amendment by Nigeria, proposing a reference to article 5 in article 33, on the grounds that since article 5 did not contain a complete list of consular functions, the reference might be taken as implying that the functions not mentioned would not be subject to the facilities in article 33. The representative of Nigeria had recognized the implications of his amendment and withdrawn it.

31. The same question arose with article 38; the reference was already in the International Law Commission's draft and the fact that the First Committee had added a list of other functions to article 5 did not, in his view, lessen the danger. He therefore inquired if the sponsors of the amendment would agree to delete the words " specified in article 5 " and replace the words " the functions " by " their functions ".

32. Mr. MARESCA (Italy) said that the amendment dealt with one of the most important and interesting subjects in consular relations: the authorities in the receiving State which the consul was entitled to address. The consul was concerned solely with matters in his own district and should normally address only the local authorities. If he was to be given the right to address the central authority in certain circumstances, it should be clearly stipulated that the right was valid only for matters affecting his own district. Although the reference to article 5 seemed superfluous, he would support the joint amendment if it included the limitation he had indicated. Otherwise he would request a separate vote on the two parts.

33. Mr. LEVI (Yugoslavia) said he was not satisfied with the joint amendment and preferred to retain the International Law Commission's draft, which was a compromise between two distinct points of view. Yugoslavia was made up of six republics, each with its own local and central authorities. If the consul had the right to address the central authority, the authorities in the republics would be by-passed. For his own country, consuls should have the right to address the appropriate authority in the republic concerned, which would be covered by the reference to competent authorities in the International Law Commission's draft, but the joint amendment only referred to the right to address local and central authorities. He would have voted for the Byelorussian amendment (L.103) but could not support the joint amendment.

34. Mr. EVANS (United Kingdom) considered the International Law Commission's draft satisfactory. The

joint amendment would also be acceptable but he would ask the co-sponsors if they would be willing to accept some minor adjustments.

35. First, he agreed with the French proposal that the first line should read: " in the exercise of their functions, . . ." Secondly, he would like to see the word " if " in paragraph (*b*) replaced by the words " to the extent that ", so as to express more clearly the distinction between matters on which direct access to the central authorities was permissible and matters on which it was not. Thirdly, he believed that replacement of the word " and " before the words " by the relevant international agreements " in paragraph (*b*) by the word " or " would be in keeping with the intention of the sponsors.

36. Mr. HARAZSTI (Hungary) supported the third suggestion by the United Kingdom representative.

37. Mr. KHOSLA (India) remarked that the International Law Commission's draft was divided into two parts. The first dealt with the consul's right to address the competent authorities and the authorities that could be so addressed. The International Law Commission rightly left it to the receiving State to decide which were the authorities concerned and thus provided for the case of particular countries such as Yugoslavia and for cases where the consul might have to address the central authority in the absence of a diplomatic mission. He suggested that the drafting committee might consider a more specific wording by referring to the competent authorities in both cases. The second part referred to the important matter of procedure for addressing authorities and left it to the receiving State to decide the procedure by which a consul could approach the central authority — either direct or through the local authority — as well as the procedure for addressing the authorities of the receiving State in general. It was necessary to retain that paragraph.

38. He could not support the joint amendment because it said nothing about procedure. He had no objection to the French representative's suggestion, for similar action had been taken in connexion with article 33.

39. Mr. AVAKOV (Byelorussian Soviet Socialist Republic), speaking on behalf of the sponsors, agreed to the deletion of the reference to article 5 and to the replacement of the word " and " by " or " in paragraph (*b*).

40. Mr. VRANKEN (Belgium), also speaking on behalf of the sponsors of the joint amendment, said he would be willing to insert the word " competent " before " authorities ".

41. Mr. LEVI (Yugoslavia) inquired if the authors would agree to replace the words " central authorities " in paragraph (*b*) by the words " other authorities ".

42. In the absence of further comment, the CHAIRMAN invited the Committee to vote on the revised version of article 38 contained in the joint amendment (A/CONF.25/C.2/L.145).

Article 38, as revised by the joint amendment, was adopted by 52 votes to none, with 13 abstentions.

43. Mr. MARESCA (Italy) explained that he had voted for the revised article on the understanding that the consul could address the central authorities only on affairs concerning his consular territory.

44. The CHAIRMAN said that the United Kingdom representative's suggestion that the word " if " in paragraph (*b*) should be replaced by the words " to the extent that " would be referred to the drafting committee.

Article 39 (Levying of fees and charges and exemption of such fees and charges from dues and taxes)

45. The CHAIRMAN invited the Committee to consider article 39 and the joint amendment proposed by Argentina, Belgium, Brazil, the Netherlands and Venezuela (A/CONF.25/C.2/L.130).

46. Mr. NASCIMENTO e SILVA (Brazil) presented the joint amendment on the right of the consulate to transfer, in any currency, the fees and charges referred to in paragraph 1 of the International Law Commission's draft. Agreements to establish a consulate automatically included the right to levy fees and charges in the receiving State, but experience in many countries showed there should also be a provision for transferring the amounts levied, as a natural consequence of the right to levy. Normally such sums could be used within the receiving State — to help nationals of the sending State, to pay consular or diplomatic staff, or for other purposes; but cases sometimes arose where transfers were necessary, either because the receipts were large and consulates were small or because fiscal control in the sending State was exercised by a central bank or other agency responsible for public funds. The suggestion that the sending State should be allowed to select the currency was made to meet the difficulties of countries like his own whose currency did not have a wide circulation and was often difficult to obtain.

47. Mr. BOUZIRI (Tunisia) opposed the joint amendment because its adoption might constitute an interference in matters that were solely the concern of the receiving State. The practice proposed was entirely contrary to normal usage. There was no objection to consulates making their own arrangements with local authorities, but he could not agree to an obligation being placed on the receiving State. If the idea were accepted it might lead to the consular accounts being inspected by officials of the receiving State, which would certainly be unacceptable to the sending State.

48. Mr. TOURE (Guinea) shared the views of the Tunisian representative. In Guinea consular receipts were an integral part of the consular budget and the question of transfer did not arise. If the joint amendment were adopted, some of the countries represented at the present conference would undoubtedly refuse to apply the article. He therefore opposed the amendment.

49. Mr. VAZ PINTO (Portugal) supported the joint amendment in so far as it concerned the transfer of sums collected, which was a corollary to the principle already recognized by article 39. It would, however, be too drastic to allow the sending State to choose the currency

for transfer and in that respect he agreed with the Tunisian representative's objections. If the words " in the currency chosen by the sending State " were deleted the amendment would represent a fair compromise between the interests of the sending and the receiving State. He accordingly requested a separate vote on those words.

50. Mr. LEVI (Yugoslavia) said he would vote against the joint amendment because it shoule not come under the draft convention. Such matters were usually dealt with in bilateral agreements because they were dependent on many circumstances such as the receiving State's foreign currency position, commercial relations between the receiving and the sending State and questions of hard and soft currency. The matter was entirely outside the competence of the present conference.

51. Mr. JAMAN (Indonesia) also opposed the joint amendment. Such transfers might not be permissible or feasible under the laws of the sending State. Experience showed that consular levies could normally be used in the receiving State and the possibility of consular accounts being subject to inspection by the receiving State's auditors was a violation of the accepted principle of secrecy.

52. Mr. MOUSSAVI (Iran) endorsed the views of the representative of Tunisia. The International Law Commission's draft was entirely satisfactory and he could not support the joint amendment.

53. Mr. MARESCA (Italy) did not agree with the view that the question of transfer was outside the Committee's competence. It was a logical consequence of the right to levy a fee recognized in article 39 and he would accept the amendment as a necessary complement to paragraph 2.

54. Mr. SPYRIDAKIS (Greece) said that he appreciated the fact that the free transfer of consular revenues to the sending State would caused difficulty to many receiving States. It should be remembered, however, that in the case of many countries, like his own, with large communities and merchant fleets, considerable sums of money were collected in consular fees. In countries where there was no exchange control, consulates were already freely making transfers to their countries of origin under bilateral agreements. In countries with strict exchange control, considerable sums were " frozen ". The sending State could not spend them, because they were far larger than the expenditure of its diplomatic and consular missions in the receiving State. The strong opposition of the representative of Tunisia to the joint amendment concerned the functions of the consul and was hardly warranted. He agreed that the question of transfer of consular fees to the sending State was a logical consequence of the right to levy fees recognized in article 39, and was therefore a matter to be decided by the Committee. He supported the Portuguese proposal for a separate vote on the words " in the currency chosen by the sending State ".

55. Mr. EVANS (United Kingdom) said he had listened with great interest to the comments of the other representatives and agreed with those representatives who were concerned at the unusually wide scope of the joint amendment. He could not recollect any other international agreement having a provision requiring the receiving State to allow the sending State not only to convert sums received into any currency but also to transfer them without restriction. In practice, the amounts involved would probably not be very large and the adoption of the amendment was unlikely to cause his own country any difficulty. Nevertheless, in view of its unusually wide scope and the difficulties that many countries would face, it would be wise not to adopt it as drafted. The most he considered the Committee should accept would be an amendment providing that sums collected from fees and charges should be freely convertible into the currency of, and transferable to, the sending State. It might, however, be wiser to maintain the International Law Commission's draft.

56. Mr. KANEMATSU (Japan) remarked that the fees and charges collected by consuls were normally used to meet the consulate's expenses. He saw no reason why the convention should provide for the transfer and conversion of such funds. Moreover, in the matter of foreign exchange regulations most countries treated consuls as non-residents, so that there should be no difficulty in dealing with the relatively small sums concerned. In his opinion, the matter should be dealt with under the currency regulations of the receiving State and should not have a place in the convention.

The meeting rose at 1.5 p.m.

TWENTY-FIRST MEETING

Tuesday, 19 March 1963, at 3.15 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 39 (Levying of fees and charges and exemption of such fees and charges from dues and taxes) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 39 and of the joint amendment thereto by Argentina, Belgium, Brazil, the Netherlands and Venezuela (L.130).

2. Mr. SRESHTHAPUTRA (Thailand) said that his delegation maintained its view that the general rules of law which could command if not universal at least broad acceptance by States, should contain only general rules. He thought that in formulating such rules regard should be had to the different conditions prevailing in different States. It was therefore not advisable to make express provision for all conceivable circumstances in the proposed convention. He warned the Committee that if it went too far in one direction or the other, then, although it might be able to adopt a convention, such a convention would never attract States to become parties to it. He did not think that the proposed consular

convention should contain provisions relating to exchange control, for the transfer of funds depended on the economic and financial conditions prevailing in the particular State. He would therefore vote against the amendment and for the International Law Commission's draft.

3. Mr. KAMEL (United Arab Republic) said he shared the views expressed earlier by the representatives of Tunisia and Yugoslavia. The proposed amendment was entirely unacceptable to his government, for if the sending State were free to choose the currency into which the proceeds of fees and charges could be converted difficulties might arise. Such a clause had no place in a convention on consular relations. Furthermore, the accounts of consulates could not be checked by the receiving State by reason of the inviolability of the consular archives.

4. Mr. HEUMAN (France) said that his delegation could not accept either the convertibility or the transferability of the proceeds of fees and charges.

5. Mr. HABIBUR RAHMAN (Pakistan) said that article 39 was an important provision. He would vote against the joint amendment and for the article as drafted by the International Law Commission.

6. Mr. MUÑOZ MORATORIO (Uruguay) said he would vote for the amendment, for the reasons explained by its sponsors. The change proposed was compatible with the principle accepted by the International Law Commission concerning the levying of fees and charges. The possibility of funds being blocked in the receiving State should be avoided. Besides, the fees and charges in question related mainly to commerce and navigation, and were charged to the buyer of the goods; hence, in effect, purely balancing items or refunds were involved.

7. Mr. SERRA (Switzerland) said that in his country money was freely transferable. The proposed amendment would make it easier for Swiss consulates abroad to transfer the funds at their disposal. Nevertheless, he would abstain from voting on the amendment, as he preferred the International Law Commission's text.

8. Mr. CAMPORA (Argentina) said that, as one of the sponsors of the joint amendment, he had been surprised by some of the arguments put forward against it. The amendment was said by some of its critics to produce consequences which, in his opinion, could hardly be anticipated. The International Law Commission's text applied only to a part of the process of levying fees. In fact, there were two distinct stages: first, the actual levying of the fees in question, and then the possible transfer of the sums levied by the consul. The sponsors of the amendment had therefore proposed that the International Law Commission's text should be supplemented by a provision dealing with the second stage. In their view the term " transfer " supplemented the term " levy ".

9. Mr. DAS GUPTA (India) said that no distinction could be drawn in practice between transferability and convertibility, for if consulates asked for the transfer of the proceeds of fees levied in the currency of the receiving State, the banks had to take the necessary action for conversion. For some countries, such as India, which were experiencing balance-of-payment difficulties, the adoption of the amendment would aggravate the situation. That probably also applied to many Asian and African countries. If funds accumulated in the receiving State and if it should not be possible to transfer them, the sending State could at all events use them for such purposes as the payment of the salaries of consular staff in the receiving State. Furthermore, owing to the inviolability of the archives the consular accounts could not be inspected by the receiving State. The Indian delegation would accordingly vote against the joint amendment.

10. Mr. VRANKEN (Belgium) said he realized that exchange control regulations varied so greatly from country to country that some delegations could not accept the amendment. In deference to their views, the sponsors of the joint amendment would agree to a proposal by the representatives of Greece and Portugal for the deletion of the phrase " in the currency chosen by the sending State."

11. Mr. BOUZIRI (Tunisia), supported by Mr. LEVI (Yugoslavia), said that delegations which had submitted amendments should not introduce changes at the last minute, for then representatives who did not approve the modified amendment would not be able to comment.

12. The CHAIRMAN said that he would ask the Committee to decide by a vote whether a discussion should take place on the changes made by the sponsors.

The Committee decided in the negative by 30 votes to 16, with 21 abstentions.

13. The CHAIRMAN put to the vote the joint amendment, as amended by its sponsors.

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

Ghana, having been drawn by lot by the Chairman, was called to vote first.

In favour: Greece, Ireland, Italy, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands, Peru, Portugal, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Argentina, Austria, Belgium, Brazil, Canada, Costa Rica, Federal Republic of Germany.

Against: Guinea, Hungary, India, Indonesia, Iran, Japan, Republic of Korea, Kuwait, Libya, Mongolia, Morocco, Nigeria, Pakistan, Poland, Romania, Swdeen, Thailand, Tunisia, Turkey, Republic of Viet-Nam, Yugoslavia, Albania, Australia, Cuba, Czechoslovakia, Denmark, Federation of Malaya, France.

Abstaining: Ghana, Israel, Laos, New Zealand, Norway, Saudi Arabia, Sierra Leone, South Africa, Spain, Switzerland, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, China, Congo (Leopoldville), Ecuador, Finland.

The joint amendment (A/CONF.25/C.2/L.130) was rejected by 28 votes to 20, with 22 abstentions.

14. Mr. DEJANY (Saudi Arabia) said that, as some delegations might vote differently on the two paragraphs

and then on the article as a whole, he proposed that article 39 be put to the vote paragraph by paragraph.

It was so agreed.

Paragraph 1 was adopted by 69 votes to none, with 1 abstention.

15. Mr. BLANKINSHIP (United States of America) said that paragraph 2 did not specify the status of the consular staff concerned. Paragraph 2 of the commentary on article 57 stated that special attention should be drawn to article 69 of the draft, which was also applicable to honorary consuls; if they were nationals of the receiving State, honorary consuls did not, under article 69, enjoy immunity other than immunity from jurisdiction in respect of official acts performed in the exercise of their functions. In his opinion, honorary consuls who were nationals of the receiving State did not qualify for the benefit of the exemption provided for in article 39, paragraph 2, and it was on that understanding that he would vote for the paragraph.

16. Mr. SHITTA-BEY (Nigeria) said that the United States representative had raised a very important point. Under article 57 honorary consuls would apparently be eligible for the benefit of the exemption accorded by article 39. The point should be elucidated before the vote.

17. Mr. SALLEH bin ABAS (Federation of Malaya), supported by Mr. DAS GUPTA (India), took the view that the exemption was granted in respect of the sums levied by the consulate, and not by reason of the persons levying them.

18. Mr. AMLIE (Norway), supported by Mr. MARESCA (Italy) and Mr. NASCIMENTO e SILVA (Brazil), suggested that discussion on that particular point should be deferred and the question decided when article 57 came up for consideration.

19. Mr. HEUMAN (France) said that such a procedure would be dangerous; it would be difficult to include in substantive articles certain provisions which might be unacceptable to some delegations and to rely on a later and problematical decision on article 57 which might well confirm undesirable clauses.

20. The CHAIRMAN invited the Committee to decide whether it wished to take an inmediate vote on paragraph 2.

By 62 votes to none, with 4 abstentions, it was decided to take an immediate vote on paragraph 2.

Paragraph 2 was adopted unanimously.

Article 39 as a whole was adopted unanimously.

21. Mr. NALL (Israel) said that in his delegation's opinion consulates should not provide services for documents subject to stamp duty in the territory of the receiving State unless such duties had been paid.

22. Mr. SPACIL (Czechoslovakia) explained that his delegation had voted against the joint amendment because it considered that the sums levied by consulates should be paid in the currency of the receiving State. The object of the consular function was to assist the nationals of the sending State, and those nationals should therefore be granted the most favourable conditions, namely, the possibility of paying the fees and charges referred to in the article in the most easily obtainable currency, that of the receiving State.

23. Mr. VRANKEN (Belgium) said that he supported the viewpoint of the representative of Israel.

New articles to be inserted after article 39

24. Mr. HEUMAN (France), speaking on a point of order, asked whether the Netherlands delegation would agree to the postponement of debate on its proposal (A/CONF.25/C.2/L.109) for the insertion of two new articles after article 39. Both the articles proposed therein would be out of place in chapter II of the draft convention because in effect they qualified the facilities, privileges and immunities of consular officials. The question could hardly be dealt with before the consideration of articles 47 and 48.

25. Baron van BOETZELAER (Netherlands) said that he had no objection to his delegation's proposal being discussed at the same time as articles 47 and 48.[1]

Article 40 (Special protection and respect due to consular officials)

26. The CHAIRMAN drew attention to the amendments to article 40 submitted by the United States of America (A/CONF.25/C.2/L.5), Japan (A/CONF.25/C.2/L.58) and Greece (A/CONF.25/C.2/L.95).

27. Mr. KANEMATSU (Japan) said that, since the Committee had approved article 30, his delegation would withdraw its amendment.

28. Mr. BLANKINSHIP (United States of America), introducing his delegation's amendment (L.5), said that its purpose was to bring the draft article into line with article 29 of the Vienna Convention on Diplomatic Relations. It would be going too far to accord " special protection " to consular officials. For example, if a consular official experienced personal difficulties in the matter of housing, he could hardly be entitled to special protection. The amendment proposed by his delegation would be sufficient to provide effective protection for consular officials.

29. Mr. SPACIL (Czechoslovakia) said that the article as drafted was perfectly satisfactory; it confirmed the consul's official position and extended to him enjoyment of a special consideration in keeping with his status. The privilege thereby recognized was necessary for the proper exercise of his functions. The omission of any reference to " special protection " in the United States amendment would place the consul on a par with an ordinary citizen. While every citizen had, of course, the right to be treated with respect, consular officials should enjoy additional safeguards.

30. Mr. SPYRIDAKIS (Greece) said that the purpose of his delegation's amendment (L.95) was to enhance

[1] The first new article in the Netherlands proposal was later withdrawn; the second was considered at the thirtieth meeting.

the protection that should be enjoyed by consular officials. There was no question of granting to consulates the same inviolability as that accorded to the diplomatic mission, but the protection due to consular officials should not be qualified in any way.

31. Mr. WOODBERRY (Australia), Mr. MOUSSAVI (Iran), Mr. TOURE (Guinea), Mr. RUSSELL (United Kingdom), Mr. BOUZIRI (Tunisia) and Mr. VRANKEN (Belgium) expressed support for the United States amendment, which had been supported by sound arguments.

32. Mr. DAS GUPTA (India) said that he had listened with interest to the Czechoslovak representative's statement, but he had doubts about the scope of " special protection "; the provisions of the Vienna Convention of 1961 had no relevance in the case under consideration. There was a risk that honorary consuls might also claim the enjoyment of that special protection.

33. Mr. ALVARADO GARAICOA (Ecuador) said that the article as drafted was perfectly clear. " Special protection " was granted to consular officials by reason purely of their official position, and that sufficed to limit the field of application.

34. Baron van BOETZELAER (Netherlands) said that he would vote for the United States amendment but suggested that in the French text the word " appropriées " should be substituted for the word " raisonnables " as in the 1961 Vienna Convention. He added that, in some cases, for example during a press campaign, the receiving State had no means of assuring the protection of consular officials.

35. Mr. HEUMAN (France) said that article 29 of the 1961 Vienna Convention spoke only of the " respect " due to the diplomatic agent, but at the same time under that convention the diplomatic agent enjoyed absolute inviolability, which was not the case with consular officials. In reply to the Indian representative, he said that article 57 contained no reference to article 40 and that an honorary consul did not therefore come within its scope. His delegation could not support the United States amendment, because it did not guarantee special protection for consular officials.

36. Mr. WASZCZUK (Poland) said that the United States amendment unduly narrowed the scope of the article. His delegation would support the article as drafted by the International Law Commission.

37. Mr. MARESCA (Italy) said that under the Vienna Convention the inviolability of the diplomatic agent was guaranteed in absolute terms. The consul, however, since he had partial inviolability, should be entitled, in addition to the respect normally due to him, to special protection in the performance of his functions.

38. The CHAIRMAN put to the vote the United States amendment; the words " raisonnables " would be replaced by the word " appropriées " in the French text.

The United States amendment (A/CONF.25/C.2/L.5) was adopted by 37 votes to 22, with 11 abstentions.

39. The CHAIRMAN said that the decision just taken made it unnecessary to vote on the Greek amendment (L.95) or on the article as drafted by the International Law Commission.

40. He suggested that the Committee should proceed to discuss article 42, since article 41 had given rise to many amendments, whose sponsors might with advantage confer with a view to facilitating debate.

It was so agreed.

Article 42 (Duty to notify in the event of arrest, detention pending trial or the institution of criminal proceedings)

41. Mr. PEREZ-CHIRIBOGA (Venezuela) said that the phrase " a member of the consular staff " was extremely vague. It might be taken to mean any person employed in the consulate, which would be going too far. The obligation provided in the article could not be extended to nationals of the receiving State, whatever their consular rank might be. His delegation would vote for the draft article on that understanding.

Article 42 was adopted unanimously.

The meeting rose at 5.20 p.m.

TWENTY-SECOND MEETING

Wednesday, 20 March 1963, at 10.45 a.m.

Chairman: Mr. KAMEL (United Arab Republic)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 41 (Personal inviolability of consular officials)

1. The CHAIRMAN invited the Committee to consider draft article 41 together with the amendments thereto.[1]

2. Mr. SERRA (Switzerland) withdrew his amendment (L.105) which had been submitted to effect uniformity between the terminology of the International Law Commission's text and that of his government's penal legislation. He hoped that representatives who had submitted amendments for similar reasons would also respond to the Chairman's appeal. He now fully supported the International Law Commission's draft. It

[1] The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.16; Indonesia, A/CONF.25/C.2/L.61; Federal Republic of Germany, A/CONF.25/C.2/L.62/Rev.1; Brazil, A/CONF.25/C.2/L.64; Byelorussian Soviet Socialist Republic, A/CONF.25/C.2/L.104/Rev.1; Switzerland, A/CONF.25/C.2/L.105; Hungary, A/CONF.25/C.2/L.115 and L.143; Yugoslavia, A/CONF.25/C.2/L.116; Italy, A/CONF.25/C.2/L.117; Cambodia, A/CONF.25/C.2/L.126; United Kingdom, A/CONF.25/C.2/L.134; South Africa, A/CONF.25/C.2/L.148; Romania, A/CONF.25/C.2/L.149; Spain, A/CONF.25/C.2/L.150.

was the result of long study and discussion; it upheld the principle that consular officials should not enjoy the full inviolability accorded to diplomats; it was comprehensive and to the point.

3. Mr. CAMPORA (Argentina) said that the Committee had accepted the principle of relative inviolability for the consular premises and the consular bag and should therefore accept the principle of relative personal inviolability. Otherwise the Convention would be neither consistent nor well balanced. The International Law Commission had itself accepted the principle of relative personal inviolability by stating in paragraph 1 that except in the case of a grave crime and pursuant to a decision by the competent judicial authority, consular officers were not liable to arrest or detention.

4. Article 41 laid down that the personal inviolability of the consular official could not extend to grave crime. If he committed a grave crime he lost his inviolability and could be detained. It was therefore essential that the idea of a grave crime should be stated and clearly defined so that it should have the same meaning for all the authorities who would be governed by the article. The most acceptable definition would be to determine the gravity of the crime according to the duration of imprisonment applicable under the law of the receiving State. It was an objective and unequivocal criterion and was embodied in most of the amendments presented. If it were accepted, the word " grave " would be redundant; moreover, it introduced a subjective criterion which was incompatible with the criterion of duration of imprisonment.

5. Mr. JAMAN (Indonesia) presented his amendment (L.61) which was similar to the original Byelorussian amendment (L.104). It was intended to provide for the varying systems and practice in the different countries. Indonesia, for example, was one of the few countries which accorded almost the same privileges and immunities to consular as to diplomatic officers. His government's concern was to help the officials of sending States to do their work and not to hamper them by charges for minor offences. In case of arrest, the judicial authorities were not empowered to issue a warrant: the police authorities could detain a person without reference to the court. The amendment also took into account the fact that consular employees, who might be nationals of the sending State, the receiving State, or a third State, did not enjoy personal inviolability.

6. Mr. EVANS (United Kingdom) informed the Committee that a new joint amendment (A/CONF.25/C.2/L.168) had been submitted, combining the amendments of Brazil (L.64), the Federal Republic of Germany (L.62/Rev.1), Italy (L.117), Spain (L.150) and the United Kingdom (L.124). He pointed out first that, while article 43 (Immunity from jurisdiction) provided immunity in respect of official activities, article 41 was concerned only with personal inviolability. Bearing in mind that nothing under article 41 should detract from the immunities under article 43, paragraph 1 of article 41 would give consular officials a higher degree of personal inviolability than actually existed under international law. The main defect of the paragraph was that it referred to arrest or detention only pursuant to a decision of the judicial authority, whereas an individual could also be arrested by the police, or in some circumstances by a private individual, without a previous decision by a judicial authority: for example, if he were caught *in flagrante delicto*, or if there were grounds for believing that he had just committed a serious offence. In such cases it was essential to allow the authorities to take him into custody and detain him until he had established his identity. The same would apply in cases where a warrant had been issued for his arrest. The joint amendment was intended to cover such cases. It was also possible that an official might be arrested or detained in custody pending trial, with the consent of the sending State: that should be specifically covered in article 41.

7. Paragraph 1 of the joint amendment followed the pattern adopted by the Committee concerning other articles by stating a general proposition. Paragraph 2 stated the cases where arrest was permissible and mentioned only cases of arrest for an offence. The essential difference between the joint amendment draft and that of the International Law Commission was that under the latter a consular official could only be arrested — even for a grave crime — pursuant to a decision by the competent judicial authority. Paragraph 3 of the amendment established the principle that except in the case of a grave offence or at the request or with the consent of the sending State, the consular officer should be released immediately he had established his identity. Paragraph 4 was a valuable safeguard because it provided that the consular official should be brought before the competent judicial authority within 48 hours of his arrest. Paragraphs 5 and 6 were the same as paragraphs 2 and 3 of the International Law Commission's draft and paragraph 7 was a definition of " grave offence ".

8. Mr. ALVARADO GARAICOA (Ecuador) supported the International Law Commission's draft. He was strongly opposed to the replacement of the word " crime " by " offence " for the two words had very different meanings and involved very different types of punishment. The International Law Commission, by choosing the words " a grave crime ", had made its meaning perfectly clear without the need to lay down fixed rules.

9. Mr. HARASZTI (Hungary) introduced the two Hungarian amendments. The first (L.115) was to remedy an omission in paragraph 3 of article 41. It was obvious from paragraph 2 that coercive measures could not be applied to a consular official who refused to appear before the court, but that would not be deduced from paragraph 3 as drafted. The second (L.143) was to clarify the inviolability of the consular courier. At the 14th meeting, the representative of the Federal Republic of Germany had drawn attention to the fact that the inviolability of the consular correspondence and courier provided under article 35 was not defined in article 41. It was essential for it to be clearly stated that the consular courier could not be arrested or detained, so that there should be no possibility of misinterpretation.

10. Mr. HONG (Cambodia) presented his amendment (L.126) the aim of which was to make it clear that the inviolability accorded under paragraph 1 was solely in respect of consular activities and was not personal immunity. He regretted that the original text of article 40, which had made the position quite clear, had been rejected. He was proposing to introduce the idea of immunity in respect of consular functions because, as indicated in paragraph 2 of the commentary to article 43, it was a part of international law. If it were not clearly stated, article 41 would imply absolute instead of relative immunity.

11. Mr. ANGHEL (Romania) introduced his delegation's amendment to paragraph 1 (L.149). Article 41 was intended to ensure the inviolability of consular officials. In drafting it, therefore, it was important to avoid vague terms which permitted of different interpretations and might be misused. Terms such as " grave offence " and " grave crime " were not precise. They needed defining, and there should be an objective criterion which would afford a sufficient guarantee of the inviolability of consular officials. The duration of imprisonment would constitute such an objective criterion. He was therefore proposing an amendment introducing the definition of " serious offence " as one for which the maximum penalty was a term of imprisonment of at least five years. A clear definition would prevent any dispute between the receiving and the sending State on what constituted a serious offence in the event of the receiving State having arrested a consular official. He would be willing to associate himself with the sponsors of the joint amendment in respect of paragraph 7.

12. Mr. DRAKE (South Africa) remarked that paragraph 1 of the International Law Commission's draft gave consular officers a wider personal inviolability than they enjoyed under international law. The United Kingdom representative had lucidly explained the need for limiting the scope of the inviolability, and the joint amendment, which he would vote for, achieved the purpose. He welcomed the reference to " grave offence " rather than to " grave crime " as it had a wider legal meaning. He also welcomed the definition of " grave offence " in paragraph 7.

13. His own amendment (L.148) could be incorporated in paragraph 3 of the International Law Commission's draft or paragraph 6 of the joint amendment, both of which contained safeguards. Paragraph 4 of the joint amendment also contained certain safeguards, but nowhere was there a specific provision to ensure that if an official were detained, proceedings should be instituted without delay. It was essential in the interests of both the consular official and the consulate itself which would be deprived of his services, that all uncertainty should be removed at the earliest possible moment.

14. Mr. NASCIMENTO e SILVA (Brazil) said that his instructions concerning article 41 were similar to those of the Romania representative: to approve a text which would avoid any uncertainty and include a positive rule fixing a minimum term of imprisonment. Although he would prefer the five-year limit proposed in his amendment (L.64), he had joined the sponsors of the joint amendment and would accept any term that met with general approval. It was impossible to provide for every facet of national law. In connexion with the question of language referred to by the representative of Ecuador, he thought that any difficulties could be safely left to the drafting committee, whose members included representatives of all the official languages of the United Nations and of the principal legal systems of the world.

15. With regard to the other amendments, he understood the reasons for the Hungarian amendment, but did not agree that consular officials included consular couriers. Consular couriers had absolute inviolability and were not subject to the restrictions in the joint amendment. The Cambodian amendment was covered by article 43. The Indonesian amendment was unacceptable because it would change the whole intention of the article by subjecting the principle of inviolability to decision by administrative or police authorities. Paragraphs 2 (*b*) and (*c*) of the joint amendment were fully covered by paragraph 3.

16. Mr. LEVI (Yugoslavia) presented two amendments (L.116). In paragraph 2 it was essential to set a time limit to any term of imprisonment that might be imposed. He did not insist that the limit should be two years as long as the matter was not left open. His second amendment, which was similar to the Spanish amendment, was an additional paragraph to provide for the inviolability of the residence of the consular official. It provided for the inviolability of all consular residences, but he would agree to its being limited to the residence of the head of post if the Committee desired.

17. Mr. JESTAEDT (Federal Republic of Germany) said that the joint amendment was much clearer than the International Law Commission's draft, and would be easier for practical use and for the reader of the convention to understand. He supported the Hungarian amendment (L.115), but thought it would be better in paragraph 1 than in paragraph 3.

18. Mr. KHOSLA (India) said that his delegation had misgivings about the Indonesian amendment (L.61). While an authority other than the judicial authority might, of course, issue or, more particularly, carry out an order for temporary arrest or detention, in India the judicial authority only was entitled to judge in cases of crime. His delegation had no objection to the principle of the Hungarian amendment (L.143) but considered that there was no need to refer in article 41 to the situation of consular couriers which had been adequately dealt with elsewhere in the draft articles.

19. With certain exceptions, his delegation was in principle in agreement with the joint amendment (L.168). It supported sub-paragraphs (*a*) and (*b*) of paragraph 2, but felt doubtful about the necessity of sub-paragraph (*c*): it was clear that a consular official would not be covered by the provisions of article 41 until he was able to establish his identity, since otherwise the officer effecting the arrest would not be aware that he was dealing with a consular official. It would seem undesirable to include in paragraph 7 of the joint amendment a

definition of the expression " grave offence " which would be binding on all States: in view of the wide variation from country to country it would be better to leave the interpretation open. The joint amendment was, in fact, an expansion of the original text, going into the specific detail which the International Law Commission had deliberately and wisely avoided. His delegation fully approved the International Law Commission's draft, but was not opposed in principle to the joint amendment, if the details therein were acceptable to the Committee generally, as that would achieve the purpose that the International Law Commission had had in mind.

20. Mr. MARESCA (Italy) said that the personal inviolability of consular officials was an important and complicated matter. The delegation of Cambodia had proposed in its amendment (L.126) that personal inviolability should be conferred on consular officials " in the exercise of their functions ". In fact, all consular immunities were granted so that the consular functions might be freely discharged. In the case of activities performed in the exercise of those functions, therefore, the consular official enjoyed complete inviolability: article 43 provided that members of the consulate should not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions. Article 41, however, dealt with the consular official's personal inviolability, to which there were certain exceptions. The joint amendment (L.168), of which his delegation was one of the sponsors, had the advantage of specifying those exceptions clearly, and struck a proper balance between the interests of the sending and those of the receiving State.

21. Mr. ADDAI (Ghana) suggested that, since the United Kingdom representative had explained that the main objection to the International Law Commission draft was that it conferred a greater degree of personal inviolability than was afforded by existing international law, the purpose of the joint amendment might be achieved simply by the substitution of the word " or " for " and " between the words " grave crime " and " pursuant to a decision " in of paragraph 1 of the International Law Commission's draft. His delegation would favour that draft, which had the advantage of brevity, with the addition of paragraph 7 of the joint amendment. It would also support the amendments proposed by Indonesia (L.61) and the Netherlands (L.16).

22. Mr. SPACIL (Czechoslovakia) expressed his support for the International Law Commission's draft, as opposed to the joint amendment. The existing draft of article 41 conferred on consular officials the proper degree of inviolability to enable them to discharge their functions. It was sufficiently general to allow its practical application yet specific enough to ensure that its objectives would be achieved. Most of the amendments submitted, and the Committee's discussion of them, had revived arguments already carefully considered but rejected by the International Law Commission.

23. The joint amendment (L.168) was unacceptable to his delegation. The direct statement in paragraph 2 of the International Law Commission draft " except in the case specified " was preferable to the vaguer expressed used in paragraph 2 of the amendment " in respect of any offence " which would be open to misinterpretation. The United Kingdom representative had explained that the sponsors of the joint amendment had wished to remove the condition that the arrest or detention pending trial of consular officials must only be pursuant to a decision by the competent judicial authority. His delegation could not accept that view, nor could it accept the suggestion by the representative of Ghana that paragraph 1 of the International Law Commission draft might be amended to make that condition an alternative, rather than an obligatory, condition. It was of the utmost importance that consular officials could not be placed under arrest or detention pending trial except under an order of the competent judicial authority. To allow the arrest of consular officials by any other authority, such as the police or army, would open the way to abuse. Paragraph 2 of the joint amendment enumerated the cases in which consular officials would be liable to arrest. Sub-paragraph (*a*) specified a " grave offence " similar to the reference to " grave crime " in paragraph 1 of the International Law Commission draft. The remaining sub-paragraphs, however, listed exceptional cases in unnecessary and dangerous detail which might further open the way to abuse. It was also obvious that the list was not exhaustive. The International Law Commission had wisely decided not to go into such detail in its draft. In practice, for example, a consular official detected *in flagrante delicto* would be released after he had produced proof of his identity. A specific provision, as in paragraph 2 (*b*) of the joint amendment, that the consular officer was liable to arrest if he was so detected, might be abused. The police, having arrested the consular official, might detain him for several days, and then plead that they had not understood that he was a consular official. Similarly, the introduction of the provision in paragraph 2 (*c*), that a consular officer should be liable to arrest if he was unable to establish his identity, was undesirable. In practice, he would always be able to produce evidence of identity, but a specific provision could be abused by a police officer. The exception made in paragraph 2 (*d*) concerning a request for the arrest made by the sending State or its consent to the arrest would be a rare occurrence and it was unnecessary to include it in an international convention. In practice, if the sending State waived an official's immunity the result would be his arrest.

24. His delegation would prefer to retain the expression " grave crime " used in paragraph 1 of the International Law Commission draft, which had been established after careful consideration. It had no firm opinion as to whether that expression should be defined but would have no objection should a majority of the Committee favour the inclusion of a definition.

25. His delegation would support the Hungarian proposals to amend paragraph 3 of article 41 (L.115) and and to add a new paragraph clarifying the situation of consular couriers (L.143). In general, however, it considered that the existing text of article 41 was satisfactory.

26. The joint amendment (L.168) was so different from the original text that he would welcome the Chairman's ruling as to whether it came within the definition of an amendment in the last sentence of rule 41 of the rules of procedure, or whether it must be considered as an entirely new proposal.

27. The CHAIRMAN replied that in his opinion the joint amendment came within the definition given in rule 41.

28. Mr. SALLEH bin ABAS (Federation of Malaya) agreed with the representative of the United Kingdom that paragraph 1 of the International Law Commission text conferred too great a degree of personal inviolability on consular officials. He welcomed the enumeration, in paragraph 2 of the joint amendment (L.168), of the circumstances in which a consular official would be liable to arrest. The expression " grave crime ", which was not a term used in the penal law of his country, would lead to serious misunderstandings in the future, and it would be preferable to define it as in paragraph 7 of the joint amendment. His delegation had no objection to paragraph 3 of that amendment, and would accept the provision in paragraph 4 that a consular officer who had been arrested and not released must be brought before a competent judicial authority not later than forty-eight hours after his arrest, since the maximum length of detention after arrest in his own country was twenty-four hours.

29. Should the joint amendment be accepted by the Committee, the delegation of Indonesia might perhaps consider the withdrawal of its amendment (L.61) since the sponsors of the joint amendment had merely listed the circumstances in which an arrest might be made and wisely avoided any attempt to regulate the procedure for arrest, a matter which should be left to the municipal law of the receiving State. If the joint amendment was rejected and the International Law Commission's text approved by the Committee, however, his delegation would have no difficulty in accepting the Indonesian amendment although in the Federation of Malaya a warrant for arrest was, in fact, always issued by the competent judicial authority. To object to the practices of other countries, however, would be to cast doubt on the legal systems of those countries. His delegation supported the South African amendment (L.148) since it agreed that the accused person should always be tried with the minimum of delay in order to avoid unnecessary anxiety for him and his family.

30. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that article 41 contained a number of important provisions concerning the personal inviolability of consular officials. In general, the effect of the joint amendment was to diminish the degree of that inviolability and to weaken the International Law Commission's text, because it did not state as a general principle that consular officials might not be liable to arrest or determine pending trial, except in the case of a grave crime and under an order of the competent judicial authority. His delegation would prefer to retain that statement of principle, although it realized that the interpretation of " grave crime " might present certain difficulties. Paragraph 2 of the joint amendment was less specific and clear than paragraph 1 of the original draft, and distorted its purpose, which was to prevent the arrest or detention of a consular official pending trial. There might be exceptions to that general principle, but they should not be enumerated as standard provisions, as was done in the joint amendment, and even in those exceptional cases, arrest or detention must be under an order of the competent judicial authority or of the State legal department. The amendment would have the effect of allowing the police, or an authority other than the judicial authority, to decide on the arrest of a consular official; that would be most undesirable and lead to abuse and conflict between the authorities of the two States. The list of exceptions in paragraph 2 of the joint amendment might be lengthened or shortened according to the various legal systems in the different countries. In the view of his delegation, such exceptional cases should be dealt with by diplomatic negotiations between the parties concerned. The consent of the sending State to the detention in custody of the consular official was governed by article 45 (Waiver of immunities). The adoption of the joint amendment would also weaken article 40 (Special protection and respect due to consular officials). His delegation advocated the maintenance of the International Law Commission's text and the adoption of the amendment proposed by the Byelorussian Soviet Socialist Republic (L.104/Rev.1) whcih would be in accordance with the legal system of the Ukrainian Soviet Socialist Republic. It would also support the Hungarian amendments (L.115 and L.143). It could not, however, support the Indonesian amendment (L.61), which would bestow on an authority the right to arrest a consular official, with the consequent undetermined difficulties of interpretation and the possibility of friction.

31. Mr. PEREZ HERNANDEZ (Spain), speaking as one of the sponsors of the joint amendment, said that he did not agree that it weakened article 40, which dealt with the duty of the receiving State to give special protection to consular officials by reason of their official position and to treat them with due respect. The purpose of article 41 was to establish rules which would ensure the reasonable, although not absolute, personal inviolability of consular officials. The joint amendment defined " grave offence " as any offence that entailed a maximum penalty of at least five years' imprisonment under the law of the receiving State. In view of the complexity of the legal considerations and legal terms involved, he would ask the Chair to take note of his intention to consult with the other Spanish-speaking members of the Committee with a view to presenting an agreed Spanish text to the drafting committee which would conform in substance and form with the French and English texts.

32. The provision in paragraph 2 (*b*) of the joint amendment for the arrest of a consular officer detected *in flagrante delicto*, which had been criticized by one speaker, had been included with a view to the maintenance of public order and respect for public opinion in the receiving State. Paragraph 4 of the joint amendment provided that a consular officer who had been arrested and not released must be brought before a competent

judicial authority not later than forty-eight hours after his arrest: it would be desirable, particularly in a large country, to allow the police time to obtain the required warrant but the difficulties should not be so great that they could not do so within the specified period. The expression " competent judicial authority " did not refer only to a judge or court, but included all those with judicial functions, the independent exercise of which had for long ensured that a judicial decision would be objective and fair. Paragraph 2 (*d*) of the joint amendment provided a logical method for the solution of a conflict should one arise. The amendment had been drafted with the express intention of avoiding the possibility of friction between States, a possibility which would be removed by the consent of the sending State to the consular officer's arrest. The provision in paragraph 2 (*c*) had been included because, unless a consular officer could establish his identity, the police would not know that he was a consular officer and would arrest him. If a consular officer should leave his means of identification at home, he would have to rely on the courtesy of the police.

The meeting rose at 1.5 p.m.

TWENTY-THIRD MEETING

Wednesday, 20 March 1963, at 3.15 p.m.

Chairman: Mr. KAMEL (United Arab Republic)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 41 (Personal inviolability of consular officials) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 41 and the amendments relating to it.[1]

2. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that article 41 had very understandably given rise to likely discussion in the International Law Commission, where it had been said, incidentally, that there was a tendency to interpret the idea of immunity too liberally. That opinion had been confirmed by the adoption of the Vienna Convention of 1961, which drew an implied distinction between consular and embassy staff.

3. The joint amendment (L.168) comprised restrictive features, but they were very difficult to define precisely. What was meant, for instance, by a " grave offence " ? Why did it specify a five-year term of imprisonment as the criterion for defining such an offence ? The same offence might carry different penalties in different countries, and it would be preferable to leave it to each State to solve that problem. It was not always easy to establish that an offender had been taken *in flagrante delicto*, and so far as identification was concerned the individual in question might not at all times carry on his person the papers enabling him to establish his status and identity. Paragraph 2 (*d*) of the joint amendment dealt with a rather improbable situation, which was essentially a matter for the receiving State. He considered that the enumeration in paragraph 2 of the amendment was entirely superfluous, and he would vote against the amendment. On the other hand, he would vote for the International Law Commission's draft and for the Hungarian amendment (L.143).

4. Mr. SRESHTHAPUTRA (Thailand) said that his delegation regarded the article concerning the personal inviolability of consular officials as one of the more important articles and preferred more precise language to that proposed by the International Law Commission because that might facilitate matters and to some extent prevent controversy between the receiving and the sending States. Accordingly, he approved of the joint amendment. However, the forty-eight-hour clause in paragraph 4 was liable to raise practical difficulties in his country, where a longer time-limit might be necessary by reason of local conditions; for instance, in some cases, owing to the difficult terrain, it took more than forty-eight hours to bring the arrested person back to the police station, and the investigation would begin as from then. For that reason, he asked for a separate vote on paragraph 4 of the joint amendment.

5. Mr. SPYRIDAKIS (Greece) said that the joint amendment was an improvement on the article as drafted by the International Law Commission, in that it was more precise, notably in the provisions concerning grave offence and *in flagrante delicto*. In addition, paragraph 2 (*c*) and paragraph 3 were useful clauses in that they provided for the release of the person concerned after he had established his identity. Although he had some doubts about the forty-eight-hour time limit — a twenty-four-hour time limit applied in Greece — he would vote for the amendment. He was entirely in favour of the South African amendment (L.148), which supplemented the joint amendment. He had no objection in principle to the amendments of Cambodia (L.126) and Romania (L.149), which were actually covered by draft article 43 and the joint amendment, respectively. On the other hand, he failed to see the object of the Byelorussian amendment (L.104/Rev.1) which would add nothing, at all events so far as Greek law was concerned. The Indonesian amendment (L.61) was, he thought, unacceptable, because it would grant excessive powers to nonjudicial authorities. He was prepared to accept the second part of the Yugoslav amendment (L.116), if the joint amendment was adopted.

6. Mr. HEUMAN (France) said that he shared the concern expressed at the previous meeting by the Czechoslovak representative. He thought that a text which so thoroughly revised the original draft as did the joint amendment (L.168) could hardly be described as an " amendment ". If a provision laid down a principle, then it was wrong to nullify the principle by subsequent

[1] For a list of the amendments to article 41, see the summary record of the 22nd meeting, footnote to para. 1. During that meeting, the amendments by Brazil (L.64), the Federal Republic of Germany (L.62/Rev.1), Italy (L.117), Spain (L.150) and the United Kingdom (L.134) had been withdrawn in favour of a joint amendment (L.168). The amendment by Switzerland (L.105) had been withdrawn.

restrictive provisions. Besides, the expression " grave offence " meant very little; it would suffice to speak of " crime ". He preferred the objective definition proposed by Romania (L.149). With regard to sub-paragraphs 2 (*b*), (*c*) and (*d*) of the joint amendment, he was in entire agreement with the Czechoslovak representative; commenting on sub-paragraph (*c*) in particular, he said that if the consul was unable to establish his identity, he placed himself *ipso facto* outside the protection of the convention. In any case, the risk of arbitrary action on the part of the police still remained. The situation contemplated in sub-paragraph (*d*) was rather paradoxical and, in the improbable case of its occurring, it should come under article 45.

7. The French delegation's main objection was that the close and extremely important connexion between crime and judgement was considerably weakened by paragraph 4 of the joint amendment. For that reason he would vote against the paragraph. He would abstain from voting on the Byelorussian amendment (L.104/Rev.1), since in France the ministère public was also a judicial authority. The Indonesian amendment (L.61) was entirely unacceptable for it would be inadmissible that the administrative or police authorities should take so serious an action as arresting a consul. Lastly, the proposal by Ghana to replace the word " and " by the word " or " would be an invitation to arbitrary action and he could not support it.

8. His vote would be determined to some extent by the voting procedure to be applied to the joint amendment.

9. Baron van BOETZELAER (Netherlands) said that he would have been able to accept the draft article 41, as amended by the Yugoslav amendment (L.116). Nevertheless, the joint amendment (L.158) was a great improvement and he would vote for it. At the same time, he was bound to say that paragraph 2 (*c*) seemed unnecessary and, moreover, did not remove the risk of arbitrary action. Paragraph 7, too, was liable to raise difficulties, inasmuch as the criterion of a maximum penalty of at least five years' imprisonment could not be applied equally in all countries owing to the diversity of municipal law. He therefore asked for a separate vote on that paragraph.

10. Mr. KONSTANTINOV (Bulgaria) said that any attempt to give a precise definition to certain situations would create difficulties. For that reason the joint amendment was not as satisfactory as the International Law Commission's draft. The general language of the draft made it acceptable to a larger number of delegations.

11. Mr. HABIBUR RAHMAN (Pakistan) said that the protection accorded by the draft article was greater than that granted by most national legal codes. Accordingly he was in favour of the joint amendment, except its paragraph 7: the notion of " grave offence " depended on the decision of the receiving State.

12. Mr. SILVEIRA-BARRIOS (Venezuela) said that in modern times there was a tendency to broaden the immunity of consular officials, despite a certain resistance which had found an echo in the debates of the International Law Commission. In Venezuela, consular officials did not enjoy the same immunities as the staff of diplomatic missions. With a view to maintaining that state of affairs, and yet not wishing to arrest contemporary trends, his delegation would vote for any balanced proposal which would have the effect of toning down the draft, more particularly any proposal which applied a shorter term of imprisonment for the purpose of measuring the gravity of an offence.

13. Mr. TÔN THÂT ÂN (Republic of Viet-Nam) said that the situations to which article 41 related were serious and liable to affect consular relations between countries. As complete a text as possible should therefore be adopted. The terms of the original draft article were too general, particularly those relating to " grave crime ". For that reason, he greatly preferred the joint amendment which employed more precise and specific language.

14. Mr. MOUSSAVI (Iran) said that his delegation would vote for the joint amendment.

15. Mr. PETRENKO (Union of Societ Socialist Republics) said that article 41 was one of the most important in the draft convention on consular relations. It was also one of the most difficult, for it had to allow for differences in municipal law and had to be drafted in terms acceptable to all States. From the summary records of the International Law Commission's proceedings it was clear that it had tried to draft article 41 in general and flexible terms.[2] His delegation considered draft article 41 to be better than the amendments submitted. The Byelorussian amendment (L.104/Rev.1) would, however, improve the article by adding the reference to the " Procurator's Office ", which had power in some countries to order a person's arrest and detention. The International Law Commission had apparently been guided by the English system; the fact was, however, that in most countries the procurator's office had the same powers in some of those matters as the judicial authority. The Yugoslav amendment (L.116) would limit the scope of paragraph 2 of the draft article and raise difficulties of application. For those reasons, his delegation would be unable to vote for that amendment. The Hungarian amendment (L.115) filled a gap in the draft article and removed the apparent contradiction between paragraphs 3 and 1 of article 41.

16. As the Czechoslovak representative had said, the joint amendment was based on a principle different from that accepted by the International Law Commission. The definition of a " grave offence " proposed in that amendment was not acceptable, since it did not take account of the criminal law in force in the various States. In the Soviet Union, for instance, the penal code provided, in the case of grave crimes, for imprisonment for three to fifteen years, subject to extenuating or aggravating circumstances (e.g., recidivision). The convention could hardly ignore the laws applicable in the various countries represented at the Conference. Para-

[2] For relevant discussion, see the summary records of the twelfth (538th, 539th and 540th meetings) and thirteenth (599th and 600th meetings) sessions of the International Law Commission.

graph 2 (*b*) of the joint amendment was open to misuse for it failed to specify the degree of gravity of the offence, and the consul might thus be arrested or detained for a minor offence. The cases envisaged in sub-paragraphs (*c*) and (*d*) were so rare that it was surely unnecessary to make express provision for them in the convention. The time limit of forty-eight hours provided for in paragraph 4 would lead to difficulties in some States. In the Soviet Union, for instance, the procurator's office had to release the person arrested or else bring him before the competent court before the expiry of that period.

17. For all those reasons, he would support the International Law Commission's draft, as amended by the Byelorussian amendment (L.104/Rev.1) and by that of Hungary (L.115), and would vote against the joint amendment.

18. Mr. BOUZIRI (Tunisia) said that the article as drafted tended to grant to consular officials almost total inviolability, except in the case of a " grave crime ", an expression the meaning of which was not defined in the text and which would be left to be construed by national courts. The sponsors of certain amendments had attempted to define it by reference to the term of imprisonment. Although not a very satisfactory solution, that idea should, in the absence of other proposals, receive the Committee's approval. The joint amendment was a praiseworthy attempt at a compromise, but was obscure in some respects. Paragraph 2 (*a*) was too vague so far as the basis for the arrest was concerned; for instance, a consul might be unjustly arrested on a mischievous information because the offence of which he was accused was punishable by more than five years' imprisonment, which would obviously be a serious abuse. He proposed that the provision in question should read " the offence is a grave offence and serious charges are brought against him ". Secondly, as paragraph 2 (*b*) did not specify that the offence in question must be a serious one, one might gather the impression that a consul could be arrested *in flagrante delicto* even if the offence was a minor one; it would be better, therefore, to add the words " and the offence is a grave one ". Thirdly, paragraph 2 (*c*) as drafted might lend itself to arbitrary action by the police; he suggested that the provision should read " it has not been possible to establish his identity ". The police should attempt to establish the identity of a person arrested who claimed to be a consular official. If the three changes he had proposed were accepted, he would vote for the joint amendment. Otherwise, it would not be acceptable to his delegation.

19. Mr. AMLIE (Norway) said that the sponsors of the joint amendment had made a very commendable effort to find a formula which would strike a balance between the rather extensive protection accorded under the International Law Commission's draft and considerations which called for a less extensive protection. The amendment did not, hovewer, provide a solution. Paragraph 2 (*b*) opened the way to abuses against the consul. In many countries people were arrested for trivial offences; to arrest a consular official for such a trivial offence would be a breach of the respect due to him and the clause was therefore dangerous. With regard to paragraph 2 (*c*), a consular official who did not establish his identity was an anonymous person, and the convention could not include provisions relating to anonymous persons. With regard to paragraph 2 (*d*), he said that under article 45 the sending State could waive the immunities provided for in articles 41, 43 and 44; accordingly, paragraph 2 (*d*) was superfluous. Paragraph 7 of the joint amendment did not introduce a better criterion than the International Law Commission's text, because the severity of the penalty for a given offence might vary greatly from one country to another.

20. The Byelorussian amendment (L.104/Rev.1) was not acceptable, for the prosecuting authority was party to the case and was therefore not qualified to decide whether a consular official should be arrested. The Hungarian amendment (L.115), which would grant the consular official unduly great protection, was also unacceptable to the Norwegian delegation, which, however would support the South African amendment (L.148) as it added a useful clause requiring the receiving State to proceed promptly.

21. Mr. CHIN (Republic of Korea) expressed support for the joint amendment, despite certain reservations with regard to paragraph 2 (*c*). Paragraph 2 (*d*) seemed unnecessary.

22. Mrs. VILLGRATTNER (Austria) said that the joint amendment qualified the inviolability of consular officials. She agreed with the representatives of France and Norway that sub-paragraphs 2 (*b*), (*c*) and (*d*) served little purpose. Moreover, the terminology used in the amendment should be brought into line with that used in the other articles of the draft convention.

23. Mr. LEVI (Yugoslavia) said that the joint amendment had merely introduced confusion into the Committee's discussion. The text would weaken the clause on personal inviolability, and his delegation would vote against the amendment, and indeed against any draft along the same lines. The only two amendments that were acceptable to his delegation were those of the Netherlands (L.16) and Hungary (L.115). He added that his own delegation's amendment (L.116) should be regarded as an amendment to the original text, not as a sub-amendment.

24. Mr. HEUMAN (France) moved that the special rapporteur of the International Law Commission be invited to make a statement before the sponsors of the various amendments replied to the debate. The Commission had succeeded in preparing a balanced text, and the task of the Conference was to draft a convention acceptable to the largest possible number of governments. It would therefore be in the interests of the members of the Committee to hear Mr. Žourek's explanations.

25. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, said that owing to the diversity of legislation and of consular conventions, article 41 was one of those which had given most trouble to the International Law Commission; yet its provisions had to be acceptable to the largest possible number of governments. The first draft submitted had gone rather

further than the latest draft, which had been adopted in the light of the comments received and which was based on two principles. First, in the interests of the exercise of his functions the consul should not be liable to arrest or to detention pending trial except in the case of a serious offence. Secondly, if the consul was found guilty by the judicial authority he could be imprisoned. The Commission had appreciated that its draft did not provide an ideal solution, for it did not exclude the possibility that by reason of a court decision a consul might be deprived of his liberty even for a minor offence. Nevertheless, the Commission had taken the view that it could not go any further, and had given the Conference the opportunity of making the provisions more specific. The Commission had also considered whether or not it should define the term " grave crime ", which it had finally used because of differences in municipal law, the different penalties for different offences and the fact that even in bilateral conventions a serious offence might be defined differently in regard to each of the contracting parties. The essential point was to restrict the number of cases in which a consul might be detained prior to a decision of the judicial authority, and the Commission had therefore stipulated in paragraph 2 that there must have been a judicial decision of final effect before the consular official could be imprisoned. It had intended to take account of the official nature of consular functions and at the same time to provide safeguards for the receiving State.

26. In reply to the representative of France, who had asked what considerations had influenced the drafting of paragraph 1, at the Commission's twelfth session, he explained that in the 1960 provisional draft the safeguard against detention pending trial had been the clause " except in the case of an offence punishable by a maximum sentence of not less than five years' imprisonment ", with the variant " except in the case of a grave crime ".[3] The then paragraph 2 had contained the proviso " save in execution of a final sentence of at least two years' imprisonment ".

27. Replying to a question by the Italian representative concerning the anomalous position of a consul who actually was sentenced to imprisonment, he said that the case was rare; if it arose, the sending State would recall the consul concerned.

28. Mr. ANGHEL (Romania) said that the question of " grave crime " might be referred to the drafting committee for consideration in connexion with article 1 (Definitions). He added that he would not press for a vote on the amendment contained in document L.149.

29. Mr. EVANS (United Kingdom) said that the discussion had confirmed his delegation's opinion that there were two main weaknesses in paragraph 1 of article 41 as drafted by the International Law Commission. In the first place, the text was not well balanced because it granted an excessive inviolability to consular officials and unduly restricted the jurisdiction of the receiving State. Secondly, it did not define the meaning of the expression " a grave crime ". That was why his delegation had sponsored the joint amendment.

30. None of the arguments advanced against paragraph 2 of the joint amendment was really convincing. To those representatives who had said that the question involved could be settled through the diplomatic channel, he would reply that, in fact, that would not be possible; to those who thought that the question was dealt with by implication in the International Law Commission's draft, the answer was that the draft convention should be as explicit and precise as possible; and to those who, like the representative of Tunisia, had complained that the paragraph was vague and did not sufficiently specify the circumstances in which arrest might be effected, he would point out that the circumstances were specified in the law of every country.

31. The sponsors of the joint amendment were prepared to accept the Tunisian proposal for replacing paragraph 2 (*c*) by the words " it has not been possible to establish his identity ". It would be wrong, however, to delete the sub-paragraph. In deference to the view of some representatives that paragraph 2 (*d*) was superflous and that the point was covered by article 47, the sponsors of the joint amendment were prepared to delete the provision in question, and also the corresponding words in paragraph 3.[4] With regard to paragraph 7, the Pakistan representative had said that one and the same offence might be regarded as more or less serious according to the country. The sponsors of the joint amendment thought, however, that an attempt should be made to define the meaning of the expression " grave offence ". He was prepared to agree that paragraph 7, like the other paragraphs, should be put to the vote separately.

32. Mr. HONG (Cambodia) said that he would not press his delegation's amendment (L.126) to the vote.

33. Mr. HARASZTI (Hungary) said that none of the speakers had denied the merits of the Hungarian delegation's amendment (L.115). The representative of the Federal Republic of Germany had proposed that that amendment be embodied in paragraph 1. That proposal was acceptable, but should be referred to the drafting committee.

34. Mr. JAMAN (Indonesia) said that the joint amendment was acceptable to his delegation. If it were approved, his delegation's amendment (L.61) would be withdrawn; otherwise he would ask that the amendment be put to the vote.

35. Mr. SPYRIDAKIS (Greece) requested under rule 40 of the rules of procedure that each paragraph be put to the vote separately.

36. Mr. JESTAEDT (Federal Republic of Germany) explained that his delegation opposed paragraph 1 of the article because in the case of serious offences committed by consular officials, the receiving State must be in a position to take immediate steps; that situation had occurred in practice. The representatives of the Soviet Union, and of the Ukrainian and the Byelorussian

[3] See *Yearbook of the International Law Commission, 1960*, vol. II (United Nations publication, Sales No. 60.V.I, vol. II), p. 168.

[4] These changes were incorporated in a revised version of the joint amendment (A/CONF.25/C.2/L.168/Rev.1).

Soviet Socialist Republics had opposed the inclusion of the expression " *in flagrante delicto* " in the article. Yet the expression appeared in a German-Soviet agreement and had not given rise to any difficulty. He failed to see, therefore, why paragraph 2 (*b*) of the joint amendment should not be acceptable.

37. Mr. BOUZIRI (Tunisia) moved the adjournment of the meeting.

The motion was carried by 26 votes to 25, with 12 abstentions.

The meeting rose at 6.20 p.m.

TWENTY-FOURTH MEETING

Thursday, 21 March 1963, at 10.45 a.m.

Chairman: Mr. KAMEL (United Arab Republic)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 41 (Personal inviolability of consular officials) (*continued*)

1. The CHAIRMAN said that the Committee would proceed to vote on article 41, the discussion having been closed at the end of the previous meeting.

2. Mr. HEUMAN (France), on a point of order, asked whether the revised joint proposal submitted by the delegations of Brazil, the Federal Republic of Germany, Italy, Spain and the United Kingdom (L.168/Rev.1) could still be held, after careful study, to be an amendment as defined by rule 41 of the rules of procedure. The joint amendment did not merely add to, delete from or revise " part " of the original proposal; it would replace the whole of the International Law Commission's draft of article 41, as was recognized by the sponsors in the introduction of their proposal which, they said, should " replace the article ". In the view of his delegation, therefore, it must be considered as a new proposal relating to the same question under rule 42 of the rules of procedure, and he would ask the Chairman to decide accordingly. The International Law Commission's draft of article 41, together with the amendments (in the true sense) to that draft, would then according to rule 42 have to be considered before the new proposal. His delegation wished the International Law Commission's draft to be given prior consideration because of the rule, unwisely accepted by the Committee, that the only amendments permissible during the discussion were those sub-amendments to written amendments which were approved by the sponsors of the original amendments. The application of that rule meant that it would be possible for a minority to impose its will on the majority of the Committee by stifling discussion and preventing votes on important matters of principle. If the revised joint proposal were adopted by the Committee no separate consideration could be given, or vote taken, on the vital phrase omitted from that proposal, " pursuant to a decision by the competent judicial authority " because the sponsors of the joint proposal had refused to accept the suggested sub-amendment. They had also been able to reject in the same way other sub-amendments proposed during the discussion, leaving no right of appeal.

3. If the Chairman should rule that the joint proposal was an amendment as defined in rule 41, the French delegation would appeal against his ruling. If the Committee then voted to accept the ruling, the French delegation would immediately move that the Committee should decide to reverse the rule concerning the submission of amendments which had resulted in the present unfortunate situation.

4. The CHAIRMAN said that in his opinion the joint amendment (L.168/Rev.1) was an amendment in accordance with rule 41. The first four paragraphs of the amendment replaced paragraph 1 of the International Law Commission text; paragraphs 5 and 6 of the amendment revised paragraphs 2 and 3 of the International Law Commission text; while paragraph 7 of the amendment added to the original draft. In his view, consideration of the amendment in that way would avoid a long discussion on procedure. Under rule 22 of the rules of procedure, however, a representative might appeal against the Chairman's ruling and, in accordance with the statement by the French representative, he would immediately put his ruling to the vote to allow the Committee to decide freely whether or not it accepted the ruling.

5. Mr. LEVI (Yugoslavia) regretted that he could not accept the Chairman's ruling. Although the United Kingdom representative had said that the sponsors of the joint amendment accepted paragraphs 2 and 3 of the International Law Commission draft, a comparison of the texts showed that in fact changes of substance had been made in those paragraphs and that the joint proposal replaced the whole of article 41.

The ruling of the Chairman, that the joint amendment (L.168/Rev.1) was an amendment as defined in rule 41 of the rules of procedure, was upheld by 28 votes to 25, with 9 abstentions.

6. Mr. HEUMAN (France), speaking on a point of order, moved that the Chairman should put to the vote the proposal of the French delegation that the Committee should reverse the rule it had previously adopted and should decide that oral sub-amendments to written amendments could be accepted during the discussion, even if they were opposed by the sponsors of the original amendments.

7. The CHAIRMAN ruled that the Committee should vote first on article 41 and then on the proposal of the French delegation.

8. He would put the article to the vote, paragraph by paragraph, on the basis of the three paragraphs in the original International Law Commission draft. The Committee would vote first on the text furthest removed in substance from paragraph 1 of that draft, which

was that contained in paragraphs 1 to 4 of the joint amendment (L.168/Rev.1). He would next put to the vote the Yugoslav amendment (L.116) which was the text furthest removed from paragraph 2 of the International Law Commission draft, on the understanding that it would be applied either to the original paragraph 2 or to paragraph 5 of the joint amendment, whichever should be adopted. On paragraph 3 of the International Law Commission text, he would put to the vote the amendments by Hungary (L.115), South Africa (L.148), and paragraph 6 of the joint amendment (L.168/Rev.1), in that order. Finally, the Committee would vote on the new paragraphs proposed by Yugoslavia (L.116) and Hungary (L.143) and on paragraph 7 of the joint amendment (L.168/Rev.1).

9. Mr. MOLITOR (Luxembourg) asked whether the reference in the French text of the revised joint amendment to " consuls " and not to " fonctionnaires consulaires ", as in the original draft, represented a point of substance or merely of drafting.

10. The CHAIRMAN replied that the term was under consideration by the drafting committee.

11. Mr. SPYRIDAKIS (Greece) recalled that he had asked at the previous meeting that there should be a separate vote on each paragraph and sub-paragraph of the joint amendment.

Paragraph 1 of the joint amendment (A/CONF.25/C.2/L.168/Rev.1) was adopted by 41 votes to 8, with 19 abstentions.

12. Mr. BLANKINSHIP (United States of America), explaining his vote, said that his delegation had carefully considered the complicated subject of article 41. At the outset of the discussion it had been inclined to support the joint amendment, which had seemed to solve certain of the doubts it had felt in regard to the International Law Commission's text. Having weighed all the arguments put forward during the discussion, however, it had come to believe that it would be preferable, all things considered, not to support the joint amendment. His delegation had been particularly impressed by the views of the French representative on the omission of the phrase " pursuant to a decision by the competent judicial authority " which might give too wide powers to the police. It also was concerned at the use of the expression " *in flagrante delicto* " in sub-paragraph 2 (*b*) of the joint amendment, which was vague and open to various interpretations. Sub-paragraph 2 (*c*) of the joint amendment would also grant too much discretion to the local police who might hold the consular officer incomunicado or otherwise abuse their powers. The provision in paragraph 4 of the amendment, for detention up to forty-eight hours after arrest, might be inconsistent with some state laws in the United States which required quicker release. Finally, although a valiant attempt had been made in paragraph 7 of the amendment to define what was meant by a grave offence it would appear, in the light of the arguments put forward during the discussion, to be a somewhat fictitious definition. His delegation would therefore attempt in its vote to support those amendments which would improve the International Law Commission text but could not accept the text as a whole.

13. Mr. BOUZIRI (Tunisia) said that the International Law Commission's draft of article 41 was unsatisfactory because it conferred almost complete inviolability on the consular official. Although the joint amendment had seemed to represent some progress towards a more acceptable text it would as drafted, allow possibilities, particularly, in sub-paragraphs 2 (*a*) and (*b*), for injustice, insult and deprivation of liberty which were quite inadmissible. He regretted that the sponsors of the amendment had not accepted the sub-amendments proposed by his delegation which would have represented a compromise between the amendment and the International Law Commission's text. He would therefore vote against sub-paragraphs 2 (*a*) and (*b*) of the joint amendment and against the whole of that amendment if put to the vote as a whole.

14. Mr. PETRENKO (Union of Soviet Socialist Republics) said that his delegation would vote against the joint amendment for the reasons explained earlier in the discussion. The question was very closely related to the different legal systems of each State and it was essential, in the interests of the convention as a whole, that the text adopted should be as generally acceptable as possible.

15. Mr. SRESHTHAPUTRA (Thailand) said that his delegation would vote for the joint amendment, with a reservation as to paragraph 4, which was not only in contradiction with his country's legislation but would also be unworkable for the reasons he had explained at the twenty-third meeting.

16. Mr. KANEMATSU (Japan) said that his government was inclined to share the doubts expressed by some delegations with regard to sub-paragraph 2 (*b*); it could not support sub-paragraph (*c*) which was not in conformity with the legal system of Japan; and it inclined to the view that the question of the definition in paragraph 7 should be left to the legal systems of the respective countries. For those reasons his delegation would be unable to support the joint amendment as a whole.

17. Mr. SALLEH bin ABAS (Federation of Malaya) explained that his delegation had thought earlier that it could support the joint amendment but would have to abstain from voting on paragraphs 2 (*b*) and (*c*), 3, 4, and 7, not because it disapproved of the principles involved but because it appeared in the light of the discussion that the adoption of those paragraphs would cause considerable difficulties for certain countries in view of their different penal systems. Although the provisions in those paragraphs were in line with the criminal laws and procedure of his country, his delegation would abstain from voting because the decisions of the Committee should represent, not the victory of one view over another, but a common denominator which in the present instance had not yet been found.

18. Mr. AMLIE (Norway) said that his delegation would vote against the joint amendment. It considered

that sub-paragraph 2 (*b*) was extremely dangerous and would be apt in the long run to undermine completely the dignity and freedom of consular officials; and it was in open conflict with article 40. His delegation considered further that sub-paragraph 2 (*c*) should not be included in the convention since unknown persons were not consular officials. The drafting and appearance of the whole amendment represented an invitation to abuses in the arrest of consular officials.

19. Mr. HEUMAN (France) drew attention to rule 39 of the rules of procedure on conduct during voting. In his view, the voting was being conducted in an irregular manner. He had requested that before the vote on article 41 began, a vote should be taken on his delegation's proposal concerning the reversal of the rule on the submission of sub-amendments. The Chairman had ruled that the Committee should first vote on article 41. His delegation appealed against that ruling since priority should be given to a point of order, and would request that the Chairman's ruling be immediately put to the vote.

20. The CHAIRMAN put to the vote his ruling that a vote on article 41 should precede a vote on the French proposal.

The Chairman's ruling was upheld by 33 votes to 26, with 6 abstentions.

21. The CHAIRMAN said that in view of the request by the Greek representative for a separate vote on the sub-paragraphs of the joint amendment, he would put paragraph 2 of the amendment to the vote sub-paragraph by sub-paragraph, beginning with the introductory phrase: " A consular officer shall not be liable to arrest in respect of any offence unless ".

The introductory phrase of paragraph 2 of the joint amendment (A/CONF.25/C.2/L.168/Rev.1) was adopted by 32 votes to 17, with 16 abstentions.

Paragraph 2, sub-paragraph (a), was adopted by 35 votes to 18, with 16 abstentions.

Paragraph 2, sub-paragraph (b), was rejected by 29 votes to 21, with 16 abstentions.

Paragraph 2, sub-paragraph (c), was rejected by 29 votes to 20, with 18 abstentions.

22. The CHAIRMAN put to the vote paragraph 2 of the joint amendment as a whole, as amended.

Paragraph 2 as a whole, as amended, was adopted by 32 votes to 18, with 17 abstentions.

23. Mr. HEUMAN (France) said that the text of paragraph 2 of the joint amendment as approved by the Committee corresponded to the first part of paragraph 1 of the International Law Commission's draft. The vital second part of that paragraph had, however, been omitted and his delegation had accordingly voted against the adoption of paragraph 2 of the joint amendment. His delegation wished to express its extreme concern that a procedural device had resulted in the exclusion of the vitally important phrase: " pursuant to a decision by the competent judicial authority " from the discussion and had prevented a vote on it.

24. Mr. SRESHTHAPUTRA (Thailand) said that in view of the Committee's rejection of sub-paragraphs (*b*) and (*c*) of paragraph 2, his delegation now found it difficult to support the joint amendment.

25. Mr. LEVI (Yugoslavia) said that paragraph 3 of the joint amendment appeared to have lost most of its meaning, particularly in view of the rejection of paragraph 2, sub-paragraph (*c*).

26. The CHAIRMAN suggested that the Committee should not vote on paragraph 3, as it had become meaningless.

27. Mr. EVANS (United Kingdom) said that the Committee's action on paragraph 2 had given rise to an unexpected and difficult situation in respect of paragraph 3. He asked for a short suspension of the meeting to enable the sponsors of the joint amendment to consider what should be done.

28. Mr. SPACIL (Czechoslovakia), on a point of order, opposed the United Kingdom representative's request because voting was in progress and could not be interrupted. There was nothing in rule 27 of the rules of procedure, on the suspension or adjournment of meetings, to imply that a representative could move the suspension of a meeting during voting. He appealed to the Chairman for a ruling on whether the Committee should vote on the remainder of the joint amendment and refer the text to the drafting committee.

29. Mr. EVANS (United Kingdom) said he was able to clarify the situation. As a result of the decision on paragraph 2, the words " after he has established his identity " were redundant in paragraph 3. If those words were deleted, the paragraph would be meaningful.

30. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said it was against recognized procedure to propose an amendment while a vote was in progress. He moved that the voting should continue.

31. The CHAIRMAN suggested that the Committee should vote on paragraph 3 and leave the drafting committee to examine any inconsistencies in the text.

32. Mr. AMLIE (Norway), speaking on a point of order, said that paragraph 3 was partly meaningless and also dangerous. He moved that the Committee should decide by a two-thirds majority to suspend the rules of procedure so that the United Kingdom representative's request could be granted.

33. Mr. JESTAEDT (Federal Republic of Germany) said that, as a sponsor of the joint amendment (L.168/Rev.1), he agreed with the United Kingdom representative's comments on paragraph 3. He also pointed out that paragraph 3 dealt with detention in custody pending trial, which was a matter distinct from arrest, and could therefore be voted on.

34. Mr. HEUMAN (France) approved of the United Kingdom representative's improvised amendment, although it was in open violation of the rules of procedure and the special rules adopted by the Committee. He would be very ready to support it if he might then propose

as an oral amendment to paragraph 2 the addition of the words " pursuant to a decision by the competent judicial authority ".

35. Mr. BOUZIRI (Tunisia) insisted that the Committee should abide by its rules of procedure and continue with the voting. The vote was an important one and none of the reasons given could justify an interruption. Paragraph 3 was now meaningless and should be allowed to disappear without further delay. The drafting committee could deal with any inconsistencies.

36. The CHAIRMAN invited the Committee to vote on his ruling that paragraph 3 of the joint amendment should be voted on, as his ruling had been challenged.

The Chairman's ruling was upheld by 55 votes to 1, with 6 abstentions.

37. Mr. EVANS (United Kingdom) asked that the paragraph should be voted on in two parts, so that there could be a separate vote on the meaningless part.

38. Mr. HEUMAN (France) opposed a separate vote.

39. The CHAIRMAN said that, under rule 40 of the rules of procedure, two representatives could speak in favour of the motion and two against.

40. Mr. BOUZIRI (Tunisia) opposed the motion. There could be very few precedents in the United Nations for a request for a separate vote by the sponsor of the text to be voted on. In the case in point, it was an indication that the text was incomprehensible.

41. Mr. SHITTA-BEY (Nigeria) supported the motion.

42. Mr. MARESCA (Italy) strongly supported the motion as it would help to clarify the final vote.

43. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) opposed the motion and endorsed the reasons given by the Tunisian representative.

The motion was rejected by 31 votes to 19, with 19 abstentions.

44. The CHAIRMAN invited the Committee to vote on paragraph 3 of the joint amendment (L.168/Rev.1).

The paragraph was rejected by 36 votes to 19, with 14 abstentions.

45. The CHAIRMAN invited the Committee to vote on paragraph 4 of the joint amendment, on the understanding that it would be revised by the drafting committee in view of the deletion of paragraph 3.

Paragraph 4 of the joint amendment was approved by 25 votes to 24, with 17 abstentions.

46. The CHAIRMAN invited the Committee to vote on paragraphs 1, 2 and 4 of the joint amendment to replace paragraph 1 of the International Law Commission's draft.

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

Nicaragua, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Nigeria, Pakistan, Portugal, Saudi Arabia, South Africa, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, Australia, Austria, Belgium, Brazil, Costa Rica, Rederal Republic of Germany, Indonesia, Iran, Ireland, Italy, Republic of Korea, Libya, Liechtenstein, Luxembourg.

Against: Norway, Poland, Romania, Switzerland, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Yugoslavia, Argentina, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Cuba, Czechoslovakia, France, Ghana, Guinea, Hungary, Japan, Laos, Liberia, Mexico, Mongolia.

Abstaining: Sierra Leone, Thailand, Turkey, Venezuela, Republic of Viet-Nam, Canada, Ceylon, Chile, China, Colombia, Congo (Leopoldville), Denmark, El Salvador, Federation of Malaya, Finland, Greece, India, Israel, Kuwait, Morocco, Netherlands.

The paragraph were rejected by 24 votes to 22, with 21 abstentions.

47. The CHAIRMAN invited the Committee to vote on paragraph 1 of the International Law Commission's text.

48. Mr. EVANS (United Kingdom) asked for the paragraph to be voted on in two parts: the first three lines as far as the word " crime "; and the remainder of the paragraph.

49. Mr. JESTAEDT (Federal Republic of Germany) supported the motion because the paragraph involved two separate principles. The representative of Ghana had recognized the distinction in the amendment he had proposed earlier in the discussion.

50. Mr. PETRENKO (Union of Soviet Socialist Republics) opposed the motion. The Committee had spent a great deal of time trying to change paragraph 1 of the International Law Commission's draft and had realized in the end that it would have to be re-established in its original form. He saw no need for a separate vote.

51. Mr. SPACIL (Czechoslovakia) also opposed the motion. He agreed with the Soviet Union representative, although he acknowledged the United Kingdom representative's right to ask for a separate vote.

52. Mr. SHITTA-BEY (Nigeria) supported the motion.

The motion was rejected by 33 votes to 21, with 13 abstentions.

53. Mr. VRANKEN (Belgium), speaking on a point of order, pointed out that the amendments by Hungary, the Netherlands and the Soviet Union had not been withdrawn.

54. The CHAIRMAN invited the Committee to vote on the Netherlands amendment to paragraph 1 (A/CONF.25/C.2/L.16).

The amendment was adopted by 37 votes to none, with 21 abstentions.

55. Mr. BOUZIRI (Tunisia) said he had not taken part in the vote because it was not clear whether the amendment applied to the French as well as to the English text.

The Indonesian amendment (A/CONF.25/C.2/L.61) was rejected by 48 votes to 3, with 15 abstentions.

The amendment of the Byelorussian SSR (A/CONF.25/C.2/L.104/Rev.1) was rejected by 32 votes to 13, with 20 abstentions.

56. The CHAIRMAN invited the Committee to vote on paragraph 1 as amended by the Netherlands amendment.

Paragraph 1, as amended, was approved by 49 votes to 6, with 11 abstentions.

The Yugoslav amendment to paragraph 2 (A/CONF.25/C.2/L.116) was rejected by 46 votes to 1, with 18 abstentions.

57. The CHAIRMAN invited the Committee to vote on paragraph 2 of the International Law Commission's draft.

58. Mr. EVANS (United Kingdom) pointed out that it was the same as paragraph 5 of the joint amendment except for the replacement of the word " liable " by the word " subjected ".

Paragraph 2 was approved by 61 votes to none, with 6 abstentions.

The South African amendment to paragraph 3 (A/CONF.25/C.2/L.148) was adopted by 47 votes to none, with 18 abstentions.

The Hungarian amendment to paragraph 3 (A/CONF.25/C.2/L.115) was rejected by 33 votes to 14, with 16 abstentions.

Paragraph 3, as amended, was approved by 63 votes to none, with 4 abstentions.

59. The CHAIRMAN invited the Committee to consider the proposals for additional paragraphs to article 41.

The Hungarian amendment (A/CONF.25/C.2/L.143) was rejected by 30 votes to 15, with 20 abstentions.

The Yugoslav amendment (A/CONF.25/C.2/L.116) was rejected by 36 votes to 13, with 18 abstentions.

60. The CHAIRMAN invited the Committee to vote on the new paragraph proposed in paragraph 7 of the joint amendment.

61. Mr. LEVI (Yugoslavia), speaking on a point of order, pointed out that the text already adopted referred to " grave crime " whereas the text now to be voted on referred to " grave offence ".

62. The CHAIRMAN said that the final text would be reviewed by the drafting committee.

Paragraph 7 of the joint amendment (A/CONF.25/C.2/L.168/Rev.1) was rejected by 29 votes to 25, with 13 abstentions.

Article 41, as amended, was approved by 53 votes to 7, with 9 abstentions.

63. Mr. EVANS (United Kingdom) explained that he had voted against the article because the text adopted would mean that if a consular officer were, for example, found in the act of committing murder, he could not be arrested without the previous decision of the competent judicial authority. He was surprised that such a situation should be acceptable to any of the governments represented in the Committee. It would certainly not be acceptable to his own government.

The meeting rose at 1.5 p.m.

TWENTY-FIFTH MEETING

Thursday, 21 March 1963, at 3.15 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 41 (Personal inviolability of consular officials) (*continued*)

1. Baron van BOETZELAER (Netherlands) explained that he had abstained from voting on the joint amendment (L.168/Rev.1) as a whole because, as a result of the changes made to its paragraphs 1, 2, 3 and 4, it had become too far removed from the International Law Commission's draft of article 41, paragraph 1 of which provided a satisfactory safeguard for personal inviolability.

2. Mr. BOUZIRI (Tunisia) said that he had abstained from voting on article 41 because its provisions went beyond accepted international practice. The joint amendment did not satisfy him either; his delegation would have been in favour of a compromise solution.

3. Mr. JESTAEDT (Federal Republic of Germany) said he had voted against article 41 for the same reasons as the United Kingdom representative.

4. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that he had voted for article 41 on the understanding that the idea of the competent judicial authority included the procurator's office.

5. Mr. UNAT (Turkey) said that he had abstained from voting on the final text of article 41, since it did not include the provisions of paragraph 7 of the joint amendment, which would have given it a legal structure. The absence of any definition of the term " grave crime " might give rise to contradictory interpretations. He had also abstained from voting on the South African amendment (L.148), because too great haste in undertaking judicial proceedings could be harmful to the administration of justice.

6. Mr. DRAKE (South Africa) said that he had voted against article 41 as a whole for the specific reasons stated by the United Kingdom representative.

7. Mr. NEJJARI (Morocco) considered that article 41, which had been adopted in the absence of a better solution, went too far, whereas the joint amendment had been

too restrictive. He regretted that the sponsors of that amendment had not taken account of the comments made by Tunisia and France, which would have afforded an opportunity of achieving a successful compromise.

8. Mr. VRANKEN (Belgium) said that he had abstained from voting on article 41 for the same reasons as those given by the United Kingdom representative.

9. Mr. SRESHTHAPUTRA (Thailand) said he had voted against article 41 because it went too far. The provision in the last part of paragraph 1, that consular officials might be arrested only pursuant to a decision by the competent judicial authority, was in contradiction to the principle of criminal law and the legislation of his country whereby the administrative or police officers could arrest persons who were found committing a crime, without any decision by the judicial authority. Furthermore, the expression " grave crime " was too vague and might be the cause of controversy between the receiving and the sending States.

10. Mr. ANGHEL (Romania) said that his delegation had voted for article 41. It wished to state, however, that it regards the term " competent judicial authority " as including both the courts and all other bodies which, under Romanian legislation, exercised judicial authority.

11. Mr. MARESCA (Italy) considered it to be inconceivable that an article of the convention could contain both a legal absurdity and a grave omission. For that reason it should be understood firstly that a consul could not be arrested unless he had committed a grave crime or, if caught *in flagrante delicto* to avoid his doing further damage; and secondly that " grave crime " signified had what been established by long consular practice, that was to say a crime carrying a penalty of at least five years' imprisonment.

12. Mr. NASCIMENTO e SILVA (Brazil) also thought that a " grave crime " should be considered to be a crime punishable by at least five years' imprisonment under the laws of the receiving State.

13. Mr. LAHAM (Syria) said that he had abstained for the same reasons as those given by the Tunisian representative. The joint amendment was of great interest, but the changes that had been made it had obscured its meaning to such an extent that his delegation had been forced to abstain from voting.

14. Mr. SPYRIDAKIS (Greece) said that he had been in favour of most of the provisions of article 41, but had had to abstain from voting on the article as a whole, since it had not been amended as he had hoped. He had voted for the second part of the Yugoslav amendment (L.116) and for the South African amendment (L.148).

15. Mr. MARAMBIO (Chile) explained that he had abstained from voting on paragraphs 1 to 6 of the joint amendment because he doubted whether it was advisable that some of the proposed provisions should be so restrictive. In addition, he doubted whether the provisions in question were compatible with international law and whether, if adopted, they would be workable in practice. On the other hand, he had voted in favour of paragraph 7 of the joint amendment, because it defined the term " grave crime ". He had also voted for article 41 of the International Law Commission's draft as a whole, as amended by the South African amendment.

16. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that he had voted for article 41 on the understanding that, since his amendment (L.104/Rev.1) had been rejected, the term " competent judicial authority " would be taken to cover the procurator's office.

17. Mr. WALDRON (Ireland) said that he had abstained from voting on article 41 as a whole because it went too far and did not take account of the various restrictions that had been accepted.

18. Mr. PETRENKO (Union of Soviet Socialist Republics) said that he had voted for the amended text of article 41 on the understanding that the term " competent judicial authority " applied also to the procurator's office.

19. Mr. SILVEIRA-BARRIOS (Venezuela) said that he had voted against article 41 because it was incompatible with Venezuelan municipal law. On the other hand, he had voted for paragraph 7 of the joint amendment, which gave a useful definition of " grave crime ".

20. Mr. CHIN (Republic of Korea) said he had voted for article 41, on condition that it was understood that by a " grave crime " was meant a crime carrying a penalty of not less than five years' imprisonment.

21. Mr. OCHIRBAL (Mongolia) stated that he had voted for article 41 on the understanding that the term " competent judicial authority " applied to the procurator's office; in Mongolia the officers of the procurator's office were empowered to order an arrest.

Article 43 (Immunity from jurisdiction)

22. The CHAIRMAN invited the Committee to consider article 43 and the amendments thereto.[1]

23. Mr. KANEMATSU (Japan) pointed out that article 43, as drafted, did not provide for the case of a consul acting in a personal capacity. For that reason paragraph 1 of his delegation's amendment (L.80) dealt with that exception by reference to article 5, sub-paragraphs (*g*), (*h*) and (*i*). Paragraph 2 dealt more particularly with possible damage caused to third parties by vehicles, vessels and aircraft owned by a consular official or employee, and with the need for insuring against such risks. The United Kingdom amendment (L.139) contained a similar provision, but went further than the Japanese amendment by stipulating that the consul " shall comply with any requirement imposed by the law of the receiving State in respect of insurance against third-party risks ". He was nevertheless prepared to

[1] The following amendments had been submitted: Japan, A/CONF.25/C.2/L.80; Greece, A/CONF.25/C.2/L.96; Brazil, A/CONF.25/C.2/L.98; United Kingdom, A/CONF.25/C.2/L.139; Venezuela, A/CONF.25/C.2/L.167.

withdraw paragraph 2 of his amendment, should that of the United Kingdom be adopted.

24. Mr. SILVEIRA-BARRIOS (Venezuela) pointed out the lack of concordance between the term " members of the consulate " and the term " exercise of consular functions ". His amendment (L.167) to replace the words " members of the consulate " by " consular officials " was intended to eliminate employees and members of the service staff, who did not perform consular functions in the strict meaning of the words.

25. Mr. EVANS (United Kingdom) said that his delegation could accept the principle of draft article 43, but some further provisions were needed for the protection of third parties. That was the purpose of his amendment (L.139). A consular official or employee should not be permitted to claim immunity in a civil action arising from a contract concluded by him in which he did not contract expressly or impliedly as an agent of the sending State. Similarly, immunity should not be claimed in the case of damage caused to a third party in the receiving State by a vehicle, vessel or aircraft. A consular officer or employee could insure himself against liability in respect of such damage and the Convention should oblige him to do so if that was required by the law of the receiving State.

26. Mr. NASCIMENTO e SILVA (Brazil) drew attention to article 17, where it was stated that the head of a consular post might with the consent of the receiving State be authorized to perform diplomatic acts and observed that that circumstance was not provided for in article 43, which referred exclusively to the exercise of consular functions. For that reason, Brazil proposed an amendment (L.98) for the substitution of the words " official functions " for " consular functions ".

27. Mr. SPYRIDAKIS (Greece) submitted his amendment (L.96) to replace the word " authorities " by the word " courts ". In his opinion, the latter term was more comprehensive and clearer.

28. Mr. KHOSLA (India) said that he was in favour of article 43 as drafted by the International Law Commission. Immunity from jurisdiction should have as wide an application as possible within the limits of the functions to which it referred. The Greek and Brazilian amendments did not seem to be advisable. He also thought that immunity should be granted to nationals of the receiving State in the exercise of consular functions.

29. Mr. MARAMBIO (Chile) considered that the immunity established by article 43 was excessive and the Japanese amendment (L.80) seemed to serve a useful purpose. Paragraph 2 of that amendment in particular should be adopted; paragraph 1 was implied in the provisions of article 5. The Brazilian amendment (L.98) represented an excessive extension of the principle of immunity from the jurisdiction of the judicial and administrative authorities, all the more since, as the Venezuelan representative had very rightly pointed out, the term " members of the consulate " covered persons who could not exercise strictly consular functions. The United Kingdom amendment (L.139) deserved consideration since it was based on solid legal arguments.

30. Mr. CAMPORA (Argentina) recalled that the Committee had that morning taken an important decision concerning the personal inviolability of consular officials under article 41. Immunity from jurisdiction was its complement. Article 43 as drafted by the International Law Commission seemed acceptable to his delegation. The rule established in draft article 43 constituted, however, an exceptional rule in that it laid down in which cases the members of the consulate were not subject to the jurisdiction of the receiving State. It was therefore necessary to determine the meaning of the term " consular functions " a matter that was dealt with in article 5.

31. Mr. JESTAEDT (Federal Republic of Germany) thought that article 43 was generally acceptable. Nevertheless, most of the amendments submitted to that article had a certain value and improved the wording. Contrary to the view expressed by the Venezuelan representative he believed that all members of the consulate should benefit by the immunity in question. The Brazilian proposal (L.98) seemed judicious: it was preferable to refer to " official functions " rather than to " consular functions ". His delegation would vote for the United Kingdom amendment (L.139), which referred to civil actions and for paragraph 2 of the Japanese amendment (L.80). With regard to the Greek amendment (L.96) he recalled that the same question had arisen in connexion with article 31 of the 1961 Convention and he suggested to the Greek representative that he adopt the terms used in that convention.

32. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) stressed the importance of the principle laid down in article 43 and said he was in favour of the text of the International Law Commission, which incorporated the fundamental and typical elements of the national legislations. He did not think it would be wise to replace the words " consular functions " by " official functions ", since the latter term might be interpreted very widely by certain sending States. In its comments on the draft articles, the Canadian Government had also proposed to introduce that amendment to the text; but the term " consular functions ", which was more specific and had become a part of the terminology of international law, had been retained by the International Law Commission. With regard to the United Kingdom amendment, it was clear from the language of the International Law Commission's text that a consular official did not enjoy immunity in the case of a road accident, for example, and the amendment therefore seemed to be unnecessary. Further, he could not support paragraph 1 of the Japanese amendment. He would vote in favour of the International Law Commission's text.

33. Baron van BOETZELAER (Netherlands) said that, after having heard the explanations of the representative of the Federal Republic of Germany, he was still convinced that the term " official functions " might give rise to dangerous interpretations. The Committee might consider the following wording: " in respect of official acts performed in the exercise of their functions ".

34. Mr. BLANKINSHIP (United States of America) said that, in principle, he could accept the Commission's

text, although attention should be paid to paragraph 3 of the commentary, which stated that it was " very difficult to draw an exact line between what is still the consular official's official act performed within the scope of the consular functions and what amounts to a private act . . ." He noted that the United States adhered to the so-called official acts doctrine under which consuls were considered amenable to the jurisdiction of local courts as a matter of procedure, but if the local court decided the acts complained of were performed within the scope of their official duties, then consuls were not liable as a matter of substantive law. The provisions of the draft were not incompatible with the practice followed by the United States.

35. He fully supported the United Kingdom proposal to insert in the original text two new paragraphs which seemed to be very useful, and he preferred that text to the one proposed by Japan to the same effect. Lastly, if the Brazilian amendment were adopted, perhaps the Venezuelan representative might see his way to withdrawing his amendment.

36. Mr. MARESCA (Italy) said that the rule laid down in article 43 was based on two principles, first, that acts performed by members of the consulate in the exercise of their functions were subject to the jurisdiction of the sending State, and not to that of the receiving State, and, secondly, that an individual was not personally responsible for acts performed in the exercise of his functions.

37. Paragraph 1 of the Japanese amendment was necessary because the receiving State had the right to intervene, for example, in certain acts relating to succession or guardianship. The amendment should, however, be inserted elsewhere in the convention. The United Kingdom amendment would make good an omission; it was necessary that a distinction should be made between contracts concluded by a consul in his personal capacity and those concluded by him in his consular capacity. Paragraph 3 of that amendment confirmed the principle that the consul should be subject to the law of the receiving State. The Venezuelan amendment referred to a question of terminology and was quite logical. " Technical or administrative tasks " was the term to use in the case of " members of the consulate " and " consular functions " in the case of " consular officials ". The Brazilian amendment, which proposed the term " official functions ", seemed acceptable. With regard to the Greek amendment, he thought it better to retain the word " authorities ".

38. Mr. UNAT (Turkey) supported the Venezuelan amendment, because the Commission's text contained a contradiction of principle, as could be seen from sub-paragraphs (*d*), (*e*) and (*f*) of article 1. The United Kingdom amendment was acceptable. The idea contained in the Brazilian amendment seemed to be valuable, but the drafting was less satisfactory, and it might be better to add the following words at the end of article 43: " and any functions which may be entrusted to them under the provisions of article 17 of the present convention ". There was no need to refer to sub-paragraph (*i*) of article 5 in connexion with article 43, as proposed in the Japanese amendment; so far as sub-paragraphs (*g*) and (*h*) of that article were concerned, it would be better to leave to the receiving State the option of subjecting a consular official or employee to the jurisdiction of its judicial or administrative authorities. That procedure would conform more closely with current practice. The Greek amendment was one of terminology and should be referred to the drafting committee.

39. Mr. SCHRØDER (Denmark) considered that the United Kingdom amendment was acceptable and useful. He would also vote for the Brazilian amendment, in the form suggested by the Netherlands representative.

40. Mr. ADDAI (Ghana) said he could not support paragraph 1 of the Japanese amendment, but thought paragraph 2 was justified. He could not support the Brazilian and Venezuelan amendments, but considered that the United Kingdom amendment was most useful.

41. Mrs. VILLGRATTNER (Austria) also supported the United Kingdom amendment, which seemed to be in conformity with the 1961 Convention. She could not agree with the proposal in the Brazilian amendment, and would prefer the term " consular functions " to be retained. Paragraph 1 of the Japanese amendment seemed to be unnecessary and even dangerous, while paragraph 2 did not differ from the United Kingdom amendment. With regard to the Venezuelan proposal, she thought it preferable to retain the term " members of the consulate ", because in some cases consular functions might be performed by a person who did not hold the title of consul, but who nevertheless needed protection.

42. Mr. KANEMATSU (Japan) said that he was not certain that it was sufficient merely to specify the restrictions in article 5; in order to prevent any confusion in interpreting the Convention it would be better to include a reminder in article 43; that was the purpose of paragraph 1 of his amendment. Nevertheless, the final wording might be left to the drafting committee. He would be prepared to accept the United Kingdom amendment if the Committee preferred that text to paragraph 2 of the Japanese amendment.

43. Mr. SPYRIDAKIS (Greece) agreed that his amendment should be referred to the drafting committee, which might take it into account in drafting the final text of article 43.

44. Mr. SILVEIRA-BARRIOS (Venezuela) urged that his amendment should be put to the vote. He thought that the term " members of the consulate " might be dangerous, since it might apply equally to members of the staff; the Brazilian amendment did not seem to meet that point.

45. Mr. EVANS (United Kingdom), in reply to a remark by the Ukrainian representative, said he agreed that the act of driving a motor-car should not be regarded as constituting the performance of a consular function for the purpose of claiming immunity from jurisdiction, but his amendment was necessary to put the matter beyond doubt.

46. Mr. NASCIMENTO e SILVA (Brazil) endorsed the Ukrainian representative's remark that the use of the term " official functions " broadened the scope of the article; that had been the Brazilian delegation's intention in submitting its amendment. Some representatives had referred to article 17 in connexion with article 43, but article 17 provided that the head of a consular post might be authorized to perform diplomatic acts, and diplomatic acts could not be entirely assimilated to official acts. With respect to the question of nationals of the receiving State, the Committee might take it up when considering articles 57 and 69.

The Venezuelan amendment (A/CONF.25/C.2/L.167) was adopted by 30 votes to 23, with 9 abstentions.

The Brazilian amendment (A/CONF.25/C.2/L.98) was rejected by 38 votes to 13, with 11 abstentions.

The United Kingdom proposal to add a second paragraph to the article (A/CONF.25/C.2/L.139) was adopted by 45 votes to 10, with 5 abstentions.

The United Kingdom proposal to add a third paragraph to the article (A/CONF.25/C.2/L.139) was adopted by 48 votes to 9, with 5 abstentions.

Paragraph 1 of the Japanese amendment (A/CONF. 25/C.2/L.80) was rejected by 28 votes to 9, with 20 abstentions.

Article 43, as amended, was adopted by 50 votes to none, with 10 abstentions.

47. Mr. VRANKEN (Belgium) explained that he had abstained from voting on the Venezuelan amendment (L.167) because no decision had yet been taken on the definition of " members of the consulate " to be included in article 1.

48. Mr. JESTAEDT (Federal Republic of Germany) said that he had also voted against the Venezuelan amendment because his delegation's view was that all the members of the consulate should enjoy some degree of immunity. He wished to reserve his government's position on that point.

49. Baron van BOETZELAER (Netherlands) said he had supported article 43 taken as a whole; a consul was obviously not exercising " consular functions " when driving a motor-car.

Article 44 (Liability to give evidence)

50. The CHAIRMAN drew the Committee's attention to the amendments to article 44.[2]

51. Mr. von NUMERS (Finland), introducing his delegation's amendment (L.41) to delete the last sentence of paragraph 1 of draft article 44, said that its purpose was to provide that the members of the consulate might be called upon to attend as witnesses in the course of judicial or administrative proceedings in the same way as any other persons. Further, since in article 43 the term " consular officials " had replaced the term " members of the consulate ", the same expression should be used in article 44.

52. Mr. BLANKINSHIP (United States of America) said that his delegation's amendment (L.6) also proposed the deletion of the second sentence of paragraph 1. A consular official, who was subject to the jurisdiction of the receiving State, should not escape the obligation to give evidence. Moreover, the second sentence contradicted the first because it allowed consular officials to avoid complying with that obligation. It would give rise to difficulties in many countries in which an accused person was authorized by law to call witnesses. In view of the fact that three fairly similar amendments had been submitted on that point, his delegation considered that the Committee should uphold the principle they contained.

53. Mr. JESTAEDT (Federal Republic of Germany) thought on the contrary that the second sentence of paragraph 1 should be retained, since in approving article 40 the Committee had granted the consul the right to respect and special protection. If a consular official were to refuse to give evidence, the receiving State could protest to the sending State through the diplomatic channel and declare the official concerned unacceptable; that would certainly be a more severe penalty than any coercive measure that might be applied to him.

54. Mr. GARAYALDE (Spain) pointed out that his delegation's amendment (L.151) applied only to the Spanish text of the draft article and should be referred to the drafting committee.

55. Mr. KANEMATSU (Japan) said that the second sentence of paragraph 1 would be unnecessary if the Committee were to adopt paragraph 2. The proposal in part 2 of his delegation's amendment (L.81) to add a sentence which was included in many bilateral conventions should not meet with any objection.

56. Mr. MARESCA (Italy) mentioned the partial inviolability granted to consular officials by virtue of which no physical restrictions could be applied to them and said that the authorities of the receiving State should avoid interference with the exercise of consular functions. If they wished to take the evidence of a consular official, according to a long-established rule, they should do so at his residence. His delegation would oppose any proposal to delete the second sentence of paragraph 1.

57. Mr. EVANS (United Kingdom) said that the draft article was not entirely satisfactory. The second sentence of paragraph 2 was not in accordance with international practice and should be deleted. The Indian amendment (L.159) would be acceptable if the words " A consular employee " in the second sentence were replaced by " They " and the third sentence were deleted. If the Indian delegation could make those two changes, his delegation would support that amendment.

58. The United Kingdom amendment (L.135), which had much in common with that of Nigeria (L.118) ,would amend paragraph 2 of the draft article, which his delegation regarded as unduly peremptory. In providing that

[2] The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.6; Finland, A/CONF.25/C.2/L.41; Austria, A/CONF.25/C.2/L.50; Japan, A/CONF.25/C.2/L.81; Nigeria, A/CONF.25/C.2/L.118; United Kingdom, A/CONF. 25/C.2/L.135; Spain, A/CONF.25/C.2/L.151; India, A/CONF.25/C.2/L.159; Federal Republic of Germany, A/CONF.25/C.2/L.166.

" all reasonable measures shall be taken " the amendment ensured adequate protection for consular officials. In the second sentence, his delegation proposed the insertion of the words " and permissible " after " possible " because, although it was desirable that the judicial authority should take the testimony of the consular official either at his residence or at the consulate, there were cases in which testimony was required by law to be taken in court. The Japanese amendment (L.81) was entirely in accordance with international practice.

59. Mr. NWOGU (Nigeria) said that he shared the point of view of the United Kingdom representative. In paragraph 2 (*b*) of the commentary, the International Law Commission had explained that the insertion of the words " where possible " was intended to take account of " cases in which the consular official's appearance in court is, in the opinion of the court, indispensable ". His delegation also considered that it would be better to leave it to the court to decide whether the official's appearance was indispensable, but thought that it should be specified in the text of article 44. The only purpose of his delegation's amendment (L.118) was to give additional precision to the text of the International Law Commission.

60. Mr. AMLIE (Norway) said that in his statement during the discussion on article 41 he had said that he could not agree that coercive means should not be used against a consul who refused to appear in court in proceedings against himself. When the consul was only a witness, however, coercive measures should not be used against him. He might be faced with embarrassing and even dangerous situations if he were forced to give testimony as a witness. Thus, in testifying against a criminal, he might be exposed to reprisals from the local underworld. The difficult situation in which a consular official might find himself should be appreciated, and he should not be compelled to give evidence if he was unwilling to do so. If his refusal to testify was found by the receiving State to be unwarranted, an appeal could be made to the sending State, which could waive the consul's immunity.

The meeting rose at 6.5 p.m.

TWENTY-SIXTH MEETING

Friday, 22 March 1963, at 10.45 a.m.

Chairman: Mr. KAMEL (United Arab Republic)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 44 (Liability to give evidence) (*continued*)

1. The CHAIRMAN invited the Committee to continue its examination of article 44 and the amendments submitted to it.[1]

[1] For the list of amendments to article 44, see the summary record of the twenty-fifth meeting, footnote to para. 50.

2. Mr. KHOSLA (India) presented his amendment to paragraph 1 (L.159), which was designed to remedy an omission in the otherwise acceptable text of the International Law Commission. The Commission had made a distinction between consular officials who were entitled to exercise consular functions and consular employees, who had other duties and were given privileges and immunities only in respect of the consular part of their duties. The distinction was clear from the definitions of " consular official " and " consular employee " in article 1 of the draft convention, and the International Law Commission had drawn attention to it in its commentary on article 41. In approving articles 40 and 41 and the Venezuelan amendment to article 43 (L.167), the Committee had agreed that consular officials should have privileges and immunities not granted to other staff, and there could be no valid reason for extending the provisions of paragraph 1 to consular employees. He believed that the International Law Commission intended paragraph 1 of article 44 to provide for the distinction, but it was not clearly evident in the text. For that reason he had proposed the additional wording in his amendment.

3. With regard to the other amendments, he was opposed to the deletion of the second sentence in paragraph 1, proposed by Finland (L.41), Japan (L.81) and the United States of America (L.6). He had discussed the matter with the United Kingdom representative and understood that the privilege to decline to attend as a witness in the course of judicial or administrative proceedings was granted by virtue of consular functions, so that consular officials should not be subject to coercive measures, particularly in view of the personal inviolability envisaged in article 41.

4. He saw nothing against the additional sentence to paragraph 2 proposed by Nigeria (L.118), which also appeared in the International Law Commission's commentary. He also had no objection to the Japanese amendment (L.81) to paragraph 3. It conformed with the provisions of a number of consular conventions and would improve the present convention.

5. Mrs. VILLGRATTNER (Austria) presented her amendment to paragraph 2 (L.50). Its purpose was to make it clear that the taking of evidence at the consul's residence or at the consulate or in the form of a written statement should not be the general rule; it should occur only when compatible with national legislation or if it was difficult or impossible for the consul to testify in person in court. Two of the main principles of Austrian criminal procedure were direct evidence and the immediate institution of proceedings, and in certain cases evidence could be given only in court. She was therefore anxious that the practice of receiving evidence elsewhere than in court should be the exception and not constitute an obligation on receiving States.

6. Mr. BLANKINSHIP (United States of America) said that in explaining his amendment (L.6) for the deletion of the second sentence of paragraph 1 he had perhaps failed to make his position quite clear.

7. Some reflection was necessary for in concentrating on individual cases and particular paragraphs and phrases, there was a danger of losing sight of the

reason for privileges and immunities. The purpose of privileges and immunities was to enable the consular official to carry out his official duties; they were really granted to the sending State and not to individuals. Privileges and immunities should not therefore be wider than necessary nor so limited as to prejudice the sending State's interests. The Committee had been seeking to establish a balance between the conflicting interests of the sending State and the receiving State and its nationals — an extremely difficult and delicate task especially in respect of the last three or four articles discussed.

8. The liability to give evidence in article 44 was a very special type of limitation on immunity for specific cases. Paragraph 3 stipulated that there was no obligation to give evidence on matters that concerned official activities; but in paragraph 1 the International Law Commission clearly recognized that it was highly desirable and in accordance with long established consular law that the consular official should not enjoy complete inviolability with regard to his private actions and that he could be called as a witness. In paragraph 2 the International Law Commission recognized that the receiving State should make it as easy as possible for the consular official to give evidence and should make every effort to see that his official work was not interfered with.

9. The crucial point was in the second sentence of paragraph 1, which meant that if, in connexion with his private activities, he was called upon to testify, the consular official should not be subjected to coercive measures or to penalties. That provision, however it was worded, was unfortunate, for it was in effect an invitation to the consular official not to carry out his obligations under the first sentence of paragraph 1. If a consul were the principal witness of a serious crime, failure to give evidence could lead to a grave miscarriage of justice, and such action could reflect adversely on the consular corps as a whole. Moreover, it was setting up a special group or category of persons who need not comply fully with local procedures for administering justice and who could thus disrupt day-to-day life in the receiving State by refusing to comply with local law.

10. The right of an accused to summon witnesses in his defence was a time-honoured principle in national law. In some countries, the right was considered so important that if the exception embodied in the second sentence of paragraph 1 remained, they would be obliged to lodge reservations. It would thus be impossible to achieve the desired aim of a universal convention signed and ratified by the greatest possible number of States.

11. At the previous meeting, the Norwegian representative had made what appeared to be a very telling case for the retention of the sentence. On reflection, however, his argument seemed less persuasive. He had stressed the possible consequences of compulsion to testify in the case of consuls in isolated places. But the cases he had cited were not typical and were comparatively rare. Most consulates were situated in metropolitan areas where police protection would be available in the occasional case of the kind cited by the representative of Norway. The possibility of embarrassment to a consular official coerced or penalized should not be a major concern, for a request to testify was much more likely to be sent in the form of a letter, with the possibility of negotiating a suitable time, than by a summons in the middle of the night. Nor was it likely, save in very exceptional cases, that a consular official's life would be endangered by his giving evidence. In the unusual event of reprisals, he would undoubtedly receive greater help and protection than the nationals of any receiving State represented in the Committee.

12. He had carefully considered the amendment by the Federal Republic of Germany (L.166), which would limit the nature of coercive measures or penalties, but did not find it adequate. The Conference was trying to produce a convention whose rules would be automatically enforceable. It was essential for it to contain a rule that consular officials should appear as witnesses and that there should be reasonable means to ensure that he appeared in order to safeguard the interests of justice. The question was not a technical one: it was the essence of the Conference's task. The ends of consular inviolability and immunity would be best attained if the consular officer were required to appear as witness in connexion with his personal activities, and the deletion of the second sentence of paragraph 1 would provide a good balance between the interests of the sending State and the receiving State, especially as regards justice for the nationals of the receiving State.

13. Mr. PEREZ-CHIRIBOGA (Venezuela) strongly supported the proposals by Finland, Japan and the United States for deleting the second sentence of paragraph 1. In Venezuela, under article 347 of the Code of Civil Procedure, every person not under disability was compelled to give evidence. The exceptions from that rule referred to in article 360 of the Code dit nod include consular officials, nor were they exempt under article 166 of the Venezuelan Code of Criminal Procedure. He did not consider it proper to provide that, if a consular official refused to testify, no coercive measure or penalty might be applied to him; that was tantamount to interfering with the ends of justice. Paragraphs 2 and 3 provided adequate safeguards for the consular official so far as his own convenience and professional secrecy were concerned. He would vote in favour of the joint amendment.

14. Mr. MYRSTEN (Sweden) also supported the deletion of the second sentence of paragraph 1 and agreed with the arguments put forward. Like the United States representative, he had been impressed by the case stated by the Norwegian representative and would certainly wish to provide against such possibilities in the convention. He was not fully convinced, however, that there was a true connexion between the Norwegian case and the second sentence of paragraph 1, for it was a fact that officials of sending States could be murdered even if they had never been asked to testify. In any case, article 40 placed an obligation on the receiving State to protect consular officials. The arguments for deleting the sentence were more wieghty than those retaining it; one of the most important tasks of foreign consuls was to help the smooth functioning of the machinery of justice in the receiving State. He therefore supported the

deletion of the second sentence of paragraph 1 for that would not run counter to the general opinion of the Committee nor to the principle of consular inviolability.

15. Mr. WASZCZUK (Poland) said that bilateral consular conventions had long respected the principle of exemption from testifying at court. It was recognized, for example, in article 4 of the agreement between Austria and Italy of 1874, which provided that where evidence was needed, it should be obtained at the consul's residence or in the form of a statement in writing. Nevertheless, consular officials were not absolved from the obligation to give evidence, though they had the right to refuse to give evidence or to produce correspondence or documents concerning matters connected with the exercise of their functions. The amendment submitted by Finland, Japan and the United States was a dangerous one for it would allow consular officials to be subjected to police control. Consuls were representatives of sending States; they were not usually criminals and they should not be subjected to humiliation. Moreover, the privilege in the second sentence of paragraph 1 was already confirmed by a large number of consular conventions, as stated in paragraph 1 of the commentary to article 44. He therefore opposed the amendment.

16. With regard to paragraph 2, the Nigerian amendment (L.118) was too far-reaching, for even though it made attendance at court the exception, there was still the question whether coercive measures should be exercised if the consular official were unable or unwilling to attend. The International Law Commission's draft of paragraph 1 was more precise and allowed greater freedom and continuity for carrying out consular functions than the United Kingdom amendment (L.135). He would, however, vote in favour of the Austrian amendment (L.50) and support the Japanese amendment to paragraph 3 (L.81). Subject to the Austrian and Japanese amendments, he found the International Law Commission's text acceptable.

17. Mr. SRESHTHAPUTRA (Thailand) said that he supported the amendments by Finland, Japan and the United States of America, proposing the deletion of the last sentence of paragraph 1, because he did not think it advisable that those words should appear in the convention. For the same reason, he opposed the amendment by the Federal Republic of Germany. If the joint amendment were rejected, he would support the Indian amendment, provided the Indian representative accepted the United Kingdom representative's suggestion that the words " consular employee " should be replaced by the word " they " and that the last sentence of that amendment should be deleted. Failing that, he would accept the International Law Commission's draft. He supported the Austrian amendment to paragraph 2 (L.50) and the Japanese amendment to paragraph 3 (L.81).

18. Mr. WOODBERRY (Australia) supported the deletion of the second sentence of paragraph 1 for the reasons given by the sponsors of the amendments. He supported the United Kingdom amendment (L.135) for the reasons given by the United Kingdom representative. He also supported the Japanese amendment to paragraph 3 (L.81).

19. Mr. SPACIL (Czechoslovakia) said that the most interesting amendment was the one proposed by Finland, Japan and the United States of America because it was a fundamental change of text. He would prefer to see the International Law Commission's text retained. He did not agree with the United States representative's argument concerning the creation of a special category of citizen, for the very fact of drafting a consular convention showed that consular officials were in a special category and could not be considered as ordinary citizens.

20. The question was being approached in the Committee from two entirely different angles. One view was that the consul would refuse to give evidence and that coercive measures must therefore be provided. His own view was that a consul, if invited to give evidence on a matter not relating to his official functions, would agree to do so; there was no reason to expect that he would refuse. But a criterion was needed for determining, under paragraph 3, who would decide whether the evidence required related to consular functions or not. In his opinion the question could only be decided by the consular official himself or by the sending State, but the deletion of the second sentence of paragraph 1 would have the effect of leaving the decision to the authorities of the receiving State. That would be an undesirable situation and could only lead to bad relations between the receiving State and the sending State. Furthermore, the consul would have no right of appeal, he would no longer be the judge of his own actions, and he would also be liable to be summoned at any time of day or night to give evidence. He opposed the amendment, because it was concerned with exceptional cases, whereas it was the purpose of the convention to provide for normal circumstances.

21. Mr. CAMPORA (Argentina) said that the International Law Commission draft of article 44 was in general satisfactory and logically arranged. His delegation understood that " administrative proceedings " in paragraph 1 referred to litigation within an administrative court and not to the proceedings of any administrative authority whatsoever, so that there was no chance of the consular official being called upon to give evidence before a political body, for example.

22. His delegation could accept the proposal to delete the second sentence of paragraph 1; but the omission of that sentence should not be considered as a complete reversal of the situation and as meaning that any kind of pressure might be applied to a consular official declining to give evidence. The type of measure which might be applied to a consular official was governed by the provisions of article 41 (Personal inviolability of consular officials) and article 43 (Immunity from jurisdiction). It would be preferable to delete the second sentence of paragraph 1 because, as drafted, it might be interpreted as sanctioning an uncooperative attitude towards the authorities of the receiving State.

23. Mr. SPYRIDAKIS (Greece) supported the International Law Commission's text, which was in accordance with the general view of his delegation that the situation of the consulate and consular officials should be

strengthened. The safeguards provided by article 44 could be found in many bilateral consular conventions and had been proved by long experience to be useful and necessary to ensure the proper functioning of the consulate and the protection of consular officials. His delegation could not, therefore, accept any amendment that would weaken article 44, although it recognized that it might create difficulties for certain States in view of the feeling of the public or the legislative body on the acceptance of such an obligation. The Greek delegation would vote against the amendments submitted by Finland, India, Japan, Nigeria, the United Kingdom and the United States of America. It fully supported the amendment by the Federal Republic of Germany, which improved the text and filled a gap. It would also vote for the Austrian amendment (L.50) and for the Spanish amendment (L.151) which, although merely a question of drafting, expressed more clearly and accurately the meaning of the text.

24. Mr. SALLEH bin ABAS (Federation of Malaya) said that liability to give evidence was limited by paragraph 3 of the article which stated that members of the consulate were under no obligation to give evidence concerning matters connected with the exercise of their functions. In matters unconnected with the exercise of their functions, the liability to give evidence was governed by paragraphs 1 and 2 which should be taken together and not read separately. The last sentence of paragraph 1 plainly referred, in the context of the paragraph, to the refusal of a consular official to attend as a witness in court and dealt only with the place in which the evidence was to be given. Although the consular official could not be forced to give evidence in court, his liability to give evidence still remained, however; paragraph 2 provided that he might give evidence elsewhere, at his residence or at the consulate. If that view was accepted, there was no need to delete the second sentence of paragraph 1. Those who did not accept that interpretation, however, would have to fall back on the proposals to delete that sentence. The law of the Federation of Malaya was in accordance with the principle expressed in the sentence, yet his delegation thought, after listening to the arguments which had been put forward, that the choice lay between possible miscarriage of justice and the harm which might be caused to the consular official as a result of his giving evidence in court. It had therefore concluded that the solution lay in the consul's discretion to decide whether or not he wished to give evidence. Presumably, as a reasonable man of the highest integrity, he might not refuse to give evidence. The argument of the United States representative seemed equally valid, however, and his delegation was therefore of the opinion that it must abstain from voting on the deletion of the last sentence of paragraph 1.

25. His delegation would support the Indian amendment (L.159) which made a desirable distinction between the obligation of consular officials and of consular employees to give evidence. It could support either the Nigerian (L.118) or the United Kingdom (L.135) amendments for the re-drafting of paragraph 2 and would also vote for the Austrian amendment (L.50) to that paragraph and the Japanese amendment (L.81) to paragraph 3.

26. Mr. BOUZIRI (Tunisia) said that paragraph 1 of article 44 made a clear distinction between " members of the consulate " in the first sentence, a term which included both consular officials and consular employees, and the " consular official " who was covered by the second sentence. The paragraph should therefore be interpreted as meaning that, although all members of the consulate could be called upon as witnesses, it was only the consular official who should not be subjected to coercive measures or penalties if he should decline to attend as a witness. There seemed to be some contradiction, however, between paragraph 1 of the article and paragraph 1 of the International Law Commission's commentary, which began with a statement corresponding to the first sentence of paragraph 1 of the article but went on to say that " if they should decline to attend, no coercive measure or penalty may be applied to them " which, in the context, referred to all members of the consulate. Before explaining further the views of his delegation he would welcome an explanation of the apparent contradiction between the commentary and the article.

27. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, explained that the decision of the International Law Commission was embodied in paragraph 1 of article 44 and that the second sentence of paragraph 1 of the commentary was, in fact, inaccurate owing to the pressure under which the International Law Commission had completed its work. The sentence should read: " However, the Commission agreed that if they should decline to attend, no coercive measure or penalty may be applied to consular officials."

28. Mr. BOUZIRI (Tunisia) thanked Mr. Žourek for his explanation. The delegation of Tunisia, as had already been stated, favoured a balance between the need to protect the freedom and dignity of consular officials and the need to safeguard the interests of the receiving State. There must be a clear distinction between the diplomatic agent who represented the sending State, as was laid down in the Vienna Convention on Diplomatic Relations, and the consular official who did not do so and whose inviolability must therefore be sufficient only to allow him to exercise his consular functions in an atmosphere of freedom and dignity and compatible with the interests of the sending State. It was not in accordance with the definition of consular functions that the consular official could decline to attend as a witness in the course of judicial or administrative proceedings. His delegation therefore supported the deletion of the second sentence of paragraph 1, since it believed it to be the bounden duty of the consular official to attend. He should not be allowed to decline and thereby possibly cause grave prejudice to one of the parties in the proceedings. If he was himself directly accused he must, of course, be given certain protection.

29. For the same reasons his delegation would vote against the amendment of the Federal Republic of Germany (L.166) which would strengthen the privileges of the consular official. The Indian amendment (L.159) improved the International Law Commission's text although it did not go far enough. His delegation had

no difficulty with regard to the Spanish amendment (L.151) which was not a matter of substance and could be referred to the drafting committee. It would give favourable consideration to the United Kingdom amendment to paragraph 2 (L.135) although it was not certain that, as drafted, it was an improvement on the International Law Commission text. The Nigerian amendment (L.118), which was acceptable to his delegation, was perhaps more restrictive, for the consular official would appear in court only in exceptional cases at the invitation of the court: the use of the term " court " was perhaps not entirely appropriate and might be considered by the drafting committee. His delegation would also vote for the Austrian amendment (L.50) but considered that the inclusion of the Japanese amendment (L.81) might not be entirely appropriate in the present convention.

30. Mr. HARASZTI (Hungary) reminded the Committee that it had rejected an amendment (L.115) submitted by his delegation to article 41 for the inclusion of a provision that, save where arrest pending trial was admissible under paragraph 1 of that article, no coercive measure might be applied against a consular official who refused to appear before the court. It considered it all the more necessary to ensure that there was no possibility of coercion under the present article. The deletion of the last sentence of paragraph 1 would prejudice the vital paragraph 3 of the International Law Commission's text, which depended on the existence of the safeguard in the sentence which it was proposed to delete. His delegation agreed that members of the consulate might be called upon to attend as witnesses as provided in the first sentence of paragraph 1 and that they should not refuse to do so except as provided in paragraph 3, but their liability could not be accompanied by the threat of coercive measures since only the consular official himself could judge whether his evidence would prejudice the performance of his official functions or not.

31. Mr. ANGHEL (Romania) said that the International Law Commission's text was a logical outcome of the law and practice. Paragraph 3 established that members of the consulate were under no obligation to give evidence concerning matters connected with the exercise of their functions and the second sentence of paragraph 1 provided the minimum guarantee which must be accorded to consular officials against any measures of coercion in the event of their refusing to bear witness, in order to ensure that the exercise of their functions was not hampered. Similar provisions were contained in many consular conventions. His delegation would therefore oppose the Japanese and United States amendments for the deletion of that clause, because the absence of such provisions would be in contradiction with the remaining provisions of the article and the other provisions approved by the Committee, such as article 40 on the special protection and respect due to consular officials. If the receiving State could apply coercive measures, the inviolability, freedom and dignity of the consular official would be endangered and there might be grave abuses. For the same reasons his delegation opposed the amendment submitted by the Federal Republic of Germany (L.166), and the Spanish amendment (L.151). It would vote for article 44 as drafted by the International Law Commission, though accepting the Austrian amendment to paragraph 2 (L.50).

32. Mr. NALL (Israel) said that if the titles of the articles were retained — a possibility indicated by the Chair — the title of article 44 should be changed to " Obligation to give evidence " which would accord with the substance of the article itself.

33. With regard to the substance, his delegation found itself at variance with the sponsors of the amendments requiring the deletion of the second sentence of paragraph 1, although the force of their arguments had not eluded his delegation. It found itself in agreement with most of the points raised by the representative of the Federation of Malaya. It was indeed unquestionable that members of consulates were not exempt by international law from the obligation to attend as witnesses in courts of law or in the course of administrative proceedings. It was, however, equally irrefutable, and ample support was found for the proposition in the works of many learned authors on international law, that consular officials were entitled to the privilege of giving oral or written testimony in the consulate or at their residence. In fact, paragraph 2 embodied that privilege, which was also contained in some sixteen bilateral conventions concluded since 1948 and as recently as 1959.

34. The exemption of consuls from giving evidence relating to matters within the scope of their official duties, and the principle concerning the non-disclosure of information or evidence relating to their official functions or contained in consular archives, sprang from the two universally recognized and well-established rules of international law — namely, the inviolability of consular archives and the consul's non-amenability to local jurisdiction in respect of acts performed in the course of his functions. Those provisions were now contained in articles 32 and 43, as approved by the Committee, and paragraph 3 of article 44 followed from those principles.

35. It was, of course, within the discretion of the sending State to withdraw or to modify by its domestic laws and regulations the privilege of giving evidence outside the precincts of the courts of law. With the permission of the French representative, he would point out that the consuls of France were encouraged in their manual to co-operate with local courts by giving testimony, except in so far as it might involve consular archives, the disclosure of which was naturally forbidden. It was, indeed, a question for the sending State alone to decide whether and to what extent its consuls should render assistance in court proceedings.

36. All consular privileges, except the two universally recognized rules which he had already mentioned, took root in agreements, reciprocal arrangements, courtesies, domestic laws and the official policies of States. Apart from that, in particular cases resort might always be had to diplomatic channels whenever disagreements existed between the court and the consul, and proceedings could be adjourned pending enquiry. Thus, article 17

of the Franco-Swedish Consular Convention of 1955 provided that the consul should be accorded the necessary time to consult his government if he considered that the evidence he was called upon to give might be connected with his official functions. The second sentence of the first paragraph must have been introduced precisely for those considerations. Its omission from the article might bring about delicate situations and complicate policies and good relations, particularly as articles 70 and 71 allowed the conclusion of bilateral agreements to enable the provisions of the convention to be modified. For those reasons, therefore, his delegation could not support the amendments proposing the deletion of the second sentence of paragraph 1. His delegation could, however, support the amendment proposed by the delegation of India (L.159).

37. With regard to paragraph 2, his delegation could support the Nigerian amendment (L.118) provided it was made subject to the provisions of paragraph 1. It could also support the amendment of the United Kingdom (L.135) and that proposed to paragraph 3 by Japan (L.81).

38. Lastly, having mentioned the principle of the non-amenability of consuls to local jurisdiction, he wished, rather belatedly, to draw attention to the lack of harmony between the title of article 43 (Immunity from jurisdiction) and its substance. He would suggest that it should read " Amenability to jurisdiction ", for the article treated of the exception to the rule of amenability.

39. Mr. HENAO-HENAO (Colombia) said that his delegation would vote for paragraph 1 of the International Law Commission's text. It could not support the deletion of the second sentence of that paragraph, which would weaken the principles, already approved by the Committee, of the special protection and respect due to consular officials, their personal inviolability and immunity from jurisdiction. The proposed deletion would prevent the consular official from exercising his consular functions with freedom and dignity. To compel a consular official to attend as a witness, it would be necessary to limit his freedom. His delegation could not accept the view that to decline to attend as a witness would be a failure to co-operate with the authorities of the receiving State. It might, in fact, be to the detriment of one party in judicial proceedings if the consul, with his special status and prestige, gave evidence in favour of the other party. To prevent the attendance of the consular official as a witness would be failure to co-operate. To compel him to do so, however, would hamper him in the exercise of his functions and would endanger his consular dignity. His delegation could not support the Japanese amendment (L.81), which would constitute interference with the exercise of consular functions. It would, however, support the Spanish amendment (L.151).

40. Mr. SOWA (Ghana) shared the views expressed by the representative of Norway in regard to the retention of the International Law Commission's text. It would be dangerous to expose the consular official to the risks which might arise should some of the amendments to paragraph 1 be adopted. In cases where the authorities of the receiving State called a consular official as a material witness in connexion with a serious criminal offence, for example, his life might be in danger, since a criminal gang might waylay and kill him before or after his appearance in court. As a representative of the sending State, he required and should be given protection. His delegation would vote against the proposals to change the text of paragraph 1 since it considered that a consular official should not be compelled to give evidence in court unless he himself was the defendant in the case.

The meeting rose at 1 p.m.

TWENTY-SEVENTH MEETING

Friday, 22 March 1963, at 3.15 p.m.

Chairman: Mr. VRANKEN (Belgium)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 44 (Liability to give evidence) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 44 and the amendments thereto.[1]

2. Mr. PETRENKO (Union of Soviet Socialist Republics) said that article 44 was acceptable as drafted. Its terms were analogous to those of the corresponding provisions in existing consular conventions. The second Japanese amendment (L.81) was a constructive proposal which would improve the text by codifying the recognized international practice in consular matters. The Austrian amendment (L.50) was primarily a drafting amendment designed to improve the text of the article, and the Soviet Union delegation regarded it as unobjectionable. He could not, however, accept the United States (L.6), Finnish (L.41), and Japanese (L.81) proposals to delete the second sentence of paragraph 1 of the article. For practical considerations, the proposed deletion was not advisable, for without the sentence in question the paragraph might place consular officials in an impasse. The legal arguments advanced by the United States representative had in no way convinced him, and he was still of the opinion that if the article was amended in the manner proposed the consular officials' relations with the judicial authorities of the receiving State would become more complicated. The same was true of the United Kingdom amendment (L.135), which would likewise not be conducive to better relations between States. The original text of article 44 was better.

3. Mr. KANEMATSU (Japan) said that quite often consuls were not experts on all aspects of the law of the sending State. Only a general acquaintance with the law was expected of them, and it would be going

[1] For the list of the amendments to article 44, see the summary record of the twenty-fifth meeting, footnote to para. 50.

too far to oblige a consul to give expert evidence. There was thus justification for the second Japanese amendment (L.81).

4. Mr. McCUSKER (United States of America) said that justice and fairness should be the foremost concern. A situation might arise in which a person who had been wrongly arrested could not be released except on the evidence of a consul. It was therefore necessary to make provision for the giving of such evidence, by a clause laying down the principle.

5. Mr. NWOGU (Nigeria) said that his delegation's amendment (L.118) was intended to rule out any possibility of ambiguity. His government took the view that the consul should give evidence voluntarily. It seemed inconceivable that a consul should decline to testify in cases where his evidence was required.

6. Mr. HART (United Kingdom) said he still considered that the second sentence in paragraph 1 should be deleted, because the possible risks involved for a consul in giving evidence likewise applied to any other witness. The additional sentence proposed by the Japanese delegation was sound. With regard to the changes proposed in paragraph 2, he said that the purpose of the Austrian (L.50) and Nigerian (L.118) amendments was very close to that of his own delegation's amendment (L.135), which was to avoid creating difficulties for consular officials. He was willing to withdraw his amendment and to agree to the idea that the drafting committee should draw up a final text along the lines indicated by those three delegations. He would, however, like the words " wherever possible and permissible " to stand.

7. Mr. DAS GUPTA (India) said that in the Indian amendment (L.159) the words " Members of the consulate " at the beginning of paragraph 1 corresponded to a more general idea than the words " consular official " at the end of the same paragraph. In general, the members of the consulate should not decline to give evidence. Article 41 provided for the personal inviolability of consular officials and, in any event, the fact of refusing to give evidence would hardly constitute a serious offence. The Indian amendment therefore merely reaffirmed an accepted principle. The Nigerian amendment (L.118) was very much to the same effect.

8. Mrs. VILLGRATTNER (Austria) said that her delegation would maintain its amendment (L.50) even if article 44 was amended in other respects, since consular officials should be free to decide whether to give evidence or not. They could be trusted to show their goodwill in facilitating the administration of justice in the receiving State.

9. Mr. AMLIE (Norway) said that he would vote against the proposal for the deletion of the second sentence of paragraph 1, despite the forceful arguments advanced in support of the proposal. The receiving State would lose nothing if the sentence were retained, whereas its deletion might be prejudicial to the consul.

10. Mr. HEUMAN (France), speaking on a point of order, said that the Chairman's decision to allow the sponsors of amendments to take the floor a second time in order to answer criticisms meant in effect that the case for the amendments was pleaded a second time. That was quite contrary to the spirit of the Chairman's decision.

11. The CHAIRMAN put to the vote article 44, together with the relevant amendments.

The amendments to paragraph 1 submitted by the United States (A/CONF.25/C.2/L.6), Finland (A/CONF.25/C.2/L.41) and Japan (A/CONF.25/C.2/L.81) were rejected by 30 votes to 27, with 2 abstentions.

The amendment to paragraph 1 submitted by India (A/CONF.25/C.2/L.159) was adopted by 27 votes to 12, with 27 abstentions.

The amendment to paragraph 1 submitted by the Federal Republic of Germany (A/CONF.25/C.2/L.166) was rejected by 20 votes to 7, with 40 abstentions.

Paragraph 1, as amended, was adopted by 52 votes to 6, with 9 abstentions.

The Nigerian amendment to paragraph 2 (A/CONF.25/C.2/L.118) was rejected by 36 votes to 10, with 21 abstentions.

The Austrian amendment to paragraph 2 (A/CONF.25/C.2/L.50) was adopted by 52 votes to 2, with 14 abstentions.

Paragraph 2, as amended, was approved by 63 votes to none, with 6 abstentions.

12. Mr. HEUMAN (France) asked that, when voting on the Japanese amendment to paragraph 3 (L.81), the Committee should first vote on the first phrase, " They are also entitled to decline to give evidence as an expert witness ", and then on the second phrase, " with regard to the laws of the sending State ".

13. Mr. DEJANY (Saudi Arabia) supported by Mr. DAS GUPTA (India) said that the sentence in question should be read as a whole; it would lose its sense if the second part were deleted.

14. Mr. SPYRIDAKIS (Greece) supported the French delegation's request.

15. Mr. MARESCA (Italy) said that many bilateral conventions mentioned " experts " without specifying their qualifications. Moreover, one of the consul's functions was to inform the receiving State about the laws of the sending State. Accordingly, it would be better to vote separately on the two phrases, and he supported the French delegation's request.

16. Mr. LAHAM (Syria) said that when debating the Japanese amendment, the Committee had treated it as an indivisible whole.

17. The CHAIRMAN put to the vote the French delegation's request for separate votes on the two phrases.

The request was rejected by 40 votes to 9, with 18 abstentions.

The Japanese amendment to paragraph 3 (A/CONF.52/C.2/L.81) was adopted by 40 votes to 3, with 22 abstentions.

Paragraph 3, as amended, was adopted by 59 votes to 2, with 8 abstentions.

Article 44, as a whole, as amended, was adopted by 54 votes to 2, with 12 abstentions.

18. Mr. McCUSKER (United States of America) said that he had voted against paragraph 1 and against article 44 as a whole. He had abstained in the other votes because he held that an accused person should have the right to call witnesses, who should not be able to avoid testifying by pleading their status as consular officials.

19. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said he had voted for article 44, as amended.

20. Mr. HART (United Kingdom) said that he had voted against article 44 because of the provision in paragraph 1 that a consular official must not be compelled to give evidence even in cases where, in accordance with paragraph 1, he was under a legal obligation to do so.

Article 45 (Waiver of immunities)

21. The CHAIRMAN invited the Committee to consider article 45, to which amendments had been submitted by Japan (A/CONF.25/C.2/L.82), Australia (A/CONF.25/C.2/L.152) and Tunisia (A/CONF.25/C.2/L.169).

22. Mr. MOLITOR (Luxembourg) said that article 45, paragraph 1, should refer specifically to the immunities provided for in paragraph 1 of article 43, as adopted by the Committee.

23. Mr. WOODBERRY (Australia) said that his delegation's amendment to paragraph 2 might be referred to the drafting committee as guidance in the preparation of the definitive text.

24. Mr. KANEMATSU (Japan), introducing his delegation's amendment to paragraph 2 (L.82), said that article 45, paragraph 2, as drafted by the International Law Commission was similar to article 32 of the 1961 Convention. Yet, in the case of consular relations, that provision seemed inadequate, inasmuch as the waiver of immunities concerned not only local authorities but also the sending and the receiving States. His amendment would have the effect that the States would be informed of a waiver of immunities.

25. Mr. JESTAEDT (Federal Republic of Germany) said that the Australian delegation's amendment, which the sponsor had suggested should be referred to the drafting committee, was not an amendment of form, but one of substance. Accordingly, under rule 32 of the rules of procedure, he wished to restore that amendment, which raised a question of substance that should be dealt with in paragraph 2 of the article.

26. Mr. NALL (Israel) asked how the sentence proposed by the Japanese delegation would operate if a country had only a consul and no diplomatic mission in the receiving State.

27. Mr. KANEMATSU (Japan) said that that was an exceptional case. In such circumstances, the waiver might be communicated through the diplomatic mission in another country.

28. Mr. MARESCA (Italy) thanked the representative of the Federal Republic of Germany for restoring the Australian amendment. Paragraph 2 of article 45 followed precisely the terms of the 1961 Vienna Convention, but two quite different situations were involved. The convention under consideration dealt with consular officials, and the consul should be regarded as representing his State and not as an individual. As it stood, paragraph 2 was unacceptable for it would permit the receiving State to interfere in the affairs of the sending State. The Australian amendment therefore raised an essential question of substance which should be discussed.

29. Mr. SPYRIDAKIS (Greece) said that paragraph 2 seemed acceptable to him. If, however, the Japanese representative were willing slightly to modify his amendment, he would suggest leaving the International Law Commission's text and adding the words of the Japanese amendment starting with the words " and shall be communicated ".

30. Mr. KANEMATSU (Japan) accepted that suggestion.

31. Mr. DAS GUPTA (India) thought that the Australian amendment raised a drafting point and should be referred to the drafting committee. He asked for a separate vote on the two phrases of the Japanese amendment.

32. Baron van BOETZELAER (Netherlands) said that the International Law Commission's text accorded a broad immunity to the members of consulates and that the trend of the discussion seemed to be in favour of restricting the immunity in some respects. The Japanese amendment could only complicate the situation, and he would therefore vote against it.

33. Mr. HART (United Kingdom) agreed with the Netherlands representative's remarks concerning the Japanese amendment and added that the impression should not be given that the waiver of immunities was an exceptional matter.

34. Mr. LEVI (Yugoslavia) doubted whether it was still useful to specify that the waiver should be communicated " in writing ", since the sub-amendment proposed by the Greek representative was acceptable to the Japanese delegation.

35. Mr. CHIN (Korea) said that he could not support the Japanese amendment.

36. Mr. NALL (Israel) suggested that the two phrases proposed by Greece and by Japan could be linked by some such formula as " and when possible ".

37. Mr. KANEMATSU (Japan) accepted that suggestion.

38. Mr. MARESCA (Italy) thought that the proposal by the representative of Israel had more drawbacks than advantages. The expression added would weaken the rule and introduce an element of doubt.

39. Mr. SPYRIDAKIS (Greece) proposed that the International Law Commission's opening phrase of paragraph 2 should be retained with the addition of the words " and shall be communicated in writing to the receiving State ".

40. Mr. LEVI (Yugoslavia) said that he did not see how it was possible to vote on paragraph 2 before voting on the Australian amendment.

41. The CHAIRMAN put to the vote paragraph 1 of article 45 as drafted by the International Law Commission.

Paragraph 1 was approved by 63 votes to none, with 1 abstention.

42. The CHAIRMAN put to the vote the proposal in the Japanese amendment (A/CONF.25/C.2/L.82) for the addition to paragraph 2 of the passage " shall be communicated to the receiving State in writing ".

The passage was approved by 31 votes to 22, with 11 abstentions.

43. The CHAIRMAN put to the vote the proposal in the Japanese amendment for the addition to paragraph 2 of the phrase " through the diplomatic channel ".

The proposal was rejected by 32 votes to 13, with 19 abstentions.

44. Mr. LEVI (Yugoslavia) suggested the postponement of further voting and the adjournment of the meeting.

It was so agreed.

The meeting rose at 6.5 p.m.

TWENTY-EIGHTH MEETING

Monday, 25 March 1963, at 10.40 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 45 (Waiver of immunities) (*continued*)

1. The CHAIRMAN recalled that, at its previous meeting, the Committee had adopted article 45, paragraph 1, and the first part of the Japanese amendment (L.82) to paragraph 2. The Australian amendment (L.152) to paragraph 2, after being withdrawn, had been resubmitted by the Federal Republic of Germany.

2. Mr. JESTAEDT (Federal Republic of Germany) said that he had resubmitted the Australian amendment (L.152) because he doubted whether a consul who initiated proceedings in the receiving State must first expressly waive his immunity. The amendment had the advantage of showing that the waiver was provided for by implication in paragraph 3 of the article.

3. Mr. LEVI (Yugoslavia) said that he accepted the amendment, though he regretted that it appeared to refer to the second part of paragraph 3, not to the first.

The Australian amendment (A/CONF.25/C.2/L.152), re-introduced by the Federal Republic of Germany, was adopted by 27 votes to 11, with 21 abstentions.

Paragraph 2, as amended, was adopted by 45 votes to none, with 13 abstentions.

Paragraph 3 was adopted unanimously.

4. Mr. BOUZIRI (Tunisia) introduced his delegation's amendment (L.169) to paragraph 4. He reminded the Committee of the importance attached to the inviolability granted to consular officials, which had been shown by the discussions on articles 41 and 43. But article 45, paragraph 4, seemed to him indirectly to introduce a further immunity relating to measures of execution of a judgement. That paragraph would be an attack on the sovereignty of the receiving State and on the dignity of its judges. The Tunisian delegation had not wished to ask for its complete deletion, but had sought by its amendment to change the spirit of the paragraph and restrict its unfortunate effects.

5. Mr. NASCIMENTO e SILVA (Brazil) regretted that he could not share the Tunisian representative's views on article 45. The proposed amendment might give the impression that a consul misused the privileges and immunities he enjoyed. He pointed out that, under article 43, a consul did not enjoy immunity from jurisdiction in respect of acts of a private nature, but only in respect of acts performed in the exercise of consular functions. The same applied to the provisions of article 41, to which the Tunisian representative had already objected. Therefore, article 45 dealt, not with inviolability, but with consular immunities with respect to his official acts, in other words with the problem of state immunities. How could the sending State facilitate the execution of a final judgement ? That was a matter for the local authorities. Did it mean that the consul would not even be able to defend himself in connexion with acts of a private nature before the judicial authorities ? If that were so, he would be in a position of inferiority as compared with other nationals of the sending State. The Brazilian delegation would therefore vote against the Tunisian amendment.

6. Mr. JESTAEDT (Federal Republic of Germany) said he wished to add the further comment that article 45 should be taken in its context. The only case to be considered was where the consul initiated proceedings in the exercise of his consular functions and probably on the instructions of the sending State; the judgement would then directly or indirectly affect the sending State itself. Logically, the question of measures of execution thus also concerned the sending State and that was where the question of immunities arose. Consequently, the Tunisian amendment did not seem to be acceptable.

7. Mr. HARASZTI (Hungary) said that he too was unable to endorse the opinion expressed by the Tunisian representative. The provision in paragraph 4 did not violate the authority of States; it stated a generally accepted rule of international law.

8. Mrs. VILLGRATTNER (Austria) suggested that the special rapporteur of the International Law Commission should explain whether the waiver of immunity related only to civil and administrative proceedings or whether it also related to criminal proceedings.

9. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, said that the rule stated in article 45, paragraph 4, of the International Law Commission's draft was intended to apply only to civil and administrative proceedings. The Commission had been guided in the matter by article 32, paragraph 4, of the 1961 Vienna Convention. In the case of consuls, moreover, the scope of those provisions was much more restricted. Members of the consulate could logically be exempted from the jurisdiction of the receiving State only for acts performed in the exercise of consular functions — i.e., for acts attributable to the sending State.

10. Mr. BOUZIRI (Tunisia) said that his delegation had adopted a similar attitude to the corresponding provisions of the 1961 Convention. He wished to point out, however, that the Brazilian representative must have misunderstood his previous remarks. He had certainly not meant to say that a consular official did not have the same rights as other nationals of the sending State and it was quite clear that the scope of the article should be restricted to acts performed in the exercise of consular functions. Nevertheless, his delegation wished to prevent abuses.

The Tunisian amendment (A/CONF.25/C.2/L.169) was rejected by 25 votes to 14, with 26 abstentions.

Paragraph 4 was adopted by 65 votes to 1.

Article 45 as a whole, as amended, was adopted by 65 votes to 1.

Article 46 (Exemption from obligations in the matter of registration of aliens and residence and work permits)

11. The CHAIRMAN invited consideration of draft article 46 and the amendments thereto.[1]

12. Mr. HART (United Kingdom) said that the effect of the United Kingdom amendment was, first, to restrict the classes of persons who should enjoy exemption under paragraph 1 as regards registration of aliens and residence permits and, secondly, to secure that there should be no exemption as regards work permits under paragraph 2. The amendment therefore provided for the replacement of the article by a new article in which paragraph 1 of the International Law Commission's draft would be replaced by two new paragraphs; there would be no provision corresponding to paragraph 2 of that draft.

13. Paragraph 1 of the draft article granted exemption in respect of the registration of aliens and residence permits to members of the consulate, members of their families and members of their private staff. That went too far and might cause difficulties for the receiving State. Under the amendment the exemption would be enjoyed only by consular officials and by those consular employees who were members of the administrative or technical staff and were permanent employees of the sending State, not engaged in private occupation for gain in the receiving State. The exemption would extend to members of the family of a person who was exempt. Those distinctions corresponded to distinctions made elsewhere in the International Law Commission's draft; they also appeared in all the bilateral conventions which the United Kingdom had concluded except conventions which gave no exemption at all to consular employees. The provision that a consular employee should lose his exemption if he was gainfully employed was justified because even a consular official would lose his exemption in such a case under articles 56 and 62. In addition, the exclusion of members of the service staff and of the private staff was justified because members of the service staff of a diplomatic mission, or of the private staff of a diplomatic agent, enjoyed no corresponding exemption under the Vienna Convention on Diplomatic Relations. Paragraph 7 of the commentary attempted to justify that difference between the 1961 Convention and the draft convention by referring to the wide immunities enjoyed by the corresponding classes of persons under the 1961 Convention; but in fact under article 37 of that convention those persons enjoyed no immunities which were in any way relevant to the exemptions provided for in draft article 46. In paragraph 3 of the commentary it was also argued that it would be " difficult " to require a member of the consulate to see that a member of his private staff complied with the obligations when the member of the consulate and his family were exempt. That argument was wholly unconvincing.

14. Paragraph 2 of the draft article was not justified. It could not in any event apply to employment in the consulate, which was governed by article 19, as pointed out in paragraph 5 of the commentary. If a person wished to engage in private gainful occupation outside the consulate, he should comply with the laws and regulations of the receiving State. It might be argued that there should be an exemption in favour of the private staff of a member of the consulate, but there was no corresponding provision in the 1961 Convention so far as the private staff of a member of a diplomatic mission was concerned, and it was not logical that members of a consulate should be put in a more favourable position than members of a diplomatic mission.

15. Baron van BOETZELAER (Netherlands) thought that the United Kingdom amendment would improve the text of the draft article. If it were approved, his delegation would not press its own amendment (L.17) to the vote.

16. Mr. HEUMAN (France) remarked that of all the amendments submitted, that of France (L.175) was the most liberal in recognizing exemptions for certain members of the private staff. That exemption, nevertheless, should not apply to persons in the service of consular employees who were themselves members of the service staff. His delegation's amendment thus expressly reserved exemption for the private staff of consular officials and of consular employees who performed administrative and technical functions.

[1] The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.7; Netherlands, A/CONF.25/C.2/L.17; Japan, A/CONF.25/C.2/L.83; Greece, A/CONF.25/C.2/L.97; China, A/CONF.25/C.2/L.124; Cambodia, A/CONF.25/C.2/L.127; Belgium, A/CONF.25/C.2/L.132; United Kingdom, A/CONF.25/C.2/L.136; Switzerland, A/CONF.25/C.2/L.157; France, A/CONF.25/C.2/L.175.

17. He had no objection to the Cambodian amendment (L.127), and paragraph 2 of the United Kingdom amendment (L.136) was also acceptable to his delegation. The Chinese amendment (L.124) was a different matter; if the Chinese delegation would agree to replace the list at the beginning of its text by the words " The persons referred to in paragraph 1 ", the French delegation would vote for it.

18. Mr. SHU (China) explained that his delegation had submitted its amendment (L.124) because it had wished to take account of a practice followed by a great many States and recognized in many bilateral conventions. The issue of special identity cards to the persons covered by paragraph 1 of article 46 imposed no additional obligation on the receiving State and facilitated both the exercise of consular functions and the administrative control of the receiving State. He thanked the French delegation for its suggestion and agreed to change the text of his amendment in the manner proposed.

19. Mr. MARESCA (Italy) feared that the International Law Commission's text would extend exemption to an unduly large number of persons. The text should specify that the members of consular families should not carry on a gainful occupation, and there should be proper recognition of the distinction proposed by the French delegation between the staff in the service of consular officials and the staff in the service of consular employees who did not perform administrative and technical functions. His delegation would support the amendments restricting the exemptions granted to private staff.

20. Mr. BLANKINSHIP (United States of America) said that in submitting its amendment (L.7) to paragraph 2 of the draft article his delegation had not wished to modify its sense, but to improve the text. In paragraph 1 he would exclude from exemption persons permanently residing in the receiving State. When the Committee took up article 69 it might very well amend the text in order to exclude persons in that category Moreover, the International Law Commission, bearing in mind article 38 of the 1961 Vienna Convention, seemed to have intended to include that stipulation in its text although it had not done so. Unless draft article 69 were amended in that sense, his delegation would find itself in a difficult situation. The formula in paragraph 2 lacked clarity. It would be better to say, as in paragraph 4 of the commentary, " members of the consulate and members of the private staff ". After studying the various amendments his delegation would support that of the United Kingdom (L.136).

21. Mr. REBSAMEN (Switzerland) said that, as proposed in his delegation's amendment (L.157), the words in paragraph 1 " and their private staff " should be deleted. There was no similar provision in the 1961 Vienna Convention, and it might be asked why the private staff of the consulate should enjoy an exemption which was withheld from the private staff of a diplomatic mission. In many countries, notably in Switzerland, the service staff was subject to strict control from the point of view of labour regulations and residence permits. The periods of employment of that staff were by no means regular and if it was not composed of nationals of the sending State difficulties might arise with regard to work permits, for which, in many countries, including Switzerland, application had to be made by the employee and not the employer.

22. With regard to paragraph 2, the Swiss delegation would support the Belgian amendment (L.132) or any other proposal of the same kind.

The meeting rose at 1 p.m.

TWENTY-NINTH MEETING

Monday, 25 March 1963, at 3.15 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 46 (Exemption from obligations in the matter of registration of aliens and residence and work permits) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 46 and the amendments thereto.[1]

2. Mr. VRANKEN (Belgium) said that it must be borne in mind that there were as yet no agreed definitions of such terms as " members of the consulate ", " consular official " and " private staff ". When article 1 had been adopted, therefore, it would be necessary to reconsider each article to ensure that the terms used were in accordance with the definitions in article 1. The amendment submitted by his delegation (L.132) did not affect the International Law Commission's text but proposed the addition of a new paragraph to provide that the persons referred to in paragraph 1 should not enjoy the exemptions provided under article 46 if, in addition to their functions at the consulate, they were engaged in any gainful private occupation. The Belgian delegation could accept the French amendment (L.175).

3. Mr. HONG (Cambodia) said that his delegation had submitted its amendment (L.127) because it considered it desirable to state explicitly what might perhaps be implicit in the International Law Commission draft, that only those members of the private staff who were nationals of the sending State should benefit from exemption under article 46. His government could not agree that members of the private staff who were nationals of a third State should so benefit. His delegation would not press for a vote, however, since the question appeared to be mainly one of drafting, and would be prepared to withdraw the amendment and request the Chairman to refer the point to the drafting committee.

[1] For the list of amendments to article 46, see the summary record of the twenty-eighth meeting, footnote to para. 11.

4. Mr. SALLEH bin ABAS (Federation of Malaya) said it would seem that the International Law Commission draft had gone too far in including private staff under article 46. His delegation would therefore vote in favour of those amendments which restricted the categories of persons entitled to exemption. It was generally in agreement with the United Kingdom amendment (L.136) but noted that it omitted any mention of work permits. His delegation therefore suggested that the United Kingdom amendment should include a reference to work permits.

5. Mr. WOODBERRY (Australia) said that his delegation found the draft unsatisfactory although it appreciated the efforts of the International Law Commission to find a suitable text for article 46 which would be in conformity with the practice of a large number of participating States. The article conflicted with Australian legislation which did not exempt private staff from the regulations on the registration of aliens and residence permits, and only exempted members of the service staff who were sent by the government of the sending State. Article 46 provided a rather wider exemption. It would not be possible under Australian law to extend exemptions to private or service staff who were permanent residents of the receiving State or locally engaged. Under the Vienna Convention on Diplomatic Relations, the private staff of members of a diplomatic mission enjoyed no privileges or immunities which would have the effect of freeing them from the obligations referred to in article 46. There seemed no sufficient reason for conferring greater privileges in that respect on the private staff of members of a consulate than on those of a diplomatic mission. His delegation was not convinced by the explanation given by the International Law Commission in paragraph 7 of its commentary. The 1961 Convention contained no reference to service or private staff but only to diplomatic agents, the administrative and technical staff and members of their families.

6. The Australian delegation would therefore support amendments in favour of limiting exemptions for service and private staff, and also those likely to bring article 46 more into line with Australian legislation. It would support the United Kingdom amendment (L.136) and amendments for the deletion of the words " private staff " from paragraph 1. Since work permits were not necessary under Australian law, paragraph 2 of the International Law Commission draft offered no difficulty to his delegation. The Australian delegation could also support the Belgian proposal (L.132) for the addition of a new paragraph.

7. Mr. KHOSLA (India) said that article 46 must be read in conjunction with article 62, which exempted honorary consular officials from registration as aliens and the possession of residence permits, and article 69 on the privileges and immunities granted to members of the consulate, members of their families and members of the private staff who were nationals of the receiving State. The article dealt with, firstly, registration of aliens and residence permits for aliens, exemption from which should be granted only to members of the consulate, members of their family forming part of their household, and their private staff, provided they worked exclusively for the consulate. The persons mentioned in paragraph 1 of article 46 should be exempted from all obligations with regard to work permits if they worked exclusively for the consulate, a provision which was omitted from the United Kingdom amendment, but if they were engaged in any gainful private occupation then work permits should be required. His delegation would therefore support the Belgian amendment (L.132). The Cambodian amendment (L.127) failed to take account of the International Law Commission's intention, expressed in paragraph 4 of its commentary, that the exemption from work permits applied to cases where the members of the consulate wished to employ a person who had the nationality of a third State. The Indian delegation would support the Chinese amendment (L.124) since the practice of issuing identification cards was recognized in several consular conventions. With regard to the other amendments proposed, his delegation felt that the International Law Commission's draft should be retained as far as possible.

8. Mr. MOUSSAVI (Iran) supported those members of the Committee who had advocated further restriction of the exemptions from the registration of aliens and residence and work permits. His delegation would accordingly vote for the amendments submitted by Greece, Japan, the Netherlands, Switzerland and the United Kingdom.

9. Mr. KANEMATSU (Japan) said that his delegation had proposed the deletion of the words " and their private staff " since no similar exemptions were granted to the private staff of a diplomatic mission under the Vienna Convention on Diplomatic Relations. Article 37, paragraph 4, and article 38, paragraph 2, of that convention provided that the private servants of members of a diplomatic mission, whether or not they were nationals of or permanently resident in the receiving State, might enjoy privileges and immunities only to the extent admitted by the receiving State. There was no precedent in bilateral consular conventions for the exemption granted by article 46 to the private staff of members of consulates; from the practical point of view it seemed excessive. His delegation approved the United Kingdom amendment (L.136) on the whole with the minor reservation that it could not agree to the exclusion of service staff from the provisions of paragraph 1; it could not, however, give its full support to paragraph 2 since it envisaged a different way of dealing with the exceptions to exemption under article 46. The Japanese delegation had submitted for subsequent consideration a proposal (A/CONF.25/C.2/L.89/Rev.1) for a new article which would replace articles 56 to 67 and would enumerate in a single article the categories of persons who woud be excluded from benefiting from privileges and immunities not only under article 46 but also under a number of other articles.[2]

10. Mr. SHARP (New Zealand) supported the United Kingdom amendment, except that it contained no provision for the employment of foreign labour. The em-

[2] This proposal was discussed at the thirty-seventh meeting.

ployment of consular staff was governed by article 19, which stated in its paragraph 1 that " subject to the provisions of articles 20, 22 and 23, the sending State may freely appoint the members of the consular staff ". Paragraph 5 of the commentary on article 46 repeated that interpretation but the commentary would not be a permanent accompaniment to the article. Provided that it was made clear, however, that consular staff were considered to be already exempted under article 19 from obligations in the matter of work permits, his delegation would support the United Kingdom amendment, and those amendments which agreed on the substance of the matter. With regard to residence and entry permits, the procedure in New Zealand was that senior officials in possession of diplomatic passports were not required to produce any further documents, but subordinate staff were given temporary permits to allow them to enter the country which, after a short period, were automatically renewed for the duration of their stay. That procedure seemed to be in accordance with article 46.

11. Mr. HARASZTI (Hungary) said that the International Law Commission's text was broadly acceptable to his delegation and there seemed no need for severe restriction. The private staff should enjoy the same exemption under article 46 as other members of the consulate. Provision to that effect was included in several bilateral agreements concluded by Hungary. A consular employee working exclusively for the consulate should not be required to obtain a permit from the receiving State. His delegation therefore opposed the amendments submitted by the delegations of Greece, Japan, Switzerland and the United Kingdom. The French amendment (L.175) represented the only reasonable limitation which could be applied.

12. It was desirable to state clearly what had certainly been the intention of the International Law Commission, that exemption would be granted only to persons not engaged in any gainful private occupation. His delegation would therefore also support the Belgian and United States amendments. The identity cards mentioned in the amendment contained in document L.124 did not seem appropriate for inclusion in the draft articles.

13. Mr. SPYRIDAKIS (Greece) welcomed the amendments submitted by Japan (L.83) and Switzerland (L.157) which were similar to the Greek amendment (L.97). If the three delegations concerned could agree on a joint amendment, that would greatly facilitate the Committee's work.

14. Mr. KANEMATSU (Japan) accepted that suggestion.

15. Mr. CABRERA-MACIA (Mexico) supported the Belgian amendment (L.132) whereby persons engaged in any gainful private occupation would be excluded from exemption. His delegation would also support the French amendment (L.175) which gave a more limited definition of " private staff ".

16. Mr. LEVI (Yugoslavia) opposed the proposals for deletion of the reference to " private staff " in article 46. Such staff, when not locally recruited, should be exempted from registration as aliens and from residence and work permits. It was preferable to exempt them as far as possible from such obligations because in practice there were cases when the police exercised pressure on the personal staff of a diplomatic mission or of a consulate. His delegation could accept some amendments, like that of the Netherlands (L.17), which made the International Law Commission text clearer.

17. The United Kingdom proposal (L.136) contained no provision concerning work permits and his delegation saw no reason for that omission. Further, the proposal was not in his view an amendment within the meaning of rule 41 of the rules of procedure but a proposal in accordance with rule 42. He would not, however, press for a ruling on that point.

18. The CHAIRMAN suggested that the Committee should vote on article 46 paragraph by paragraph. He would therefore ask the sponsors of amendments to paragraph 1 to reply to points raised in the discussion, should they consider it necessary to do so.

19. Mr. HART (United Kingdom) said that the intention of his delegation in submitting its amendment had been to change the substance of paragraph 1 very considerably and to propose the deletion of paragraph 2. It appeared to be generally agreed that the International Law Commission text had gone beyond the requirements of existing international law and bilateral agreements and beyond the provisions of the Vienna Convention in providing exemption for private staff. If the Committee concurred, his delegation would like separate votes to be taken so that the opinion of the Committee on each point of substance could be accurately gauged.

20. Mr. HEUMAN (France) said that paragraph 1 of the United Kingdom amendment would have the same effect as the amendments submitted by Greece, Japan and Switzerland — the deletion from paragraph 1 of the International Law Commission text of " private staff ". Those four proposals therefore represented an extreme position, the furthest removed from the International Law Commission text which was at the opposite extreme. The French amendment (L.175) was an attempt to find a middle way. His delegation would not oppose any request for a division of the vote on its amendment to enable the Committee to express its opinion clearly as to whether it wished exemption to be extended to both the private staff of " consular officials " and to that of " consular employees who perform administrative and technical functions ".

21. Mr. BLANKINSHIP (United States of America) noted that there was a considerable measure of agreement in the Committee with respect to the extent to which article 46 was governed by article 19, which provided that the sending State might freely appoint the members of the consular staff. In view of the general acceptance of that interpretation, his delegation had decided to withdraw its amendment (L.7) since its principal purpose had been to clarify paragraph 2 of the International Law Commission text. The United States delegation would support the United Kingdom amendment whereby paragraph 2 of the International Law Commission text would be deleted, since that paragraph had become unnecessary in view of the consensus of opinion in the Committee.

22. The CHAIRMAN invited the Committee to vote on the United Kingdom amendment (L.136).

23. Mr. HEUMAN (France) asked for separate votes on paragraph 1 and paragraph 2 of the United Kingdom amendment because, although both referred to paragraph 1 of the International Law Commission text, they dealt with two very different points.

24. Mr. REBSAMEN (Switzerland) said that he foresaw some difficulty if the Committee voted first on the United Kingdom amendment which only indirectly proposed the deletion of " private staff ". In his opinion the amendments submitted by the delegations of Greece, Japan and Switzerland, which specifically proposed deletion of those words, were furthest from the International Law Commission draft. He would therefore suggest that it would facilitate the Committee's work to vote first on those amendments, after which it would be easier to find the best method of continuing to vote on the amendments to article 46.

25. The CHAIRMAN said that in his view the United Kingdom amendment was further from the original text than the three amendments which specifically proposed deletion of the words " private staff ", since in addition to omitting those words it rephrased paragraph 1 of the International Law Commission text. In his view, therefore, the United Kingdom amendment was furthest removed from the original text.

26. Mr. REBSAMEN (Switzerland) said that, as he did not wish to complicate the voting procedure, he would not press the matter further.

Paragraph 1 of the United Kingdom amendment (A/CONF.25/C.2/L.136) was adopted by 31 votes to 20, with 12 abstentions.

Paragraph 2 of the United Kingdom amendment was adopted by 28 votes to 17, with 20 abstentions.

27. Mr. HEUMAN (France) proposed that the Committee should vote on paragraph 1 as a whole as amended.

28. Mr. LEVI (Yugoslavia) said that the Committee, by adopting the United Kingdom amendment, had approved a new article 46. He did not, therefore, feel that the vote proposed by the representative of France would be correct procedure.

29. The CHAIRMAN said that he considered paragraph 1 of the International Law Commission text to have been replaced by paragraphs 1 and 2 of the United Kingdom amendment, and that paragraph 2 of the International Law Commission's text still stood.

30. Mr. HART (United Kingdom) said that although the object of the United Kingdom amendment had been the deletion of paragraph 2 as well as the revision of paragraph 1 of the International Law Commission's text, he did not claim that the result of the vote so far taken had been to secure the former object, because the Chairman had asked sponsors of amendments in replying to the debate to refer only to paragraph 1 of the International Law Commission's text. His delegation did not wish to take advantage of the form in which its amendment was presented to deprive the Committee of an opportunity to take a separate decision on paragraph 2 of the International Law Commission's text.

31. The CHAIRMAN said that he would put to the vote first the United Kingdom amendment as a whole, and then paragraph 2 of article 46 and the amendments thereto.

32. Mr. HEUMAN (France) considered that the voting was null and void and that there should be a new vote. He supported the procedure suggested by the representative of Switzerland.

33. Mr. BOUZIRI (Tunisia) disagreed with the representative of France. The Chairman had made it clear before the vote that the entire United Kingdom amendment was a substitution for paragraph 1 of the International Law Commission's text and the United Kingdom representative had confirmed his explanation. The amendment had been rightly voted on first, as the furthest from the original text.

34. The CHAIRMAN pointed out that the procedure advocated by the representative of France could only be followed if, under rule 33 of the rules of procedure, the Committee decided by a two-thirds majority to reconsider its action.

35. Mr. HEUMAN (France) agreed that there had been an oral clarification and did not insist on rule 33 being applied.

36. The CHAIRMAN invited the Committee to vote on the United Kingdom amendment as a whole.

The United Kingdom amendment (A/CONF.25/C.2/L.136) was adopted by 32 votes to 17, with 13 abstentions.

37. The CHAIRMAN invited the Committee to vote on paragraph 2 of article 46 as drafted by the International Law Commission.

38. Mr. BLANKINSHIP (United States of America), speaking on a point of order, said he had withdrawn his amendment (L.7) in the belief that the United Kingdom amendment was intended as the complete text of article 46.

39. Baron van BOETZELAER (Netherlands) said that he had had the same impression. If the United Kingdom amendment was adopted there would be no need to vote on his own amendment (L.17). If it were rejected, however, he would maintain his amendment.

40. Mr. HART (United Kingdom) said that he wished to exercise his right to make a statement before the vote, in view of comments by a number of representatives who had raised questions regarding the effect of article 19 (Appointment of the consular staff).

41. Paragraphs 5 and 6 of the International Law Commission's commentary on article 46 made it clear that paragraph 2 was concerned with permits for work outside the consulate. The United Kingdom delegation considered that article 46 should not contain provision for work outside the consulate, because such work should be subject to the normal regulations for aliens. There was no comparable provision in the Convention on Diplomatic Relations; and it was not necessary to the

interests of the sending State to grant privileges to persons to engage in private occupations. The deletion of paragraph 2 would also leave article 19 as the only article dealing with work in the consulate.

42. If the purpose of the amendment was not clear, the text could be reviewed by the drafting committee.

43. The CHAIRMAN pointed out that if the Committee did not vote on paragraph 2 of the International Law Commission's draft, it would not have expressed its opinion on the question of work permits, which was the substance of the paragraph. If the paragraph was adopted the text of the whole article would be reviewed by the drafting committee to remove any inconsistencies.

44. Mr. HEUMAN (France) said that he had accepted the United Kingdom representative's explanation that the two paragraphs of his amendment were intended as a substitute for paragraph 1 of article 46. He was confused, therefore, to learn that they were now intended to replace the whole of the International Law Commission's text and that the International Law Commission's second paragraph was to become a third paragraph. He reserved the right to request a reconsideration of the vote under rule 33 of the rules of procedure, so that the Committee could make the situation clear. He suggested that the Netherlands and United States amendments should be put to the vote since the reason for their withdrawal no longer existed.

45. Mr. LEVI (Yugoslavia) supported the French representative's proposal to vote on the remaining amendments. He did not, however, agree that there was any confusion: he only regretted that some amendments had been withdrawn.

46. The CHAIRMAN said he gathered that the United States representative had withdrawn his amendment on the understanding that there would be no need to vote on paragraph 2 of the International Law Commission's draft if the United Kingdom amendment were adopted, as the latter would replace the whole draft article. Since, therefore, he had proposed — though not ruled — that paragraph 2 of the International Law Commission's draft should be put to the vote, it was only fair to ask the United States representative if he had withdrawn his amendment to that paragraph.

47. Mr. BLANKINSHIP (United States of America) confirmed that he had withdrawn his amendment (L.7): the reference to work permits was unnecessary because the Committee considered that article 19 was adequate. He suggested that the Committee should vote on whether to delete paragraph 2 or not; he had only raised his point of order because he was afraid that adoption of paragraph 2 might result in an incongruous article.

48. Mr. SILVEIRA-BARRIOS (Venezuela) said he had never had any doubt that the United Kingdom amendment referred solely to paragraph 1 of the International Law Commission's draft: he had only been confused by the subsequent reference to paragraph 2. He suggested that the Committee should consider the Netherlands amendment (L.17) — which he would support — before voting on paragraph 2.

49. Mr. HART (United Kingdom) suggested that the Committee's work would be simplified if he were allowed formally to propose, as a new amendment, the deletion of paragraph 2 which, as he had already explained, was the substance of his original amendment (L.136). Being furthest from the existing text, the amendment could be voted on forthwith.

50. The CHAIRMAN ruled that suggestion out of order.

51. Mr. AMLIE (Norway) formally re-submitted the amendment which had been withdrawn by the United States representative (L.7).

52. The CHAIRMAN invited the Committee to vote on the former United States amendment reintroduced by Norway.

53. Mr. REBSAMEN (Switzerland) requested a separate vote on the words " private staff " in the two places where they appeared in the amendment, as he had proposed their deletion from paragraph 1 of the International Law Commission's text.

54. Mr. HEUMAN (France), speaking on a point of order, said he was concerned at the United Kingdom representative's new proposal. To start with, he, together with the United States, Yugoslav and Netherlands representatives, had thought that the United Kingdom amendment was intended to replace the whole of article 46, paragraph for paragraph, but later it had been explained that it was intended to replace only paragraph 1 of the existing text. Now, he understood that the amendment implied the deletion of paragraph 2 of the International Law Commission's text. He would find it difficult to vote in the confusing circumstances and asked the Chairman if he would seriously consider whether the Committee could reverse its earlier votes.

55. The CHAIRMAN said that after careful consideration he had no alternative but to invite the Committee, in accordance with rule 33 of the rules of procedure, to decide by a two-thirds majority if it wished to reconsider its previous action. He invited the Committee to vote.

The result of the vote was 26 in favour and 16 against, with 19 abstentions.

56. The CHAIRMAN announced that a two-thirds majority had not been obtained. He therefore proposed that the Committee should vote on paragraph 2 of the International Law Commission's text because its substance was not included in the United Kingdom amendment, and the Committee should pronounce on it. He invited the Committee to vote first on the words " private staff ".

57. Baron van BOETZELAER (Netherlands), speaking on a point of order, said that his own amendment (L.17) had not been withdrawn. He would maintain it if the United States amendment was rejected.

58. Mr. HART (United Kingdom), speaking on a point of order, said it was clear from his amendment (L.136) that he had intended that article 46 should refer solely to residence permits and that paragraph 2 of the International Law Commission's draft should

no longer exist. It seemed only fair that the Committee should first vote on the question whether paragraph 2 still stood.

59. The CHAIRMAN ruled that the motion was an oral amendment and therefore out of order. He invited the Committee to vote on the retention of the words " private staff " in the United States amendment (A/CONF.25/C.2/L.7) reintroduced by Norway.

The words " private staff " were rejected by 26 votes to 25, with 10 abstentions.

60. The CHAIRMAN invited the Committee to vote on the amendment as modified by the deletion of the references to " private staff ".

The amendment was rejected by 22 votes to 21, with 16 abstentions.

61. Baron van BOETZELAER (Netherlands) said that he maintained his amendment because paragraph 2 of the International Law Commission's draft had not been rejected and because his amendment excluded a category of persons mentioned in paragraph 1 as adopted in the United Kingdom amendment.

62. Mr. VRANKEN (Belgium) said that his amendment (L.132) covered the same point as the Netherlands amendment but he had drafted it in a more general form so that it did not apply solely to the families of the members of the consulate. The article could apply to part-time staff.

63. Mr. HEUMAN (France) said that, although his amendment (L.175) had been implicity rejected by the adoption of the United Kingdom amendment replacing paragraph 1, he considered that it was still valid for paragraph 2, since paragraph 2 provided exemption in respect of work permits for the persons referred to in paragraph 1. He would therefore like his amendment to be considered with the other amendments to paragraph 2.

64. The CHAIRMAN concurred.

65. Mr. BOUZIRI (Tunisia) pointed out that the rejection of the former United States amendment (L.7) was tantamount to rejecting the International Law Commission's paragraph 2, since the deletion of the references to " private staff " made the two paragraphs more or less identical. Moreover, the persons referred to in paragraph 2 were no longer the ones intended by the International Law Commission, because the Commission's first paragraph had been replaced by the United Kingdom amendment. The same applied to the Belgian amendment.

66. The CHAIRMAN said that the point was valid. The representatives of Belgium and the Netherlands might wish to reconsider their amendments to the International Law Commission's paragraph 2.

67. Mr. VRANKEN (Belgium) agreed with the representative of Tunisia. He suggested that his amendment could be altered to set out the persons concerned instead of indicating them by reference to paragraph 1.

68. Mr. SILVEIRA-BARRIOS (Venezuela) did not agree with the argument of the French representative that his amendment (L.175) was applicable to paragraph 2. It was clearly stated in the amendment that it referred to paragraph 1.

69. Mr. HEUMAN (France) said that the Committee was still free to approve exemption in respect of work permits, for it was not bound to follow the same policy for residence permits as for work permits. He agreed with the Belgian representative's suggestion: whichever of the amendments was adopted, the opening sentence could be amended to state the persons concerned instead of referring to paragraph 1.

70. Baron van BOETZELAER (Netherlands) said that the reasoning of the representative of France would hold good if it had not been agreed to delete the reference to " private staff " from the United States and Norwegian amendment (L.7).

71. Mr. BOUZIRI (Tunisia) said that the point made by the representative of France was true but theoretical. He himself had merely pointed out that the persons referred to in paragraph 1 were no longer the same and that the fact should be taken into account in the Netherlands and Belgian amendments. Moreover, although in theory two categories of persons could exist and the decision on paragraph 1 would not necessarily affect paragraph 2, there had also been other decisions concerning paragraph 2. The words " private staff " in the United States amendment had been rejected. He could not agree that the French amendment was applicable to paragraph 2. It was proposed in respect of paragraph 1, and the words it proposed to replace no longer existed.

72. Mr. REBSAMEN (Switzerlands) considered that the French amendment was valid in principle. He suggested that a separate vote should be taken on the words " private staff " in that amendment.

73. Mr. LEVI (Yugoslavia), moved the ajournment of the debate.

It was so decided.

The meeting rose at 6.10 p.m.

THIRTIETH MEETING

Tuesday, 26 March 1963, at 10.40 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 46 (Exemption from obligations in the matter of registration of aliens and residence and work permits) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 46, paragraph 2.[1]

2. Mr. MARESCA (Italy) suggested that the French amendment (L.175) applied equally to paragraph 2 of

[1] For the list of amendmnts to article 46, see the summary record of the twenty-eighth meeting, footnote to para. 11.

the draft article, as did the Netherlands amendment (L.17). His delegation would support either of those amendments.

3. Mr. VRANKEN (Belgium) said that the adoption of the United Kingdom amendment, together with the provisions of article 56, were acceptable to his delegation and he would not press his own amendment (L.132) to the vote.

4. Baron van BOETZELAER (Netherlands) said that since article 56 did not cover the cases mentioned in his amendment (L.17) his delegation would maintain it.

5. Mrs. VILLGRATTNER (Austria) said that paragraph 2 seemed to be ambiguous because the reference to paragraph 1 might be understood to mean that the persons concerned were members of the consulate, members of their families and their private staff. The drafting committee would do well to improve the text.

6. Mr. von NUMERS (Finland) pointed out that paragraph 2 dealt with work permits and did not necessarily apply to the same persons as paragraph 1. Moreover, article 19 applied to consular officials and made no mention of their private staff.

7. The CHAIRMAN said that the two paragraphs of article 46 might be regarded as two separate articles, for they dealt with two different matters — namely, work permits and residence permits.

8. He proposed that paragraph 2, which would become new draft article 46 A, should be considered later.[2]

It was so decided.

Article 47 and proposed new article
(Social security exemption)

9. The CHAIRMAN invited the Committee to consider article 47 and the amendments thereto submitted by India (A/CONF.25/C.2/L.160) and France (A/CONF.25/C.2/L.186).

10. Mr. KHOSLA (India) observed that article 47 was based on article 33 of the 1961 Vienna Convention. Nevertheless, in submitting its amendment (L.160), the Indian delegation had wished to make one point clear and to confer the exemption upon members of the families of members of the consulate " forming part of their households who are not engaged in gainful occupation or professional or other activities ". Two points were included in the phrase added — the first that members of the family of members of the consulate must be included in the exemption and the second that only those should be included in the exemption who did not carry on any private gainful occupation of any kind. The Indian delegation felt that that would contribute towards filling a gap in the International Law Commission's text. Some delegations seemed to have doubts about the phrase " professional or other activities " in that such a phrase might possibly include activities which were not gainful. He suggested that the phrase as it stood should be referred to the drafting committee with a view to the insertion of a phrase which, while having as wide a meaning as possible, would contain a specific reference to the fact that the activities must be gainful.

11. Mr HEUMAN (France) said that, since the First Committee had adopted article 71, the French amendment had become purposeless and therefore he would not press for a vote. He was, however, in favour of deleting paragraph 4 of the draft article, since the mere possibility of participating in the social security system of the receiving State would entail certain administrative difficulties.

12. Mr. SMITH (Canada) considered that the term " services rendered " in paragraph 1 might lead to confusion because it was not clear whether the exemption would also apply to services rendered by persons other than members of the consulate. He suggested that it might be replaced by the words " services they render ". His delegation also wished to make it clear that, in its view, the exemption from indirect taxes in paragraph 1 (*a*) of article 48 prevailed over the exemption from " social security provisions " provided for in article 47. It was possible that the term might be interpreted to include " social security taxes ", including indirect taxes, but it should be subject to paragraph 1 (*a*) of article 48. The text of the Indian amendment was clearer than that of the Commission, and the Canadian delegation would vote for it. He shared the misgivings expressed on a number of occasions by the United States representative and hoped that persons permanently resident in the receiving State would be excluded from the exemptions provided in article 47 and other articles of the convention.

13. The CHAIRMAN said he would ask the drafting committee to take the Canadian representative's remarks into account.

14. Mr. JESTAEDT (Federal Republic of Germany) said that his delegation would reintroduce the amendment (L.186) withdrawn by the French delegation. The First Committee had adopted article 71, but the application of " social security provisions " would impose an additional burden of work on the administrative staff of consulates and diplomatic missions, and voluntary participation in the social security system of the receiving State would be difficult to put into practice.

15. Mr. RUSSELL (United Kingdom) said that the International Law Commission had prepared a generally satisfactory text for article 47. The United Kingdom delegation would, however, be prepared to vote in favour of the Indian amendment extending the exemption to members of the families of consular officials, provided that certain modifications were made in the wording of the amendment; in the first place the words " private " should be inserted before the words " gainful occupation " and secondly, the expression " a gainful occupa-

[2] See the summary record of the thirty-second meeting.

tion or profession or other activities " should be replaced by the expression " any gainful occupation whatsoever "; it was desirable to maintain uniformity with article 56. With regard to the amendment in document L.186 originally proposed by France and reintroduced by the Federal Republic of Germany, the United Kingdom delegation considered that it was redundant in view of the adoption of article 71 by the First Committee; that article provided that existing agreements, bilateral or multilateral, would remain in force and that States would be free to conclude further such agreements as they saw fit.

16. Mr. SHARP (New Zealand) said that his country's legislation on social security imposed certain obligations on persons permanently resident in New Zealand. That matter should, however, be dealt with in connexion with article 69.

17. Mr. LEVI (Yugoslavia) thought that the adoption of article 71 by the First Committee had rendered the amendment in document L.186 redundant.

18. Mrs. VILLGRATTNER (Austria) pointed out that social security was assuming increasing importance and that article 71 would not suffice to settle questions of exemption. Her delegation would therefore support the amendment in document L.186, but would like the words " and shall not preclude the conclusion of such agreements in the future " to be replaced by the words " and those which may be concluded in the future ".

19. Mr. NASCIMENTO e SILVA (Brazil) observed that the Committee could choose one of many solutions. It could adopt the amendment in document L.160 or the amendment in document L.186, and it could also delete paragraph 4. The Brazilian delegation considered that paragraph 4 should be retained, because due account should be taken of subordinate staff, who should, if they wished, be able to participate voluntarily in the social security system of the receiving State. It should be noted that the last phrase of paragraph 4 referred to cases where the receiving State did not permit such participation. The Indian amendment would improve the text of the draft article; he endorsed the United Kingdom representative's suggestion that the word " private " should be inserted before " gainful occupation ".

20. Mr. JESTAEDT (Federal Republic of Germany) pointed out that, in again placing before the Committee the amendment withdrawn by France, he was proposing to replace paragraph 4 by that text, and not to add any new paragraph.

21. Mr. WASZCZUK (Poland) thought that the Indian amendment would improve the Commission's text. It was obvious that the families of members of the consulate should be exempt from social security provisions, and his delegation would therefore support that amendment. With regard to the amendment reintroduced by the Federal Republic of Germany, article 71 covered all agreements concluded in the matter; he doubted the wisdom of including a clause similar to article 71 in each article. His delegation was against the deletion of paragraph 4, because it was inadvisable to exclude the possibility of voluntary participation in the social security arrangements of the receiving State if such participation was permitted by that State.

22. Mr. KHOSLA (India) accepted the drafting changes suggested by the United Kingdom representative, on the understanding that the activities or occupation therein mentioned would be those which would normally be subject to the social security system of the receiving State. The matter might be considered by the drafting committee.

23. The CHAIRMAN put to the vote the Indian amendment (A/CONF.25/C.2/L.160), as orally revised by the United Kingdom representative.

The amendment, as revised, was adopted by 55 votes to 3, with 7 abstentions.

Paragraphs 2 and 3 were adopted unanimously.

24. Mr. JESTAEDT (Federal Republic of Germany) accepted the Austrian representative's suggestion to alter the wording of the amendment in document L.186.

25. The CHAIRMAN put to the vote the amendment reintroduced by the Federal Republic of Germany (A/CONF.25/C.2/L.186), as modified by the Austrian representative's suggestion.

The amendment was rejected by 41 votes to 7, with 17 abstentions.

Paragraph 4 was adopted by 65 votes to 1, with 2 abstentions.

26. Baron van BOETZELAER (Netherlands) introduced an amendment (L.109) in which his delegation proposed the addition of two new articles.[3] He explained that paragraph 3 of the article that the Committee had just adopted provided for only one case, that in which members of the consulate employed persons who were not exempted from the social security system. The purpose of the second article in his delegation's proposal was to supplement the provisions of paragraph 3.

The second article in the Netherlands amendment (A/CONF.25/C.2/L.109) was rejected by 27 votes to 16, with 20 abstentions.

Article 47, as a whole, as amended, was adopted by 65 votes to none, with 1 abstention.

27. Mr. SILVEIRA-BARRIOS (Venezuela) said he had been unable to vote for the text as a whole because, in his opinion, the addition of the word " private " limited the scope of the article.

28. Mr. BLANKINSHIP (United States of America) said that he had voted on the understanding that the article would be interpreted in accordance with the commentary of the International Law Commission to mean that its provisions did not apply to nationals of the receiving State or to persons permanently resident in

[3] The first of these was later withdrawn.

that State. He assumed that article 69 would be amended accordingly.

29. Mr. DRAKE (South Africa) said he had voted in favour of the article as a whole on the same understanding as the United States representative.

Article 48 (Exemption from taxation)

30. The CHAIRMAN invited debate on article 48 and the amendments relating to it.[4]

31. Baron van BOETZELAER (Netherlands) submitted his amendment (L.18/Rev.1) and pointed out that in drafting article 48 the International Law Commission had made use of a different method from that employed with the previous articles. It provided that the members of the consulate should be exempt from all dues and taxes save those expressly specified in the article. That was liable to give rise to considerable difficulty, if, for instance, new taxes were imposed; the question might arise whether the members of the consulate would be automatically exempted. Under the Netherlands amendment, on the other hand, the receiving State would still be in a position to negotiate.

32. Mr. VRANKEN (Belgium) said that his amendment (L.133) made no changes of substance to article 48. One category of persons had, however, been omitted from the original version — namely, consular employees engaged in a private gainful occupation. He had therefore considered it advisable to include that category under paragraph 3 of his amendment.

33. Mr. KANEMATSU (Japan), introducing his amendment (L.84/Rev.1), said that there was no general rule in international law giving tax exemption to the family of members of the consulate, and he proposed to delete the reference to them in article 48 and also to the members of the private staff in paragraph 2. He wished to draw attention to the interpretation given by his delegation to the English term " dues ", which was used in article 48 and various other articles of the draft convention. The term referred to revenue taxation and not to charges levied by the State or by public administrations in return for special services rendered by those administrations. He requested that his statement should be recorded.

34. Mr. DRAKE (South Africa) said that, after studying the French amendment (L.195), his delegation had decided to withdraw the amendment (L.170) it had proposed to make to paragraph 1 (*b*). The French amendment, which referred directly to article 31, seemed to him to be preferable, and his delegation would be glad to accept it, subject to certain drafting changes which might be referred to the drafting committee. He supported the remarks on article 69, made by the United States representative at the 28th meeting.

35. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) thought that the International Law Commission's draft was acceptable. Nevertheless, his delegation proposed in its amendment (L.142) to extend tax exemption to " service staff ", since the convention under discussion should go further than the 1961 Convention. That measure would have practical consequences and contribute to the proper performance of consular duties.

36. Mr. LEVI (Yugoslavia) pointed out that the term " member of the consulate " remained undefined, since article 1 had not yet been adopted.

37. Mr. SRESHTHAPUTRA (Thailand) said that his delegation's amendment (L.67) was self-explanatory. His delegation considered that nationals of the receiving State and persons who were locally recruited should not be entitled to the exemption under paragraph 2.

38. Mr. ROSSI LONGHI (Italy) thought that paragraph 1 was indispensable and that its deletion might create confusion.

39. Mr. REBSAMEN (Switzerland) said that his delegation's amendment (L.158) was on very much the same lines as sub-paragraph (*a*). It did not make any change in substance and was intended to clarify the original text.

40. Mr. CONRON (Australia) said that the purpose of his amendment (L.197) was to modify paragraph 2 so that the conditions for tax exemption should be similar to those laid down in the 1961 Convention. The International Law Commission's text did not restrict the tax concession in paragraph 2 to domestic servants in the private employment of members of the consulate as the 1961 Convention had done. It would give a tax exemption to certain other classes of persons employed by members of a consulate, while similar people in the employ of diplomatic agents would be taxable under the terms of the 1961 Convention.

41. Mr. KHOSLA (India) said that he did not consider the conditions in the International Law Commission draft satisfactory. He supported the amendment by Thailand (L.67) and proposed to withdraw his own amendment (L.177) in favour of the amendment of Japan, since they were exactly the same. He suggested that a vote should be taken on paragraph 1 of the Japanese amendment (L.84/Rev.1) and also on the Thailand amendment. He would vote against amendments that would result in a radical alteration to the text.

42. Mr. SILVEIRA-BARRIOS (Venezuela) associated himself with the remarks made by the Yugoslav representative and hoped that the drafting committee would establish uniformity of terminology between the terms " members of the consulate " and " consular officials ".

The meeting rose at 12.55 p.m.

[4] The following amendments had been submitted; Netherlands, A/CONF.25/C.2/L.18/Rev.1; Thailand, A/CONF.25/C.2/L.67; Japan, A/CONF.25/C.2/L.84/Rev.1; Belgium, A/CONF.25/C.2/L.133; Ukrainian Soviet Socialist Republic, A/CONF.25/C.2/L.142; Switzerland, A/CONF.25/C.2/L.158; South Africa, A/CONF.25/C.2/L.170; India, A/CONF.25/C.2/L.177; Canada, A/CONF.25/C.2/L.193; France, A/CONF.25/C.2/L.195; Australia, A/CONF.25/C.2/L.197. The Netherlands had also submitted a proposal (A/CONF.25/C.2/L.110) to add a new paragraph.

THIRTY-FIRST MEETING

Tuesday, 26 March 1963, at 3.15 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 48 (Exemption from taxation) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 48 and the amendments submitted.[1]

2. Mr. SMITH (Canada) introduced his amendment (L.193). The words " and duties on transfers " in paragraph 1 (*c*) of article 48, empowering the receiving State to levy duties on transfers by members of the consulate, constituted a provision not contained in the Convention on Diplomatic Relations and, in the Canadian view, not really essential to the draft convention on consular relations. In any case, the wording lacked precision. The Canadian amendment was designed to make it clear that the duties in question concerned transfer of property at death or any transfer that was deemed to be transferred at death for tax purposes under the receiving State's laws, and that the receiving State would not be able to levy tax on transfers such as gifts made between living members of the consul's family. There was adequate provision for the receiving State to levy transfer duties under paragraph 1 (*b*) in respect of immovable property, 1 (*d*) in respect of investments and 1 (*f*) by stamp duty on property. It was a complicated subject and he hoped the Committee would give it very serious consideration.

3. He fully supported the South African amendment (L.170) and agreed in general with the Australian amendment (L.197) and with the Swiss amendment (L.158), which gave a more precise definition of indirect taxes of particular interest to Canada. He also agreed with the French amendment (L.195) and supported the South African representative's suggestion at the previous meeting.

4. Mr. HEUMAN (France) said that his delegation's amendment to paragraph 1 (*a*) had been submitted because a similar provision proposed in the Convention on Diplomatic Relations had given rise to difficulties, as the term " indirect taxes " was liable to varying interpretations in different countries. The matter had been raised by the United States representative at the 1961 Conference and it had been agreed that the tax in question was the kind normally referred to as purchase tax. He therefore considered that it would be wise in the present case to use the wording adopted in article 34 of the Convention on Diplomatic Relations. Although the Swiss amendment (L.158) was similar to his own, he could not support it because it introduced an additional proviso which would have the undesirable effect of implying wider latitude for consular than for diplomatic officials.

[1] For the list of amendments to article 48, see the summary record of the thirtieth meeting, footnote to para. 30.

5. With regard to his amendment to paragraph 1 (*b*) he greatly appreciated the support of the representatives of Canada and South Africa. The South African representative's suggestion at the previous meeting would improve his amendment and he would be glad to incorporate it. The reference to the head of post would thus be deleted and the last part of the amendment would read: "... immovable property owned or leased on behalf of the sending State ".

6. He supported the Belgian amendment (L.133) though its purpose might be achieved more easily by amending article 56 (Special provisions applicable to career consular officials who carry on a private gainful occupation). He opposed the amendments by India (L.177), Japan (L.84/Rev.1) and the Netherlands (L.18/Rev.1). He would abstain on the Canadian amendment (L.193), which did not seem logical. The amendment of Thailand (L.67) might more properly be dealt with under article 69 (Members of the consulate, members of their families and members of the private staff who are nationals of the receiving State).

7. Mr. JESTAEDT (Federal Republic of Germany) said that he would vote for the amendment of the Ukrainian SSR (L.142) since it conferred the same rights on members of the consulate and the service staff. His country had followed that policy since the nineteenth century and was strongly against discrimination between embassy and consulate personnel. Every person sent abroad by a government should enjoy the same privileges and immunities and he regretted that the Conference on Diplomatic Relations had not accepted that principle. Many States had supported the principle and he was glad to see it introduced into the Conference on Consular Relations. The Ukrainian amendment was a contribution to the progressive development of consular law.

8. Mr. KAMEL (United Arab Republic) sad that he was in favour of maintaining the International Law Commission's draft; its adoption would give members of the consulate almost the same tax exemptions as diplomats enjoyed under the diplomatic convention. He therefore opposed the drastic amendments of Belgium and the Netherlands. He would, however, support the Canadian, Japanese, Indian and Swiss amendments to paragraph 1 and the amendments of Japan and Thailand to paragraph 2.

9. Mr. STRUDWICK (United Kingdom) said that he supported the Netherlands amendment (L.18), especially as it did not offer exemption from taxation to families or private servants — the two categories which had caused most concern in the International Law Commission's draft. His only objection to the amendment was the exemption from duty on the purchase of a motor vehicle (paragraph 2 (*c*)). Although he would prefer to see families and private staff entirely excluded from exemption, he supported the Belgian amendment (L.133) because it was mainly concerned with the question of gainful private occupation. The subject could be dealt with equally well under articles 48 or 56 and it might be advisable to refer it to the drafting committee. He strongly supported the Japanese amendment, which was

the most far-reaching, because English law did not permit tax exemption for members of families and no such exemption appeared in any of its bilateral consular agreements. It was not necessary to apply the same provisions as for diplomats since consular officials did not enjoy the same immunities: they could be required by the receiving State to give information about their income, and their families could be obliged to comply with the normal conditions laid down by the tax authorities in the receiving State regarding information and could even be compelled to pay tax. The question of private staff — staff employed not by the sending State but by individual members of the consulate — was a new element, because they were normally not taxed by the sending State, being outside its jurisdiction. If they were given exemption by the receiving State as well, they would be in the abnormally privileged position of not paying tax to any State. The only category at present in that position was that of employees of international organizations, and many of the organizations (including the United Nations, the specialized agencies, the Western European Union and the OECD) thought the situation undesirable and were remedying it by imposing their own internal tax.

10. He could not support the Ukrainian amendment because it was too liberal. He was not sure that the amendment by Thailand would be covered by article 69, as had been suggested, for article 69 excluded from privileges consular officials who were nationals of the receiving State, but, unlike the corresponding provision in the diplomatic convention, it did not mention residents of the receiving State. The amendment by Thailand was a solution only in respect of the private and service staff. He hoped that permanent residents in the receiving State would be included in article 69; otherwise consular staff would receive better treatment than diplomats. He supported the Australian amendment, although it was a minor point, because it would bring the consular convention into line with the diplomatic convention. He also supported the Canadian amendment, though he did not consider it essential. He would support the French amendment, but suggested that the English text of paragraph 1 (*b*) might be improved if the words " subject, however," were replaced by the words " without prejudice ". The new paragraph proposed in the Netherlands amendment (L.110) was a valuable addition because in certain circumstances the employer had to deduct tax from employees and make payment to the revenue authorities, and also because he had to inform the revenue authorities of the names and addresses of the persons he employed. He strongly supported the amendments by India and Japan.

11. Mr. PETRENKO (Union of Soviet Socialist Republics) said that on the whole he found the International Law Commission's draft satisfactory. It had been produced in the face of difficulties due to variations in the practice and legislation of different countries and the Commission had endeavoured to make it as widely acceptable as possible so as to provide a good basis for the Final Act. Those variations, however, had given rise to a large number of amendments and it was only right that they should be examined and that arguments for and against them should be listened to so that the best possible compromise could be adopted.

12. The Ukrainian amendment (L.142) sought to include the service staff in the exemption from taxation and he agreed with the representative of the Federal Republic of Germany that the proposal was in conformity with the policy followed by some countries since the beginning of the nineteenth century. Most Soviet consular conventions included a similar provision, one example being article 9 of the Convention between the Soviet Union and Yugoslavia which provided that the consular personnel, their wives and minor children should be free from direct taxation, if the corresponding categories of diplomatic persons were also exempted. The provision was worth considering for the present convention as it reflected a liberal approach to the matter. It would safeguard the interests of the receiving and the sending State and promote the progressive development of international law. He therefore considered the Ukrainian amendment preferable to the amendments of Belgium (L.133), Japan (L.184/Rev.1) and the Netherlands (L.18/Rev.1). The Netherlands amendment came closest to covering all the consular personnel but it omitted the members of the family.

13. The Swiss amendment (L.158) was more suited to a small group of States or to a single State, whereas the International Law Commission's draft had a more general scope and covered all national circumstances more adequately. The French representative's suggestion for bringing the text into line with the corresponding text of the Diplomatic Convention was a good one and he saw no objection to it. He also agreed with the French proposal to make a specific reference in paragraph 1 (*b*) to article 31, adopted by the Committee. The Canadian amendment (L.193) to paragraph 1 (*c*) was an attempt to limit the scope of the International Law Commission's text. In reality it tended to exclude the duties on transfers, levied by the receiving State, from the exemption provided for in that article, or to reduce their importance. As the exemption from taxation of the duties on transfers was also of importance both from the legal and practical points of view, the Soviet delegation objected to the Canadian proposal and was in favour of adopting paragraph 1 (*c*) of the International Law Commission's text.

14. Mr. CAMPORA (Argentina) said that there were two sides to the question of tax exemption: the category of person to be exempted, and what exemptions should be granted. Argentina was in favour of members of the consulate having the same tax exemptions as members of diplomatic missions. Under article 48, therefore, the persons to whom exemptions should apply should be members of the consulate as defined in article 1 of the draft convention; and the exemptions themselves should in principle be the same as those granted to members of the diplomatic mission. He would vote in favour of any amendments with that end in view. The definitions given in article 1 served as the working basis for the Conference and any later modifications to those definitions might affect the attitude of representatives on the various questions discussed. He therefore reserved his position

in case an amendment to any definition in article 1 should affect any of the matters discussed in the Committee.

15. Mr. SAYED MOHAMMED HOSNI (Kuwait) said that the amendment proposed by Thailand (L.67) was a valuable addition to the International Law Commission draft. Unless it was provided that only those members of the service staff and members of the private staff who were " not nationals of the receiving State nor locally recruited " should be exempt, not only would better treatment be accorded to consular staff than to the staff of a diplomatic mission, but a privileged group would be created among the nationals of the receiving State with the resulting possibility of difficulties in the application of the national legislation. In regard to the question of whether it would be more appropriate to specify the exception in article 48 or in article 69, he would remind the Committee that it had on previous occasions been found desirable to include similar provisions in an article without awaiting the decision on a subsequent related article. He suggested that it would increase support for the amendment by Thailand if, in view of the comments which had been made, the words " nor permanent residents thereof " were to be substituted for the words " nor locally recruited " in the second line of the proposed amendment.

16. Mr. ANGHEL (Romania) said that, in the interests of their activities, members of the consulate should be exempt from income tax and other forms of taxation; there should not be a distinction between consular officials and consular employees. His delegation supported the International Law Commission's text and would vote in favour of amendments tending to maintain, to widen or to clarify it, for example, the amendment of the Ukrainian Soviet Socialist Republic (L.142). It could not, however, accept the exclusion from exemption of any category mentioned in paragraph 1. Members of the family should also enjoy exemption from taxation, as otherwise the salaries of members of the consulate might be subject to taxation. His delegation would therefore vote against the amendments submitted, for example, by Japan (L.84/Rev.1) and the Netherlands (L.18/Rev.1). His delegation considered that the Netherlands proposal (L.110) for the addition of a new paragraph was superfluous and might be subject to misinterpretation; the Committee had already rejected a similar proposal in connexion with article 47. The Romanian delegation would also vote against the Belgian proposal (L.133) which was restrictive and not clearly drafted. Details such as those covered by the Swiss amendment (L.158) should not be included in the convention. The subject of the Thailand amendment would be dealt with in article 69.

17. Mr. SILVEIRA-BARRIOS (Venezuela) said that under the legislation of his country foreign consular officials were exempted from income tax on income paid by the sending State. His delegation could accept further exemption for high consular officials such as the head of post, but not for other members of the consular staff, and still less for service staff and members of their families. His delegation would therefore give its general support to paragraph 1 in the International Law Commission's draft. It could not, however, accept paragraph 2 since in Venezuela the category of persons mentioned in that paragraph were subject to income tax like other residents of the country.

18. Mr. BLANKINSHIP (United States of America) said that his delegation was in favour of maintaining, as far as possible, the International Law Commission's draft, which was similar to the corresponding article in the Vienna Convention on Diplomatic Relations. From the administrative point of view it would be helpful to the tax authorities and the Treasury if the texts were similar, and to that extent his delegation would tend to equate diplomatic and consular immunities. It would not with to see tax exemption lessened to any significant extent, although it would perhaps favour the withdrawal of exemption privileges from permanent residents in the receiving State. It was therefore hoped that paragraph 4 (*b*) of the International Law Commission's commentary could be taken into account with respect to permanent residents of the receiving State in addition to the formal inclusion in article 69 of a provision concerning such residents.

19. His delegation's position in regard to the various amendments would be generally in accordance with the views just outlined. His delegation agreed with the amendment submitted by Thailand (L.67), but was inclined to the view that the matter should be dealt with in article 69. In regard to the Belgian amendment (L.133) his delegation agreed that members of consular employees' families who were gainfully employed should not be granted exemption, but it might be more convenient to cover the point in article 56. In regard to the amendment presented by the Ukrainian Soviet Socialist Republic, his delegation felt that it might be preferable to adhere to the International Law Commission's draft in that instance. His delegation would support the French amendment to paragraph 1 (*a*) (L.195, part 1), which would bring the language into exact conformity with article 34 of the Vienna Convention. His delegation could support the Canadian amendment (L.193) although its full implication and substance were not entirely clear.

20. The attention of the drafting committee should be drawn to several points in the text where changes might be made to ensure conformity with the text of article 34 of the Vienna Convention; for example, the substitution of " except for " save " in paragraph 1.

21. Mr. MARESCA (Italy) said that in view of the existing customary law, and the national legislation which had developed from it, it was impossible to accept such comprehensive exemption from taxation as was granted by the International Law Commission's draft of article 48. Consular employees (or, as they were now termed, " service staff ") could be given the same exemption as consular officials only in respect of any official emoluments or salary received by them as compensation for their services. It should be remembered that the corresponding article in the 1961 Convention (article 34) was governed by article 37 of that convention, under which exemption was not automatically granted to those who were not nationals of the sending State or who were permanently resident in the receiving State. Since

there was no similar qualifying provision in the draft articles on consular relations, there was no restriction on the exemption granted by article 48. The Netherlands proposal for the re-draft of the article (L.18/Rev.1) made a clear distinction between consular officials and members of the consulate and would allow exemption from taxation to be granted in accordance with the established and acceptable practice. It would be in the interests of all States if the Netherlands proposal were allowed priority in voting, and were approved by the Committee. If the criterion of equal tratment for all members of the consulate were maintained, it would be necessary at least to introduce some limitation in regard to members of families who were carrying on a gainful private occupation in the receiving State.

22. Mr. von NUMERS (Finland) said that the extent of the privileges and immunities granted under article 48 was less than in most other articles in that section. The article contained provisions of limited scope for the avoidance of double taxation. Under Finnish law, persons in the employment of a consulate in any capacity, including the private staff, were exempted from taxation, but only if they were not citizens of Finland. His delegation hoped that the text of article 69 would make satisfactory provision on that point.

23. The CHAIRMAN said that he would invite the sponsors of amendments to reply, should they consider it necessary to do so, to points made in the discussion of the article as a whole. He would then propose to put to the vote, paragraph by paragraph, the International Law Commission's draft of article 48 and the amendments relating to it. In his view, the Netherlands text and the Belgian text were new proposals in accordance with rule 42 of the rules of procedure, and not amendments within the definition in rule 41. The amendments to the International Law Commission text and the text itself should therefore be voted on first. If they were adopted, the new proposals would automatically lapse.

24. Baron van BOETZELAER (Netherlands) said that his delegation would have preferred its proposal to be considered before the International Law Commission draft.

25. Mr. SPACIL (Czechoslovakia) endorsed the Chairman's view that the Netherlands and Belgian texts were new proposals under the rules of procedure.

26. The CHAIRMAN recognized that it was not an easy question to decide and that the conclusion he had reached after very careful consideration might not be accepted by all members of the Committee. Although he did not consider that his view of the matter was being challenged, he would ask the Committee to decide by a vote whether the Netherlands and Belgian texts should be considered as new proposals.

The Committee decided that the Netherlands text (A/CONF.25/C.2/L.18/Rev.1) should be considered as a new proposal by 47 votes to 6, with 8 abstentions.

The Committee decided that the Belgian text (A/CONF. 25/C.2/L.133) should be considered as a new proposal by 39 votes to 9, with 12 abstentions.

27. Mr. SRESHTHAPUTRA (Thailand) said that his delegation considered that article 69 of the International Law Commission's draft covered only the case of nationals of the receiving State and not that of persons who had taken up residence there. His delegation therefore thought it preferable to deal with both cases — namely, the nationals and the permanent residents of the receiving State in the article under consideration — because it was not known what decision the Committee might take in regard to article 69. His delegation would readily accept the sub-amendment proposed by the representative of Kuwait.

28. Mr. HEUMAN (France) said that his delegation would accept the drafting change suggested by the representative of the United States, to the effect that the word " except " should be substituted for " save " in paragraph 1. It would abstain from voting on the amendments submitted by the Ukrainian Soviet Socialist Republic (L.142) and by Australia (L.197) and would vote in favour of the Netherlands proposal to add a new paragraph (L.110).

29. Mr. DRAKE (South Africa) said that after consultation with the Canadian delegation he would suggest that the text of the French amendment to paragraph 1 (*b*) should end with the words " subject, however, to the application of the provisions of article 31."

30. Mr. HEUMAN (France) agreed that the French amendment should be revised in accordance with that suggestion.

31. Baron van BOETZELAER (Netherlands) said that his delegation was prepared to accept the rejection of the part of its proposal (L.109) considered in connection with article 47 as implying that the first part of that proposal would be unacceptable to the Committee in connexion with article 48. The other new paragraph proposed by his delegation (L.110) was a complement to paragraph 3 of article 47.

32. The CHAIRMAN asked if the Netherlands proposal (L.110) replaced the first article in document L.109.

33. Baron van BOETZELAER (Netherlands) pointed out that the proposal in L.109 had referred to " the consulate " but the text of L.110 referred to " members of the consulate ".

The amendment to the opening sentence of paragraph 1 submitted by the Ukrainian Soviet Socialist Republic (A/CONF. 25/C.2/L.142) was rejected by 32 votes to 15, with 14 abstentions.

The amendment to the opening sentence of paragraph 1 submitted by Japan (A/CONF.25/C.2/L.84/Rev.1) was rejected by 30 votes to 23, with 8 abstentions.

The opening sentence of paragraph 1 of the International Law Commission's text was adopted by 54 votes to 1, with 6 abstentions.

The French amendment to paragraph 1 (a) (A/CONF. 25/C.2/L.195) was adopted by 42 votes to 1, with 17 abstentions.

The Swiss amendment to paragraph 1 (a) (A/CONF. 25/C.2/L.158) was rejected by 20 votes to 17, with 27 abstentions.

34. The CHAIRMAN invited the Committee to vote on the French amendment to paragraph 1 (*b*) which, as revised, would read: " (*b*) Dues or taxes on private immovable property situated in the territory of the receiving State, subject, however, to the application of the provisions of article 31."

The French amendment to paragraph 1 (b) (A/CONF. 25/C.2/L.195), as revised, was adopted by 49 votes to 2, with 11 abstentions.

The Canadian amendment to paragraph 1 (c) (A/CONF. 25/C.2/L.193) was rejected by 19 votes to 12, with 31 abstentions.

Paragraph 1 (c) of the International Law Commission's text was adopted unanimously.

35. The CHAIRMAN said that as no amendments had been submitted to sub-paragraphs (*d*), (*e*) and (*f*) of paragraph 1 it would be unnecessary to take separate votes on them. He would therefore put to the vote paragraph 1, as amended.

Paragraph 1 as a whole, as amended, was adopted by 60 votes to none, with 3 abstentions.

36. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) withdrew his amendment to paragraph 2 (L.142) since it had been related to his delegation's amendment to paragraph 1, which had been rejected by the Committee.

The Japanese amendment to paragraph 2 (A/CONF.25/ C.2/L.84/Rev.1) was rejected by 31 votes to 17, with 12 abstentions.

37. The CHAIRMAN invited the Committee to vote on the amendment submitted by Thailand which, as revised, would mean the insertion after the words " Members of the service staff and members of the private staff who are " of the words " not nationals of the receiving State nor permanent residents thereof but are . . ."

The amendment submitted by Thailand to paragraph 2 (A/CONF.25/C.2/L.67), as revised, was adopted by 31 votes to 9, with 22 abstentions.

The Australian amendment to paragraph 2 (A/CONF.25/ C.2/L.197) was rejected by 22 votes to 6, with 32 abstentions.

38. The CHAIRMAN invited the Committee to vote on the Netherlands proposal to add a new paragraph to article 48.

The Netherlands proposal (A/CONF.25/C.2/L.110) for the addition of a new paragraph was adopted by 26 votes to 8, with 27 abstentions.

Article 48, as a whole, as amended, was adopted by 60 votes to none, with 3 abstentions.

39. Mr. SPACIL (Czechoslovakia) noted that the amendment to paragraph 2 submitted by Thailand, as sub-amended and approved by the Committee, referred to members of the service staff and members of the private staff who were not " permanent residents " of the receiving State. His delegation wished it to be understood that it should be the receiving State which should determine whether or not such persons were permanent residents.

40. Mr. VRANKEN (Belgium) said that his delegation had abstained from voting on the text of article 48 as approved by the Committee because his government could not agree that members of the families of consular officials or members of a consulate who were carrying on a gainful private occupation should enjoy the exemptions granted in paragraph 1 of the article.

The meeting rose at 6 p.m.

THIRTY-SECOND MEETING

Wednesday, 27 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 46 (Exemption from obligations in the matter of registration of aliens and residence and work permits) (*continued*) [1]

1. The CHAIRMAN drew attention to the Chinese amendment (L.124) for the insertion of a new paragraph in article 46.

2. Mr. SHU (China) said that as he had introduced his amendment at the 28th meeting he only wished to add that he would accept the amendment proposed by the representative of France to replace the list at the beginning of his text by the words " The persons referred to in paragraph 1 ".

The Chinese amendment (A/CONF.25/C.2/L.124) was rejected by 18 votes to 17, with 23 abstentions.

Article 46 A (Exemption from obligations in the matter of work permits)

3. The CHAIRMAN recalled that, at its 30th meeting, the Committee had decided that paragraph 2 of article 46 of the International Law Commission's draft should become article 46 A, to read provisionally as follows:

" Members of the consulate, members of their families forming part of their households and their private staff shall be exempt from all obligations under the laws and regulations of the receiving State in regard to work permits imposed either on employers or on employees by the laws and regulations of the receiving State concerning the employment of foreign labour."

4. He drew attention to the six amendments to that text which had been submitted.[2]

5. Mr. HART (United Kingdom) said that if the joint amendment submitted by Greece, New Zealand

[1] Resumed from the thirtieth meeting.

[2] The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.198; France, A/CONF.25/C.2/L.199; Finland, A/CONF.25/C.2/L.203; Switzerland, A/CONF.25/C.2/L.204; Belgium, A/CONF.25/C.2/L.205; Greece, New Zealand and the United Kingdom, A/CONF.25/C.2/L.206.

and the United Kingdom (L.206) were adopted, the members of the consulate would be exempt from obligations in the matter of work permits " with respect to their employment in the consulate ", but would have to comply with the regulations of the receiving State with respect to any private gainful occupation outside the consulate. That exemption would apply neither to members of their families not to their private staff.

6. As the purpose of the article was to protect the interests of the sending State, there was no need to make provision as regards activities carried on outside the consulate by members of the consulate or members of their families. The position was admittedly different in the case of the private staff, but article 37 of the 1961 Convention did not include such a provision. The United Kingdom amendment (L.136) to the original draft of article 46 accordingly made no mention of work permits. In view of what had been said in the debate and of the opinion expressed by the International Law Commission in its commentary, his delegation thought it advisable to make explicit mention of the matter in the new amendment submitted to the Committee (L.206) under the heading of article 46 A.

7. Mr. von NUMERS (Finland) said that his delegation had thought it advisable to specify in its amendment (L.203) that the reference was to employment in the consulate " as such ". If the members of the consulate wished to engage in other activities they would have to comply with the regulations of the receiving State. As article 46 had been divided into two separate texts, thus departing from the method adopted for the 1961 Convention, there was no reason not to continue to do so.

In answer to a question from the CHAIRMAN concerning the drafting of his amendment, the representative of Finland said that it mentioned only " members of the private staff " because the words " members of the consulate [and] members of their families forming part of their households " in the provisional text of article 46 A applied only to persons already covered by article 19 of the Convention.

8. Mr. REBSAMEN (Switzerland) said that he approved the division of article 46 into two parts, which would afford a solution for the Committee. He would support the joint amendment (L.206); if it were not adopted, he would ask for a vote on the Swiss amendment (L.204).

9. Mr. VRANKEN (Belgium) said that if the joint amendment (L.206) was adopted he would withdraw the Belgian amendment (L.205). The text of his amendment was incomplete and required the addition of the words " outside the consulate " after the words " gainful occupation ".

10. Baron von BOETZELAER (Netherlands) did not think it necessary to explain the Netherlands amendment (L.198); he would withdraw it if the joint amendment (L.206) were adopted.

11. Mr. HEUMAN (France) said there were three distinct trends concerning the exemption to be granted to " private staff " in the matter of work permits. Some representatives, notably those of Greece, New Zealand and Switzerland, were in favour of refusing any form of exemption to that staff. His delegation did not consider that attitude justified. Although the Committee had decided in article 46 not to exempt the private staff from holding residence permits, it was not bound to adopt the same attitude in the case of work permits. Besides, by dividing article 46 into two parts, the Committee had wished to draw a distinction. He would vote against the Swiss amendment (L.204) and also against the joint amendment (L.206).

12. Other representatives held the opposite view and favoured the granting of exemption to all the private staff. That was the wider solution contemplated by the International Law Commission and by the Finnish delegation (L.203). The French delegation saw no objection to that completely liberal attitude; but it proposed a third solution as a compromise which with regard to private staff would consist in drawing a distinction between consular officials and consular employees responsible for administrative and technical functions, whose private staff would be granted the exemption, and service staff, whose private staff would not be granted the exemption. The French delegation had submitted an amendment to that effect (L.199) and would have no objection to its being divided up to facilitate voting.

13. If the French amendment were adopted, he would support the Belgian amendment (L.205) but would suggest the insertion as a drafting amendment of the word " other " before the words " private gainful occupation ".

14. Mr. SHARP (New Zealand) said he had sponsored the joint amendment (L.206) for the reasons already explained by the United Kingdom representative. The term " members of the consulate " had a wide scope and the proposed amendment was therefore not so limitative as might at first appear.

15. Mr. SALLEH bin ABAS (Federation of Malaya) said he would vote for article 46 A as read out by the Chairman. He would have been willing to accept the compromise proposal made by the French representative in view of the human element in the relationship between employer and employee, but he realized the possibility of abuse and would therefore support the Belgian and Netherlands amendments.

16. Mr. KHOSLA (India) said he would accept the text of article 46 A and would also support the Belgian and Netherlands amendments, which would fill a gap. If the Committee did not adopt that text, he would agree to the solution proposed by the French representative.

17. Mr. MARESCA (Italy) said that an article restricting exemption with regard to work permits to members of the consulate would not satisfy his delegation. So far as members of their families were concerned, it was undoubtedly advisable to state that exemption could not be granted to persons engaged in gainful occupation outside the consulate. " Private staff " was a

time-honoured expression admitted in practice, and such staff should therefore be exempt to a reasonable extent from obligations in the matter of work permits.

18. Mr. JESTAEDT (Federal Republic of Germany) said that the joint amendment stated an obvious principle which need not be embodied in the article. He subscribed to that principle, but thought its proper place was in article 56. He supported the Finnish amendment (L.203) and the French amendment (L.199), but considered the former more liberal.

19. Mr. SPACIL (Czechoslovakia) said that the term " members of the consulate " should be accepted in its widest sense and that private staff should also be exempt under article 46 A. A consul should be able to take his private staff to the country to which he was appointed without having to bother with formalities in relation to work permits. The joint amendment (L.206) was too strict in that respect and did not define the term " members of the consulate ", so that it tended to exclude the private staff from the exemption. The Belgian amendment (L.205) and the Netherlands amendment (L.198) gave more precise details and he would support them both The French amendment (L.199) was a judicious addition to the International Law Commission's draft because it excluded from the exemption the private staff of consular employees who did not perform administrative and technical functions. The situation was nevertheless slightly ambiguous, because sub-paragraph (*e*) of article 1 defined the consular employee as any person entrusted with administrative or technical tasks in a consulate, or belonging to its service staff. The service staff itself might thus be considered as forming part of the category of consular employees. The text of the Finnish amendment (L.203) appeared to be incomplete, for it did not expressly mention the members of the consulate and members of their families belonging to their households.

20. Mr. HARASZTI (Hungary) said that the private staff depended upon the consular officials and employees and it was not for the receiving State to interfere by issuing or refusing to issue work permits. The French amendment (L.199) restricted the application of the article in a very reasonable way and he would vote for it.

21. Mr. SRESHTHAPUTRA (Thailand) said he would support the Belgian amendment together with the words " outside the consulate " added by the sponsor. He likewise supported the Netherlands amendment (L.198). His delegation considered that those amendments were midway between the two extremes.

22. Mr. NALL (Israel) said that the joint amendment (L.206) was acceptable to his delegation. It was clear from the text that a member of the consulate carrying on an activity outside the consulate should not enjoy exemption in the matter of a work permit. It should perhaps be specified that in such a case the member of the consulate should expressly renounce all privileges attached to his function. His delegation would endorse the French amendment, but urged that consular employees who performed administrative and technical functions should be clearly distinguished from private staff.

23. Mr. BOUZIRI (Tunisia) said that exemption in the matter of work permits should not raise any great practical difficulties. His delegation would vote for any of the amendments submitted because in fact the receiving State never made any difficulties in that respect. The Finnish amendment (L.203) was not very clear, but the amendments submitted by Belgium (L.205) and the Netherlands (L.198) were quite acceptable.

24. Mr. von NUMERS (Finland) requested that Mr. Žourek, the Special Rapporteur of the International Law Commission, should be invited to explain paragraph 5 of the commentary on article 46.

25. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, said that from the point of view of the International Law Commission the occupation of the consular staff was governed by article 19. The receiving State could always declare that a member of the consulate was not acceptable. In the original paragraph 2 of article 46 the Commission had had in mind the exemption of the private staff brought with them by the members of the consulate and it had wished to avoid any difficulties for them with regard to work permits. Nationals of the receiving State were excluded from exemption; their case was dealt with in draft article 69. Article 46 therefore applied only to nationals of the sending State or, in exceptional cases, nationals of a third State.

26. Mr. MARESCA (Italy) asked why the International Law Commission had used in paragraph 2 of article 46 the expression " The persons referred to in paragraph 1 ", if the persons concerned were members of the private staff.

27. Mr. ŽOUREK (Expert) said that the Commission had considered that the members of the family of an official or a consular employee might occasionally work in the consulate without having, properly speaking, the position of employees or consular officials and that provision should be made for their exemption.

28. Mr. PAPAS (Greece) observed that if the amendment (L.206) which he had submitted jointly with two other delegations were adopted, the receiving State, by virtue of the provisions of article 33, should not raise any difficulties over the issue of work permits. In practice, difficulties hardly ever occurred.

29. Mr. ADDAI (Ghana) said that his delegation was satisfied with the International Law Commission's text. The reasons given in paragraph 7 of the commentary explained why a similar provision had not been included in the 1961 Vienna Convention. His delegation would support the draft article, but it would also endorse the Netherlands amendment (L.198) as it clarified the text.

30. Mr. von NUMERS (Finland) said that article 19 did not apply to the members of the private staff and that his delegation would maintain its amendment. " Members of the family " was not covered by the amendment unless they were working in or for the consulate.

31. Mr. HEUMAN (France) said that article 1 (*e*) gave a definition of " consular employee " which included

persons of two categories: those performing administrative and technical functions and those belonging to the service staff of the consulate. That definition was perhaps not sufficiently clear, and he would be prepared to amend his proposal to read " the private staff of consular officials and of those consular employees who perform administrative and technical functions ".

32. Mr. HART (United Kingdom) observed that draft article 46 A dealt with work permits and not with the case of a member of a consulate who was accompanied by staff in his service; the staff would have no right of admission under article 46 A, even in the International Law Commission's text. Article 46, as amended by the Committee, granted exemption in the matter of residence permits only to consular officials and consular employees, with certain exceptions. It would be logical therefore to adopt a similar solution in respect of work permits. Moreover, the 1961 Vienna Convention did not provide any such exemption for private staff. The argument in paragraph 7 of the commentary was fallacious. It was highly probable that the receiving State would not raise any difficulty over the issue of work permits.

33. The CHAIRMAN put the joint amendment (L.206) to the vote.

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

Czechoslovakia, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Greece, Iran, Israel, Japan, Kuwait, Morocco, Netherlands, New Zealand, Pakistan, Portugal, Saudi Arabia, Sierra Leone, South Africa, Switzerland, Syria, Tunisia, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Venezuela, Australia, Austria, Chile.

Against: Czechoslovakia, Denmark, Finland, France, Federal Republic of Germany, Ghana, Holy See, Hungary, Indonesia, Mexico, Mongolia, Norway, Poland, Romania, Sweden, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Argentina, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, China, Congo (Leopoldville), Cuba.

Abstaining: Federation of Malaya, Guinea, India, Ireland, Italy, Republic of Korea, Liberia, Libya, Liechtenstein, Luxembourg, Nigeria, Philippines, San Marino, Spain, United States of America, Republic of Viet-Nam, Algeria, Belgium, Brazil, Canada, Ceylon, Costa Rica.

The joint amendment (A/CONF.25/C.2/L.206) was rejected by 26 votes to 23, with 22 abstentions.

The Finnish amendment (A/CONF.25/C.2/L.203) was rejected by 31 votes to 12, with 29 abstentions.

The Swiss amendment (A/CONF.25/C.2/L.204) was rejected by 28 votes to 21, with 22 abstentions.

34. Mr. TÔN THÂT ÂN (Republic of Viet-Nam) requested that the French amendment (L.199) should be put to the vote in two parts, the first consisting of the words " the private staff of consular officials ".

35. Mr. KHOSLA (India) and Mr. SPACIL (Czechoslovakia) opposed a separate vote on the amendment.

36. Mr. MARESCA (Italy) and Mr. DRAKE (South Africa) supported the motion for a separate vote.

37. The CHAIRMAN put to the vote the motion for a separate vote proposed by the representative of the Republic of Viet-Nam.

The motion was rejected by 34 votes to 13, with 22 abstentions.

The French amendment (A/CONF.25/C.2/L.199), as orally revised by the sponsor, was adopted by 38 votes to 9, with 23 abstentions.

38. The CHAIRMAN put to the vote the amendment of Belgium (A/CONF.25/C.2/L.205), the text of which, as amended by its sponsor and the French representative, would read: " if they do not exercise any other private gainful occupation outside the consulate ".

The amendment was adopted by 66 votes to none, with 5 abstentions.

39. Baron van BOETZELAER (Netherlands) said that if the provisions of the amendment (L.205) applied also to the " members of their families ", he would withdraw his own amendment (L.198).

40. The CHAIRMAN said that if the text of draft article 46 A, as amended, were to be approved, that amendment would automatically apply to the " members of their families ".

Article 46 A, as amended, was approved by 61 votes to 2, with 7 abstentions.

The meeting rose at 1.15 p.m.

THIRTY-THIRD MEETING

Wednesday, 27 March 1963, at 4.50 p.m.

In the absence of the Chairman, Mr Kamel (United Arab Republic), Vice-Chairman, took the Chair.

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 49 (Exemption from customs duties)

1. The CHAIRMAN invited the Committee to consider article 49 and the amendments thereto.[1]

2. Mr. KHOSLA (India) said that, in the absence of any uniform state practice with regard to the extent of the exemption from customs duties granted to consular officials, the Conference was faced with the task of establishing a minimum provision which would be acceptable to all States. The International Law Commission draft of article 49 was satisfactory to the extent that it

[1] The following amendments had been submitted: Poland, A/CONF.25/C.2/L.119; Nigeria, A/CONF.25/C.2/L.120; Australia, A/CONF.25/C.2/L.153; United Kingdom, A/CONF.25/C.2/L.171; Spain, A/CONF.25/C.2/L.173; India, A/CONF.25/C.2/L.178; Ukrainian Soviet Socialit Republic, A/CONF.25/C.2/L.185; South Africa, A/CONF.25/C.2/L.191.

was based on the functional principle. By his delegation's amendment (L.178), the receiving State would be free to restrict the quantity of the goods imported, to designate the period during which importation must take place, and to specify the period within which the goods might not be resold. The receiving State should be able to prescribe in what conditions goods could be imported free of duty. Under the existing municipal laws and regulations of India, for example, consular officials were not permitted to import motor vehicles free of duty. The proposed provision was intended mainly to safeguard the interests of the less developed countries, which were the most likely to be affected by the unrestricted importation of duty-free goods, and which stood to lose most by way of import duties. Consular officers from highly industrialized countries were more likely to wish to import goods from their home country than those from the less developed countries.

3. The amendment submitted by the Ukrainian Soviet Socialist Republic (L.185) was entirely acceptable to his delegation since there was a similar provision in article 36 of the Vienna Convention on Diplomatic Relations. The Indian delegation would also favour the other amendments which gave greater authority to the receiving State to control the import of goods by consular officials. It would support the United Kingdom amendment (L.171) which made explicit what was implied in the International Law Commission draft.

4. Mr. NWOGU (Nigeria) said that paragraph 1 (*b*) of the International Law Commission's draft seemed to imply that a consular official could import articles for his personal use both at the time of his first installation in the receiving country and thereafter; that would not be in accordance with the practice in many countries where consular officials enjoyed exemption from customs duties only on first arriving in the country and for a limited period, perhaps three months, so as to allow him ample time to import the articles he might require for his establishment. The Nigerian amendment (L.120) was not intended to deprive consular officers of exemption, but to confine it to the period of first arrival in accordance with the practice of States. Any extension beyond that would, in his delegation's view, conflict with the provisions of article 48, paragraph 1 (*a*), which, as adopted by the Committee, provided that consular officials would be exempt from taxation save " indirect taxes of a kind which are normally incorporated in the price of goods or services ". The Committee would not wish to produce a convention which was full of contradictions and would consequently not earn international respect. To grant unnecessary exemption would not be in the interests of the new and less developed countries whose revenues depended to a great extent on customs duties and other indirect taxes. Those countries considered that exemption should be limited to what was actually necessary to allow the consular official to establish himself in the receiving country, and that exemption for a period of three months would be adequate for that purpose. The intention of the Nigerian amendment was to allow consular officials the same treatment as that given to consular employees in paragraph 2 of article 49. His delegation would not ask for a vote on its amendment if the spirit was retained and the Committee adopted the Indian amendment (L.178). Should the Indian amendment be rejected the Nigerian delegation would ask for a vote on its own proposal.

5. Mr. PAPAS (Greece) supported the amendments submitted by Australia, India and the United Kingdom. The existing practice in many countries granted consular officials exemption from customs duties only on articles for personal use and imported at the time of first installation. If exemption was to be extended, as in the International Law Commission's draft of article 49, to articles for the personal use of members of a consular official's family, for example, the receiving State must be entitled to impose certain necessary restrictions on duty-free imports by consular officials, as suggested in the Indian amendment. The consular convention conducted between Greece and the United Kingdom contained a provision which varied from paragraph 1 (*b*) of the International Law Commission text and merited the consideration of the Committee: it allowed the consular official to import articles for the members of his family, but did not grant them direct exemption. Under paragraph 2 of article 49, consular employees would benefit all the more from exemption at the time of first installation since their financial situation was less favourable than that of consular officials.

6. Mr. CONRON (Australia) said that the purpose of his delegation's amendment (L.153) was merely to bring paragraph 2 into line with paragraph 1 by sustituting the word " exemptions " for " immunities ". Since it was purely a matter of drafting, it would save time if the proposal was passed immediately to the drafting committee.

Mr. Gibson Barboza (Brazil) took the Chair.

7. Mr. GARAYALDE (Spain) said that the purpose of his delegation's amendment (L.173) was not to correct the International Law Commission's draft of paragraph 1 (*b*), but merely to define its scope in accordance with the general intention of the draft article, which should be construed restrictively. The words " in accordance with such laws and regulations as it may adopt " had been included in paragraph 1 by the International Law Commission as a safeguard against possible abuse. Articles imported by a consular official were of two types: consumer goods, and goods intended for personal use. The effect of the amendment would be to add to paragraph 1 (*b*) a sentence providing that the consumer goods imported should not exceed the quantities needed by the person concerned himself. In that way, the additional sentence would offer to States an objective criterion which they could follow in enacting the laws and regulations referred to in the Commission's draft. The limitation was even more important than that laid down in the draft article for the purpose of imports of goods for personal use, inasmuch as consumer goods were imported more frequently and could more easily form the subject of illicit transactions.

8. Mr. DRAKE (South Africa) supported the Spanish amendment, which would serve a useful purpose, together with the amendment submitted by Australia. His delegation had submitted an amendment (L.191) to paragraph 2,

the first sentence of which followed the International Law Commission's draft except that the words " for their personal use " were inserted after the words " in respect of articles imported "; and the words " exemptions " was substituted for " immunities ", as in the Australian amendment. It was proposed further to add a new sentence to paragraph 2 to give the receiving State the right to prescribe in its discretion that particular commodities intended for consumption should not be permitted duty-free entry. In proposing the amendment, his delegation had particularly in mind the importation of liquor and tobacco by consular employees on first installation. In its view it was not unreasonable that a receiving State should in the case of consular employees have the right to impose customs duties on specific articles of a consumable nature and particularly those, which in most countries attracted high rates of duty, such as liquor, cigars and tobacco. It might be argued with some justification that consular employees were not called upon to serve their sending governments in any form of representative capacity: they did not engage in official entertaining and their representational obligations were of an essentially private character. It was certainly not the intention of the amendment to make the position of consular employees in any way uncomfortable or to attempt to regulate the categories of household goods and personal effects which it was only fair to allow them to bring in without duty at the time of their first entry, or within a reasonable period thereafter. On the contrary, the amendment was designed to ensure that certain articles which did not constitute part of a consular employee's normal personal or household effects might, at the discretion of the receiving State, be made liable to the normal duty. Otherwise a situation could be envisaged where on first arrival a consular employee might import enough whisky, for example, to last during his entire stay in the receiving State. That was clearly not the intention of the International Law Commission's draft and the amendment merely sought to tighten up the existing text in a way which was reasonable so far as the receiving State was concerned and equitable for the consular employee. The term " specific articles " was purposely used in the amendment to imply that the receiving State would have no blanket authority to impose customs duties on whole categories of goods but could, on the contrary, levy duty only on specifically named commodities of a consumable nature; that in itself would constitute a safeguard to prevent a receiving State from applying the paragraph too restrictively. His delegation considered that its amendment constituted a reasonable compromise between the International Law Commission's draft of paragraph 2 and some of the other somewhat more restrictive and far-reaching amendments before the Committee.

9. Mr. WASZCZUK (Poland) introduced his amendment to paragraph 1 (L.119), the aim of which was to remedy an omission in the International Law Commission's text. Article 49 should provide for all eventualities, to ensure that consular officials did not meet with any difficulties in connexion with their return to the sending State. The inclusion of the words " and export " would enable them to take home possessions acquired in the receiving State during their term of office and would be in conformity with the provisions of article 50.

10. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that his delegation's amendment (L.185) for an additional paragraph provided that personal luggage accompanying consular officials and members of their families should be exempt from inspection except as stated. It was based on articles 36 and 37 of the Convention on Diplomatic Relations, the provisions of which should extend to consular officials. The codification of consular law meant getting rid of outworn regulations which no longer reflected the general spirit of the draft convention — the purpose of which, as stated in the preamble, was to promote and develop friendly relations among nations. Customs inspection, however carefully performed, inevitably carried with it a flavour of suspicion. There was no need to deprive consular officials of the trust and consideration to which they were entitled, merely because of the few cases of infringement that were bound to arise from time to time. Exceptions should not be allowed to affect international law.

11. Mr. CROSS (United Kingdom) welcomed the International Law Commission's draft of paragraph 49. The liberal exemptions it offered were normally contained in bilateral consular conventions and he would agree with them, subject to a reservation on the scope of exemptions applicable to honorary consuls and nationals of or permanent residents in the receiving State, which would be discussed under articles 57 and 69. Paragraph 1, and especially the words " in accordance with such laws and regulations as it may adopt ", would allow for restrictions on the movement of goods where necessary in the interests of public health and safety and, as stated in paragraph 3 of the International Law Commission's commentary, for limitations of the kind mentioned in the Indian amendment (L.178). It refrained quite rightly from making personal luggage exempt from customs examination. That exemption had long been enjoyed as a traditional part of full diplomatic immunity, but as far as he was aware, it was not a traditional right of consular officials, much less of their families, for it was not essential to the exercise of their official functions. He therefore opposed the Ukrainian amendment (L.185).

12. His own amendment (L.171) was submitted solely to remove the possibility of conflict with article 48 as adopted. Paragraph 1 (*a*) of article 48 expressly excluded the right to exemption from indirect taxation of the kind normally included in goods or services; there was thus no obligation to provide relief from excise, sales or purchase tax on articles originating in the receiving State. But article 49 might be interpreted as going beyond its essential object of relief from customs duties on goods from abroad, by referring to " all customs duties, taxes and related charges ". The United Kingdom amendment should make it clear that article 49 did not conflict with the exceptions to exemption provided in paragraph 1 (*a*) of article 48 and did not restrict its effect on excise or sales tax. Under article 49, as at present drafted, it might be thought possible for goods made in the receiving State to be exported and re-imported free

of tax and thus the purposes of article 48 would be frustrated. His amendment, though small, was neither a trivial nor a drafting matter; it was connected with an administrative question faced by all countries that availed themselves under article 48 of the right not to give relief from normal internal taxes incorporated in the price of goods. If his amendment were adopted, it would be clear that article 49 dealt with the importation of goods from abroad and not with the receiving State's taxes on its own goods.

13. Mr. KAMEL (United Arab Republic) agreed in general with the International Law Commission's text but supported the amendments to paragraph 1 submitted by the United Kingdom and Spain. He also agreed with paragraphs (*a*) and (*c*) of the Indian amendment because they contained restrictions that were reasonable and would not affect the right to import articles during the term of duty; they merely safeguarded the interests of the receiving State. The new paragraph proposed by the Ukrainian SSR corresponded to a provision in the Convention on Diplomatic Relations and would be an advantage in the consular convention.

14. Mr. NASCIMENTO e SILVA (Brazil) said that the International Law Commission's draft was satisfactory; it was based on widespread practice and corresponded with international custom, and so should be changed as little as possible. He had been impressed by the United States representative's arguments at the 31st meeting on the desirability of retaining any terminology and rules which could be applied equally to consular and to diplomatic officials. Customs officials faced with two conflicting sets of international legislation would find their task difficult: in fact, they usually treated consular officials in the same way as diplomatic officials, for in most countries consular officials travelled with diplomatic passports. It would be impossible to harmonize all the different national laws, but the most important points should be taken into account, such as those mentioned by the Indian representative and the difficulties of the more developed and the less developed countries.

15. On the whole, he supported the International Law Commission's text. Many amendments, although their purpose was to remove the possibility of abuses, would merely introduce new sources of abuse. He would, however, support some of the amendments which did not involve any great alteration of the text, notably those by Poland, Australia and the Ukrainian SSR. The Indian amendment (L.178) agreed with the practice followed in many States and included some of the limitations adopted in Brazil. Paragraph 3 of the International Law Commission's commentary indicated that the expression in paragraph 1 " in accordance with such laws and regulations as it may adopt " was intended to cover the time limits. There should be no difficulty for States with a quota system, as they would be covered by that phrase. If a State adopted restrictive laws and regulations, article 70 could be involved. The purpose of the South African amendment was to prevent abuse by consular employees; but in such an event the receiving State could approach the diplomatic mission. The United Kingdom amendment was also concerned with abuses. He did not agree with the interpretation of paragraph 1 (*a*) of article 48, for the matter had been very carefully discussed and it had been agreed that the word " normally " had a very specific meaning. The inclusion of the clause proposed by the United Kingdom would, he feared, have an adverse effect. There was no such clause in the Convention on Diplomatic Relations, and its inclusion in the consular convention would mean that diplomatic officials could import the products mentioned while consular officials could not.

16. Mr. TILAKARATNA (Ceylon), referring to the Indian, South African, Spanish and Nigerian amendments on the rules and regulations in the sending State, said that his country allowed the same exemptions for consular officials as for diplomatic officials. Exemptions must, however, be subject to certain restrictions to safeguard the interests of the receiving State, and he recognized the significance of the four amendments because the consular staff in any receiving State far exceeded the diplomatic staff in numbers. Another important point was the need in emerging countries like his own to restrict the disposal of luxury goods, which he understood to be the purpose of the Indian amendment.

17. Nevertheless, although he fully agreed with the principle in the four amendments, he would be sorry to see conditions introduced into the convention. It would be better to agree on a general amendment without stating any conditions, for he agreed with the representative of Brazil that States were covered by the phrase " in accordance with such laws and regulations as it may adopt ". If, however, the Committee considered that the International Law Commission's draft obliged the receiving State to give exemptions, there were two possible ways of solving the difficulty. A provision could be introduced stating that the granting of privileges would not prejudice the receiving State's right to impose conditions on the export or disposal of the articles in question. If, however, it were agreed that the restrictions embodied in the four amendments were covered by the article as drafted, in the light of the International Law Commission's commentary, the sponsors of the amendments might be willing not to insist on a vote. That would be acting in the spirit of a multilateral convention, and he was speaking as a representative of one of the countries which could least afford to grant exemptions.

18. With regard to the Australian amendment, he thought that the word " privileges " might be better than " immunities " because it included exemptions. Moreover, the word " exemptions " did not appear in article 57. He suggested that the matter should be referred to the drafting committee. He agreed with the Ukrainian amendment but if consular officials were to receive the same immunities as diplomatic officials under the new paragraph, the same should apply under paragraphs 1 and 2. He did not support the Polish amendment because the additional words would give the article a new connotation. He agreed with some of the technical points raised by the United Kingdom representative but considered that his amendment was already fully covered by article 49.

19. Mr. SALLEH bin ABAS (Federation of Malaya) supported the idea implied in the amendments of India, Spain, South Africa and Nigeria, that paragraph 1 of article 49 as drafted by the International Law Commission restricted the receiving State's power to impose conditions on the entry of goods. He doubted, however, whether the amendments were necessary because the International Law Commission had explained in paragraph 3 of its commentary that the words " in accordance with such laws and regulations as it may adopt " in paragraph 1 of the draft left the receiving State free to decide whether it wished to impose conditions or not. The matter might perhaps be referred to the drafting committee.

20. He would abstain from voting on the United Kingdom amendment because, although he appreciated the desire to avoid any possible conflict with paragraph 1 (*a*) of article 48, the comments of the Brazilian representative had made him doubt the value of the amendment. He supported the amendments of Poland to paragraph 1 and of Australia and South Africa to paragraph 2; he also supported the new paragraph proposed by the Ukrainian SSR which would be a valuable contribution to consular law. In the main, he approved of the International Law Commission's text and he did not wish to see it drastically changed.

Reallocation of articles

21. The CHAIRMAN announced that the General Committee, at its first meeting, had noted that the workload of the Second Committee had been exceptionally heavy and that it was very important, for a number of reasons, that the Conference should close on time. After considerable discussion it had decided, in order to expedite the work and in the interests of the Conference as a whole, to recommend to the plenary meeting that four articles should, in the first instance, be reallocated to the First Committee: articles 52, 53, 54 and 55. Those articles concerned matters of principle and there was no reason therefore why they should not be assigned to the First Committee.

22. It had not been considered appropriate to recommend the assignment of article 69 to the First Committee since its subject was so closely linked with the matters already discussed, and the articles yet to be considered, by the Second Committee.

23. The General Committee had taken the view that article 56 could be appropriately reallocated to the First Committee together with articles 65, 66 and 67. It had, however, been impossible to recommend the immediate reallocation of those articles because the delegation of Japan had submitted a proposal (A/CONF. 25/C.2/L.89) to replace articles 56-67 of the International Law Commission draft by a single article. The General Committee had reached the conclusion that the best way to deal with the matter would be for the Second Committee, when it came to consider article 56, to take the Japanese proposal before any of the other amendments submitted to that article.

24. It would appear that the Japanese proposal was in fact a new proposal under rule 42 of the rules of procedure and not an amendment under rule 41, and could not according to those rules be considered earlier. The practical advantage of taking a decision first on the Japanese proposal was so apparent, however, that the General Committee had expressed the hope, which he personally shared, that the Second Committee could agree to consider the Japanese proposal first when it reached article 56. He would of course abide entirely by the decision of the Committee in the matter.[2]

It was so agreed.

The meeting rose at 6.45 p.m.

[2] The Japanese proposal was rejected at the thirty-seventh meeting, but the General Committee did not maintain its recommendation that articles 56, 65, 66 and 67 should be re-allocated to the First Committee.

THIRTY-FOURTH MEETING

Thursday, 28 March 1963, at 10.30 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 49

(Exemption from customs duties) (*continued*)

1. The CHAIRMAN invited the Committee to continue its discussion of article 49 and the amendments relating to it.[1]

2. Mr. JESTAED (Federal Republic of Germany) considered that article 49 was one of the most important of the whole draft convention. His delegation regretted that, as was apparent from paragraph 2, that article did not apply to " service staff "; that was equivalent to a renunciation of the principle that one State could not levy taxes on another State. His delegation supported the Ukrainian Soviet Socialist Republic's amendment, but considered that the valuable suggestions in the Spanish and Indian amendments were already contained in the first sentence of paragraph 1. He was unable to accept the United Kingdom amendment for the reasons already stated by the Brazilian representative.

3. Mr. SAYED MOHAMMED HOSNI (Kuwait) observed that restrictive measures were advocated in a number of amendments, and that such a tendency was in the interests of the developing countries. Nevertheless, his delegation was of the opinion that the maximum amount of privilege should be granted although it realized that some amendments were aimed at avoiding possible abuses. It would not oppose the Ukrainian amendment but considered that it should be the subject of a separate article.

4. The CHAIRMAN thought that it might be left to the drafting committee to take a decision in the matter.

[1] For the list of the amendments to article 49, see the summary record of the thirty-third meeting, footnote to para. 1.

5. Mr. BLANKINSHIP (United States of America) said that he was in agreement with the statements made at the preceding meeting by the representatives of Brazil and Ceylon. Nevertheless, he considered the International Law Commission's original wording to be satisfactory, since paragraph 1 was taken from article 36 of the Convention on Diplomatic Relations and paragraph 2 from article 37, paragraph 2. In practice, the United States had always been very liberal in the matter of giving the same treatment to consular and diplomatic officials. He wished to point out, however, that it was his country's intention to restrict the privileges in such as way as to exclude nationals of the receiving State and persons residing permanently in that State.

6. He understood the misgivings of the Indian representative, who thought it necessary to restrict exemption from customs duties in the interests of the developing countries, but he did not think his fears were justified. All the amendments submitted were alike in showing a desire to avoid possible abuse; but it would not be reasonable to overload the convention with rules that were too detailed. The United States delegation did not share the views of the South African representative and believed, on the contrary, that consuls, like diplomats, exercised representative functions that required the free entry of some articles of consumption, always, of course, on a basis of reciprocity. The Australian amendment seemed to be a matter for the drafting committee. Lastly, the validity of the amendment of the Ukrainian SSR had not been established.

7. Mr. VRANKEN (Belgium) said that he was in favour of the amendment by the Ukrainian SSR which reproduced the wording of article 36, paragraph 2, of the 1961 Convention.

8. Mr. LEVI (Yugoslavia) said that there were three distinct categories of amendments: those that followed the corresponding clause of the 1961 Convention as closely as possible, as for instance the amendment of the Ukrainian Soviet Socialist Republic for which his delegation would vote; those which aimed at clarifying article 49, like the Indian and Spanish amendments, which his delegation would not oppose although they did not appear necessary in the light of paragraph 3 of the International Law Commission's commentary; and lastly those aimed at restricting customs exemption privileges, as, for instance, those submitted by Nigeria, the United Kingdom and South Africa. The Yugoslav delegation would vote against those amendments.

9. Mr. HEUMAN (France) said that he had no objection to the principle of the amendments of Spain, South Africa and India for the restriction of exemption from customs duties. He believed, however, that they were unnecessary, since they duplicated the introductory sentence to article 49, as drafted by the International Law Commission, which provided safeguards against possible abuses. He would accordingly abstain from voting on those three amendments.

10. He noted, as the Brazilian representative had done, that the Committee was to some extent bound by the wording of the 1961 Vienna Convention, since it was under the necessity of avoiding mistakes in interpretation, which might result in a divergence between the two documents. He regretted therefore that he would be unable to vote for the United Kingdom amendment. He suggested a re-drafting of paragraph 1 (*a*), where he would prefer the words " strictly administrative " to be substituted for the word " official ". He also believed that the word " export " proposed by Poland in its amendment had too commercial a meaning and should, therefore, be replaced by some such term as " exit ", as the antithesis of the term " entry " used in paragraph 1. On the other hand, since a divergence between the wording of the present convention and that of 1961 was undesirable, the Ukrainian amendment might be adopted. The French delegation also supported the drafting amendment proposed by the Australian representative.

11. The French delegation considered the Nigerian amendment to be the most important of all and it would give that amendment its warm and unconditional support, since its effect would be to eliminate all distinction between consular officials and consular employees who, should the amendment be adopted, would both be entitled to exemption from customs duties only at the time of first installation. That would involve a rearrangement of article 49, since paragraph 2 would necessarily have to be dropped.

12. Mr. HARASZTI (Hungary) also considered that, with respect to exemption from customs duties, the position of consular officials should be assimilated to that of diplomatic agents. His delegation was prepared to accept the International Law Commission's draft of article 49 and would vote for the amendment by Spain, sub-paragraphs (*b*) and (*c*) of the Indian amendment, the Polish amendment and that of the Ukrainian Soviet Socialist Republic; but it could not support the amendments of the United Kingdom, Nigeria or South Africa, which would have the effect of introducing restrictive features.

13. Mr. KONSTANTINOV (Bulgaria) said that he would support the original text of article 49 with the amendments by Poland, the Ukrainian Soviet Socialist Republic, India and Spain, which all helped to clarify the text. He could not, however, accept the United Kingdom and Nigerian amendments, which were unnecessarily restrictive.

14. Mr. MOUSSAVI (Iran) said that he understood the purpose of the amendments by India, Spain, the United Kingdom and Nigeria, but he would abstain from voting on the amendment by the Ukrainian SSR since the customs authorities of the receiving State should have the right to inspect the luggage of consular officials without being called upon to give their reasons.

15. Mr. REBSAMEN (Switzerland) said that the Ukrainian amendment did not reproduce word for word article 36, paragraph 2, of the 1961 Convention, but should the sponsor confirm that such was his intention, he was ready to give the amendment his support.

16. Mr. WASZCZUK (Poland) said that he could not accept the Nigerian amendment or the proposal put forward by the United Kingdom or Australia, which unduly restricted the rights of consular officials. His

delegation would vote for sub-paragraphs (*b*) and (*c*) of the Indian amendment; sub-paragraph (*a*) of that amendment should be altered to fit in with the Spanish proposal. His delegation could not support the South African amendment, the second sentence of which did not seem to him sufficiently clear. On the other hand, it would vote for the amendments by Spain and by the Ukrainian Soviet Socialist Republic, which seemed to him to be convincing.

17. Mr. MARESCA (Italy) said that, with regard to exemption from customs duties, a distinction should be made between the consulate as such and consular officials. The International Law Commission had combined in a single article those two aspects of the matter, which were generally considered apart. In practice, there was a certain amount of uniformity in bilateral agreements, which observed the principle of reciprocity. His delegation was therefore of the opinion that the International Law Commission's draft should be adopted, since it went into sufficient detail. The Spanish amendment seemed to him acceptable. So far as the Australian amendment was concerned, he thought that the word " immunities " should be retained and not be replaced by the word " exemptions ".

18. Mr. KOCMAN (Czechoslovakia) said that, while the Spanish amendment was acceptable to his delegation, the restrictions proposed in the Nigerian and South African amendments were unduly severe. The United Kingdom amendment, which was not very clearly drafted, was not an improvement on the International Law Commission's text. The Polish amendment was well conceived, as was that of the Ukrainian Soviet Socialist Republic, which followed the text of article 36 of the 1961 Convention but with greater detail, and was entirely in accordance with the evolution of contemporary law.

19. Mr. SMITH (Canada) said that most of the amendments submitted, in particular those of Nigeria, the United Kingdom, South Africa, Spain and India were of doubtful utility since paragraph 1 of draft article 49 was couched in broad terms and could deal with all possible cases. He would point out that the English equivalent of the French word " installation " was sometimes " installation " and sometimes " establishment ", which did not have the same meaning, which indicated that the French text might be confusing. In the Australian amendment, the word " privileges " would be preferable to the word " exemptions " because it was more comprehensive and was the same as that used in the corresponding article of the Convention on Diplomatic Relations. Although the Ukrainian amendment has a good deal of merit in the opinion of his delegation because, subject to reciprocity, the customs authorities of his country did not examine the personal luggage of consuls-general, his delegation believed such a concession should be made by the decision of individual countries rather than by the Conference. As to the Polish amendment, there was no reference in the sub-paragraphs of article 48 to any export duties and the proposal, so far as tax exemption was concerned, was superfluous. The article should also contain a formal provision, as suggested by the United States representative, that permanent residents of the receiving State should not enjoy exemption. Although paragraph 1 (*a*) was acceptable in the case of consular posts headed by a career consul, its scope was too wide so far as consular posts headed by honorary consuls were concerned, and it should be restricted when chapter III was being considered.

20. Mr. SHARP (New Zealand) said that his delegation could not support any amendments to the International Law Commission's text. He had the same reservations regarding permanent residents in the receiving State as the representatives of the United States and Canada.

21. Mr. PETRENKO (Union of Soviet Socialist Republics) said that at first sight there seemed to be a lack of logic in the text proposed by the International Law Commission; paragraph 1 of article 49 began by setting out restrictive conditions and then provided for exemption from all customs duties. Although laws and regulations laid down certain reservations in customs matters, special favoured treatment was generally granted to the staffs of diplomatic missions and consulates, and the text did not therefore raise any practical difficulties. In paragraph 1, the reference to " charges for storage " did not seem to have much point.

22. The amendments of Spain, Poland and the Ukrainian Soviet Socialist Republic contained useful supplementary provisions and made the text of the draft article more clear. He had some reservations with regard to the amendments of the United Kingdom, Nigeria and South Africa because they unduly restricted the scope of exemption from customs duties. The Indian amendment was not concise, but if the text were modified his delegation might support it. Taken as a whole, the draft of article 49 was acceptable.

23. Mr. KANEMATSU (Japan) said he could endorse the draft article, but would accept the Polish amendment because some countries imposed export taxes and that eventuality should be provided for in the draft convention. If the amendments of India and Spain were put to the vote, his delegation would abstain, on the ground that the first part of paragraph 1 provided ample safeguards for the receiving State.

24. Mr. DEJANY (Saudi Arabia) thought that the draft article provided undue exemption, in particular in paragraph 1 (*b*). The granting of such exemptions to consular officials went beyond existing international practice. The Nigerian delegation had made a reasonable proposal (L.120) in providing that exemption from customs duties should be applied only to articles imported at the time of first installation. In the case of consular employees, exemption should be granted only with the consent of the receiving State. Paragraph 2 might give rise to difficulties, and his delegation could not support it. The amendments by India and South Africa duplicated the first part of paragraph 1 and his delegation would abstain in the vote on those proposals; the amendment of the Ukrainian Soviet Socialist Republic, which was not in accordance with international practice, was also unacceptable.

25. Mr. JAMAN (Indonesia) said that the sending State should enjoy exemption from customs duties on any articles that it considered necessary for the equipment of its consulates. In the case of articles for the personal use of the members of the consulate, his country granted the same treatment as to diplomatic agents. The Indian amendment was unduly restrictive and unacceptable to his delegation. The receiving State should not impose restrictions upon the entry of articles for use in consulates, although in the case of articles for the personal use of consular officials a time-limit was perfectly admissible.

26. Mr. KHOSLA (India) said that the object of his delegation's amendment was to provide that the receiving State would have the right to lay down the conditions governing the resale of goods imported duty free and governing the import of goods so far as quantity and period of time were concerned. That was of particular importance for the under-developed countries. He welcomed the sympathy and support shown for the Indian amendment by several representatives and noted in particular that, in the view of a majority of delegations, the reservation in the opening sentence of the article would in fact cover the conditions and was intended to do so, and that it would thus cover the proposals in his amendment. That understanding was confirmed both by paragraphs 2 and 3 of the International Law Commission's commentary and by the practice of those States which, as mentioned by some delegations, did in fact impose such controls.

27. In the light of that understanding and in deference to the appeal made by the representative of Ceylon, he would withdraw his amendment and would join that representative in requesting other delegations which had submitted amendments specifying conditions governing imports to do likewise.

28. Mr. DRAKE (South Africa), referring to the remarks made by the United States representative, explained that his delegation's amendment (L.191) to paragraph 2 applied only to consular employees; they did not perform representational functions. It seemed to him that the phrase " in accordance with such laws and regulations as it may adopt," as interpreted by paragraph 3 of the commentary, was concerned essentially with the conditions and procedures which the receiving State could apply in respect of articles imported under customs duty exemption, and did not relate directly to the actual granting of such exemptions. If that interpretation was correct, paragraph 2 of the draft article would not seem to give the receiving State the right to levy customs duties at the time of first installation. His delegation regretted its inability to comply with the wish of the Indian representative and must maintain its amendment. With regard to permanent residents and nationals of the receiving State, he would express the same reservations as the United States representative.

29. Mr. CROSS (United Kingdom) regretted that he could not accept the French representative's suggestion to modify sub-paragraph (*a*) of his delegation's amendment (L.171), for that, he feared, involved a logically different point. Some delegations had urged that the substance of the amendment was already covered by the text and that there should be no departure from the text of the 1961 Convention; the privileges and immunities of consular staff, however, were not the same as those granted to diplomatic agents, and the Committee need not feel bound by the wording of the Convention on Diplomatic Relations. Article 49 of the text under discussion was concerned with the importation of goods from abroad and was not meant to deal with taxes in the receiving State on its own goods; the adoption of the United Kingdom amendment would remove any possibility of doubt on that point.

30. Mr. NWOGU (Nigeria) explained that in submitting his amendment (L.120) he had wished to take account of the practice of many countries. The text of the draft convention should include minimal obligations without precluding States from granting more extensive facilities. The aim was to define a principle, leaving exceptions to the discretion of States.

31. Mr. WASZCZUK (Poland) said his delegation would accept the French representative's proposal to replace in its amendment (L.119) the word " export " by the word " exit ".

32. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) thought that consular officials should be trusted: if they were granted exemption from taxation on first installation, there was no reason to refuse them that privilege on subsequent tours of duty. The suggestion by the representative of Kuwait, that the Ukrainian amendment should constitute a new article, could be referred to the drafting committee. The Swiss representative had said that the text of the Ukrainian amendment departed from article 36 of the 1961 Vienna Convention. He would willingly accept a different formula, provided that the substance was maintained and that it was clearly indicated that it referred to personal luggage accompanying consular officials and not packages addressed to them.

33. Mr. GARAYALDE (Spain) said that his amendment (L.173) laid down an objective criterion which clarified the meaning of paragraph 1.

The Polish amendment to the introductory phrase of paragraph 1 (A/CONF.25/C.2/L.119), as amended, was adopted by 25 votes to 19, with 21 abstentions.

The introductory clause of the United Kingdom amendment (A/CONF.25/C.2/L.171) was rejected by 32 votes to 11, with 20 abstentions.

Paragraph 1 (a) was adopted.

34. The CHAIRMAN invited the Committee to vote on the Nigerian amendment (L.120).

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

South Africa, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Syria, Thailand, Tunisia, Guinea, France, Indonesia, Iran, Liberia, Morocco, Nigeria, Saudi Arabia, Sierra Leone.

Against: South Africa, Sweden, Switzerland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Re-

publics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia, Argentina, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Chile, Czechoslovakia, Denmark, Finland, Federal Republic of Germany, Ghana, Hungary, India, Ireland, Italy, Libya, Luxembourg, Mongolia, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, San Marino.

Abstaining: Spain, Turkey, United Arab Republic, Republic of Viet-Nam, Australia, Austria, Ceylon, China, Congo (Leopoldville), Cuba, Federation of Malaya, Israel, Japan, Republic of Korea, Kuwait, Laos, Mexico, Pakistan, Philippines.

The Nigerian amendment to paragraph 1 (b) (A/CONF.25/C.2/L.120) was rejected by 35 votes to 12, with 19 abstentions.

The Spanish amendment to paragraph 1 (b) (A/CONF.25/C.2/L.173) was adopted by 34 votes to 8, with 24 abstentions.

Paragraph 1 as a whole, as amended, was adopted by 62 votes to 2, with 3 abstentions.

The South African amendment to paragraph 2 (A/CONF.25/C.2/L.191) was rejected by 33 votes to 10, with 22 abstentions.

The Australian amendment to paragraph 2 (A/CONF.25/C.2/L.153) was adopted by 40 votes to 10, with 14 abstentions.

35. The CHAIRMAN stated that the Polish amendment which the Committee had approved for paragraph 1 could also apply to paragraph 2 by the addition of the words " or thereafter exported ", and he asked the Committee to vote on that point.

The modification of paragraph 1 as a result of the adoption of the Polish amendment (A/CONF.25/C.2/L.119) was extended to paragraph 2 by 19 votes to 14, with 32 abstentions.

In paragraph 2, as amended, it was decided by 43 votes to 5, with 13 abstentions, to retain the words " except those belonging to the service staff ".

Paragraph 2 as a whole, as amended, was approved by 60 votes to 2, with 3 abstentions.

The proposal by the Ukrainian Soviet Socialist Republic for the addition of a new paragraph (A/CONF.25/C.2/L.185) was adopted by 36 votes to 14, with 15 abstentions.

36. Mr. SAYED MOHAMMED HOSNI (Kuwait) asked if the last vote did not prejudge the question of whether the additional text might be inserted in the form of a new article.

37. The CHAIRMAN replied that the sponsor of the amendment had agreed that the drafting committee should decide that point.

Article 49 as a whole, as amended, was adopted by 58 votes to none, with 7 abstentions.

38. Mr. BLANKINSHIP (United States of America) said he had abstained from voting on the article as a whole because the question whether the Ukrainian amendment would be included in article 49 or become a separate article had been left open. If the amendment were included as paragraph 3 of article 49, personal luggage accompanying consular officials and members of their families would be governed by the first part of paragraph 1 of the article: " the receiving State shall in accordance with such laws and regulations as it may adopt . . . " Subject to further consideration and to the instructions of his government, he might in that case find the amendment acceptable.

The meeting rose at 1.30 p.m.

THIRTY-FIFTH MEETING

Thursday, 28 March 1963, at 3.20 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 50 (Estate of a member of the consulate or of a member of his family)

1. The CHAIRMAN suggested that article 50 with amendments should be discussed as a whole but voted on in three parts: the opening sentence, sub-paragraph (*a*) and sub-paragraph (*b*).[1] He proposed that only the amendment to sub-paragraph (*b*) in the United States amendment should be put to the vote, since the remainder only affected the drafting. As the amendments of Belgium and Chile were similar, he inquired if the sponsors would be willing to combine them.

2. Mr. BLANKINSHIP (United States of America) accepted the Chairman's suggestion.

3. Mr. VRANKEN (Belgium) and Mr. LEA-PLAZA (Chile) said that they would jointly sponsor the amendment in document L.146.

4. Mr. SMITH (Canada) said that his amendment (L.194) was submitted so that article 50 should conform to article 48 (exemption from taxation). Paragraph 1 (*c*) of article 48 as adopted contained the words " and duties on transfers ": the word " including " in his amendment to article 50 should therefore be replaced by the word " and ". During the discussion on article 48 he had pointed out that the phrase " duties on transfers " was too general and could be interpreted to permit the imposition of duties not intended by the International Law Commission; but his suggestion had not been accepted. If the Committee thought that inclusion of the phrase in article 50 might also be misleading, he would be willing for his amendment to be reviewed by the drafting committee. He merely wished it to be clear that the transfer duties in question were only those

[1] The following amendments had been submitted to article 50: Japan, A/CONF.25/C.2/L.85; Belgium, A/CONF.25/C.2/L.146; United Kingdom, A/CONF.25/C.2/L.172; Spain, A/CONF.25/C.2/L.176; United States of America, A/CONF.25/C.2/L.181; Canada, A/CONF.25/C.2/L.194; Chile, A/CONF.25/C.2/L.196.

applicable to the property referred to in the article. He supported the amendment by Belgium and Chile.

5. Mr. VRANKEN (Belgium) said that the purpose of the joint amendment by Belgium and Chile (L.146) was to exclude nationals or permanent residents of the receiving State from the provisions of the article. Article 39 (4) of the Convention on Diplomatic Relations had a similar purpose and it was desirable that consular officials should be given the same treatment as diplomats.

6. Mr. STRUDWICK (United Kingdom) said that the United Kingdom amendment (L.172) was the most far reaching as it proposed the deletion of sub-paragraph (*b*), so that if a member of the consulate or a member of his family died in the receiving State, the same duties would apply as in the case of any visiting alien. Reference had been made in the Committee to the adverse effects of consular privileges and immunities on citizens in the receiving State in such cases as motor accidents or refusal to give evidence. The same applied, but more forcibly, in the case of taxation, for accidents were the exception but tax was a normal occurrence. Exemptions from taxation to specific categories of persons caused resentment which was disproportionate to the amounts involved; a line had to be drawn and death duties seemed to be the appropriate point. His proposal that they should not be subject to exemption was in accordance with the law in the United Kingdom.

7. The other amendments, though less far reaching, were also designed to limit the scope of the International Law Commission's exemptions. He supported the joint amendment by Belgium and Chile (L.146) and would support the Japanese amendment (L.85) if his own were rejected. He would abstain from voting on the Canadian amendment as the inclusion of the proposed phrase might make it possible to extend the exemption unduly.

8. Mr. GARAYALDE (Spain) said that article 50, paragraph (*b*), as drafted by the International Law Commission was very liberal and that his delegation's amendment (L.186) was intended to restrict the scope of the provision. The expression " movable property " raised a problem of definition, with all its consequential drawbacks, particularly in the convention under discussion.

9. Under Spanish law the expression " movable property " [bienes meubles] could cover anything from a picture to a ship, and included securities. Accordingly, his delegation considered that the article should be restricted by the replacement of the words " movable property " by the word " furniture " [mobiliario], which should be construed to mean not only furniture in the narrow sense but also personal effects generally.

10. Mr. KANEMATSU (Japan) said that his amendment (L.85) was intended to exclude members of the family from the exemptions, because there was no established rule or practice for the extension of privileges to families. The argument that consular officials should be treated in the same way as diplomatic officials was not valid because conditions were different: to take one example, consular officials could follow gainful pursuits. As, however, the Committee had included members of families under article 48, it might not be proper to reverse the decision in article 50. If, however, the Committee considered that it would be possible to make a difference in article 50, he would ask for his amendment to be put to the vote.

11. Mr. BLANKINSHIP (United States of America) said that the main purpose of his amendment (L.181) was to extend sub-paragraph (*b*) to cover regional and municipal, as well as national, duties and taxation; and also to introduce the idea of official functions. The amendment to sub-paragraph (*b*) would necessitate changes in the first part of the article.

12. The United States Government had pointed out in its written comments that article 50 did not refer to regional and municipal taxes. They were mentioned in articles 31 (Exemption from taxation of consular premises) and 48 (Exemption from taxation) and should also appear in article 50. The words " movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased " was not very clear and was liable to interpretations leading to wider exemptions than would be desirable. The International Law Commission's commentary did not clarify the scope of the article: it only stated that the text " was brought into line " with the text of article 39, paragraph 4, of the 1961 Convention on Diplomatic Relations. But the policy of aligning the consular and diplomatic conventions would be carried too far and a distinction should be made in article 50 between consular and diplomatic officials. The United States amendment therefore proposed that the exemption should be limited to apply only to movable property the presence of which in the receiving State was due solely to the performance of officials duties. He assumed that article 69 would deal with nationals of the receiving State and persons permanently resident or gainfully occupied in that State.

13. Mr. DAS GUPTA (India) said that the article as drafted by the International Law Commission was entirely adequate. It was designed to meet every side of the question and was consistent with the other relevant articles.

14. He appreciated the difficulties of the United States representative but found his amendment contradictory and illogical. Article 49 as adopted gave consular officials the privilege to import and export articles for their own or their families' use and article 50 was only concerned with a particular situation. If the right to import and export free of duty was granted in the first place, it was immoral and illogical to deny it later, particularly in the case of death. Moreover, death duties, like income tax, were imposed on a reciprocal basis and it would be unfair to make it possible for such duties to be imposed by both the receiving and the sending State. He also found the introduction of the idea of official functions unacceptable: it was vague and complicated and would nullify the true purpose of the article.

15. He could not accept the United Kingdom amendment: if exemptions were granted to living persons there was all the more reason to maintain them in the

case of death. The Spanish amendment seemed superfluous. Furniture was a movable property and there was no need to specify it. He did not fully understand the implications of the Canadian amendment. If it concerned transfer duties on sales, it was already covered, for if a diplomat sold his car or other movable property to a permanent resident or a national of the receiving State he would be liable to normal duty; and if he sold it to a diplomat he was exempt from duty. The amendment seemed redundant. The Japanese amendment was unacceptable since property acquired by the consular official for his household was imported in the official's name. A married daughter or an adult son were not included in the privileges, but it would be unfair and illegal to exclude a wife or minor child. The amendment by Belgium and Chile was implicit in article 50, which dealt with career consuls and not with honorary consuls who were nationals or permanent residents of the receiving State. The amendment would change the whole meaning of the article. He appealed to the Committee in the interests of humanity and justice to accept the International Law Commission's text.

16. Mr. NASCIMENTO e SILVA (Brazil) considered that most of the amendments, and the arguments supporting them, were too restrictive. He would prefer to see the International Law Commission's text retained and would vote in favour of it.

17. Many of the clauses criticized were generous and humanitarian in spirit and the article should be examined in detail to find out what each clause meant. Article 50 concerned the death of the career consul, a person sent to the receiving State for duty. His possessions were chiefly in the sending State and his movable possessions and salary in the receiving State would not usually be of very great value. The exceptional cases of a consul with large investments in property would be provided for in article 48. The question of succession duty was a complicated matter which came within the scope of the national laws on succession. On principle, therefore, he was against all the amendments.

18. The representative of Japan had asked whether he should maintain his amendment or not. He hoped he would not insist on a vote because the property of the family of a member of a consulate was not likely to be very large; even if it was, it would normally have no connexion with the receiving State. The United Kingdom amendment was not, he thought, necessary, for the source of revenue would be very small. With regard to the United States amendment, he appreciated the difficulties that might arise if article 50 were adopted and also understood the problems concerning regional and municipal duties, for Brazil's national legislation was similar to that of the United States. Nevertheless, he was not in favour of the reference to official functions and considered it would be undesirable to adopt different provisions for consular and for diplomatic officials. The joint amendment of Belgium and Chile (L.146) was concerned with a very rare possibility and he would vote against it, although it was to some extent justified by the drafting of article 39 (4) of the diplomatic convention.

19. He would fully support the Canadian amendment, which was generous and logical; but he would vote against all the others.

20. Mr. SPYRIDAKIS (Greece) endorsed the views of the previous speaker and supported the International Law Commission's draft of article 50, the subject of which must be treated with human feelings. His delegation, like that of Brazil, opposed the Japanese amendment and could not support the Spanish amendment which would not improve the text of sub-paragraph (*b*). The second part of the United States amendment, concerning sub-paragraph (*b*), was not acceptable to his delegation, although it understood that the United States might have special reasons for wishing to introduce such a proposal; the drafting of an international convention must be approached from a broad rather than a national point of view. His delegation also opposed the United Kingdom amendment and the amendment jointly sponsored by Belgium and Chile, although he recognized that difficulties might arise in cases where the person concerned was a national or a permanent resident of the receiving State.

21. The International Law Commission's commentary on article 50 contained no definition of " movable property ", a very general and sometimes controversial term which might be held to include money and stock, for example. A definition would facilitate acceptance of the article for many countries which exercised strict currency controls.

22. There appeared to be a discrepancy between the French and English texts of draft article 50: the English text referred to a member of the family " forming part of his household ", the French text used the expression " qui vivait à son foyer ". It would more correctly express the meaning of the English text and would be less likely to lead to misunderstanding if the words " faisant partie de leur ménage " were used.

23. The CHAIRMAN said that the point raised by the representative of Greece would be considered by the drafting committee in connexion with a Belgian proposal relating to several of the draft articles.

24. Mr. CAMPORA (Argentina) said that the International Law Commission's draft was acceptable to his delegation because a similar provision appeared in the Vienna Convention on Diplomatic Relations. Although it was desirable that a member of the consulate and members of his family should be accorded the privileges specified in sub-paragraphs (*a*) and (*b*) of article 50, it should be clearly established that " movable property " did not include productive investments, particularly in view of the differing legal interpretations of the term, which in many countries included stocks and shares, for example.

25. Mr. KHLESTOV (Union of Soviet Socialist Republics) endorsed the views expressed in support of the International Law Commission's draft which was clear, responded to an obvious necessity and was entirely acceptable to his delegation, particularly as the legislation of the Soviet Union was in accordance with its provisions.

26. The Japanese and United Kingdom amendments were entirely inappropriate. It would be inhuman to refuse to allow the export of the movable property of the deceased in the event of the death of a member of the family forming part of the member of the consulate's household. His delegation could accept the Canadian amendment, if it was thought that the situation in some countries required the inclusion of a reference to " duties on transfers ", because the purpose of the proposal appeared to be the protection of the member of the consulate and his family. The subject of the joint amendment sponsored by Belgium and Chile was already dealt with implicitly in the International Law Commission's draft, which his delegation preferred.

27. The revised sub-paragraph (*b*) proposed by the United States was not clearly drafted and would be extremely difficult to apply in practice. It would be impossible to determine exactly to what extent the presence of the movable property in the receiving State was due solely " to the performance of official duties " by the deceased member of the consulate. Moreover, as drafted, the United States amendment would mean that the same criterion would apply in the case of a deceased member of the family. It would be very difficult to ascertain, for example, how much of the dowry of the deceased wife of a consul had been brought to the receiving State solely for " the performance of official duties ". The amendment was illogical, and the practical difficulties it would raise would further complicate recruitment for the consular service.

28. Mr. SPACIL (Czechoslovakia) agreed that the provisions of the draft article should not be restricted. To the arguments already put forward in support of the International Law Commission's draft, he would add a plea that more consideration should be given to courtesy and humanity in the sad event which was the subject of the article. The privileges and immunities conferred on the member of the consulate by virtue of his office must logically be carried on in the case of his death. It would be unfortunate and discourteous if he were suddenly to be accorded different treatment with regard to exemption from duties when his consular career was ended by death. The United Kingdom and Japanese amendments were therefore unacceptable to his delegation. The effect of the latter amendment would be to discriminate against the widow and surviving family of a member of the consulate, since a wife would be allowed to take her movable property back to her own country on her husband's retirement, while the widow of a deceased consul could not do so. His delegation endorsed the views expressed by the representative of the Soviet Union in regard to the United States amendment.

29. Mr. SALLEH bin ABAS (Federation of Malaya) said that the International Law Commission's draft was acceptable; the exemption granted was not so wide as might appear, for it was limited to movable property; immovable property was dealt with in article 48, sub-paragraphs 1 (*b*) and (*c*). His delegation was in complete agreement with the International Law Commission's reasoning in its commentary on article 50 that the exemption was fully justified because the persons in question came to the receiving State to discharge a public function in the interests of the sending state. There was no reason, therefore, for property exempted from customs duties when it was brought into the receiving State to be subjected later to death duties. Finally, the International Law Commission's draft provided, rightly, that exemption from duties would be granted only on movable property " the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consulate or as a member of the family of a member of the consulate ". The phrase introduced in the United States amendment, " due solely to the performance of official duties ", was an improvement on the International Law Commission's text, but the phrase could obviously only be applied to a member of the consulate and not to a member of his family. In the opinion of his delegation, the government of the receiving State was free to levy duties on movable property acquired in the territory of the receiving State by a member of the consulate or a member of his family. His delegation supported the amendment sponsored jointly by Belgium and Chile which would have the effect of reserving the right of the receiving State to levy duty in the event of the death of a member of the consulate or of a member of his family who was a national or permanent resident of the receiving State. With that amendment, his delegation would support the International Law Commission's text.

30. Mr. SMITH (Canada) fully agreed with the representative of Brazil that humanitarian considerations should be stressed. Since it was unusual for consular officials to be wealthy, the loss of revenue to the authorities of the receiving State was likely to be very small compared with the great trouble to the consular official or his widow of filing foreign tax returns and retaining lawyers at a time which was in any case very difficult. He was inclined to agree with the representatives of Czechoslovakia and Malaya that it seemed illogical to go to so much trouble to make sure that an automobile, for example, was not taxed when imported by a consular official, but would be taxed if its owner died. The acceptance of the International Law Commission's draft with the Canadian and United States amendments would avoid the possibility of double taxation.

31. He also agreed with the representative of Greece that it was necessary to define the meaning of " movable property ". The United States amendment was of considerable assistance there as it made it clear that the movable property envisaged was that present in the receiving State " due solely to the performance of official duties ": the exemption in that case would not apply to investment property, the presence of which in the receiving State could not be " due solely to the performance of official duties ". The intention of the Canadian amendment was to clarify to some extent what was meant by movable property and by succession duties in article 50, an article which should be interpreted broadly.

32. Mr. PEREZ HERNANDEZ (Spain) explained that, although the English text of his delegation's amendment (L.176) might seem somewhat restrictive, the term

used in the original Spanish text meant personal effects, which included not only furniture, but jewels, cars and all objects in everyday use by the person concerned. The intention of the Spanish amendment was to ensure that the member of the consulate was granted the same treatment as any other resident or national of the receiving State in regard to his private fortune, which should not, therefore, be subject to exemption from estate duties. There should be no exemption if the movable property was unconnected with the exercise of consular functions. It was not certain, however, whether the International Law Commission's draft of sub-paragraph (*b*) made that clear in its reference to " movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consulate or as a member of the family of a member of the consulate."

33. The International Law Commission's draft of article 50 repeated in substance article 39, paragraph 4, of the Vienna Convention on Diplomatic Relations. During the Committee's discussions, however, it had become apparent that it was undesirable to establish an analogy between consular officials and diplomatic agents in view of the different nature of their functions. The fact that a similar provision had been included in the Vienna Convention was not a sufficient reason, therefore, for approving the International Law Commission's text.

34. Nothing prevented a member of a consulate or a member of his family from acquiring as much movable property as he wished, including stocks and bonds, yachts and other luxury articles which could form the basis of a large fortune. It that fortune was quite unconnected with the exercise of consular functions, it would be illogical and unfair for it to be exempt from estate duties. That view was confirmed by article 48, paragraph 1 (*c*), which excepted estate, succession or inheritance duties, and duties on transfers, from exemption from taxation, " subject, however, to the provisions of article 50 concerning the succession of a member of the consulate or of a member of his family ". The International Law Commission had left the door open and his delegation had no wish to close it entirely, especially in the sad event of death.

35. Mr. KANEMATSU (Japan) expressed his delegation's appreciation of the comments made on its amendment. In view of the general opinion, he would withdraw the amendment.

36. Mr. STRUDWICK (United Kingdom) agreed that the subject of the article was a sad one, but said that the existence of death duties must be recognized. It was, of course, necessary to show courtesy and humanity, but the International Law Commission's text of sub-paragraph (*b*) as drafted did, in fact, allow members of the consulate to be subjected to death duties in respect of property they might have in the receiving State. In reply to criticisms which had been made of the United Kingdom proposal to delete sub-paragraph (*b*), he would point out that it did not affect sub-paragraph (*a*) and therefore would not prevent the export of the movable property of the deceased. His delegation would have preferred a vote to be taken on the Japanese amendment.

37. Mr. BLANKINSHIP (United States of America) said that his delegation's amendment had been introduced in the general interests of all countries represented in the Conference, and not for special reasons which applied only to the United States. The precise scope and meaning of article 50 as drafted was far from clear, and the amendment was intended to assist tax authorities to attain a degree of certainty as to what was meant by the International Law Commission text — that certainty which was the bedrock of fairness and equity. The criticisms made by the representatives of Brazil and the Soviet Union had been based on somewhat emotional grounds, but it was necessary to consider the situation objectively. As drafted, the article appeared to give some kind of exemption based on the mere presence of the member of the consulate or his family in the receiving State. " Movable property " seemed an innocuous term, but it too must be examined a little more fully. It was far from clear in the International Law Commission's draft whether exemption applied only to movable property imported at the time of initial entry or also to movable property acquired subsequently; whether it encompassed stocks, bonds and bank accounts, for example; or whether the type of property contemplated would normally accompany a person from place to place. " Movable property " did not merely consist of the consular official's clothes or an old car, for example; it might include his bank account, or very valuable pictures. His delegation did not wish the provision to be unduly restrictive. The International Law Commission's draft would not, however, achieve the purpose of avoiding tax evasion and abuse and it was necessary that there should be a provision with greater certainty to allow the tax authorities to carry out their task properly.

38. The CHAIRMAN invited the Committee to vote on the amendment submitted jointly by Belgium and Chile (A/CONF.25/C.2/L.146) to the introductory paragraph of article 50.

The joint amendment was adopted by 32 votes to 13, with 17 abstentions.

39. The CHAIRMAN suggested that, since there were no amendments to sub-paragraph (*a*) of article 50, it would be unnecessary to take a vote on it.

Sub-paragraph (a) of article 50 was adopted without amendment.

40. The CHAIRMAN invited the Committee to vote on the four amendments which had been submitted to sub-paragraph (*b*) of article 50.

The United Kingdom proposal (A/CONF.25/C.2/L.172) to delete sub-paragraph (b) was rejected by 45 votes to 3, with 16 abstentions.

The United States amendment (A/CONF.25/C.2/L.181) was rejected by 29 votes to 11, with 23 abstentions.

The Spanish amendment (A/CONF.25/C.2/L.176) was rejected by 41 votes to 5, with 18 abstentions.

The Canadian amendment (A/CONF.25/C.2/L.194), as orally revised by its sponsor, was adopted by 38 votes to 7, with 19 abstentions.

Sub-paragraph (b), as amended, was adopted by 58 votes to 2, with 2 abstentions.

Article 50 as a whole, as amended, was adopted by 62 votes to none, with 2 abstentions.

41. Mr. HEUMAN (France) explained that his delegation had voted against the Canadian amendment because it could not understand the purpose of including in a provision which concerned only the estate of a deceased person a reference to " duties on transfers "; it had voted against the joint amendment sponsored by Belgium and Chile because the inclusion of a reference to " permanent resident of the receiving State " in article 50 would become redundant when article 69 was approved.

42. Mr. SPYRIDAKIS (Greece) said that he had abstained from voting on the United States amendment (L.181) to article 50. Although the amendment was more detailed, he found the International Law Commission's text more suitable to an international convention and more readily acceptable to a large number of States.

The meeting rose at 6 p.m.

THIRTY-SIXTH MEETING

Friday, 29 March 1963, at 10.35 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 51
(Exemption from personal services and contributions)

1. The CHAIRMAN invited the Committee to consider article 51, to which amendments had been submitted by Belgium (A/CONF.25/C.2/L.147) and Romania (A/CONF.25/C.2/L.207).

2. Mr. ANGHEL (Romania) said that he approved the motives of the International Law Commission's draft article 51. One question, however, had attracted the attention of the Romanian delegation, causing it to submit its amendment. By refusing to grant to the service staff exemption from personal services and contributions — and it appeared from paragraph 1 of the International Law Commission's commentary on that article that members of the service staff might be subject to military service, service in the militia, jury service and other forms of service — the work of the consulate might be paralysed, especially if it employed only a small staff, because that staff would no longer be able to carry out its functions. After all, the service staff was sent to the receiving State for the same purpose as the other members of the consulate. Citizens of the sending State who belonged to the service staff should certainly not be drafted into the armed forces of the militia of the receiving State; as was well known, international law exempted aliens from any obligation to serve in the armed forces of a State other than their own. The question had undoubtedly escaped the attention of the International Law Commission, and a solution should be found. Besides, in the course of the discussions in the International Law Commission, Mr. Padilla Nervo and Mr. Amado had spoken in favour of the exemption of the service staff from personal services and contributions, and particularly military service.[1] The Romanian amendment was not intended to impose additional obligations on the receiving State, but rather to avoid tension between States and to ensure the functioning of consular posts in the best possible manner. That was the reason for the amendment (L.207). He would, however, be prepared to accept a text for article 51 which would exempt members of the service staff from military obligations.

3. Mr. VRANKEN (Belgium) said that the purpose of the Belgian amendment (L.147) was plain. It seemed normal that a consular employee who carried on a private gainful occupation and enjoyed whatever advantages he might be given by the receiving State should also be under the obligation to serve it in the event of catastrophe or public calamity, for instance. The amendment did not affect the consular employees alone, but also all the members of their families.

4. Mr. MARESCA (Italy) said that consular immunities in respect of personal services were normally restricted to consuls and consular officials. Any extension of those immunities to other persons would be an innovation which would have to be restricted. The Belgian amendment was based on that consideration, and he would therefore support it. With regard to the Romanian amendment concerning service staff, account must be taken of the decisions reached in the 1961 Convention, since article 35 of that convention made no mention of service staff.

5. Mr. HEUMAN (France) said he had no objection to the substance of the Belgian amendment, but would raise a few objections of a technical nature. The Committee had doubtless noted that the question of members of the families of consular employees had arisen in connexion with so many articles that it would probably be better to deal with that matter in a general article which would then cover all the others, and that article could only be article 56.

6. The other general question — namely, the exclusion of permanent residents — should be dealt with in article 69. It was useless to overburden each article with an exclusion clause which the drafting committee might have to delete subsequently if the general safeguard clause was inserted in article 69. He therefore proposed that the Belgian representative should for the time being withdraw his amendment to article 51, pending the adoption of article 56. It would be advisable perhaps in that case to take up article 69 immediately after article 56.

7. The CHAIRMAN thanked the representative of France for his suggestion, but said that he was not convinced that such a procedure would help the Committee in its work, because, before considering article 56,

[1] See *Yearbook of the International Law Commission, 1961*, vol. I (United Nations publication, Sales No. 61.V.1, vol. I), p. 134.

the Committee would have to take up the Japanese amendment in document L.891/Rev.1 which covered chapter III as a whole.

8. Mr. LEVI (Yugoslavia) said that he would vote for the Romanian amendment, which seemed logical: there was no point in repeating the mistakes of the 1961 Convention. In view of paragraph 1 of the International Law Commission's commentary, he could not vote for the Belgian amendment.

9. Mr. CAMPORA (Argentina) said that the exemption in article 51 should cover the greatest possible number of persons working in the consulate. In view of the corresponding provisions of the 1961 Convention, however, if the Romanian amendment were adopted, the consular staff would be in a more advantageous position than the staff of diplomatic missions. He would therefore not vote for the amendment. With regard to permanent residents, he agreed with the representative of France that the matter should be studied in connexion with article 69.

10. Mr. SPACIL (Czechoslovakia) said that, on the contrary, the Romanian amendment was logical and indispensable; it was in keeping with the spirit of the Convention, the purpose of which was to facilitate the exercise of consular functions. Besides, it was not so much a question of immunities as of certain advantages. The only argument against the amendment was that the new convention would no longer be parallel to the 1961 Convention; but if a mistake had been made then, there was no need to repeat it.

11. Mr. RUSSELL (United Kingdom) said that his delegation was in general agreement with the draft prepared by the International Law Commission and would vote for it. It would be obliged, however, to oppose the Romanian amendment on two grounds; in the first place it was contrary to prevalent international usage and, secondly, it would create an anomalous situation if the proposed convention were to accord wider facilities than the Vienna Convention on Diplomatic Relations. With regard to the Belgian amendment, he agreed with the representatives of France and Argentina that it raised a much more general issue which would have to be settled at a later stage in the discussion of the draft articles.

12. Mr. HARASZTI (Hungary) said that the convention should ensure exemption from personal services for all, including the service staff; he would therefore support the Romanian amendment. The proper place for the matter covered by the Belgian amendment was in article 56 from which, moreover, there had been certain omissions; he was therefore unable to support that amendment.

13. Mr. VRANKEN (Belgium) said that the entire question could not be covered by article 56; furthermore, it was by no means certain that the article would be adopted. He would therefore be forced to defend his position in advance on each article in which the question arose. Nevertheless, if article 56 was adopted, his delegation would be willing to agree that the provisions in question should be deleted in the various articles; in the meantime he would have to maintain his amendment.

14. Mr. ANGHEL (Romania) admitted that the Conference could take the 1961 Convention as a basis. But its task was to draw up a consular convention and it should not automatically transpose all the provisions of the one instrument into the other. The experience gained in 1961 should be sifted and compared with the facts and the texts should be compared in order to adopt the best solution. Article 35 of the 1961 Convention dealt with requisitioning, military contributions and billeting; in his opinion, the 1961 Conference had given to that article a meaning that was different from that attributed in the commentary to the text of article 51 of the draft under discussion. Moreover, since aliens were under no obligation to serve in the armed forces of the receiving State, there was all the more reason for treating at least in the same manner members of the service staff of a consulate who had the nationality of the sending State.

The Romanian amendment (A/CONF.25/C.2/L.207) was adopted by 23 votes to 22, with 16 abstentions.

The Belgian amendment (A/CONF.25/C.2/L.147) was adopted by 26 votes to 11, with 25 abstentions.

Article 51 as a whole, as amended, was adopted by 39 votes to 2, with 20 abstentions.

15. Mr. SILVEIRA-BARRIOS (Venezuela) explained that he had voted against article 51 because the text as amended had lost some of its restrictive character and thus had a wider range.

16. Mr. KANEMATSU (Japan) associated himself with the views expressed by the representative of Venezuela.

Proposal to replace articles 56 to 67 by a single article

17. The CHAIRMAN said that the Committee had before it a Japanese proposal (A/CONF.25/C.2/L.89/Rev.1) to replace articles 56 to 67 by a single new article. That proposal must be examined before starting to discuss any of the articles in question, in accordance with the decision taken by the Committee at its 33rd meeting.

18. Mr. LEVI (Yugoslavia) thought that if the Committee was to examine the Japanese amendment, it should likewise make a thorough study of articles 56 to 67.

19. The CHAIRMAN said that it might well be difficult for the Committee not to make a thorough examination of the draft articles in question, but that was a matter for the Committee itself to decide.

20. Mr. KANEMATSU (Japan) said that he shared the concern expressed by the representatives of France and Belgium; but in his view the case of honorary consular officials and assimilated persons should be dealt with more clearly than it was in the draft articles drawn

up by the International Law Commission. After a careful study of articles 56 to 67 of the draft, the Japanese delegation had come to the conclusion that to allot twelve articles to that question was too complicated a procedure and one which might create difficulties if it was desired to determine precisely the status of honorary consular officials. Mention was made in article 56 of honorary consular officials, although that article was part of chapter II, under the heading " Facilities, privileges and immunities of career consular officials and consular employees ". Chapter III dealt solely with honorary consular officials and did not explicitly regulate the case of persons who were employed on half-time work in a consulate and were engaged at the same time in private gainful occupation. It would be a good solution to draw up a positive list and a negative list. The Japanese amendment would simplify the position with regard to honorary consular officials or employees and personnel on the same footing, and the procedure outlined would be of help to the Conference in its work.

21. The CHAIRMAN pointed out that the Committee had decided to study the Japanese proposal together with article 56. The proposal advocated a method different from that adopted by the International Law Commission. If the Committee decided to discuss the principle on which the Japanese proposal was based, it would be discussing the amendment itself. If it approved the principle, it could be considered as having approved the amendment, at least in part.

22. Mr. LEVI (Yugoslavia) pointed out that if the Committee rejected the Japanese proposal, then it would no longer lie before the Committee, and the Japanese delegation would be able to propose an amendment to each of the articles from 56 to 67.

23. The CHAIRMAN thought that if the Committee did not accept the proposed procedure it would not thereby be making a decision on the substance of the text itself.

24. Mr. VRANKEN (Belgium) said that the Committee would have to decide whether it would prefer to retain chapter III or adopt a single article. If the principle of the proposal were accepted, the substance would have to be examined; if it were rejected, the Committee would then have to study each article, from article 56 to article 67. If the method proposed was not accepted, the Japanese delegation could then submit an amendment to each article.

25. Mr. VAZ PINTO (Portugal) said that the Japanese proposal raised a question of method and of substance. He asked if the Japanese delegation would be willing to withdraw its amendment and submit amendments to each of the articles, 56 to 67.

26. Mr. BLANKINSHIP (United States of America) moved the adjournment of the meeting.

It was so agreed.

The meeting rose at 12.30 p.m.

THIRTY-SEVENTH MEETING

Friday, 29 March 1963, at 3.5 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*)

Proposal to replace articles 56 to 67 by a single article (continued)

1. The CHAIRMAN recalled that the Committee had before it a proposal by the delegation of Japan (A/CONF. 25/C.2/L.89/Rev.1) to replace articles 56 to 67 of the International Law Commission's draft by a single new article. He proposed to ask the Committee to decide, by an immediate vote, whether it wished to discuss first the approach adopted in the Japanese proposal, i.e., the replacement of articles 56 to 67 by a single article, or to proceed at once to discuss the substance of that proposal. If the Committee decided to begin by discussing the approach, and not the substance, it would vote, after the discussion, on whether it preferred the approach proposed by the Japanese delegation or that adopted by the International Law Commission. If the vote went in favour of the Japanese presentation, the Japanese proposal would become the basic text before the Committee, and amendments to it could be submitted before the substance of the proposal was discussed. If the vote went against the Japanese presentation the Committee would revert to the International Law Commission's draft as the basic text, and would proceed to discuss, and subsequently to vote on, article 56, followed by the remaining articles and the amendments thereto. In that case, however, the Chair would permit the Japanese delegation to submit amendments to any of those articles, since the substance of its proposal would not have been rejected, but merely the principle of substituting a single article for a whole series of articles.

2. Mr. RUSSELL (United Kingdom) moved that the meeting should be suspended to enable delegations to study the revised Japanese proposal.

The motion was rejected by 25 votes to 17, with 17 abstentions.

3. Mr. HEUMAN (France) moved the closure of the debate on the Chairman's proposal for an immediate vote.

The motion for the closure of the debate was carried by 45 votes to 2, with 7 abstentions.

4. The CHAIRMAN invited the Committee to decide whether it wished to begin by discussing the approach or the substance of the Japanese proposal.

The Committee decided, by 45 votes to 1, with 10 abstentions, to begin by discussing the presentation in a single article adopted in the Japanese proposal.

5. Mr. AMLIE (Norway) said that there was no doubt that honorary consular officials could not be treated in the same way as career consular officials. The Interna-

tional Law Commission had therefore chosen a special way of dealing with the matter. In article 57, it had enumerated the articles in chapter II which could without difficulty be directly applied to honorary consular officials. It had, however, wished to go further, and because the special character of certain other articles made their direct application to honorary consular officials impossible, it had included in chapter III a number of special articles making the provisions of articles in chapter II applicable to a modified extent. It had, for example, been impossible to make direct reference to article 30, but since the International Law Commission had wished to provide that the premises of a consulate headed by an honorary consul should be inviolable, it had drafted article 58, which was a modified version of article 30. In the same way, article 46 was much too specific for application to honorary consular officials, and hence the Commission had drafted a modified version which appeared as article 62.

6. The Japanese proposal was based on an admirably thorough study of the draft articles. It was, however, not only a new technical approach: it also differed greatly in substance from the Commission's draft, and it was actually that difference in substance which made the new Japanese approach possible, because a formula such as that proposed by Japan could be used only if the privileges and immunities accorded to honorary consular officials and to consulates headed by such officials were limited to the privileges and immunities contained in those of the preceding articles which could be applied directly to such officials and consulates. If privileges and immunities were to be accorded to a greater degree than proposed by Japan, a system of cross-references was not enough: it had to be supplemented by new, modified articles. Specific provisions should be written into the draft when it was necessary to do so, as the International Law Commission had done.

7. Some representatives had criticized the system adopted by the International Law Commission. It was true that it entailed reference to a number of preceding articles; but the Japanese proposal would not be any improvement in that respect, since it merely listed a number of articles which were not to be applicable, and would therefore, just like the Commission's draft, necessitate constant reference to a certain key article.

8. Mr. JESTAEDT (Federal Republic of Germany) said that the Japanese proposal had enabled the Committee to gain a clearer idea of possible ways of dealing with the subject of honorary consular officials — a subject of the utmost importance, particularly for the smaller countries. After very careful comparison of the two different presentations, his delegation favoured the International Law Commission's draft. To have only one article to cover all cases would raise insuperable practical difficulties. For example, paragraph 1 of the Japanese proposal listed three unrelated categories of persons, comprising not only honorary consular officials and members of the consulate engaged in any private occupation for gain in the receiving State, but also members of the consulate who were " not in the full-time regular employment of the sending State ". The privileges and immunities of honorary consuls should be dealt with in a special chapter of the convention, which would make it easier for honorary consuls all over the world to ascertain the exact extent of their privileges and immunities. The Japanese proposal did, however, represent a valuable contribution towards clarifying the status of honorary consuls and he would suggest that on all the points of substance raised in it the Japanese delegation should submit amendments to the relevant articles.

9. Mr. DAS GUPTA (India) endorsed the views expressed by the representative of Norway. While he appreciated the valuable contribution made by the Japanese delegation to the Committee's discussions, the approach adopted in the proposal was complex and confusing. It made no distinction between career consuls engaged in a private occupation for gain in the receiving State and honorary consuls who might be nationals of the receiving State.

10. Mr. VAZ PINTO (Portugal) endorsed the views expressed by the representatives of Norway and the Federal Republic of Germany. He thought that to choose the Japanese proposal as the basis for discussion would involve the Committee in grave procedural difficulties.

11. Mr. SPYRIDAKIS (Greece) supported the previous speakers. While recognizing the value and importance of the Japanese proposal, the delegation of Greece, a country with many honorary consuls all over the world, was anxious that the privileges and immunities provided for in articles 57 to 67 should be given detailed consideration. It nevertheless supported the suggestion made by the representative of the Federal Republic of Germany, and strongly urged the Japanese delegation to present the valuable ideas contained in its proposal as amendments to the relevant draft articles.

12. Mr. NASCIMENTO e SILVA (Brazil) said that his delegation had found the system of cross-references adopted in the International Law Commission's draft somewhat unsatisfactory; but, although the Japanese delegation had performed a valuable task in working out its proposal, it would be preferable to keep to the draft as the basis of discussion, examining it article by article and making the necessary deletions and amendments.

13. Mr. DRAKE (South Africa) said that he was in favour of fairly detailed provisions on the position of honorary consular officials. Like many other smaller countries, South Africa both appointed and received honorary consular officials and, in his delegation's view, it would be useful for the draft articles to contain specific and separate rules to govern the situation. That did not mean that his delegation was in entire agreement with the text of the relevant articles as they stood: it had certain reservations with regard to some of them. Nevertheless, it considered that a separate regime for honorary consular officials would serve a most useful purpose.

14. The institution of honorary consuls was not a new one: it had been known in customary international law for a very long time and had been recognized by

many, if not most, countries in the past. In those circumstances it would be inopportune and unwise to dismiss it rather lightly in the convention with only one meagre and somewhat involved article — an article which must necessarily be complicated and would not be readily intelligible to the lay reader of the convention. The articles which it was proposed to replace by the Japanese proposal dealt with a number of highly important matters which should receive thorough consideration by the Committee; that consideration would be facilitated if the articles could be dealt with individually and in orderly progression, instead of in one comprehensive whole. The International Law Commission, after several years' study, had come to the conclusion that a separate chapter on honorary consuls should be included in the convention. His delegation respected that conclusion and would therefore, with regret, feel obliged to vote against the approach adopted in the Japanese proposal.

15. Mr. LEVI (Yugoslavia) endorsed the views expressed by previous speakers and agreed that, while the Japanese proposal had many good points, the International Law Commission's draft should be retained as the basis for discussion.

16. Mr. SILVEIRA-BARRIOS (Venezuela) said that his delegation, while recognizing the valuable work of the Japanese delegation, would prefer to examine all the articles drafted by the International Law Commission, since it was necessary to determine specifically in each case the question of the privileges and immunities to be enjoyed by honorary consular officials in the exercise of their consular functions.

17. Mr. REBSAMEN (Switzerland) said that his delegation could not vote in favour of the Japanese proposal, since from the practical point of view it would be preferable to take the International Law Commission's draft as the basis for discussion. He endorsed the arguments put forward by previous speakers and stressed the importance of honorary consuls for many countries including Switzerland. It was advisable to adopt clear and specific provisions regulating the situation, so that not only governments, but honorary consuls themselves, would be quite clear as to their status. He proposed that Mr. Žourek should be invited to explain to the Committee why the International Law Commission had adopted its draft articles on honorary consular officials.

18. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, explained that his first draft had not contained a separate chapter concerning facilities, privileges and immunities for honorary consular officials. During the preliminary discussion, some members of the International Law Commission had tended to favour detailed provisions concerning honorary consuls, and in the light of the comments by governments, the Commission had recognized the need to include a separate chapter establishing the privileges and immunities of honorary consular officials as precisely as possible. It had also been necessary to take into account the fact that, although many States followed the practice of appointing and accepting consular officials, some did not. It had therefore been decided that the regime of privileges and immunities applicable to honorary consular officials should be dealt with in a separate chapter, the last article of which (article 67) established the optional character of the institution of honorary consular officials.

19. The first draft had contained no article corresponding to article 56. After considering the comments by governments, however, the Commission had recognized that some States permitted their career consular officials to carry on a private gainful occupation, and in view of that practice it had adopted article 56.

20. Article 57 enumerated those articles which, in the opinion of a majority of the members of the Commission, could apply in full to honorary consuls. The Commission had been of the opinion that the articles of chapter II, which were not enumerated in article 57, paragraph 1, could not apply in full, but since it had acknowledged that some of the rights accorded to career consuls in those articles should also be granted to honorary consuls, it had defined — for example, in articles 62, 63 and 64 — the privileges and immunities which should be granted to honorary consuls. It would be seen that the extent of the privileges and the categories of the person benefiting from them were more restricted than in the case of career consuls.

21. An attempt had been made to include a definition of honorary consuls in the 1960 draft. However, in view of the practice of States and the considerable differences in national laws with regard to the definition, the Commission had decided at its twelfth session to leave States free to define honorary consuls in accordance with their own criteria.

22. Mr. REBSAMEN (Switzerland) expressed his complete satisfaction with the explanation given.

23. Mr. CAMPORA (Argentina) doubted, in view of rule 29 of the rules of procedure, whether the Second Committee was, in fact, competent to decide that chapter III of the International Law Commission's draft, which was the basic proposal, should be replaced by the Japanese proposal. In his opinion, only a plenary meeting of the Conference could take such a decision. While congratulating the delegation of Japan on the valuable work it had done, his delegation would prefer the International Law Commission's draft to be retained as the basis for discussion.

24. Mrs. VILLGRATTNER (Austria) stressed the fact that separate provisions on honorary consuls were necessary, in order to make it clear that the institution of honorary consuls, which was of great importance for many countries, merited special consideration. The regime applicable to honorary consular officials should be clearly defined. Moreover, in view of article 1, paragraph 2, the Japanese proposal seemed to raise certain fundamental structural difficulties, and her delegation would be unable to support it.

25. Mr. SPYRIDAKIS (Greece) moved the closure of the debate, since the general feeling of the meeting on the subject under discussion seemed to be clear.

26. Mr. DAS GUPTA (India) and Mr. REBSAMEN (Switzerland) opposed the motion.

The motion for the closure of the debate was rejected by 37 votes to 6, with 22 abstentions.

27. Mr. TILAKARATNA (Ceylon) urged the Committee to proceed without delay to consider the vital articles concerning honorary consuls, during the discussion of which the substance of the Japanese proposal could be given full consideration.

28. Mr. SCHRØDER (Denmark) fully agreed with the views expressed by the representative of Norway.

29. Mr. EVANS (United Kingdom) said that his delegation had carefully studied the Japanese proposal and the articles it would replace, and had reached the conclusion that the proposal had great merits and deserved the most serious consideration by the Committee. Not only would it replace twelve articles in a long and complicated convention by one single article, but in certain respects it was more comprehensive than the twelve articles and seemed to remedy certain obscurities and defects in them. He found it difficult to explain his reasons adequately, because of the Committee's procedural decision to discuss the approach adopted in the Japanese proposal and not the substance; he did not think that the true merits of the proposal, which were very considerable, could be properly understood without going into the substance and comparing it carefully with the International Law Commission's draft articles. He would, however, endeavour to comply with the Committee's decision and refrain from speaking in detail on the substance of the proposal.

30. The International Law Commission, in defining the scale of privileges and immunities for the persons covered by the convention, had distinguished between three main categories: first, career consuls and consular employees receiving the full scale of privileges and immunities provided for in chapter II of the convention; secondly, honorary consuls, among whom the Commission had included, through article 56, career consuls carrying on a private gainful occupation; and thirdly, nationals of the receiving State. The United Kingdom delegation was broadly in agreement with the Commission's view that the convention should establish those three scales of privileges and immunities; the Japanese proposal was concerned with the second scale and the second or middle category, comprising honorary consuls and persons assimilated to them. There was no reason at all why the persons in the second category should not be defined in a single article instead of in two articles (56 and 57). After defining the category to whom the middle scale applied, the next step was to define the privileges and immunities in that scale; and in order to do so, the International Law Commission had found it necessary to draft no less than eleven articles. The Japanese amendment, however, had demonstrated convincingly that it was possible and convenient to define the scope of the middle scale of privileges and immunities in a single article.

31. The main difference in presentation between the Japanese proposal and the Commission's draft was that the Commission listed the articles in chapter II which would apply and the Japanese amendment listed the articles which would not. The representative of Norway had been concerned that a single article might detract from the scale of privileges and immunities accorded to honorary consuls. That did not seem a logical view, since after careful comparison he could find very little difference in substance between the privileges and immunities accorded to consular officers by the Japanese proposal and those accorded by the Commission's draft. The only differences in substance appeared to be first, in regard to articles 41, 46 and 46 A, which dealt with questions of minor importance.

32. Mr. LEVI (Yugoslavia), speaking on a point of order, said that, despite the decision adopted, the United Kingdom representative was speaking on the substance of the Japanese proposal.

33. The CHAIRMAN appealed to the United Kingdom representative to keep to the procedure decided on.

34. Mr. EVANS (United Kingdom) said he was sorry if he had infringed the procedural decision adopted earlier in the meeting; but, unless representatives could state why they considered the Japanese proposal meritorious, it could not be given fair consideration.

35. One respect in which the Japanese proposal had a very great advantage over the Commission's draft was that it included specific provisions concerning members of families and private staff of honorary consuls — an important matter on which the Commission's draft said practically nothing. The United Kingdom delegation accordingly welcomed paragraph 4 of the Japanese proposal which filled a serious gap in the draft articles.

36. Lastly, the Japanese proposal dealt with the entitlement of consulates presided over by an honorary head of post or other person in that category to facilities, privileges and immunities.

37. Mr. DAS GUPTA (India), on a point of order, said that he had every sympathy with the United Kingdom representative's difficulties, but the Committee must keep to the procedure it had adopted. He moved the closure of the debate.

38. Mr. SHARP (New Zealand) supported by Mr. BLANKINSHIP (United States of America) said it was unfortunate that the earlier motion for closure had been proposed when nearly all the speakers had been against the Japanese presentation. Now that one speaker was in favour, it would be only fair to grant him some latitude. He opposed the motion for closure.

The motion for closure was rejected by 30 votes to 9, with 26 abstentions.

39. Mr. EVANS (United Kingdom) thanked the Committee for its indulgence. Continuing his statement, he said that another point covered by the Japanese proposal was the facilities, privileges and immunities accorded to

a consulate headed by an honorary consul or person assimilated to an honorary consul. There again the United Kingdom delegation had concluded, after very careful consideration, that the matter could be satisfactorily dealt with in a single article without prejudice to the position of honorary consuls.

40. To sum up, there were four distinct problems dealt with in the Japanese proposal: the categories of officials entitled to the middle scale of privileges and immunities, the status of members of families and private staff of such officials; the privileges and immunities to which such persons should be entitled; and the privileges and immunities of consulates headed by the consular officers in question. There was great merit in a proposal which dealt with those four interrelated problems in one article. The Japanese proposal was both more concise — which was in itself a great merit — and more comprehensive than the Commission's draft articles. He therefore supported it in principle.

41. Mr. AMLIE (Norway), exercising his right of reply, said he did not agree with the United Kingdom representative that the differences between the Japanese proposal and the draft articles were insignificant. The Japanese proposal omitted any mention of the inviolability of consular premises, exemption from taxation of consular premises, attendance at court, registration of aliens, work permits, or permission for subordinates to import articles free of duty on first installation. The differences were so great that they would make the application of the Japanese proposal impossible.

42. Mr. KANEMATSU (Japan) said that the General Committee had placed the Second Committee in a dilemma by deciding that it should vote on his proposal when it came to deal with article 56. It would be impossible to vote without discussing the substance, which would require a considerable time, since his proposal affected twelve articles. In order to help the Committee he had agreed to a compromise by which the presentation and the substance of his proposal would be dealt with separately, but the United Kingdom representative had clearly demonstrated that the two things were inseparable. In his opinion, the Committee was faced with an impossible task.

43. The CHAIRMAN explained that the General Committee had considered the problem only from the practical point of view, in an effort to speed up work. It had not discussed the merits of the Japanese proposal, but had merely decided that in view of the Japanese proposal, it would not transfer articles 56, 65, 66 and 67 to the First Committee. That decision had been taken out of consideration for the delegation of Japan and the matter had been left in the hands of the Second Committee.

44. The vote to be taken next was consequent on two decisions by the Committee: the initial decision to deal with the Japanese proposal before any of the other amendments to article 56; and the decision to vote first on the presentation. He had no alternative but to follow the procedure decided on by the Committee, and to invite it to vote on the approach proposed by the Japanese delegation whereby articles 56 to 67 would be replaced by a single new article.

At the request of the representative of the United Arab Republic, a vote was taken by roll-call.

Brazil, having been drawn by lot by the Chairman, was called upon to vote first:

In favour: Canada, China, Federation of Malya, Israel, Japan, Republic of Korea, Libya, Mexico, New Zealand, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America.

Against: Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Colombia, Congo (Leopoldville), Czechoslovakia, Denmark, Finland, Federal Republic of Germany, Ghana, Greece, Hungary, India, Indonesia, Ireland, Italy, Lebanon, Liberia, Liechtenstein, Luxembourg, Mongolia, Netherlands, Nigeria, Norway, Philippines, Poland, Portugal, Romania, San Marino, Sierra Leone, South Africa, Spain, Sweden, Switzerland, Syria, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Venezuela, Yugoslavia, Algeria, Argentina, Austria, Belgium.

Abstaining: Cambodia, Cuba, France, Guinea, Honduras, Iran, Pakistan, Saudi Arabia, Tunisia, Republic of Viet-Nam, Australia.

The approach adopted in the Japanese proposal (A/CONF.25/C.2/L.89/Rev.1) was rejected by 45 votes to 13, with 11 abstentions.

Article 56 (Special provisions applicable to career consular officials who carry on a private gainful occupation)

45. The CHAIRMAN invited the Committee to consider article 56 and the amendments submitted to it.[1] As he had explained at the beginning of the meeting, the representative of Japan could submit an oral amendment if he wished.

46. Mr. DRAKE (South Africa) introduced his delegation's amendment (L.188), which provided that members of the families of career consular officials should not enjoy greater facilities, privileges and immunities than the consular officials themselves. Without such a provision article 56 would permit the anomalous situation that families could be in a better position than the consular officials from whom they derived their privileges. He was sure that had not been the intention of the International Law Commission.

47. Mr. HEUMAN (France), introducing the French amendment (L.211), pointed out that the draft article

[1] The following amendments had been submitted: Austria, A/CONF.25/C.2/L.51; Byelorussian Soviet Socialist Republic, A/CONF.25/C.2/L.106; India, A/CONF.25/C.2/L.179; South Africa, A/CNOF.25/C.2/L.188; France, A/CONF.25/C.2/L.211.

referred only to career consular officials; since other members of a consulate might also carry on a private gainful occupation, his delegation was proposing a text which would include them.

48. Members of families should also come within the provisions of the article, however. The problem of how to deal with them was a difficult one and he congratulated the representative of Japan on paragraph 4 of his proposal, which made it clear that there were really two cases to be considered: the family of a career consular official who was carrying on a private gainful occupation, and a wife or children carrying on a private gainful occupation while the husband or father had no occupation but his career consular functions and therefore retained his privileges. Paragraph 4 (*b*) of the Japanese amendment was extremely important and should be embodied in article 56.

49. The French amendment filled only one of the gaps. The South African amendment did not entirely solve the other problem, because it did not cover the case of a wife or member of the family carrying on a private gainful occupation, while the member of the consulate himself did not. Unless the Japanese representative intended to propose his own paragraph 4 as an amendment to article 56, he would be willing to accept it as an addition to the French amendment.

50. Mr. KANEMATSU (Japan) said that he would be willing either to propose the addition of paragraph 4 of his proposal to article 56, or to let it be added to the French amendment.

51. Mr. DAS GUPTA (India), introducing his delegation's amendment (L.179), said that although similar in purpose to many of the other amendments, it differed from them in one respect. Article 56 was not, strictly speaking, concerned with either career consuls or honorary consuls; it was concerned with the intermediate category of career consuls whom the sending State allowed to carry on a private gainful occupation. There were three points to be considered: first, the status, privileges and immunities of the official; second, the status, privileges and immunities of members of his family; and third, the right of the sending State to allow career consular officials to carry on a private professional occupation in the receiving State. The third point was the most important, because the receiving State normally had the right to refuse permission for such an occupation. Many States, including India, did refuse permission; but the nationals of some countries were unwilling to accept consular office unless they were allowed to carry on a private occupation in the receiving State. The first part of his amendment therefore made permission for career consuls to engage in a private gainful occupation subject to the consent of the receiving State. The question would not arise for honorary consuls, who were usually nationals of the receiving State. The second part of his amendment was on the same lines as those of France and South Africa. He supported the Byelorussian amendment (L.106), which made a significant improvement to the draft, and agreed with the French representative's comments on the Japanese amendment.

52. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that his amendment (L.106) had been submitted because the International Law Commission stated in paragraph 3 of its commentary that the expression " private gainful occupation " meant commercial, professional or other activities carried on for pecuniary gain, but did not include occasional activities such as giving university courses or editing publications. As the commentary would not appear in the Convention, the position should be made clear in the text of the article. The wording of his amendment was similar to that of article 42 of the Convention on Diplomatic Relations.

53. Mr. MARESCA (Italy) pointed out that as drafted, the reference in the French amendment to members of the consulate " other than the service staff " might be liable to misinterpretation. He supported the Austrian amendment, because it should be made clear that consular officials could not normally carry on a private gainful occupation.

54. Mr. SILVEIRA-BARRIOS (Venezuela) drew attention to certain shortcomings in article 56. In practice, it would be difficult for the receiving State to find out whether a consular official was engaging in a private gainful occupation; inquiries might interfere with normal consular relations. The term " private gainful occupation " without further definition was too vague. The Austrian amendment came closest to his own view, but he requested that the part referring to members of families should be voted on separately.

55. Mr. JESTAEDT (Federal Republic of Germany) saw some incongruity in the wording used in the article; a career consular official carrying on a private gainful occupation had never been met with in his country, though there might be a few cases among consular employees whose salaries were low. Perhaps Mr. Žourek or some member of the Committee could comment on the statement in paragraph 1 of the International Law Commission's commentary, for it seemed to him unlikely that a government would allow its career consular officials to carry on a private gainful occupation. He would support the Austrian amendment.

56. The CHAIRMAN observed that even if the situation did not exist at present, it could arise in the future.

57. Miss LAGERS (Netherlands) said that her government did not permit its career consuls to carry on private gainful occupations, but she knew of two cases in the Netherlands.

58. Mr. BLANKINSHIP (United States of America) quoted from the United States Foreign Service Act which prohibited officials in the foreign service from transacting business for profit in their own name or through the agency of another person. He was unable to quote any cases of career consular officials in the United States carrying on private gainful occupations.

The meeting rose at 6.15 p.m.

THIRTY-EIGHTH MEETING

Monday, 1 April 1963, at 10.5 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 56 (Special provisions applicable to career consular officials who carry on a gainful occupation) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 56.[1]

2. Mr. KANEMATSU (Japan) presented the amendment in document A/CONF.25/C.2/L.211/Rev.1, which combined the French amendment (L.211) and paragraph 4 of his earlier proposal (L.89/Rev.1).

3. Mrs. VILLGRATTNER (Austria) presented her delegation's amendment (L.51) to re-draft article 56 so as to lay down the principle that career officials and their families should not engage in private gainful occupation in the receiving State. It was not the practice in most of the countries represented at the Conference for career officials to engage in such occupations and there was a similar provision in the Convention on Diplomatic Relations. She would accept any sub-amendments on the definition of the persons and activities concerned that would not affect the principle. Stipulations concerning the exclusion from privileges of persons engaged in private gainful occupation appeared in a number of other articles and the Committee or the drafting committee should ensure that the definitions were uniform. Under articles 46 and 46 A consular employees engaged in private gainful occupation and their families, and service staff and their families, were not exempted from obligations in respect of registration of aliens and residence permits; but in the case of work permits the exclusion from exemption applied to members of consulates and their families as well. Under article 47, exemption from social security applied solely to members of the consulate and their families not engaged in private gainful occupation and no further stipulation was necessary. Article 48 (Exemption from taxation) contained no specific limitation concerning private gainful occupation but it was implied under paragraph 1 (*d*). No stipulation was necessary in articles 49 and 50, which dealt with other matters. Article 51 (exemption from personal services and contributions) stated that exemptions did not apply to members of the families of consular employees if the latter carried on a private gainful occupation, so that there was no need for a reference to consular employees themselves. Thus the exemptions and exceptions in respect of members of the consulate were all set out in the relevant articles and in article 56 it was only necessary to state the principle.

4. Mr. TSHIMBALANGA (Congo, Leopoldville) said it had often been pointed out during the Conference that the newly independent and the smaller countries had neither the financial means nor the qualified staff to meet all their commitments. That applied to their consulates and he would draw attention to some of the advantages of honorary consuls.

5. In order to carry out the consular functions set out in sub-paragraphs (*a*), (*b*) and (*c*) of article 5, it was necessary to have a well-developed system of consulates covering every region containing a large group of nationals of the sending State. But in some cases the interests to be protected did not warrant the setting up of a full-scale consulate. The cost of maintaining a consulate with a career consul was very high and a large number would be too heavy a burden on the economies of some countries, particularly countries with economic and balance-of-payment difficulties. For such countries a system of consular posts operated by honorary consuls was an essential condition of economic expansion. Moreover, it was sometimes more satisfactory to appoint a person on the spot than to send a qualified person from the sending State. A consul chosen in the receiving State was usually much more familiar with the local situation and could provide better service than the commercial section of an embassy or consulate staffed by nationals of the sending State who were not so well acquainted with the receiving State, its people and customs. Moreover, an embassy was situated in the capital and its area of competence was too wide to allow for effective business relations. Honorary consuls had been criticized; but the criticism was unjustified, for the few individuals who were unsuitable and had failed in their task should not bring discredit on the whole system.

6. His country was facing a severe crisis, following its independence, and needed honorary consuls. He would support any amendments which would extend and make more precise the provisions in the convention governing honorary consuls. He hoped that the Committee would keep in mind during the discussion the advantages of the system of honorary consulates which he had endeavoured to outline.

7. Mr. HEUMAN (France) said that the reference in paragraph 1 of the joint amendment by Japan and France to " consular employees entrusted with administrative or technical tasks " was an improvement on the original French amendment (L.211) which had used the more general term " members of the consulate, other than the service staff ". The new term did not imply the exclusion of the service staff from the provisions of the paragraph; they had not been mentioned because the privileges which they would lose by carrying on a private gainful occupation were so few. If anyone disagreed with him on that point he would be willing to amend the text. The inclusion of the reference to the employees of honorary consular officials at the end of paragraph 1 would make a similar addition necessary to article 57 since the two articles were closely linked, and he would submit an amendment to that effect.[2] With regard to paragraph 2, which had been taken from the original Japanese amendment (L.89/Rev.1), he had

[1] For the list of amendments to article 56, see the summary record of the thirty-seventh meeting, footnote to para. 45.

[2] See document A/CONF.25/C.2/L.218.

nothing to add to his comments at the previous meeting. Paragraphs 1 and 2 together filled the gap in article 56 and paragraph 2 made good the absence of any mention of the family.

8. As the joint amendment now embodied the essence of the South African amendment (L.188) he invited the South African representative to withdraw his amendment and become a third sponsor of the joint amendment. The Austrian amendment embodied an excellent principle. It would not, however, prevent clandestine private gainful occupation. It would be better to accept the fact that a consular official might occasionally engage in a private gainful occupation and deal with the situation when it arose by reducing his privileges to those accorded to honorary consuls under chapter III. He would vote for the Indian amendment (L.179) which provided that the sending State should notify the receiving State in the event of the appointment of a career consular official permitted to engage in private gainful occupation.

9. He had been impressed by the evidence cited by the representative of Austria to show that the employee carrying on a private gainful occupation and his family were already excluded from privileges, but that was a matter of drafting. The Committee had from the outset had the alternative of stating the exclusions in each article or stating the principle in a general article — which was the purpose of the joint amendment. If the second form were adopted the individual cases would have to be deleted from the articles. If it were rejected the Convention would have to be reviewed to see that stipulations were inserted in all the articles where they were required, but there was a risk that some would be overlooked. The safer method was a general provision in article 56 on the lines proposed in the joint amendment.

10. Mr. PAPAS (Greece) agreed with the views of the Austrian representative but suggested that the object of her amendment could be achieved more easily by deleting the word " career ".

11. Mr. LEVI (Yugoslavia) observed that a definition of members of the consulate staff was given in article 1, and paragraph (*b*) of the joint amendment seemed therefore to be a repetition of paragraph (*a*). The situation was a little confusing because article 1 had not yet been approved. He agreed with the general intention of the Austrian amendment but wondered if it was feasible since under article 46 A it was implicitly accepted that members of the consulate might carry on gainful private occupation. He would nevertheless support the Austrian amendment if it were put to the vote. If it were rejected he would support the Indian amendment. He would also support the South African amendment if it could be incorporated in the Indian amendment.

12. Mr. MARESCA (Italy) said that in codifying consular law the Conference had consistently recognized two separate categories: career consuls and honorary consuls. But the article which the Committee was trying to introduce could only cause confusion. To state that a career consul could carry on an activity alien to his profession and be reduced to honorary status was nothing more than an invitation to engage in such activity. He supported the Austrian amendment which was legally and ethically correct; it dealt with the substance of the matter and he considered that it should be voted on before any of the others. On the other hand, it was perhaps going too far to prohibit such activities where members of families were concerned. He would therefore suggest that the amendment should provide that members of a career consul's family who engaged in a gainful occupation would cease to enjoy the privileges granted under the convention.

13. Mr. SALLEH bin ABAS (Federation of Malaya) said that in view of the introductory comments to chapter III (Facilities, privileges and immunities of honorary consular officials), the persons who were the subject of article 56 were nothing more than honorary consuls themselves within the International Law Commission's definition. On the question of career consular officials being permitted to carry on private gainful occupations, he agreed with the views of the representatives of Austria and Italy.

14. With regard to the joint amendment, he agreed to the inclusion of consular employees in the text: otherwise they would not lose privileges through carrying on private gainful occupation, whereas their superior officers would. He was not fully satisfied with the wording " consular employees entrusted with administrative or technical tasks " because it would mean that the service staff of such employees would not lose their privileges and immunities when carrying on private gainful occupations. He was puzzled by the reference to " honorary consular officials and their employees " at the end of paragraph 1 of the joint amendment, for chapter III made no mention of the employees of honorary consuls. A review of articles recently approved showed that in articles 41, 43, 44, 46, 46 A, 47, 48, 49, 50 and 51 the privileges in question in most cases concerned members of the consulate which by definition included consular employees; yet article 56 excluded consular employees. He would therefore support the joint amendment by France and Japan subject to a satisfactory explanation of the words " entrusted with administrative or technical tasks ". He also supported the South African amendment (L.188) which filled a gap in paragraph 2 of the joint amendment. He approved the principle underlying the Austrian amendment, but thought that it would have the effect of allowing the receiving State to influence the policy of the sending State. There was no reason why the receiving State should object to something permitted by the sending State. He would therefore abstain from voting on the proposal.

15. Mr. SILVEIRA-BARRIOS (Venezuela) said that after hearing the comments of the Italian representative he wished to withdraw his proposal made at the previous meeting for a separate vote on the Austrian amendment. The Austrian amendment conformed to article 42 of the Convention on Diplomatic Relations and he would support it.

16. Mr. JESTAEDT (Federal Republic of Germany) supported the Austrian amendment and the joint amendment. He agreed that article 42 of the Diplomatic Convention prohibited private gainful occupation but

article 31 tacitly recognized it by stating that a diplomatic agent should not have certain immunities in connexion with activities outside his official functions. Those two principles were recognized. He wondered, however, whether it would not be possible for the joint amendment to be incorporated in article 1, paragraph 2, where there was already a reference to article 56. He strongly supported the Indian amendment.

17. Mr. DONADO (Lebanon) supported the Austrian amendment. Should it be rejected by the Committee, however, his delegation would favour the joint amendment.

18. Mr. ALVARADO GARAICOA (Ecuador) supported the Austrian amendment with the sub-amendment proposed by the representative of Italy.

19. Mr. PEREZ HERNANDEZ (Spain) endorsed the views expressed by the representatives of Venezuela and Ecuador. His delegation would support the Austrian amendment provided that it was made clear that members of the family of a career consular official should not be prevented from carrying on a private gainful occupation, but that when they did so, their privileges and immunities would be restricted.

20. Mr. RUSSEL (United Kingdom) said that the appointment of career consular officials who were permitted to carry on a private gainful occupation was, in fact, extremely rare; it was not the practice of his government to make such appointments. His delegation had therefore felt some scepticism with regard to article 56 but would not oppose it if the majority of the Committee decided in favour of its retention; in that case his delegation would vote for the amendment sponsored jointly by delegations of France and Japan.

21. Under article 69 nationals of the receiving State, whether career or honorary consular officials, would not be entitled to most of the privileges and immunities accorded to other members of the consulate. Amendments had been submitted to article 69 to the effect that permanent residents should also be excluded from the enjoyment of most privileges and immunities under the convention. His delegation was inclined to think that persons engaged in private gainful occupation should form a third category for disqualification. If a provision to that effect was included in article 69, however, it would not necessarily mean that article 56 should be deleted.

22. Mr. VRANKEN (Belgium) said that an amendment had been submitted to article 1 on the definition of career consuls and honorary consuls; if adopted, it would have an effect on the drafting of article 56. The aim of that amendment was the same as that of the Austrian amendment, since its effect would be to provide that all those consular officials who were not career consuls were honorary consuls, who would not benefit from the privileges and immunities in chapter II but come under chapter III. His delegation would therefore vote in favour of the Austrian amendment.

23. Mr. MARAMBIO (Chile) supported the Austrian amendment with the Italian sub-amendment. He would, however, propose that the first line of the Austrian amendment should read " Career consular officials and members of their families . . ." in accordance with the proposed title of the article.

24. Mr. BLANKINSHIP (United States of America) said that the taking of employment by members of consulates and diplomatic missions, and by members of their families, caused some difficulty in his country in cases where such persons were well qualified, for example, and obtained employment in an area where nationals of the country were unemployed. United States Government officials had been seeking means to deal with the matter. The Austrian amendment, however, referred to " consular officials and members of their families ". The possible loop-hole would seem to exist in regard to consular employees, who were less well paid, and members of their families rather than in regard to consular officials. The Austrian amendment, although it might be useful, appeared therefore to have certain limitations and some combination of it with the joint amendment might be preferable.

25. Mr. AMLIE (Norway) said that the question of what was meant by the expression " commercial activity " used in article 31, paragraph 1 (*c*), of the Vienna Convention on Diplomatic Relations had remained unanswered at the 1961 Conference. The term " private gainful occupation ", used in the text under discussion, seemed equally nebulous. While a case in which the official ran a shop or business was clear enough, there might be borderline cases where, for example, a consular official bought stock on which he made a profit, or received interest on capital assets owned by him in the receiving State. It would be useful for the Committee to hear Mr. Žourek's views on the matter.

26. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, explained that article 56 had been included by the International Law Commission because a study of consular regulations had shown, and the comments of governments had confirmed, that some States permitted their career consular officials to carry on a private gainful occupation. It had also noted that States were not prepared to give to that category of consular official the same treatment as to other career consular officials who were employed full-time in the exercise of their functions. The inclusion of article 56 therefore obviated the clumsy drafting required if a reference to " private gainful occupation " had had to be included in almost every article. It was also necessary to define the status of career consular officials who carried on a private gainful occupation in order to ensure that their position was not inferior to that of honorary consuls, to whom they were generally assimilated by municipal law. It was recognized, however, that the practice referred to in article 56 was exceptional. In reply to the representative of Norway, the International Law Commission had referred to a private gainful " occupation " which implied that work was involved as explained in paragraph 3 of the International Law Commission's commentary on article 56. It was true that there would be some difficulty in regard to borderline cases, for example, where income was derived

from investments, but in his view the question was one of tax exemption rather than of the application of the present article which regulated the legal status of the consular officials concerned in regard to the facilities, privileges and immunities to which they were entitled.

27. Mr. MARESCA (Italy) asked whether it would not be possible for a receiving State simply to consider as an honorary consul a career consular official who was found to be carrying on a private gainful occupation.

28. Mr. ŽOUREK (Expert) replied that it was because no uniform practice had developed on that point that the International Law Commission had considered it necessary to include an article to clarify the situation. It would be difficult to recognize the right of the receiving State to decide the category — career consular official or honorary consular official — into which a particular official should fall. He agreed that from the practical point of view the position of the officials referred to in article 56 was similar in many respects to that of honorary consuls who in the majority of cases exercised a private gainful occupation. Article 56, while leaving the sending State free to appoint the career consular official and to permit him to carry on a private gainful occupation, still safeguarded the interests of the receiving State by establishing that the category of officials concerned should in fact be treated in the same way as honorary consular officials.

29. Mr. VAZ PINTO (Portugal) asked whether it would not be desirable both from the legal and practical point of view to include in the convention a better definition of career consuls and honorary consuls, since the municipal law of the different countries gave varying criteria which gave rise to difficulties.

30. Mr. ŽOUREK (Expert) replied that it would indeed be desirable to have definitions of the two categories of the officials which were interrelated. The question was whether it was possible to establish such definitions. The International Law Commission had attempted to define them in the 1960 draft but had abandoned the attempt in view of the widely varying practice of States.

31. Mr. GANA (Tunisia) asked whether the privileges and immunities generally accorded to honorary consuls were granted by reason of their capacity or by reason of the functions which they exercised.

32. Mr. ŽOUREK (Expert) said that consular immunities were based both on the official capacity of the consular official and on the official functions which he was called upon to exercise.

33. Mr. SHARP (New Zealand) said that his delegation had a slight preference for the Indian amendment (L.179), as opposed to the Austrian amendment, provided that the first alternative text of paragraph 1 was adopted. His delegation would also favour the addition in that text of the word " only " before the words " with the consent of the receiving State ". The Austrian amendment was rather too rigid. Although difficulties might arise in some countries where there was unemployment, there might be some circumstances when it would be to the advantage of the receiving State that at least the members of the families of consular officials should be able to seek employment, for example, in cases where a highly qualified member was able to fill an important vacancy.

34. Mr. NALL (Israel) expressed his delegation's appreciation of the explanations given by Mr. Žourek in which it found considerable support for the point of view expounded in the Austrian amendment, which his delegation would support with one or two reservations. He would remind the Committee that the League of Nations committee of experts for the progressive codification of international law had suggested the abolition of the institution of honorary consuls on the ground, among others, that they might use their position for their own benefit, for example by obtaining information while offering their consular services to persons who might apply to them. That argument could *a fortiori* be applied to career consuls. It would indeed be anomalous to permit career consuls to engage in private occupation for gain in the receiving State, and whenever such a case had arisen it had been a distinct exception to the rule that a consular officer should engage only in consular occupations. For those reasons it was clear to his delegation that the solution suggested by Austria was the only possible one, and should be included in an international multilateral convention. Two points, however, embarrassed his delegation slightly. Firstly, it was not clear why the prohibition should apply only to consular officials; in that respect his delegation drew no distinction whatever between members of the consulate, including the service staff, and the consular officials themselves, and the exclusion should apply to all. Secondly, as the representative of New Zealand had pointed out, very often both the receiving State and the sending State benefited by the employment of members of families of consuls in the receiving State. The reasons were obvious and needed no explanation. The receiving State frequently afforded a very wide field for experiment or employment of knowledge where payment could also be obtained. The exclusion of members of families of consular officials was not, therefore, entirely justified. Subject to those two changes, if they were commendable to the Austrian delegation, his delegation would support the Austrian amendment.

35. Mr. HEUMAN (France), replying to criticisms that there were no provisions in the joint amendment for service staff, said that reference to them had been omitted since they had practically no privileges in the draft articles. He was, however, prepared to meet the objections by revising paragraph 1 of the joint amendment to make it applicable to all consular employees.

36. In reply to the comments made in connexion with the reference, in paragraph 1 of the joint amendment, to the consular employees of honorary consular officials, he would be prepared, not to delete the reference, but to accept a separate vote on the words " and their employees " at the end of the paragraph.

37. The representative of the Federal Republic of

Germany had suggested that the question should be dealt with in article 1, paragraph 2. In the absence of a written proposal to that effect, however, it would be preferable to avoid the transfer of such a complex technical matter to another committee which would not be thoroughly acquainted with the question.

38. Mr. KANEMATSU (Japan) said, in reply to the representative of Yugoslavia, that sub-paragraph (*b*) of paragraph 2 of the joint amendment dealt with those members of the family of a member of a consulate who were themselves engaged in private occupation for gain whereas sub-paragraph (*a*) referred to all members of the family to whom paragraph 1 applied whether or not engaged in private occupation for gain.

39. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that, in view of the fact that the word "private" was used in articles, such as article 48, already adopted by the Committee, and in the light of the discussion, his delegation would withdraw its amendment (L.106) on the understanding that it would be referred to the drafting committee for consideration.

40. Mr. DRAKE (South Africa) said that, having had an opportunity to examine the joint amendment, his delegation was prepared to support it instead of its own, more limited, amendment (L.188). Since the joint amendment would presumably be voted on before the South African amendment, however, his delegation would not formally withdraw and wished its amendment to be voted on should the joint amendment be rejected.

41. Mr. KHOSLA (India) said that the object of the Indian amendment (L.179) was to ensure that the consent of the receiving State was obtained. The receiving State should in any case be notified if career consuls were entitled to carry on a private gainful occupation, since that practice was not general among States. He would like the alternative text of the Indian amendment to be put to the vote first but if the joint amendment was approved before the Indian amendment was voted on, it would then be necessary to modify the latter.

42. Mrs. VILLGRATTNER (Austria) said she was grateful to the various representatives who had commented on the Austrian amendment (L.51). As she had said earlier, she was willing to incorporate any constructive suggestions in the text of her amendment. In particular, she accepted the Chilean proposal to add the word " career " at the beginning of the amendment, which was fully in accordance with the intention of the amendment. She could not accept the suggestion of the Greek delegation that the word " career " should be deleted from the title.

43. If the words " and members of their families forming part of their households " were struck out of the Austrian amendment, it would be necessary to include a new second paragraph stipulating the status of members of the families of consular officials engaged in private gainful occupations. She asked that that phrase should be voted on first, and if it were rejected she would be glad to adopt the suggestion of the Italian representative regarding a new second paragraph, to read: " Members of the family of a career consular official forming part of his household, who are practising, for personal profit, any professional or commercial activity in the receiving State, shall not enjoy the exemptions as provided in chapter II of this convention."

44. With regard to the question of the Israel representative why only consular officials were mentioned in the amendment, and not members of a consulate as such, it was not her delegation's intention to make a rigid prohibition for all members of a consulate. The status of consular employees who did not fall under the definition of career consular officials was already provided for in a number of previous articles. The practice of private gainful occupations was incompatible in particular with the status of career consular officials who might be tempted to use their special knowledge of conditions in the receiving State for the profit of their private occupation.

45. Mr. HEUMAN (France) asked whether the purpose of the Austrian amendment was to forbid consular officials from engaging in private gainful occupations or only to disqualify them from enjoying the facilities provided in chapter II if they did so.

46. Mrs. VILLGRATTNER (Austria) said that her amendment was intended to prohibit, not merely to disqualify.

47. The CHAIRMAN invited the Committee to decide whether the Austrian text should be regarded as an amendment or simply as a proposal. If it were an amendment it would have to be voted on first; but if it were a proposal it would be voted on after the vote on the International Law Commission's text.

It was decided by 36 votes to 10, with 35 abstentions, that the Austrian text constituted an amendment.

48. Mr. VAZ PINTO (Portugal), on a point of order, recalled that a number of countries, notably Belgium, had submitted amendments to the definitions in article 1; if those amendments and the Austrian amendment were adopted, there might be some discrepancy or duplication between the resulting text of article 1 and article 56. He suggested that the necessary readjustments should be left to the drafting committee.

49. The CHAIRMAN invited the Committee to vote on the retention of the words " and members of their families forming part of their households ", in the Austrian amendment.

The Committee decided by 38 votes to 1, with 30 abstentions, not to retain those words.

The original text of the Austrian amendment (A/CONF. 25/C.2/L.51), as amended, was adopted by 44 votes to 2, with 25 abstentions.

50. Mr. EVANS (United Kingdom) asked whether, if the second paragraph of the Austrian amendment were approved, that would mean that the joint amendment (L.211/Rev.1) would not be put to the vote.

51. Mr. HEUMAN (France) said that if paragraph 2 of the Austrian amendment were adopted, it would render unnecessary only point 2 (*b*) of the French-Japanese amendment. The Austrian amendment did not cover the case dealt with in sub-paragraph 2 (*a*) of the joint amendment, nor would it eliminate the need for paragraph 1 of the joint amendment, the purpose of which was to provide for sanctions against consular officials who engaged in private gainful occupations despite the prohibition. Moreover, the Austrian amendment said nothing about consular employees. He therefore thought that there was no incompatibility between the Austrian amendment and the joint amendment; and that any adjustments to eliminate duplication could be left to the drafting committee.

52. Mrs. VILLGRATTNER (Austria) pointed out that the first paragraph of the Austrian amendment as approved stated " Career consular officials shall not practise . . ." There could not therefore be a reference in a subsequent paragraph to the status of career consular officials who did practise professional or commercial activities. Moreover, the joint amendment would water down the Austrian text. In drafting that text, she had considered whether it was necessary to refer to sanctions, but she thought that sanctions were already implicitly provided for. If a member of a consular staff contravened the article, the proper way to meet the case would be for the receiving State to communicate with the sending State so that it could take the necessary steps; if that failed, the consular official in question could be declared unacceptable. That was a sanction even stricter than that in the French proposal, which suggested merely that the consular official should be disqualified from enjoying the consular privileges and immunities allowed under chapter II. The case of consular employees was already dealt with in articles 46 to 51. Only members of the families of consular officials had not been covered, and they would be dealt with in the second paragraph of her amendment.

53. There was a difference in wording between the second paragraph of the joint amendment and that of the Austrian amendment, since according to the joint amendment the privileges and immunities under chapter II were not to be accorded to members of the family of a consular official practising a private gainful occupation, whereas the Austrian amendment merely said that they should not enjoy the exemptions provided for in chapter II. The Austrian delegation held that those persons should continue to enjoy such advantages as facilities for departure in the event of a rupture of consular relations, even if they were engaged in private gainful occupations.

54. The CHAIRMAN said that the French representative had conceded that paragraph 2 (*b*) of the joint amendment was covered by the second paragraph of the Austrian amendment; but the phrase " members of the family of the member of a consulate " in that sub-paragraph of the joint amendment was much wider than the phrase " members of the family of a career consular official " in the Austrian amendment. He would suggest therefore that the Committee should first vote on sub-paragraph (*b*) of the joint amendment.

55. Mr. HEUMAN (France) accepted the Chairman's proposal with regard to sub-paragraph (*b*), but the question of the first paragraph remained. If nothing was said about consular employees, an unfortunate situation might arise. Proper provision should be made for their case should they engage in a gainful occupation by transferring the matter to chapter II. As a compromise he suggested that sub-paragraph 2 (*b*) of the joint amendment should be voted on before the Austrian amendment; paragraph 1 of the joint amendment should be voted on in a modified form in which it would read: " The provisions applicable to members of a consulate who carry on a private gainful occupation in the receiving State shall, so far as facilities, privileges and immunities are concerned, be the same as those applicable to honorary consular officials and their employees."

56. The CHAIRMAN invited the Committee to decide whether it should vote on the joint amendment as a whole or on sub-paragraph (*b*) of that amendment only.

It was decided by 25 votes to 19, with 27 abstentions, to vote on the joint amendment as a whole.

57. Mr. LEVI (Yugoslavia) pointed out that the text of paragraph 1 of the joint amendment was inconsistent: in the first line it referred to " members of a consulate ", whereas the last line referred to " honorary consular officials and their employees ".

58. Mr. KANEMATSU (Japan) proposed that the text of paragraph 1 should read: " The provisions applicable to consular employees who carry on a private gainful occupation in the receiving State shall, so far as facilities, privileges and inmunities are concerned, be the same as those applicable to consular employees who are employed at a consulate headed by an honorary consular official."

59. The CHAIRMAN invited the Committee to vote on the joint amendment by France and Japan as a whole, as revised by the Japanese representative.

The joint amendment (A/CONF.25/C.2/L.211/Rev.1) was rejected by 26 votes to 17, with 28 abstentions.

The second paragraph of the Austrian amendment (A/CONF.25/C.2/L.51), as submitted orally by the Austrian representative, was adopted by 61 votes to none, with 8 abstentions.

Article 56 as a whole, as amended, was adopted by 65 votes to none, with 5 abstentions.

60. Mr. HEUMAN (France) said that he had abstained in the vote on article 56 because the question of consular employees had not been dealt with.

61. Mr. VRANKEN (Belgium) said that he approved the motives of the French-Japanese amendment, but had found the text unsatisfactory and had therefore voted against it.

The meeting rose at 1.20 p.m.

THIRTY-NINTH MEETING

Monday, 1 April 1963, at 3.20 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 56 (Special provisions applicable to career consular officials who carry on a private gainful occupation) (*continued*)

1. Mr. BLANKINSHIP (United States of America) said that he had abstained from voting on article 56 at the previous meeting because the wording adopted covered only part of the question. He approved of the principle that consular officials and consular employees should not carry on any private gainful occupation; that, incidentally, was prohibited by United States law. But, as the representatives of Irsael and France had poinied out, the article was inadequate and would result in the members of the families of consular officials being in a less favourable position in that connexion than consular employees and the members of their families.

2. Mr. JESTAEDT (Federal Republic of Germany) said that he wished to draw attention to a drafting matter in connexion with article 56. In paragraph 2 of the text adopted by the Committee, it would, in his opinion, be preferable to replace the words " exemptions provided for " by the words " privileges and immunities provided for " and he asked that his suggestion be referred to the drafting committee.

3. The CHAIRMAN said that due note would be taken.

Article 57

(Regime applicable to honorary consular officials)

4. The CHAIRMAN invited the Committee to consider article 57 and the amendments thereto.[1]

5. Mr. VAZ PINTO (Portugal) said that neither career consuls nor honorary consuls were defined in chapter III of the International Law Commission's draft; he considered that a methodological defect. The omission was probably due to the difficulty of establishing a distinction, but a definition was needed since it was necessary to know who was a career consul and who was an honorary consul. An appropriate method which would supply a solid working basis would be to complete article 1 of the draft convention by inserting the following sub-paragraphs between sub-paragraphs (*b*) and (*c*):

" (*x*) ' Career consular official ' means any person who is an official of the sending State, is in receipt of a regular salary and does not exercise in the receiving State any professional activity other than his consular functions;

" (*xx*) ' Honorary consular official ' means any person entrusted with the exercise of consular functions who does not fulfil the conditions stated in sub-paragraph (*x*)."

Paragraph 2 would then be deleted.

6. The CHAIRMAN regretted that he could not accept the Portuguese representative's suggestion. The general committee had instructed the First Committee to consider article 1 and the Second Committee could not lawfully interfere. Naturally, the Conference sitting in plenary could deal with the question should it so desire.

7. Mr. VAZ PINTO (Portugal) explained that he merely wished to draw the attention of delegations to the point so that they might bear it in mind during the consideration of article 1 by the First Committee.

8. Mr. NWOGU (Nigeria) said that, in view of the adoption of article 35, and of its paragraph 3 in particular, he withdrew his amendment (L.140).

9. Mr. AMLIE (Norway) introduced his amendment (L.212), which was based on the idea that some privileges and immunities were granted to consulates as consular posts, whereas others were provided for the benefit of consular officials. That distinction, though logical, was not made in article 57. The restrictive provisions of article 69 could relate only to the privileges and immunities granted to consular officials, and not to those having reference to consular posts.

10. Mr. HEUMAN (France) pointed out that by its vote on article 56 at the preceding meeting the Committee had prohibited consular officials from exercising a private gainful occupation, but had said nothing about consular employees, who would in that way not only be authorized, but in some sort incited to carry out occupations of that nature. In the circumstances, he withdrew his amendment (L.218) which he feared had lost its meaning. That would not prevent him, however, from voting for the Japanese amendment (L.217) or that of the United Kingdom (L.213), which were based on the same principle. He approved the Norwegian delegation's amendment, which was full of good sense. Chapter II of the International Law Commission's draft was divided into two sections, one of which dealt with the " facilities, privileges and immunities relating to a consulate " and the other one with the " facilities, privileges and immunities regarding consular officials and employees ". Logically, chapter III should be sub-divided in the same way, but that had not been done and the Norwegian amendment would make good that omission.

11. With regard to the procedure to be followed, he noted that article 57 referred to numerous other articles of the future convention. When the time came to vote, the Committee would have to choose between two possible methods: it could either vote on the various amendments submitted by delegations, one by one, or else vote article by article and group together all the amendments proposing the inclusion or deletion of the reference to any particular article in article 57.

[1] The following amendments had been submitted: Canada, A/CONF.25/C.2/L.122/Rev.1; Nigeria, A/CONF.25/C.2/L.140; Australia, A/CONF.25/C.2/L.154; United States of America, A/CONF.25/C.2/L.182; South Africa, A/CONF.25/C.2/L.189; India, A/CONF.25/C.2/L.200; Norway, A/CONF.25/C.2/L.212; United Kingdom, A/CONF.25/C.2/L.213; Pakistan, A/CONF.25/C.2/L.214; Japan, A/CONF.25/C.2/L.217; France, A/CONF.25/C.2/L.218.

12. The CHAIRMAN said that the various amendments submitted did not seem to be mutually exclusive. In order to facilitate the Committee's work he had requested the secretariat to draw up a synoptic table.

13. Mr. AMLIE (Norway) explained that his amendment referred to a question of method rather than any specific article mentioned in article 57. If the Commission were to decide to delete any of the articles referred to therein, he would ask that his amendment be put to the vote, disregarding any article omitted.

14. Mr. KHOSLA (India), intorducing his delegation's amendment (L.200), said that the reference to articles 28 and 49 should be deleted, because honorary consuls were not entitled to the privileges connected with the national flag, nor were they entitled to exemption from customs duties since in addition to their consular functions they frequently exercised activities of a private nature; such privileges might therefore give rise to abuse. In practice, it was impossible to tell whether a car with a flag was being used for private or for official purposes. Even more important was the impossibility of distinguishing those articles intended for official use from others. In addition, it was very undesirable that the privileges referred to in paragraph 2 of article 49 should also be granted under article 57. It was particularly important for the less developed countries that the provisions of article 49 should be extended as little as possible.

15. Mr. DRAKE (South Africa) explained that in his amendment (L.189) he had proposed the deletion of the references to article 39 and to paragraph 3 of article 41. With regard to the first proposal, there seemed no justification for burdening the receiving State with the obligations under article 29. Honorary consular officials and their staffs were generally permanently resident in the receiving State and could reasonably be expected to have a first-hand knowledge of local conditions. Care should be taken in framing the convention to avoid imposing additional obligations on the receiving State, especially when that was not really necessary. If article 69 were eventually amended so as to be applicable to permanent residents as well as nationals of the receiving State, the deletion of the reference to article 29 would not be necessary. It was not certain, however, that article 69 would be changed and it would be wiser, therefore, to delete in article 57 the reference to article 29, as suggested in his delegation's amendment.

16. With regard to the deletion of the reference to paragraph 3 of article 41, the basic objection to making that paragraph applicable to an honorary consular official was that it would, in effect, give him a privileged position in respect of proceedings instituted against him in his private capacity. There again, the honorary consular official would most likely be permanently resident in the receiving State, and engaged in private business. As he would thus be devoting only a limited part of his time to the exercise of his consular functions, the necessity to avoid hampering him in the performance of his part-time duties was much less pressing than it would be in the case of a career consular official. The point he had made in reference to article 69 would also apply, though to a lesser extent.

17. The Canadian amendment (L.122/Rev.1) was an excellent proposal. It was not necessary, however, to add paragraph 2 of article 49 to the list in article 57. In paragraph 2 of the Canadian amendment, the insertion of the words " or at the instance of " after the words " supplied by " would make the text less restrictive so that it could accommodate situations arising in which articles intended for the official use of a consulate headed by an honorary consular official were not supplied direct from the sending State but were ordered from other countries of manufacture for shipment to the office concerned.

18. Mr. WOODBERRY (Australia) explained his delegation's amendment (L.194), which was a drafting change and therefore a matter primarily for the drafting committee. His delegation would support the principle of the Norwegian amendment.

19. Mr. SMITH (Canada) introduced his delegation's amendment (L.122/Rev.1) and said he could accept the South African representative's proposal for adding the words " or at the instance of " after the words " by the sending State " in paragraph 2. The effect of the first part of his amendment would be to clarify the Commission's text which was difficult to follow because it required many cross-references. The object of the second part was to restrict the meaning of " articles for the use of the consulate " so as to prevent possible abuse by honorary consuls, especially if they were nationals or permanent residents of the receiving State. The wording in paragraph 2 would, for example, prevent imports of liquor ostensibly for consular use but actually for private use. The honorary consul would not be allowed to import at will whatever articles he wanted, but would be restricted to what the receiving State was willing to let him import.

20. Mr. BLANKINSHIP (United States of America) said that the purpose of his amendment (L.182) was to insert, among the articles listed in article 57, paragraphs 1 and 2 of article 30 (Inviolability of the consular premises), which would entail the deletion of article 58, and article 40 (Special protection and respect due to consular officials), which would entail the deletion of article 61.

21. Mr. KANEMATSU (Japan) said that in his amendment (L.217) he proposed, like the United States representative and for the same reasons, to include article 40 among those enumerated in paragraph 1 of article 57. He also proposed to include in that list article 55 (Respect for the laws and regulations of the receiving State), which would entail the deletion of article 66, and to add at the end of the article a new provision concerning consular employees employed at a consulate headed by an honorary consular official. The second part of his amendment related to the families of honorary consular officials and was intended to set a limit to the extension of privileges. He agreed with the Norwegian representative that a distinction should be made between articles applying to consulates and those applying to honorary consular officials.

22. Mr. RUSSELL (United Kingdom) said that his amendment (L.213) was intended to serve three purposes.

Firstly, to correct a defect of drafting in the article by inserting an allusion to consulates as well as to consular officials. Secondly, to add to the list of references in article 57 references to article 31 which provided for exemption from taxation for consular premises, article 54, paragraph 3, concerning the obligations of third States, and article 55 concerning respect for the laws and regulations of the receiving State; there appeared to be no reason for drawing a distinction in respect of those articles between career and honorary consular officials. Thirdly, to introduce a reference to consular employees; while the concept of honorary consular employees was somewhat indeterminate, especially in the absence of an adopted text for article 1, it was at least arguable that the term should be regarded as applicable to such cases as, for example, that of a clerk in a shipping office who occasionally performed consular services on behalf of the manager of the shipping office who was himself an honorary consul.

23. The United Kingdom delegation supported the Canadian amendment (L.122/Rev.1), which proposed the addition of an article on exemption from duties and taxes on imports. For practical reasons, it opposed the inclusion of article 30 on the inviolability of the consular premises in the list given in paragraph 1 of article 57. It could agree that article 40 on special protection should be included in that list, as the United States and Japanese delegations had proposed. With regard to the Japanese amendment, his delegation could accept the proposed addition to paragraph 1, but was not convinced of the value of the last phrase, " and who are not engaged in a private gainful occupation in the receiving State ". His delegation thought that the question of gainful occupation might with advantage form the subject of a separate provision.

24. Mr. HABIBUR RAHMAN (Pakistan) associated himself with the Norwegian representative's remarks concerning the distinction to be drawn between articles that applied to consulates and those that applied to consular officials. In his amendment (L.214) he proposed that article 43, article 44, paragraph 3, and article 49, with the exception of paragraph 1 (*b*), should be deleted from the enumeration in article 57.

25. Mr. MARESCA (Italy) thought that the draft article was properly balanced, but that a distinction should be made between articles relating to consulates and those dealing with consular officials, as the Norwegian representative had rightly pointed out. An honorary consul might be assimilated to a career consul when he was performing official acts, and the Italian delegation would vote in favour of any amendments which stressed the nature of the functions performed.

26. Mr. JESTAEDT (Federal Republic of Germany) observed that if the Committee were to adopt the various amendments submitted, several articles would be omitted from chapter III of the Convention. It might be better to examine chapter III as a whole so as to be able to make a decision with a full knowledge of the matter.

27. The CHAIRMAN observed that article 57 was the most important provision in chapter III and that, in discussing it, the Committee could hardly avoid referring to other articles. Nevertheless, the best procedure might be to continue to consider the chapter article by article, as the Committee had done hitherto.

28. Mr. KAMEL (United Arab Republic) pointed out that most States considered honorary consuls to be consular officials who were not in receipt of a regular salary from the sending State and who were authorized to exercise a gainful occupation in the receiving State. That definition corresponded to the one which the International Law Commission had adopted at its eleventh session.[2] Nevertheless, the Commission seemed to have accorded excessive privileges to honorary consuls and the delegation of the United Arab Republic would vote against any amendment which was likely to extend the facilities, privileges and immunities granted to honorary consular officials.

29. Mr. SALLEH bin ABAS (Federation of Malaya) favoured the amendments which would add other articles to the list set out in article 57, paragraph 1. The United Kingdom amendment proposed the addition of article 31, article 54, paragraph 3, and article 55. If that proposal were adopted, articles 59, 65 and 66 would be eliminated from chapter III. If the Committee adopted the United States amendment, articles 58 and 61 would be deleted. The amendment of South Africa was acceptable, as there was no valid reason for treating honorary consuls, who were more often than not nationals of the receiving State, better than their fellow citizens. The Malayan delegation could support the Canadian amendment, but would like paragraph 1 (*a*) of article 49 to be referred to in the list in paragraph 1 of the proposed new article.

30. Mr. NASCIMENTO e SILVA (Brazil) said that the Norwegian amendment would materially improve the text of article 57. A consulate headed by an honorary consular official should fulfil the same conditions as a consulate headed by a career consul. If the honorary consul was a national of the receiving State, article 69 would apply. A person employed by the consulate and paid by an honorary consul would be treated in the same manner as a member of the private staff within the meaning of article 1, sub-paragraph 1 (*i*).

31. The Canadian amendment put the matter in its proper place by allowing exemption only in respect of " articles exclusively for the official use of a consular post ": it could be considered that the articles in question were intended not for the honorary consul, but for the consulate, and that it was the sending State which consigned them to him. The amendments by the United States of America, the United Kingdom and Japan had some points in common, and the Brazilian delegation could support them. The amendment by Pakistan (L.224) introduced restrictions that were unacceptable because they related to official acts performed in the exercise of consular functions, acts in respect of which article 69 provided for immunity of jurisdiction and personal inviolability of members of the consulate who were nationals of the receiving State.

[2] See *Yearbook of the International Law Commission, 1959*, vol. II (United Nations publication, Sales No. 59.V.I, vol. II), p. 111.

32. Mr. MARAMBIO (Chile) said that he could not support the first part of the Canadian amendment because that text would broaden the scope of article 57, paragraph 1. On the other hand, he supported the new article proposed by the Canadian delegation, because it would limit the exemption from duties and taxes on imports. When the various amendments were put to the vote, the Chilean delegation would vote in favour of all those which restricted the scope of the privileges and immunities granted to honorary consuls.

33. Mr. RUSSELL (United Kingdom) explained that, in his previous statement, he had referred to employees paid by the sending State or from funds provided by the sending State and not to persons whose remuneration came from a different source — for example, from the honorary consular official concerned in his private capacity.

34. Mr. HENAO-HENAO (Colombia) commended the Norwegian amendment, which took into account the amendments to the draft articles adopted by the Committee. It would facilitate the work of the Committee to take a decision on the Norwegian amendment first.

35. Mr. ADDAI (Ghana) said that the privileges and immunities set forth in article 57 were indispensable to the satisfactory exercise of consular functions. His delegation would therefore oppose any departure from that principle and would vote against the amendments of South Africa and Pakistan. On the other hand, it would vote in favour of the amendments of the United States, the United Kingdom and Norway.

36. Mrs. VILLGRATTNER (Austria) pointed out that if certain articles enumerated in paragraph 1 of article 57 were removed, it would not necessarily follow that the corresponding articles of chapter III would disappear from the text of the Convention. Those articles could be altered in accordance with the amendments which the Commission would adopt. Her delegation also wished to point out that the new paragraph 3 which the Commission had added to article 49 should not, in its opinion, apply to honorary consuls.

37. Mr. DAS GUPTA (India) noted that the delegation of Pakistan proposed in its amendment to delete from article 57, paragraph 1, the reference to article 43, which laid down immunity of jurisdiction only in respect of acts performed in the exercise of consular functions. It was true that an honorary consul was more often than not a national of the receiving State, but it should not be forgotten that the receiving State itself had accepted his appointment as honorary consul. Nor did it seem advisable to delete the reference to paragraph 3 of article 44 and thus oblige an honorary consul to give evidence concerning matters connected with the exercise of his functions, or the reference to article 49, except for paragraph 1 (*b*), because honorary consular officials should be privileged with regard to all their official acts.

38. The Norwegian amendment raised a question of method, but it would also have the effect of refusing to an honorary consul facilities which were necessary for the performance of his functions. As for the Canadian amendment, he would willingly vote in favour of it, but the enumeration contained in paragraph 2 of the proposed new article was much too vague, and some articles, such as books, office equipment and office furniture should not be included. He found it difficult to accept the amendments of the United Kingdom (L.213) and the United States (L.182) because they would broaden the scope of draft article 57 as proposed by the International Law Commission.

39. Mr. HEUMAN (France) observed that a comparison between draft article 57 and the various amendments showed that 23 texts were in question. The French delegation would oppose the inclusion in article 57 of five articles, because of their discriminatory character. It would therefore vote against the amendments to add articles 30, 31, 40 and 55 and article 54, paragraph 3, to the enumeration in paragraph 1 of article 57.

The meeting rose at 6.10 p.m.

FORTIETH MEETING

Tuesday, 2 April 1963, at 10.20 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 57 (Regime applicable to honorary consular officials)

1. The CHAIRMAN invited the Committee to continue its consideration of article 57 and the amendments relating to it.[1]

2. Mr. PAPAS (Greece) said that it would be inappropriate to grant the same privileges and immunities to honorary consular officials as to career consular officials, since the honorary consular official was usually a national of the sending State, recruited on the spot, and pursuing a gainful occupation. There was a special category, sometimes described as honorary consuls, who were really officials of the sending State; they received emoluments in respect of their consular activities and did not pursue any other gainful occupation. They should be treated in every way as career consular officials, but otherwise it was necessary to maintain a sharp distinction between career and honorary consular officials. The same was true of honorary consulates which were usually located on the private or professional premises of the consul and therefore could not lay claim to the immunities to which consulates headed by a career consul were entitled.

3. He agreed that honorary consular officials should be granted the facilities accorded to career consular officials by articles 33, 34, 36, 37, 38, 39, 43, 44 (paragraph 3), 45 and 53. Moreover, article 28 should apply to consular premises and to consular officials only when engaged in the exercise of their functions. He supported

[1] For the list of amendments to article 57, see the summary record of the thirty-ninth meeting, footnote to para. 4.

the South African amendment (L.189) to delete reference to article 29 and article 41, paragraph 3; he also supported the second paragraph of the United Kingdom amendment (L.213) and the Australian amendment (L.154). The question of tax exemption should be dealt with in article 59. Lastly, he supported the Indian proposal to delete reference to article 49.

4. Mr. SRESHTHAPUTRA (Thailand) said that in his delegation's view the institution of honorary consuls was a very important feature of consular practice and was indispensable for a large number of States. In regulating the status of honorary consuls it was very necessary to try to find the common denominator which would strengthen the functional concept. That could only be achieved by establishing a strict balance between the rights and duties of the sending and the receiving States. His delegation would be guided by that line of approach and would be prepared to support those proposals which tended to strengthen the functional concept, while opposing those which would jeopardize it. He would support the addition of articles 30 (paragraphs 1 and 2), 31, 40, 54 (paragraph 3) and 55 to article 57 and the deletion of articles 29, 41 (paragraph 3) and 49, except paragraph 1 (*b*), from the article. He also supported the Canadian proposal (L.122/Rev.1) to insert a new article in the convention.

5. Mr. NALL (Israel) said the institution of honorary consuls was born of necessity, recognized by some States, rejected by others and tolerated by a few. The definitive determination of their status by the convention would have momentous consequences and required very careful consideration. There were three main difficulties: firstly, honorary consuls were not defined in the draft. That was not due to an enigmatic secretiveness or an oversight on the part of the International Law Commission; it was a deliberate omission, because the Commission had found that the domestic laws of the different countries did not fall into a uniform pattern capable of codification in a multilateral convention. The second difficulty was that no general rule could be laid down concerning honorary consular officials corresponding to that laid down for consular officials in article 22, paragraph 1 — namely, that the latter should in principle be nationals of the sending State. Thirdly, chapter III appeared to refer to two types of honorary consul: those who carried on a private gainful occupation and those who did not.

6. Mr. Žourek had confirmed that in the vast majority of cases honorary consuls were either nationals of the receiving State (90 per cent) or residents of the receiving State, and received some sort of remuneration. There seemed, therefore, to be no reason to exempt honorary consuls who engaged in a private gainful occupation from the fiscal and civil obligations laid down by the law of the receiving State. They should, on the contrary, be liable to the same obligations as other residents of the receiving State.

7. Chapter III dealt only with honorary consular officials and not with "honorary consulates". No such thing existed; there were only ordinary consulates, which might be headed by honorary consuls. A clear distinction should therefore be made between the privileges and immunities accorded to honorary consuls and the privileges and immunities accorded to the sending State. In so far as chapter III referred to consular premises, documents and archives and their inviolability, privileges and immunities, it should be construed as referring to consulates headed by honorary consular officials.

8. It was understandable that certain States should argue that the privileges and immunities of honorary consuls should be equal to those of career consuls in every respect, because for many countries honorary consuls were particularly valuable for financial reasons and because of their special local knowledge as residents of the receiving State. But it could be no part of the Conference's intention in drafting the convention to set up a third arm of the foreign service. The institution of honorary consular officials was only a temporary device and whenever the work of a consulate exceeded the capacity of honorary officials, the sending State would appoint a career consul.

9. While the usefulness of honorary consular officials should not be underestimated, article 57 should not over-emphasize the importance of their role. He thought that the reference to sixteen articles covering their facilities, privileges and immunities constituted such an over-emphasis. He would urge the Committee to consider the question in that perspective and with those observations in mind.

10. Mr. TILAKARATNA (Ceylon) said that he was impressed by the statement made by the representative of Israel and he agreed with his thesis; but the privileges of consulates and those of consular officials were closely interwoven and could not be separated. His country was essentially a receiving State, and did not have many honorary consular officials abroad. Most honorary consular officials in Ceylon were also engaged in a private gainful occupation which provided them with a generous income so that their consular activities were generally only incidental.

11. Career consuls should enjoy the same privileges as their diplomatic counterparts. Immunities were given to honorary consular officials with the object of facilitating the performance of their functions, but many States, particularly the emerging States, had to impose restrictions for financial reasons.

12. With regard to the United States amendment (L.182) for the addition of a reference to article 30, paragraphs 1 and 2, he could not agree that inviolability should be conceded to the consular premises of an honorary consular officer since he might use the same premises for his private business and keep his business documents there; but he had no objection to the addition of paragraph 3 of article 30. Small States could not agree to the inclusion of a reference to article 31, as proposed by the United Kingdom delegation (L.213), nor to article 49, paragraph 2, as proposed by the Canadian delegation (L.122/Rev.1). An honorary consul was generally a person of means — otherwise he would not be appointed honorary consul — and it would be unfair to exempt him from taxation. On the other hand, the

inclusion of a reference to article 40 was quite acceptable. With regard to the second paragraph of the Canadian amendment proposing the insertion of a new article, his delegation could not accept the reference to office furniture and equipment, as in certain cases their own nationals were not permitted to import such things. He had no quarrel with the addition of a reference to article 55. The Indian amendment (L.200) for the deletion of the reference to article 28 did not seem useful but he agreed with the Pakistan amendment (L.214) to delete the reference to articles 43 and 44. He could not support the reference in the Norwegian amendment (L.212) to articles 60 to 66 as it was not yet known whether those articles would be included in the final draft.

13. Miss ROESAD (Indonesia) thought that too much importance had been attached to the regime of honorary consuls. Though chapter III was right in suggesting that certain facilities should be granted to honorary consuls to enable them to perform their functions, they should not be equivalent to those accorded to career consuls, particularly as most honorary consuls also carried on a private gainful occupation. She would support any amendment for the deletion of a reference to articles giving unnecessary facilities to honorary consuls. She would vote for the Indian amendment (L.200) but not for the Pakistan amendment (L.214), since article 43 referred to acts performed in the exercise of consular functions, and the same applied to the proposal to delete reference to article 44, paragraph 3. She could not support the Canadian amendment (L.122/Rev.1), which coincided with the third part of the Pakistan amendment.

14. Mr. AMLIE (Norway) said that the Committee seemed to be divided into two groups: those who regarded honorary consular officials with suspicion and sought to curtail their rights in order to avoid possible abuses, and those, to which the Norwegian delegation belonged, whose concern was rather to ensure that facilities were granted enabling honorary consular officials to perform their functions as efficiently as possible.

15. Large States did not need to have recourse to honorary consuls; they had the resources to appoint career consuls to all posts. But smaller States often could not even afford to have diplomatic representation in all countries, let alone career consuls in major cities or ports. Some smaller countries were today predominantly receiving States, and as such concerned to prevent abuses, but in the future those States might develop world-wide interests necessitating the appointment of numerous honorary consuls. The representatives of those States should bear that point in mind when dealing with the problem before the Committee. Honorary consuls were not a phenomenon of yesterday but a reality of tomorrow.

16. His government had urged him to do his best to see that the text finally adopted by the Conference retained as a minimum the privileges and immunities provided by the International Law Commission's draft. He therefore favoured the proposals to amplify the enumeration in article 57 of articles which should apply also to honorary consular officials and consulates headed by such officials. Of the proposed additions to article 57, he especially supported the United Kingdom proposal to include a reference to article 54, paragraph 3. He did not understand why the Indian amendment proposed to delete a reference to article 28. A flag or a coat-of-arms helped the public to find its way to the consulate. If the Pakistan amendment to delete a reference to article 43 and paragraph 3 of article 44 were adopted, the Conference might as well delete the whole of chapter III, because the privileges and immunities contained in article 43 and paragraph 3 of article 44 constituted the whole basis of the activity of honorary consular officials. To adopt that amendment would be to destroy the institution of honorary consular officials. With regard to the reference to article 49, he agreed that honorary consular officials should not be free to import articles for personal use. That was expressed in the International Law Commission's draft. Articles for the official use of a consulate headed by an honorary consular official should, however, be exempt from customs duties, a point made in his delegation's amendment which referred explicitly to article 49, paragraph 1 (*a*); that became even more clear in the Canadian delegation's proposal for the insertion of a new article to that effect. He asked the Canadian representative to include in paragraph 2 of that proposal a reference to information material as well.

17. He requested the Chairman to put the Canadian amendment to article 57 to the vote. If it were adopted, the Norwegian amendment would automatically drop out, but if the vote on the Canadian amendment were postponed, he would have to retain that point in his own amendment.

18. The attempt in the United Kingdom and Japanese amendments to legislate on the position of employees at consulates headed by an honorary consular official threatened to upset the structure of the draft convention. The position of consular employees was, according to the draft, to be the same, irrespective of whether the employee concerned worked at a consulate headed by a career official or at one headed by an honorary official. He would strongly urge against embarking upon the dangerous adventure of changing the structure of the draft in that respect. The clerks in shipping offices mentioned by the United Kingdom representative as employees of honorary consular officials were not consular employees at all, but private staff.

19. So far as the new technical approach was concerned, the Norwegian amendment was more far reaching than the Australian and Japanese amendments, and he therefore asked the Chairman to call for a vote on the Norwegian amendment before the corresponding parts of the Australian and Japanese amendments.

20. Mr. DE CASTRO (Philippines) said he wished to refer to article 69 because, as there was no definition of honorary consuls, the term could apply equally well to nationals of the sending State and nationals of the receiving State. The International Law Commission's article 69 referred to members of consulates who were nationals of the receiving State. A number of amend-

employees who were nationals of, or permanent residents additional classes of honorary consular officials — i.e., pemanent residents of the receiving State and honorary consular officials carrying on gainful occupations. It seemed that article 57 would apply to very few honorary consular officials. They would include only nationals of the sending State who neither carried on a gainful occupation nor sought permanent residence in the receiving State and received no salary, and similarly-placed nationals of third States. He thought there were no such persons.

21. With regard to article 57, his delegation favoured all proposals to increase the scope of the privileges and immunities of honorary consular officials. The officials dealt with by the article only differed from career consuls in that they drew no salary. He found the Norwegian amendment satisfactory and he favoured some of the provisions of the Canadian proposal. But he feared that when they came to consider article 69 they might find that all their work on article 57 had been in vain.

22. Mr. WESTRUP (Sweden) said he had essentially the same attitude to the problem as the representative of Norway for he too represented one of the countries which made extensive use of honorary consuls. He had been glad to observe from the discussion that many representatives — even those of larger countries like France and the United States of America — seemed to understand the difficulties of those countries. Other representatives, however, seemed to regard honorary consuls as rather suspect and he appealed to them to consider carefully if their attitude was really justified. Sweden had a very large number of consulates in ports and commercial centres all over the world; but it was impossible to provide them all with career consuls and honorary consuls were therefore essential. His government set great store by those honorary consuls, who were carefully chosen and had amply proved their worth and integrity. Their duties were concerned with shipping and commercial relations and, far from being a source of suspicion, they did useful work in fostering good relations between sending and receiving State. If friendly relations existed between receiving and sending State and the receiving State had given the exequatur, it seemed unreasonable to suggest that the honorary consul was a subject of suspicion. Objections had been raised concerning the use of the national flag, but it was used not as a personal attribute of the honorary consul but solely to help nationals needing assistance to find their consulate. The system of honorary consuls might seem unnecessary to some States, but those same States might well one day need such consuls themselves.

23. The merits of the Norwegian amendment had been fully described and he would vote for it. Of the other amendments he would support the generous but not the restrictive ones.

24. Mr. LEVI (Yugoslavia) said that he considered the amendments submitted by Japan (L.217), the United Kingdom (L.213) and the United States of America (L.182) out of order, for they were based on the method which the Committee had rejected in the case of the Japanese amendment (L.89/Rev.1) which proposed to replace twelve articles by one. He would therefore vote against them. With regard to the Canadian amendment (L.122/Rev.1) he would accept the deletion in the first part, now that it had been explained by the representative of Norway, but he saw no reason for adding a reference to article 49, paragraph 2. With regard to the amendment of Pakistan (L.214) to delete the reference to articles 43, 44 and 49, he endorsed the Indian representative's statement at the previous meeting on the reasons why the reference to articles 43 and 44 should not be omitted. He would agree to the deletion of the reference to article 49 if the Norwegian representative's suggestion with regard to the Canadian amendment were adopted, otherwise the reference should be retained. He could not support the South African amendment (L.189) as the reference to article 41, paragraph 3, had important repercussions.

25. The CHAIRMAN said he could not agree with the Yugoslav representative that the amendments of Japan, the United Kingdom and the United States of America were out of order; he would invite the Committee to vote on them at the appropriate time.

26. Mr. CAMPORA (Argentina) said that in his opinion, honorary consular officials should not have the same privileges and immunities as career consular officials but they should have a status to enable them to carry out their duties. He would therefore support any proposal which would reconcile the interests of the receiving State with the functions of honorary consular officials. He would vote in favour of the method proposed in the Norwegian amendment (L.212) and for the new article proposed in the Canadian amendment (L.122/Rev.1).

27. Mr. VAZ PINTO (Portugal) strongly supported the Norwegian amendment, the presentation of which was superior to that of the International Law Commission. He hoped that the Committee would be given an opportunity to vote on it. He also supported the French representative's suggestion at the previous meeting that the Committee should vote on the questions raised in the amendments and not on the amendments themselves.

28. He agreed with the views of the representative of Norway since he represented one of the countries which was concerned more with enabling the honorary consul to carry out his duties than with the possibility of abuse. The acceptance of an honorary consul by the receiving State implied that it was obliged to see that he could carry out his duties. The privileges provided by article 57 as drafted by the International Law Commission might not be absolutely essential for consular functions but they would be of great help. He was opposed to amendments that would limit those privileges and immunities. In addition to the arguments already stated in the discussion, the desire not to increase privileges was no reason for denying them altogether. A very important point to be borne in mind when voting was that article 57 was concerned only with honorary consuls who were not nationals of the receiving State — a very small proportion of the category as a whole. Most honorary consuls were nationals of the receiving State and would

ments to that article now proposed that it should govern be dealt with under article 69. He also agreed with the representative of Norway that honorary consuls were usually appointed for practical reasons which were often of a financial nature and it would be unfair to prevent newly independent countries and countries with limited resources from using the services of foreign nationals to establish the consulates they needed.

29. Mr. BLANKINSHIP (United States of America) said that the word " likewise " in the first paragraph of the Norwegian amendment was ambiguous. He suggested the wording " to the extent applicable to consulates ".

30. Mr. MARESCA (Italy) pointed out that the effect of the amendments to article 57 would be to upset the balance of chapter III. The International Law Commission had designed chapter III so that in certain cases precise rules were laid down but in others it was only necessary to refer to particular articles governing career consular officials.

31. Mr. AMLIE (Norway), replying to the United States representative, said that the word " likewise " was taken from the International Law Commission's text; it should be kept because it established a link between the earlier articles applying to career consular officials and the provisions concerning honorary consular officials. If it were deleted, there was a risk of misunderstanding if article 57 were read out of the context of the whole convention. The additional words proposed by the United States representative would be inappropriate because the articles listed in paragraph 1 of his amendment referred to consulates, not to consular officials.

32. Mr. KANEMATSU (Japan) strongly supported the statement by the representative of Israel on the system of honorary consuls. He fully appreciated the needs of governments which depended on the institution of honorary consuls, as explained by the representatives of Norway and Yugoslavia. The Japanese amendment was intended solely to remedy certain inconsistencies in the International Law Commission's text concerning the articles which would place the honorary category on the same footing as the career category, and the articles which would discriminate between the two. His amendment would make it clear that the articles in chapter II did not apply to members of the families of honorary consular officials or to employees of a consulate headed by an honorary consular official. Paragraph 3 of his amendment covered part of paragraph 1 of the Norwegian amendment.

33. Mr. BLANKINSHIP (United States of America) said it should be clearly understood that after the voting on article 57, representatives would be free to submit amendments to the next articles, for it was impossible at the moment to see how the decision on article 57 would affect them. His whole attitude, in voting and in introducing his amendments, had been governed by the assumption that permanent residents would be included under article 69. He believed that the Committee was discussing privileges for individuals as well as for consulates; for example, article 28 concerned the use of the flag by the individual; and article 34 concerned freedom of movement and travel. It seemed to him that it was possible that, by referring to some articles as dealing with consulates, something else was being inserted into the convention. His attitude was not prejudicial to honorary consular officials; he merely believed that the matter should be examined very carefully.

34. The CHAIRMAN said that the question of amendments to the other articles would be considered after the voting on article 57 and the amendments to that article. He would explain the implications of each amendment at the time of each vote.

35. Mr. HABIBUR RAHMAN (Pakistan) said that the best of all the statements on honorary consuls was the one by the representative of Israel, which went to the core of the matter. The representative of Norway was mistaken in thinking that representatives proposing the deletion of certain articles looked upon honorary consuls as black sheep. It must be borne in mind that the Convention was to provide for future as well as existing conditions and he understood why the representative of Norway wished honorary officials to be given as many privileges as possible.

36. The deletion of article 43 and article 44, paragraph 3, as proposed in his amendment (L.214) would not, as the Indian representative had suggested, hamper the functioning of honorary consuls, for the vast majority of honorary consuls were nationals of the receiving State. If such persons claimed the privileges in question, they might put the receiving State in a difficulty and even cause trouble between the receiving State and the sending State. In any case, the privileges were not very great. With regard to paragraph 49, which he also proposed should be deleted, he agreed with the views of the Indian representative and did not consider that honorary consuls should be exempt from customs duties. He asked that the Committee should vote separately on the deletion of each of the three articles.

37. Mr. SMITH (Canada) said that at the previous meeting the Austrian representative had drawn attention to a point which had escaped his attention: namely, that it was provided that personal luggage accompanying consular officials and their families should be exempt from customs inspection. His amendment to article 57 was thus a little further removed from the International Law Commission's draft than he had indicated in presenting it, but his action at the previous meeting would not have been affected thereby.

38. He regretted that he could not accept the suggestion made by the Norwegian representative earlier in the present meeting. As he had already mentioned, he would accept the addition of the words " at the instance of " suggested by the South African representative.

39. At the previous meeting, the representative of the Federation of Malaya had asked why his amendment made no reference to article 49 (1) (*a*). He explained that that paragraph referred to articles for the official use of the consulate and he feared that the privilege might be open to abuse by honorary consular officials or their

employees who were nationals of, or permanent residents in, the receiving State. It was important that taxes and duties should be applied equally to all residents of the receiving State. Moreover, however restrictive the Committee might wish to make article 69 — and he hoped that it would include permanent residents of the receiving State — it would not affect the customs privileges for the consulate, and article 57 was the only place to provide against possible abuse in that respect.

40. Mr. RUSSELL (United Kingdom) said that in his second statement during the debate the Norwegian representative had reverted to the question of consular employees. The experience of different countries no doubt varied; in the experience and practice of the United Kingdom, however, there certainly existed a category of consular employees which were analogous to honorary consular officials rather than to career consular officials. An example was that of a clerk in a shipping office of which the manager was an honorary consul; that was, of course, on the assumption that the clerk received remuneration for his consular services either direct from the sending State or from the honorary consul out of sums provided by the sending State. The question was perhaps primarily one of terminology; however, it was not possible to be definite in matters of terminology pending the adoption of article 1. Whatever the outcome of discussions elsewhere on article 1 it would be necessary at one place or another in the convention to make appropriate provision for that category of employee.

41. It was not exact, as had been suggested by the representative of Yugoslavia, that the United Kingdom amendment was intended to reintroduce a principle included in the Japanese proposal contained in document (L.89/Rev.1); it was intended merely to fill certain gaps in the International Law Commission's draft and not to introduce a different structure.

42. It had been said that some of the larger countries regarded the institution of honorary consuls with disfavour; that was certainly not the case so far as his country was concerned. The United Kingdom appointed a number of honorary consular officials in foreign states and received large numbers of honorary consuls in its own territories; it recognized that not all States could rely wholly on career consuls and that honorary consuls were an indispensable element in international relations. Given the existence of the institution of honorary consuls, it followed that honorary consuls should be granted the appropriate facilities, privileges and immunities for the performance of their duties. The question that arose was: what was the correct criterion ? In the opinion of his delegation the answer was clear. The criterion to apply was what was, strictly speaking, necessary for the effective performance of consular functions ? It would be wrong to give more than was strictly necessary; equally, it would be wrong to give less.

43. Mr. KHOSLA (India) said, in reply to certain comments, that his delegation's amendment was not intended to interfere in any way with the exercise of consular functions. To allow the honorary consul exemption from customs duties in accordance with article 49, however, would mean that the sovereignty of the receiving State would not apply to him. It would be inadmissible to create a separate class of persons on the sole ground that they were honorary consuls. In practice, it was quite impossible to distinguish between articles which the honorary consul might wish to import for his private use and those the import of which was necessary for official purposes. Apart from the principle involved, to allow honorary consuls to benefit from exemption would in practice affect the less developed countries to a much greater extent than the more highly developed countries. The deletion of any reference to article 49 from article 57 was of such importance to his delegation that he would request a roll-call vote to be taken.

44. Mr. DRAKE (South Africa) requested that a separate vote should be taken on the Canadian proposal (L.122/Rev.1) to add a reference to article 49, paragraph 2.

45. The CHAIRMAN said that he would first ask the Committee to vote, separately in the case of each article, on the proposals for the deletion from article 57 of references to other articles.

The Indian proposal (A/CONF.25/C.2/L.200) to delete the reference to article 28 was rejected by 55 votes to 13, with 9 abstentions.

The South African proposal (A/CONF.25/C.2/L.189) to delete the reference to article 29 was rejected by 29 votes to 28, with 21 abstentions.

The South African proposal (A/CONF.25/C.2/L.189) to delete the reference to article 41, paragraph 3, was rejected by 43 votes to 17, with 15 abstentions.

The Pakistan proposal (A/CONF.25/C.2/L.214) to delete the reference to article 43 was rejected by 57 votes to 11, with 8 abstentions.

The Pakistan proposal (A/CONF.25/C.2/L.214) to delete the reference to article 44, paragraph 3, was rejected by 59 votes to 12, with 6 abstentions.

46. The CHAIRMAN invited the Committee to vote on the Indian proposal for the deletion of any reference to article 49. The vote would decide whether or not the Committee accepted the proposal of Canada (A/CONF 25/C.2/L.122/Rev.1) and Pakistan (A/CONF.25/C.2/L.214) to delete from article 57 the words " 49, with the exception of paragraph (*b*) ".

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

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

In favour: Libya, Mali, Nigeria, Pakistan, Philippines, Saudi Arabia, Sierra Leone, South Africa, Syria, Thailand, Tunisia, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Republic of Viet-Nam, Algeria, Australia, Ceylon, Federation of Malaya, France, Greece, Guinea, India, Indonesia, Iran, Israel, Lebanon.

Against: Liechtenstein, Luxembourg, Mexico, Mongolia, Netherlands, New Zealand, Norway, Panama, Peru, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Ukrainian Soviet Socialist Republic, Union

of Soviet Socialist Republics, Upper Volta, Uruguay, Yugoslavia, Argentina, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Colombia, Congo (Leopoldville), Costa Rica, Cuba, Czechoslovakia, Denmark, Finland, Federal Republic of Germany, Ghana, Hungary, Italy, Liberia.

Abstaining: Austria, Cambodia, Canada, China, Ecuador, El Salvador, Honduras, Ireland, Japan, Republic of Korea.

The Indian proposal (A/CONF.25/C.2/L.200) to delete all reference to article 49 was rejected by 38 votes to 29, with 10 abstentions.

47. The CHAIRMAN invited the Committee to vote on proposals to add references to other articles in article 57.

The United States proposal (A/CONF.25/C.2/L.182) to add a reference to article 30, paragraphs 1 and 2, was rejected by 39 votes to 23, with 13 abstentions.

The United Kingdom proposal (A/CONF.25/C.2/L.213) to add a reference to article 31 was rejected by 34 votes to 29, with 13 abstentions.

The proposals by the United States (A/CONF.25/C.2/L.182) and Japan (A/CONF.25/C.2/L.217) to add a reference to article 40 was rejected by 40 votes to 23, with 12 abstentions.

The proposal by Canada (A/CONF.25/C.2/L.122/Rev.1) to add a reference to article 49, paragraph 2, was rejected by 43 votes to 17, with 15 abstentions.

48. The CHAIRMAN pointed out that the adoption of the United Kingdom proposal to add a reference to article 54, paragraph 3, would imply the deletion of article 65 of the International Law Commission's draft.

The United Kingdom proposal (A/CONF.25/C.2/L.213) to add a reference to article 54, paragraph 3, was adopted by 31 votes to 30, with 15 abstentions.

The proposals by the United Kingdom (A/CONF.25/C.2/L.213) and Japan (A/CONF.25/C.2/L.217) to add a reference to article 55 was adopted by 41 votes to 17, with 18 abstentions.

49. Mr. DE CASTRO (Philippines) asked whether the decision to include a reference to article 55 implied the deletion of article 66 of the International Law Commission draft.

50. Mr. JESTAEDT (Federal Republic of Germany) pointed out that article 66 incorporated a principle which had not been voted on and which his delegation considered to be of great importance since it referred to the duty of honorary consuls " not to misuse their official position for the purpose of securing advantages in any private activities in which they may engage ".

51. The CHAIRMAN suggested that when the Committee came to consider article 66 it should vote, not on the article as a whole, but on the inclusion of the principle to which the representative of the Federal Republic of Germany had referred, and which would, if approved, be taken into account by the drafting committee.

It was so agreed.

52. Mr. HEUMAN (France) said that a similar procedure might be appropriate in connexion with article 65 since article 54, paragraph 3, concerned freedom of communication to a very limited extent.

53. The CHAIRMAN suggested that it would be preferable to consider the matter when the Committee came to discuss article 65.

It was so agreed.

54. Mr. HEUMAN (France) assumed that the express rejection by the Committee of the Canadian proposal to include a reference to article 49, paragraph 2, implied that the reference in article 57, paragraph 1, would be to article " 49, with the exception of paragraph 1 (*b*) and paragraph 2 ".

55. Mr. LEVI (Yugoslavia) objected that the Committee had rejected both parts of the Canadian proposal for the amendment of article 57, paragraph 1, and that the reference should therefore remain as in the International Law Commission text, which would mean that article 49 " with the exception of paragraph 1 (*b*) " would apply to honorary consular officials

56. Mrs. VILLGRATTNER (Austria) pointed out that a new paragraph 3 had been added by the Committee to article 49. In her view, a separate vote should be taken on the inclusion of a reference to that paragraph in article 57.

The Committee decided, by 55 votes to 7, with 12 abstentions, to exclude article 49, paragraph 3, from the list of articles applying to honorary consular officials.

57. Mr. OCHIRBAL (Mongolia), supported by Mr. VRANKEN (Belgium), said that there seemed to have been some misunderstanding with regard to the vote on the Canadian proposal, since it had been opposed by delegations that wished the provisions of article 49, paragraph 2, to be extended to honorary consuls.

58. The CHAIRMAN said that the matter would be discussed at the next meeting.

The meeting rose at 1.40 p.m.

FORTY-FIRST MEETING

Tuesday, 2 April 1963, at 3.40 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 57 (Regime applicable to honorary consular officials) (*continued*)

1. The CHAIRMAN said that, as some misunderstanding had arisen at the preceding meeting as to the meaning to be attached to votes on the paragraphs or sub-paragraphs of article 49 to be mentioned in the enumeration in article 57, paragraph 1, the best course would be to take each paragraph and sub-paragraph of

article 49, as approved by the Committee, separately. In that way the Committee would be able to decide unambiguously what provisions should also apply to honorary consular officials, in other words, which provisions should be cited in article 57, paragraph 1. The Canadian delegation had announced that it wished to withdraw paragraph 1 but to maintain paragraph 2 of the new article proposed in its amendment (L.122/Rev.1).[1] Should that amendment be adopted, the drafting committee would have to decide where in the draft convention the new article should be inserted.

2. Mr. VRANKEN (Belgium) said that he hoped that the drafting committee would insert the Canadian proposal, if adopted, in the form of a new article.

3. Mr. HEUMAN (France) said that, because paragraph 2 of the new article proposed by the Canadian delegation purported to be an exhaustive enumeration of goods admitted free of duty, it was discriminatory; he would not vote for that provision.

The inclusion of a reference to the introductory sentence of article 49, paragraph 1, in the enumeration of articles contained in article 57 was approved by 55 votes to 6, with 7 abstentions.

The inclusion of a reference to sub-paragraph (a) of paragraph 1 of article 49 in the enumeration of articles contained in article 57 was approved by 57 votes to 3, with 5 abstentions.

Paragraph 2 of the new article proposed by Canada (A/CONF.25/C.2/L.122/Rev.1) was adopted by 50 votes to 4, with 17 abstentions.

By 68 votes to none, with 1 abstention, it was decided not to include a reference to sub-paragraph (b) of paragraph 1 of article 49 in the enumeration of articles contained in article 57.

By 49 votes to 7, with 12 abstentions, it was decided not to include a reference to paragraph 2 of article 49 in the enumeration of articles contained in article 57.

By 57 votes to none, with 13 abstentions, it was decided not to include a reference to paragraph 3 of article 49 in the enumeration of articles contained in article 57.

4. The CHAIRMAN invited the Committee to vote on the inclusion of a reference to article 49 in article 57; he explained that the vote would in effect relate to the inclusion of article 49, paragraph 1 (*a*), in the enumeration in article 57, as well as the text of paragrah 2 of the new article proposed by Canada.

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

The Sudan, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Sweden, Switerland, Syria, Thailand, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Argentina, Australia, Austria, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Colombia, Congo (Leopoldville), Costa Rica, Cuba, Czechoslovakia, Denmark, Ecuador, Federation of Malaya, Finland, France, Federal Republic of Germany, Ghana, Greece, Guinea, Honduras, Hungary, Ireland, Israel, Italy, Japan, Republic of Korea, Liberia, Libya, Liechtenstein, Luxembourg, Mexico, Mongolia, Netherlands, New Zealand, Norway, Panama, Philippines, Portugal, Romania, San Marino, Saudi Arabia, South Africa, Spain.

Against: Ceylon, India.

Abstaining: Belgium, Indonesia, Mali, Nigeria, Pakistan, Sierra Leone.

The inclusion of a reference to article 49, paragraph 1 (a), and the text of the additional paragraph proposed by Canada were approved by 62 votes to 2, with 6 abstentions.

5. Mr. MOLITOR (Luxembourg) considered that the Committee should vote separately on the inclusion of a reference to article 43.

The inclusion of a reference to article 43 in the enumeration in article 57 was approved by 60 votes to 2, with 4 abstentions.

6. Mr. PAPAS (Greece) said that, in view of the new provisions adopted by the Committee, the last of article 41, paragraph 3, should be amended.

7. Mr. LEVI (Yugoslavia) thought that the matter might be left to the drafting committee.

8. The CHAIRMAN said that he would put to the vote the reference to articles enumerated in article 57 concerning the retention of which the Committee had not yet taken a decision.

9. Mr. HEUMAN (France) and Mr. PAPAS (Greece) asked for a separate vote on the inclusion of article 35.

The inclusion of a reference to article 35 in article 57 was approved by 35 votes to 2, with 29 abstentions.

The inclusion of references to the other articles mentioned in the draft of article 57[2] *was approved by 49 votes to 2, with 19 abstentions.*

10. The CHAIRMAN put to the vote the phrase the addition of which was proposed in part 1 of the Japanese amendment.

Part 1 of the Japanese amendment (A/CONF.25/C.2/L.217) was rejected by 52 votes to 14, with 30 abstentions.

Part 2 of the United Kingdom amendment (A/CONF.25/C.2/L.213) was rejected by 26 votes to 16, with 26 abstentions.

11. The CHAIRMAN invited the Committee to vote on part 2 of the Japanese amendment (L.217).

12. Mr. VRANKEN (Belgium) asked for a separate vote on the words " Privileges and immunities provided for in this convention shall not be accorded to members of the family of an honorary consular official "; his delegation could accept those words but not the rest of the paragraph concerning consular employees employed at a consulate headed by an honorary consul.

[1] For the list of amendments to article 57, see the summary record of the thirty-ninth meeting, footnote to para. 4.

[2] i.e., articles 28, 29, 33, 34, 36, 37, 38, 39, 41 (paragraph 3), 42, 44 (paragraph 3), 45 and 53.

13. Mr. KANEMATSU (Japan), in reply to the representative of Belgium, pointed out that his delegation's amendment contained a mistake and that in part 2 the words " nor to " should be replaced by the words " or of ".

Part 2 of the Japanese amendment (A/CONF.25/C.2/L.217) up to and including the words " of an honorary consular official," was adopted by 56 votes to 7, with 4 abstentions.

14. The CHAIRMAN put to the vote the words " or of a consular employee employed at a consulate headed by an honorary consular official " in part 2 of the Japanese amendment.

The words were adopted by 42 votes to 18, with 10 abstentions.

The new paragraph proposed in part 2 of the Japanese amendment (A/CONF.25/C.2/L.217) was adopted as a whole by 52 votes to 5, with 12 abstentions.

15. The CHAIRMAN said that the drafting committee would bring the text just adopted into line with the Norwegian amendment (L. 212), if approved.

16. Mr. RUSSELL (United Kingdom) said that the second part of his delegation's amendment (L.213), which the Committee had rejected, was based on the same idea as paragraph 1 of the Norwegian amendment. That being so, it occurred to him to inquire whether it was correct to put the Norwegian amendment to the vote. He was raising the point as a matter of procedure only; he certainly did not wish to embarrass the Norwegian delegation.

17. The CHAIRMAN said that the rejection of the United Kingdom amendment did not affect the Norwegian amendment, which was still before the Committee. If the Norwegian amendment was adopted, the Committee would not have to vote on paragraph 2 of the original draft article.

18. Mr. BLANKINSHIP (United States of America) asked that it should be made quite clear that the vote on the Norwegian amendment would apply only to the structure of the text and not to the articles listed therein, for those articles would subsequently be added by the drafting committee.

19. The CHAIRMAN confirmed the interpretation of the United States representative.

20. He put to the vote the Norwegian amendment (A/CONF.25/C.2/L.212) concerning the formulation of article 57.

It was decided by 56 votes to none, with 14 abstentions, that article 57 should be formulated in the manner proposed by Norway.

21. The CHAIRMAN put to the vote article 57 as a whole, as amended, subject to drafting changes.

Article 57 as a whole, as amended, was adopted by 58 votes to 1, with 11 abstentions.

22. Mr. ALVARADO GARAICOA (Ecuador) explained that he had voted for the Canadian amendment limiting the customs exemption to be granted to honorary consular officials, on the ground that, while the institution of honorary consuls might be defensible, their privileges should be limited.

23. Mrs. VILLGRATTNER (Austria) said that her delegation had voted for the new paragraph proposed by Canada. It had abstained from voting on the first part of the second of the Japanese amendments, because it thought it unnecessary to specify that members of the family of an honorary consular official did not enjoy privileges and immunities. It had, however, voted for the second part of the same provision because it thought it necessary to mention consular employees.

24. Mr. WOODBERRY (Australia) explained that his delegation had voted for the article as a whole, as amended, on the understanding that the drafting committee would insert in either that or in another article of the convention, in regard to paragraph 5 of article 35, an appropriate limitation concerning the nationality of consular couriers. His position was also subject to the amendment of article 69 by the addition of a reference to permanent residents, as proposed by various delegations, including his own.

25. Mr. NWOGU (Nigeria) said that he had abstained from voting because he failed to reconcile the adoption of the Canadian amendment with the approval of the inclusion of a reference to paragraph 1 (*a*) of article 49.

26. Mr. KHOSLA (India) said that he had voted against the Norwegian amendment because, since the adoption of articles 58 and 59 was by no means certain, that proposal prejudged the issue.

27. Mr. VRANKEN (Belgium) said that he had abstained from voting for the reasons he had given concerning the reference to consular employees.

28. Mr. REBSAMEN (Switzerland) said that he had voted against the new paragraph proposed by Japan which had been approved by the Committee. He had consequently been compelled to vote against article 57 as a whole. His delegation was surprised at the Committee's approval of the article, which was quite broad in scope and which was on the whole unfavourable to the institution of honorary consular officials. He reserved the right to revert in plenary session to the provision concerning consular employees, and requested that his comments should be recorded.

29. Mr. PAPAS (Greece) said that he had endorsed the French delegation's proposal that the reference to article 35 should be voted on separately. His delegation, which had earlier made reservations concerning article 35, could not agree that that provision should be applicable to honorary consular officials and wished its statement to be recorded.

30. Mr. DRAKE (South Africa) suggested that the drafting committee should include in article 57 the word " duty ", which appeared in article 55, inasmuch as a reference to article 55 had been added.

31. Mr. MOLITOR (Luxembourg) said that he had abstained from voting on the Norwegian amendment,

because he was unable to estimate the effect that the new drafting of the articles might have on the interpretation of article 69, which had not yet been adopted.

32. Mr. TSHIMBALANGA (Congo, Leopoldville) said that he had voted for the article as a whole, which, despite certain omissions, was acceptable to his delegation.

33. Mr. HEUMAN (France) said that he had voted against paragraph 2 of the Canadian amendment for reasons both of substance and of form. The introductory phrase of article 49 made it unnecessary to insert the detailed provisions proposed by Canada, which in fact constituted an amendment to article 49 and not to article 57.

34. Mr. JESTAEDT (Federal Republic of Germany) associated himself with the comments of the Swiss representative.

35. Mr. MARESCA (Italy) said that article 55 had been added to the list in article 57 to which he had no objection in substance. However, the drafting committee should be warned against including references to very diverse provisions in one and the same article.[3]

Article 58 (Inviolability of the consular premises)

36. The CHAIRMAN said that the amendments to article 58 submitted by Greece, India and Pakistan were identical; he suggested that their sponsors might agree to regard them as a joint amendment. The delegation of the United States had withdrawn its amendment.[4]

37. Mr. PAPAS (Greece) said that article 58 did not answer any practical need, because honorary consular officials rarely occupied premises that were used exclusively for the performance of consular functions. Accordingly, his delegation proposed the deletion of the article.

38. Mr. ENDEMANN (South Africa) said that the article provided more extensive immunities than article 30 as approved by the Committee, and hence should be amended. He could not, however, agree to its deletion, as was suggested by some delegations. The inviolability of the premises of a consulate headed by an honorary consul should not be as categorical as that of the premises of a consulate headed by a career consul. The inviolability of the archives, as provided for in article 60, alone was really essential. Nevertheless, if article 58 were modelled, *mutatis mutandis*, on the provisions of paragraph 3 of article 30, protection of the premises would be better provided for, and accordingly his delegation had submitted an amendment (L.219) which it considered to be an acceptable compromise solution.

39. Mr. DAS GUPTA (India) said that the premises used by honorary consuls in the exercise of their functions were generally also used for private purposes. Since the essential point was to ensure the inviolability of the consular archives and documents, for which there was special provision in article 60, his delegation regarded article 58 as entirely superfluous.

40. Mrs. VILLGRATTNER (Austria) said that in connexion with article 30, her delegation had submitted an amendment (L.26) similar to that (L.52) which it was proposing for article 58. The earlier amendment had been approved after being merged in the relevant United Kingdom amendment. Her delegation still thought that the inviolability of the consular premises should be safeguarded, particularly in view of the amendment of article 30. In some places, certain consular functions were performed by the heads of diplomatic missions, and the purpose of the Austrian amendment to article 58 was precisely to take account of such cases.

41. Mr HABIBUR RAHMAN (Pakistan) announced the withdrawal of his delegation's amendment (L.215) in favour of that of South Africa (L.219), and asked to be regarded as a co-sponsor of the latter.

42. Mr. RUSSELL (United Kingdom) agreed with the representatives of Greece and India that article 58 should be deleted; it went far beyond the requirements of international law and practice. It would be recalled that article 30, of which article 58 was the counterpart, had given rise to a long and difficult discussion; in the outcome it had been decided to introduce certain important modifications into article 30 with the result that it had become more restrictive than article 58; it was obviously anomalous that a provision regarding the premises of an honorary consulate should be less restrictive than a corresponding provision regarding the premises of a career consulate. It was important that honorary consuls should be given the facilities necessary for the performance of their functions but, from that point of view, while it was essential to ensure the inviolability of the consular archives, it was not essential and, indeed, would be undesirable to extend inviolability to the premises themselves. Quite apart from the question of principle it would be very difficult in practice to establish what part of the premises was used exclusively by honorary consuls for the performance of their consular functions, since they frequently used the same premises for their own personal and commercial activities. His delegation would therefore vote in favour of the Greek and Indian amendments. If those amendments were not adopted, it would vote for the joint amendment of South Africa and Pakistan.

43. Mr. WESTRUP (Sweden) said that he had reached the same conclusions as the United Kingdom representative. While realizing that article 58 was not acceptable to many delegations, he would regret the omission from the convention of any reference to the inviolability of the consular premises used by honorary consuls. He would therefore vote for the South African amendment, which was a satisfactory compromise.

44. Mr. BLANKINSHIP (United States of America) said that, while sharing the opinion of the United Kingdom and Swedish representatives, he considered, like

[3] For further explanations of vote on article 57, see the summary record of the forty-third meeting, paras. 1-3.

[4] The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.20; Austria, A/CONF.25/C.2/L.52; Greece, A/CONF.25/C.2/L.163; United States of America, A/CONF.25/C.2/L.183; India, A/CONF.25/C.2/L.201; Pakistan, A/CONF.25/C.2/L.215; South Africa, A/CONF.25/C.2/L.219.

the latter, that it would be better to adopt the solution proposed by South Africa. In the title of the article, he would suggest that the word " inviolability " should be replaced by the word " protection " in deference to the views of some delegations.

45. The CHAIRMAN said that that suggestion would be referred to the drafting committee.

46. Mr. LEVI (Yugoslavia) said that, having read the commentary to article 58, he considered that the International Law Commission had had sound reasons for proposing the text under consideration. However, in view of the amendment to article 30, the text of article 58 went too far, even if modified as proposed by the Austrian delegation. He therefore shared the view of the United Kingdom and United States representatives and thought that the South African amendment should be adopted, without any reference to inviolability.

47. Mr. BREWER (Liberia) endorsed the South African amendment for the reasons stated by the United Kingdom and Swedish representatives, subject to the amendment to the title suggested by the representative of the United States of America.

48. Mr. ENDEMANN (South Africa) welcomed the representative of Pakistan as a co-sponsor of his amendment. In reply to the Indian representative's remarks he said that admittedly it was often impossible in any particular case to distinguish between consular premises and those used for private purposes; in such cases, the provisions of the article would be deemed not to apply.

The amendment by Greece (A/CONF.25/C.2/L.163) and India (A/CONF.25/C.2/L.201) were rejected by 30 votes to 18, with 15 abstentions.

The joint amendment by South Africa and Pakistan (A/CONF.25/C.2/L.219) was adopted by 44 votes to none, with 19 abstentions.

Article 59

(Exemption from taxation of consular premises)

49. The CHAIRMAN invited the Committee to consider article 59 and amendments thereto.[5]

50. Mr. BLANKINSHIP (United States of America) pointed out that his delegation's amendment (L.184), which was consequential on the changes made in article 31, was practically identical with the South African amendment (L.220). The Committee might wish to discuss the two amendments together.

51. Mr. ENDEMANN (South Africa) agreed, and suggested that it be left to the drafting committee to choose between the two amendments. However, if for voting purposes the Committee should wish to deal with only one document, he was ready to withdraw his delegation's amendment and to become a sponsor of the United States proposal. The object of his amendment was merely to bring the language of article 59 into line with that of article 31, and to extend the provisions of that article to cover the premises of a consulate headed by an honorary consular official.

52. Mr. WOODBERRY (Australia) said that his delegation's amendment (L.155) made only drafting changes, and hence could be referred to the drafting committee.

It was so agreed.

53. Mr. DAS GUPTA (India) said that he would have no objection to article 59 provided that it was made clear that it applied exclusively to premises used for the exercise of consular functions. But in most cases it was very difficult to determine whether the premises of an honorary consul were used exclusively for consular purposes. For that reason the Indian delegation had submitted an amendment (L.202) for the elimination of article 59. Since, however, the joint United States and South Africa amendment (L.184) provided the necessary clarification, he would withdraw his own delegation's amendment.

54. Mr. HABIBUR RAHMAN (Pakistan) agreed that it was hard to determine to what extent premises occupied by an honorary consul were used for consular functions or for private purposes. Hence, the application of the provisions on exemption from taxation was liable to be very difficult. Nevertheless, he would withdraw his delegation's amendment (L.216) since the phrase " used exclusively for consular purposes " in the United States and South African amendment would suffice.

55. Mr. MARESCA (Italy) asked that the phrase " or any person acting on behalf of the sending State ", which appeared in the amendment of the United States and South Africa, should be put to the vote separately. Whereas such a clause was inoffensive in the case of career consuls, it was very dangerous where honorary consuls were concerned.

58. Mrs. VILLGRATTNER (Austria) said that she from the phrase " used exclusively for consular purposes " the new wording of article 59, paragraph 1, as proposed by the United States was to all intents and purposes the same as that of article 31. Unless the Committee wished to adopt an article discriminating against honorary consuls, it would be preferable merely to refer to article 31 in article 57.

57. The CHAIRMAN said he shared that view, but since the Committee seemed to desire a separate article he would have to put article 59 and the amendments thereto to the vote.

58. Mrs. VILLGRATTNER (Austria) said that she fully agreed with the Italian representative's comments and supported his request for a separate vote. Whether the article tended to be discriminatory or not would depend on the result of that vote.

59. The CHAIRMAN put to the vote the phrase " or any person acting on behalf of the sending State " in the joint amendment by the United States and South Africa (A/CONF.25/C.2/L.184).

[5] The following amendments had been submitted: Australia, A/CONF.25/C.2/L.155; United States of America, A/CONF.25/C.2/L.184; India, A/CONF.25/C.2/L.202; Pakistan, A/CONF.25/C.2/L.216; South Africa, A/CONF.25/C.2/L.220.

The phrase was rejected by 25 votes to 19, with 18 abstentions.

The joint amendment by the United States and South Africa (A/CONF.25/C.2/L.184), as so amended, was adopted by 50 votes to 1, with 16 abstentions.

Article 59, paragraph 2, was adopted by 61 votes to none, with 4 abstentions.

Article 59 as a whole, as amended, was adopted by 58 votes to 1, with 6 abstentions.

60. Mr. VRANKEN (Belgium) said that he had voted against paragraph 1 as proposed by the United States because under that paragraph the premises of honorary consuls would receive greater protection than those of career consuls.

61. Mrs. VILLGRATTNER (Austria) asked that the drafting committee be instructed to bring the wording of paragraph 2 into line with that of the new paragraph 1.

The meeting rose at 6.5 p.m.

FORTY-SECOND MEETING

Wednesday, 3 April 1963, at 10.10 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 60

(Inviolability of consular archives and documents)

1. The CHAIRMAN invited the Committee to consider article 60, to which amendments had been submitted by the Netherlands (A/CONF.25/C.2/L.20), Austria (A/CONF.25/C.2/L.53) and South Africa (A/CONF.25/C.2/L.221).

2. Mr. DRAKE (South Africa) introduced his amendment in which he said it was proposed to amplify the wording in the International Law Commission's draft of article 60 to include papers and documents other than those mentioned in the text, which was too specific. The honorary consular official was almost invariably a citizen, or at least a permanent resident of the receiving State, and would in either case usually be occupied in carrying on his own private business; his duties as an honorary consul would normally be of a part-time character only. It might reasonably be assumed, therefore, that he would have on his business premises — which would probably also house the consulate as well — material of a non-official character, as was recognized in the article. The text did not go far enough, however, for it did not stipulate that the consular archives and documents must be kept separate from all non-official material or property which might happen to be on the premises. The draft article did not mention the possibility that the property of third parties, employed neither in the consulate nor in the business in which the honorary consul might be associated, might from time to time come to be on the premises as a normal consequence of the honorary consul's business activities.

3. Even if article 69 were to be amended subsequently to include permanent residents as well as nationals of the receiving State, it did not cover the inviolability of consular archives and documents, which was an immunity attached not to the individual but to the archives themselves. It would therefore in no way affect the operation of article 60, which had a wide application extending to all honorary consulates, whether the honorary consul concerned was a national or a permanent resident of the receiving State, or a national of the sending State or of a third State. It was therefore all the more necessary to consider the article with care.

4. Mr. RUSSELL (United Kingdom) supported the South African amendment.

5. Miss LAGERS (Netherlands) explained that the amendment submitted by her delegation (L.20) concerned drafting only, since it proposed the replacement of the word " consul " by " consular official ".

6. The CHAIRMAN said that the drafting committee would take the proposed change into consideration, and that it would therefore be unnecessary to put the Netherlands amendment to the vote.

7. Mrs. VILLGRATTNER (Austria) withdrew her delegation's amendment (L.53), since a similar amendment had not been upheld in connexion with an earlier article.

The South African amendment (A/CONF.25/C.2/L.221) was adopted by 48 votes to none, with 4 abstentions.

Article 60, as amended, was adopted unanimously.

Article 61 (Special protection)

8. The CHAIRMAN announced that the United States proposal (L.11) to delete article 61 had been withdrawn since it had been introduced as dependent on the adoption of the United States proposal (L.182) to add a reference to article 40 in article 57, which had, however, been rejected by the Committee at its fortieth meeting. The Committee therefore had before it amendments to article 61 submitted by Canada (A/CONF.25/C.2/L.121), South Africa (A/CONF.25/C.2/L.190) and India (A/CONF.25/C.2/L.208).

9. Mr. LEE (Canada) said that the International Law Commission's draft of article 61 on the receiving State's duty to accord " special protection " to an honorary consular official suggested that an honorary consular official should enjoy a more privileged status than citizens of the receiving State. In the view of his delegation, the criterion should be the honorary consul's need for protection which, it was recognized, might in certain circumstances be greater than that of the ordinary citizen. His delegation had therefore submitted an amendment to provide that the honorary consul should be accorded such additional protection as he might require by reason of his official position. In order to expedite the Committee's work, however, his delegation had decided, after consultation with the South

African delegation, to sponsor a joint amendment, the text of which was that contained in the amendment submitted by South Africa with the deletion of the word " special " before " protection ". It was hoped that the delegation of India, which had submitted a similar amendment, might also agree to join in sponsoring the joint amendment.

10. Mr. KHOSLA (India) said that his delegation would joint South Africa and Canada in sponsoring the amendment, which adequately expressed the intention of the Indian amendment.

11. Mr. DRAKE (South Africa) said that it seemed advisable to reduce to reasonable limits the obligation resting on the receiving State to give adequate protection to an honorary consular official. The International Law Commission's draft of article 61 would seem to imply the necessity for a certain measure of continuing vigilance on the part of the authorities of the receiving State; they would have a permanent obligation to keep a watchful eye over the safety of the honorary consular official. Such an obligation, stated in such equivocal terms, was unreasonable and unnecessary. It would be only in exceptional circumstances that the honorary consular official would in fact require protection: in that unfortunate event, he must be able to look to the receiving State for it, but as an honorary consular official, he could not ask more than that and indeed, would almost certainly not find it necessary to do so. The joint amendment sought to strike a reasonable balance by lessening, but by no means removing, the obligation contained in the International Law Commission's draft.

12. Mr. HEUMAN (France) said that the approval either of the International Law Commission's text or of the joint amendment would result in the paradox that an honorary consular official was accorded a greater degree of protection than a career consular official. Article 40 as approved by the Committee confined the obligation of the receiving State in regard to career consular officers to treating them " with due respect ": the reference in the original text to " special protection " had been deleted. Moreover, the title of article 61, " Special protection ", would not correspond to the text of the joint amendment, nor did the title of article 40 correspond to the revised text approved by the Committee.

13. Mr. LEVI (Yugoslavia) did not agree that the joint amendment, which his delegation accepted, would accord greater protection to honorary consuls than was accorded to career consuls under article 40. The joint amendment provided that the receiving State should accord to an honorary consular official such protection " as may be required by reason of his official position ", while article 40 provided that the receiving State should " take all appropriate steps " to prevent any attack on the person, freedom or dignity of career consular officers.

14. Mr. BLANKINSHIP (United States of America) said that it was clear that the joint amendment, particularly if read in conjunction with the International Law Commission commentary on article 61, would give less, and not more, protection to the honorary consular official. His delegation would therefore support the amendment.

15. Mr. MARESCA (Italy) endorsed that view.

16. The CHAIRMAN said that the titles of articles 40 and 61 would be considered by the drafting committee in relation to the texts approved.

17. He invited the Committee to vote on the joint proposal to amend article 61 to read: " The receiving State is under a duty to accord to an honorary consular official such protection as may be required by reason of his official position."

Article 61, as so amended, was adopted by 50 votes to 1, with 11 abstentions.

Article 62 (Exemption from obligations in the matter of registration of aliens and residence permits)

18. The CHAIRMAN invited the Committee to consider article 62 and the amendments thereto submitted by Austria (A/CONF.25/C.2/L.54) and Japan (A/CONF. 25/C.2/L.225).

19. Mrs. VILLGRATTNER (Austria) and Mr. KANEMATSU (Japan) withdrew their amendments in view of the decisions already taken by the Committee with regard to chapter III.

The International Law Commission's draft of article 62 was adopted by 58 votes to 2, with 4 abstentions.

20. Mr. JESTAEDT (Federal Republic of Germany) explained that his delegation had voted against article 62 which had no meaning since there appeared to be no honorary consuls who did not carry on a private gainful occupation.

Article 63 (Exemption from taxation)

21. The CHAIRMAN drew the Committee's attention to the amendments to article 63 submitted by India (A/CONF.25/C.2/L.209) and Portugal (A/CONF. 25/C.2/L.222).

22. Mr. KHOSLA (India) sid that his delegation proposed the deletion of article 63. Honorary consular officials were normally chosen from among persons with a substantial earning capacity, who therefore paid considerable tax. If they were granted exemption from taxation, it might lead to competition for appointment as honorary consuls and would also have the undesirable effect of creating a special privileged class of citizens with consequent discrimination against other citizens.

23. Mr. VAZ PINTO (Portugal) introduced his delegation's proposal to add a sentence to article 63 providing that if the honorary consular official did not carry on a gainful private occupation, he should enjoy also the exemption from customs duties as provided in article 49, paragraph 1 (*b*). It was true that the International Law Commission had given separate consideration to exemption from taxation and exemption from customs duties. In his view, however, customs duties were

generally regarded as taxes and it might not be considered inappropriate to include a reference to customs duties in an article headed " Exemption from taxation ". Alternatively, the Committee might wish to amend the title of article 63 if it were decided to include the proposed reference to customs duties, or it might prefer that the Portuguese amendment should be included in the convention as a separate article. The Committee had decided, in regard to article 57, that article 49, paragraph 1 (*b*), should be excluded from the list of articles applying to honorary consular officials. Article 57, however, dealt with the facilities, privileges and immunities to be granted to honorary consular officials in general, while the Portuguese amendment was intended to cover the very special case of honorary consuls who were not nationals of the receiving State — those who were came within the scope of article 69 and not that of article 63 — but who did not carry on any gainful private occupation. It was recognized that the category was not common, but it did exist. It was sometimes found expedient for reasons of economy, by the Portuguese Government, for example, to appoint such honorary consuls who, although they were not recruited from the limited foreign service staff, were sent by the State to exercise consular functions abroad, they did not carry on a gainful private occupation but devoted themselves exclusively to their consular functions. They were therefore much nearer to career consular officials than honorary consular officials, since they lived exclusively on the remuneration received from the State they served.

24. The proposed amendment was not based on financial considerations but was submitted with a view to avoiding difficulties which might arise even when relations between the sending and receiving States were very friendly. It had happened, for instance, that the regulations in a receiving State made the import of cars difficult, particularly for foreigners. The officials concerned were not considered as career consular officials by the receiving State, but as honorary consular officials. The legislation of the receiving State, however, recognized only honorary consular officials who were nationals of the receiving State. The honorary consular officials concerned, therefore, did not even enjoy the privileges of the ordinary citizen, and when the authorities generously decided to allow the import of cars, under certain conditions, by diplomatic and consular officials who carried on no gainful private occupation, the officials concerned were in an invidious position. Although the authorities of the receiving State had shown great understanding and co-operation, considerable difficulties had arisen which had been very hard to solve. His delegation recognized that its amendment, which in itself seemed reasonable, applied to a very limited number of cases only; it merely contained a special provision to cover the special cases to which he had referred and did not contradict any of the principles already approved by the Committee.

25. His delegation did not share the view expressed by some members of the Committee that too great a measure of facilities, privileges and immunities was being conferred on honorary consular officials. It must be remembered that so far the Committee had been dealing only with honorary consular officials who were not nationals of the receiving State. It was unfortunate that the structure of the Convention was such that article 69, which regulated the situation of honorary consular officials who were nationals of the receiving State, could not have been discussed earlier, for that would have made the situation much clearer. His delegation strongly supported the proposals that article 69 should be amended to include permanent residents of the receiving State.

26. Mr. ALVARADO GARAICOA (Ecudaor) supported the Indian proposal to delete article 63 which would grant special privileges to a particular class in the receiving State, of which honorary consuls were usually nationals. His delegation would therefore vote against the International Law Commission's text and the Portuguese amendment.

27. Mr. JESTAEDT (Federal Republic of Germany) suggested that the best solution for the case described by the Portuguese representative would be for the Portuguese Ministry of Foreign Affairs to confer on the persons concerned the status of career consular officials, and thus obviate all the difficulties to which reference had been made.

28. Mr. BLANKINSHIP (United States of America) said that, although article 63 appeared to have no great significance, his delegation would favour its retention on the understanding that article 69 would be amended to include permanent residents of the receiving State. His delegation had accepted the preceding article, and would support the following article, on that same understanding. The effect of the tax exemption granted by article 63 would then be reduced to a bare minimum in contrast with the broader tax exemption granted to career consular officials in article 48. Moreover, article 63 granted no exemption from taxation to members of families of honorary consular officials.

29. Mr. MARESCA (Italy) said that article 63 was based on the principle of non-interference by the receiving State in the internal affairs of a consulate, for to tax the remuneration and emoluments which an honorary consular official received from the sending State would constitute interference. It was known that most honorary consular officials did not receive emoluments in the strict sense, but merely financial help to enable them to carry out their functions. The deletion of the article would obstruct the functioning of consulates headed by honorary consuls for whom such financial aid from the sending State was necessary.

30. He sympathized with the Portuguese amendment which was intended to meet a situation where certain consuls described as honorary were not honorary consuls in the traditional sense — i.e., persons with a private gainful occupation. If the Committee could adopt a definition of honorary consuls sufficiently wide to include the category mentioned by the Portuguese representative, the case would be settled automatically. In the absence of such a definition, the Portuguese amendment was justified.

31. Miss ROESAD (Indonesia) said that her delegation preferred the International Law Commission's text. She agreed with the Italian delegation that the remuneration of honorary consuls was a matter for the sending State and that any emoluments paid to them to facilitate the exercise of their functions should be exempt from taxation. That would not amount to discrimination between nationals of the receiving State, as the Indian representative had suggested; that point was made clear in the International Law Commission's commentary on article 69. For those reasons she could not support the Indian amendment and she was also unable to support the Portuguese amendment.

32. Mr. ZELLINGER (Costa Rica) said that he did not understand article 63, which exempted honorary consul officials from dues and taxes on the remuneration or emoluments they received from the sending State. If consuls received remuneration from the sending State they were not honorary consuls but career consuls.

33. Mr. NASCIMENTO e SILVA (Brazil) fully appreciated the reasons for the two amendments; but with regard to the Portuguese amendment he agreed with the representative of the Federal Republic of Germany that the question could be more easily solved by the Portuguese authorities than by the Conference. The question was internal, not international.

34. With regard to the Indian amendment, he thought it desirable to retain article 63. It was quite possible that article 69 would be amended to include permanent residents of the receiving State; in that case article 63 would refer to only a very limited number of cases. Moreover, the receiving State had no tax control over sums paid as remuneration to honorary consuls by the sending State. In any case, the sums involved were small for, if a consular post headed by an honorary consul received large sums, it would be transformed into a career consulate. The Indian amendment was a precaution against the possibility that the amendments submitted to article 69 would not be approved, but he thought it was better to retain the article than to leave a gap which might lead to abuse.

35. Mr. RUSSELL (United Kingdom) said that he had listened with great interest to the Portuguese representative's statement; but he could not suppor this proposal. As many speakers had pointed out, the traditional distinction between *consules missi* and *consules electi* had become blurred under modern conditions. His delegation thought that the category of consular officials referred to by Portugal were properly speaking career consuls, not honorary consuls. He agreed with the representatives of the Federal Republic of Germany and Brazil that the question could be settled internally and was not a matter for an international agreement.

36. His delegation could not agree with the Indian proposal to delete the article. Honorary consular officials were appointed to perform certain functions on behalf of the sending State, and it was the practice of many if not most States to make some kind of payment to them in return for the performance of those functions. Some States which took the view that such emoluments should be treated as exempt from liability to taxation considered that the relevant principle was that one State should not tax another. Other States, including the United Kingdom, preferred to consider it as deriving from the principle that it was the exclusive right of the sending State to impose direct taxation on its own officials, whether serving at home or abroad, in respect of their official emoluments. However, whatever the theoretical basis, it was a very widespread usage that honorary consuls were not taxed in respect of their official emoluments. The United Kingdom delegation was therefore in favour of the International Law Commission's draft, which reflected prevalent international usage and seemed right and desirable in principle.

37. Mr. AMLIE (Norway) pointed out that article 63 referred to " remuneration and emoluments ". " Remuneration " clearly meant the salary. It was not clear whether the expression " emoluments " included reimbursement for expenses incurred in the exercise of consular functions. That was important because article 69 laid down that honorary consular officials who were nationals of the receiving State should not enjoy the privileges granted under article 63. Though honorary consuls who were nationals of the receiving State should not be exempted from taxation on their remuneration, reimbursement of expenses incurred in the exercise of their functions should be exempted.

38. Mr. EL KOHEN (Morocco) said that he agreed with the substance of the arguments of the representatives of India and Ecuador, but disagreed with their method of settling the matter. Article 63 did discriminate between citizens of the same State and therefore contravened the principle of equality before the law of all citizens, the more so because honorary consular officials were generally men of means. Nevertheless, he did not think that the article should be deleted. He was opposed to the wholesale deletion of articles; if too many articles were deleted the Convention would be reduced to triviality. The International Law Commission's commentary on article 63 stated that the provisions of that article did not apply to honorary consular officials who were nationals of the receiving State. He suggested that the Indian representative, instead of proposing the deletion of the article, should propose its amendment by incorporating those words from the International Law Commission's commentary.

39. Mr. CHAVEZ VELASCO (El Salvador) said that his was a small country which employed many honorary consuls and it was therefore obliged to consider the matter from every angle. It was obvious that honorary consuls should enjoy the necessary minimum of privileges and immunities to enable them to exercise their functions, but if the minimum were exceeded difficulties would arise. Care was exercised in the selection of consular officials, but occasional errors were inevitable. When an error was discovered, there was a clear distinction between the procedure to be adopted in the case of career consular officials and in that of honorary consular officials. An error committed by a career consular official led to administrative measures on the part

of the sending State; an error by an honorary consular official was usually subject to one sanction only, namely, dismissal. He agreed with the United States representative that the scope of article 63 could be limited and reduced to its proper proportions by the provisions of article 69.

40. Mr. VAZ PINTO (Portugal) thanked the Italian representative for his support and the representatives of the Federal Republic of Germany, Brazil and the United Kingdom for their comments. He agreed that the matter could be settled by a clear definition of the expressions " career consular official " and " honorary consular official ". The particular consular officials of whom he had spoken could either be recognized as career consular officials according to the municipal law of the sending State, or as a kind of *ad hoc* career consular official. If the first solution were adopted, then those consular officials would have to be treated as permanent members of a foreign staff and the whole advantage of employing them would be lost. Not to regard them as members of the foreign service would amount to introducing a new category of official into the convention, which — though a parallel institution did exist in diplomatic practice — might lead to abuses. Such officials would not belong to the diplomatic or to the consular services and it was doubtful if they could rank as career consuls.

The Indian amendment (A/CONF.25/C.2/L.209) was rejected by 27 votes to 13, with 26 abstentions.

The Portuguese amendment (A/CONF.25/C.2/L.222) was rejected by 42 votes to 10, with 17 abstentions.

Article 63 was adopted by 55 votes to 4, with 9 abstentions.

41. Mr. HEUMAN (France), Mr. VRANKEN (Belgium), Mr. MARAMBIO (Chile), Mr. SRESHTHEPUTRA (Thailand) and Mr. SHARP (New Zealand) said that they had voted for article 63 of the International Law Commission's text on the understanding that article 69 would cover permanent residents in the receiving State.

42. Mr. LEE (Canada) said that he had abstained from voting on the Indian amendment and had voted for draft article 63.

43. Mr. DRAKE (South Africa) said that he had abstained from voting on the Indian amendment and on the International Law Commission's draft article 63. His abstention on the Indian amendment was based on the understanding, which he shared with the previous speakers, that the exclusions provided for in article 69 would be extended to cover permanent residents as well as nationals of the receiving State. He would otherwise have voted in favour of the deletion of the article.

44. Mr. AMLIE (Norway) said that he had voted for the Portuguese amendment because there were very few honorary consuls who did not carry on a private gainful occupation, and, though the point did not directly affect his country, it was obviously of considerable importance to Portugal.

Article 64

(Exemption from personal services and contributions)

45. The CHAIRMAN stated that the Australian amendment (A/CONF.25/C.2/L.156) was the only amendment to article 64.

46. Mr. WOODBERRY (Australia) said that article 64 dealt not only with honorary consuls but with all officials employed in consulates headed by honorary consuls. He saw no reason to exempt all such officials who were permanent residents in the receiving State from all public services and obligations in that State, though an honorary consul might require exemption in certain circumstances.

47. Mr. KOCMAN (Czechoslovakia) pointed out that in accordance with paragraph 2 of the International Law Commission's commentary to article 57, honorary consuls who were nationals of the receiving State did not enjoy any of the immunities mentioned in the Australian amendment. He thought therefore that the purport of the Australian amendment would be dealt with in article 69, which would probably be amended to cover permanent residents in the receiving State.

48. Mr. VRANKEN (Belgium) pointed out that article 51 had been supplemented by a new sentence providing that the exemption from personal services and contributions referred to in the first part of the article should not apply to members of the families of consular employees if the latter carried on a private gainful occupation. It would be logical to add to article 63 a similar clause relating to honorary consular officials.

49. Mr. AMLIE (Norway) said that as there was no common formula regulating the status of members of families of consular officials carrying on private gainful occupations, it had been necessary to make a special addition to a number of articles. Members of families of consular officials who were nationals of the receiving State were covered by article 69; the Committee should therefore not deal with that question until it came to discuss article 69.

50. Mr. WOODBERRY (Australia) agreed with the Czechoslovak and Norwegian representatives that article 69 dealt with nationals of a receiving State and might deal with permanent residents; but if it were not adopted, or not amended, the Committee would be left with an article very much wider in scope than anything its members would wish. If the Australian amendment were adopted, it could be left to the drafting committee to bring it into harmony with whatever text of article 69 might subsequently be adopted.

51. Mr. LEVI (Yugoslavia) asked whether the drafting committee would be in a position to exclude those parts of the Australian amendment that proved to be unnecessary in the light of the text of article 69 which was subsequently adopted.

52. The CHAIRMAN said that the drafting committee could make any adaptations which proved to be necessary.

53. Mr. AMLIE (Norway) asked for a separate vote on the words " who are neither nationals nor permanent residents of the receiving State " in the Australian amendment.

54. Mr. HEUMAN (France) asked for separate votes on the references in the Australian amendment to nationals of the receiving State and to permanent residents.

55. The CHAIRMAN invited the Committee to vote on the retention of the words: " who are neither nationals " in the Australian amendment.

The words were retained by 53 votes to 6, with 8 abstentions.

56. The CHAIRMAN invited the Committee to vote on the retention of the words: " nor permanent residents " in the Australian amendment.

The words were retained by 48 votes to 7, with 10 abstentions.

The Australian amendment (A/CONF.25/C.2/L.156) as a whole was adopted by 48 votes to 5, with 15 abstentions.

57. The CHAIRMAN said that, in the absence of any objection, he would take it that article 64, as amended, had been adopted.

58. Mr. HEUMAN (France) said that the discussion of the Australian amendment had given further proof of how far the deliberations of the Committee would have been facilitated if article 69 had been taken before chapter III.

59. Mr. JESTAEDT (Federal Republic of Germany) said that he had voted against the retention of the words " permanent residents " because, if that expression were approved, no other honorary consular officials would be left within the scope of article 64.

Article 65 (Obligations of third States)

60. The CHAIRMAN said that, after carefully considering the matter, he was still of the opinion that, as the Committee had added article 54, paragraph 3, to the enumeration in article 57, article 65 should be regarded as having been deleted. The provisions of paragraph 3 of article 54 were wider than those of the International Law Commission's draft for article 65; consequently, if the Committee were now to approve article 65, an impossible position would arise.

61. Mr. HEUMAN (France) said that he too had reconsidered the matter and after carefully comparing the texts of article 54, paragraph 3, and article 65, he had arrived at the same conclusion as the Chairman.

62. He expressed his regret that so many facilities had been accorded to honorary consuls; he would have preferred a more discriminatory text, such as that of article 65.

Article 66 (Respect for the laws and regulations of the receiving State)

63. The CHAIRMAN said that amendments to article 66 had been submitted by Switzerland (A/CONF.25/C.2/L.165) and the United Kingdom (A/CONF.25/C.2/L.224). The Swiss amendment was covered by the text already approved by the Committee.

64. Mr. REBSAMEN (Switzerland) agreed and withdrew his amendment.

65. The CHAIRMAN recalled that at the 40th meeting the representative of the Federal Republic of Germany had suggested that the whole of article 66 had not been disposed of by including a reference to article 55 in the enumeration in article 57, and he had accepted the point. The words in question were those at the end of the second sentence of article 66 as drafted by the International Law Commission: " not to misuse their official position for the purpose of securing advantages in any private activities in which they may engage." The Committee would have to vote on that provision. If it were adopted it might be best if it constituted a new article, though in that case a new introductory phrase would have to be drafted. The provision referred only to honorary consular officials and not to career consular officials.

66. Mr. VRANKEN (Belgium) suggested that the proposed new article might begin with the words: " Without prejudice to their privileges and immunities, it is the duty of honorary consular officials not to misuse . . ."

67. Mr. HEUMAN (France) suggested that an alternative method would be to introduce a new article on the following lines: " Without prejudice to their obligations under article 55, honorary consuls also have a duty not to misuse their official position. . . ."

68. Mr. RUSSELL (United Kingdom) said he had proposed the inclusion of article 55 in the list of articles in article 57 on the understanding that article 66 would be entirely deleted. He appreciated the arguments for both sides of the question but, after weighing up the situation, had come to the conclusion that it would be better not to include article 66 in the Convention. If it were retained it might be interpreted as implying that career consular officials were not under the same obligation as honorary consular officials not to misuse their official position for private advantage. If such a provision were included in the article it should apply equally to career and honorary consular officials. In the circumstances, therefore, it would be better for article 66 not to appear.

69. The CHAIRMAN suggested that for procedural purposes the Committee should vote on the text of article 66. There were two suggestions before the Committee and if the Belgian representative did not maintain his proposal he would prefer the text presented by the French representative.

70. Mr. VRANKEN (Belgium) withdrew his proposal but pointed out that the words " without prejudice " in the French representative's text were unnecessary because the obligation under article 66 was additional to the obligations under article 55.

71. Mr. HEUMAN (France) said he would replace the words " without prejudice " by the words " in addition ".

72. Mr. BLANKINSHIP (United States of America) considered that article 66 should be deleted for the reasons put forward by the United Kingdom representative. A provision of that kind in an international convention, however carefully worded, would inevitably appear insulting and would be difficult to enforce. The provisions of article 55 fully covered the situation.

73. Mr. WALDRON (Ireland) agreed with the representatives of the United Kingdom and the United States. At first sight it had seemed quite proper to include such an article in the Convention. After reconsidering the question, however, and reading the rather harsh words proposed, he thought the proposed text would strike a discordant note and would be hard to fit into a convention of the kind in view.

74. Mr. MARAMBIO (Chile) thought it essential to maintain the last sentence of article 66. He approved of the text proposed by the representative of France.

75. Mr. HENAO-HENAO (Colombia) opposed the inclusion of a reference to the misuse of official position for private advantage. A conference of highly qualified legal experts might well be criticized for laying down such elementary principles. The obligation in question was the obvious complement to the receipt of the privileges accorded to honorary consular officials. The article should be deleted.

76. Mr. NASCIMENTO e SILVA (Brazil) said he had been impressed by the reasoning of the United Kingdom representative, since article 66 would affect only a limited category of consular officials. The proposed text was somewhat harsh and its legal effect would be small so he would prefer to see the article deleted.

77. Mr. MARESCA (Italy) said that the Committee was free to approve changes in the status of honorary consular officials or limitations on the privileges granted to them. It was not free to introduce an offensive article into the Convention; he considered that article 66 should be deleted.

78. The CHAIRMAN invited the Committee to vote on the United Kingdom amendment (A/CONF.25/C.2/L.224) to delete article 66.

The United Kingdom amendment was adopted by 35 votes to 23, with 12 abstentions.

79. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted against deleting the article for the reasons given by the representative of Chile. He would have accepted the text proposed by the representative of France.

Article 67 (Optional character of the institution of honorary consular officials)

80. The CHAIRMAN invited the Committee to consider draft article 67 and the amendment submitted by Japan (A/CONF.25/C.2/L.226).

81. Mr. KANEMATSU (Japan) withdrew his amendment on the ground that the committee had approved the regime for honorary consular officials.

82. Mr. AMLIE (Norway) said that article 67 implied that the system of honorary consulates was not normal and that honorary consular officials were an inferior class of persons subject to the receiving State's acceptance. Article 67 was unnecessary since article 11 fully safeguarded the interests of the receiving State. He would therefore reintroduce the Japanese amendment.

83. Mr. RUSSELL (United Kingdom) opposed the deletion of article 67. He did not agree with the representative of Norway that the receiving State was safeguarded by article 11, for it would be an abuse of article 11 to use it for refusing acceptance of an honorary consular official. Article 67 was a necessary part of the International Law Commission's structure for the convention, which included a separate set of articles for honorary consuls.

84. Mr. VRANKEN (Belgium) inquired if the Swiss proposal on consular agencies (A/CONF.25/C.1/L.102/Rev.1), which had been dealt with by the First Committee, would affect article 67.

85. Mr. REBSAMEN (Switzerland) said that, at its 28th meeting, the First Committee had adopted a new article on consular agencies to be inserted after article 67. Although it followed the pattern of article 67, the new article had no direct or fundamental relation to article 67 and would thus not be affected by the possible deletion of the latter.

86. Mr. PETRENKO (Union of Soviet Socialist Republics) thought that article 67 should be kept, as it contained one of the most important principles concerning the institution of honorary consular officials. He strongly supported the optional principle because, although legislation in the Soviet Union did not permit the sending or receiving of honorary consular officials, the Conference was drafting an international convention and many countries made wide use of honorary consuls.

87. Mr. HENAO-HENAO (Colombia) considered that the article should be deleted. If it were put to the vote, he would ask for separate votes on appointing and receiving honorary consular officials: it was not within the competence of the draft convention to lay down rules concerning the appointment of officials.

88. Mr. NWOGU (Nigeria) also thought the article should be deleted because it was superfluous once the institution of honorary consular officials was recognized. Moreover, it implied that receiving States could influence the choice of honorary consular officials, which would be unacceptable, particularly to the developing countries. There was adequate provision in the convention for the receiving State to object to a person appointed but there should be no right to object to the institution.

89. Mr. ANGHEL (Romania) opposed the deletion of article 67 because the principle it contained was an important one. It was the practice of a large number of States not to appoint or to admit honorary consuls; it would be wrong to impose on those States an institution which was unknown to them. The International Law Commission had included a chapter III on honorary consuls in its draft solely because of article 67. Had it not

been for that articles, the Commission would have considered submitting a separate draft convention on the subject.

90. Mr. KANEMATSU (Japan) said that he had originally proposed the deletion of article 67 in the context of a proposal for re-drafting chapter III, but since his proposal concerning chapter III had been rejected, he had withdrawn his amendment (L.226).

91. Mr. SILVEIRA-BARRIOS (Venezuela) considered that article 67 should be retained. He did not agree with the Colombian representative's arguments in favour of deleting the article because it provided an optional formula suitable for countries with differing practice.

92. Mr. LEVI (Yugoslavia) said that article 67 was not of great importance to his country, which both appointed and received honorary consular officials. Nevertheless, it would be better to keep the article since it represented a compromise between the views of States with differing customs and was therefore valuable in a convention which it was hoped would be ratified by as many States as possible.

93. Mr. TILAKARATNA (Ceylon) said that the deletion or retention of article 67 was really nothing more than a procedural matter. The important thing to establish in connexion with chapter III was that the honorary consular official was a representative of the receiving State; a worthy and hard-working citizen with little or no remuneration, whose only concern was to promote friendly relations between receiving and sending State. He was not regarded as a suspicious person whose activities should be restricted, and there was no such intention in article 67.

94. Mr. NASCIMENTO e SILVA (Brazil) agreed with the representative of Yugoslavia that article 67 was intended as a compromise to meet the needs of countries, like his own, which appointed and received honorary consular officials and was well served by them, and countries that did not admit the system. He also agreed that the draft convention must be acceptable to as large a number of countries as possible. Article 67 was therefore indispensable and was one of the most important articles in chapter III.

95. He did not agree with the representative of Norway that the receiving State could prevent the appointment of an honorary consular official by refusing the exequatur, because article 2, paragraph 2, stated that consent to the establishment of diplomatic relations between two States implied consent to the establishment of consular relations.

96. Mr. MARESCA (Italy) saw no necessity for keeping article 67. The optional nature of consular relations was apparent throughout the convention and there was no need to restate it in article 67.

97. Mr. MORGAN (Liberia) said he would vote for the retention of article 67, which made it clear that States were under no obligation to appoint or to receive honorary consular officials.

98. Mr. RODRIGUEZ (Cuba) was also in favour of keeping article 67, which codified a long-established international practice and did not impose any obligation.

99. Mr. TOKER (Turkey) said he would vote in favour of article 67, which was in accord with international practice.

100. Mr. KEITA (Mali) said that he, too, was in favour of article 67 because the optional character was an important element in the system of honorary consular officials.

101. Mr. AMLIE (Norway) said that he appreciated that article 67 represented a compromise between the different points of view, and that the purpose of article 11 was primarily to give the receiving State the power to refuse an individual honorary consular official. But he was not convinced by the argument that article 11 was not applicable in the present context; in his opinion, article 11 fully safeguarded the receiving State's interests and a receiving State would not be abusing it nor infringing the optional principle if it were invoked to refuse an individual. Nor did he agree that the deletion of article 67 would complicate the machinery of the Convention.

102. The CHAIRMAN invited the Committee to vote on the Japanese amendment, reintroduced by Norway (A/CONF.25/C.1/L.226) to delete article 67.

The amendment was rejected by 56 votes to 11, with 4 abstentions.

103. The CHAIRMAN invited the Committee to vote on article 67 as drafted by the International Law Commission.

104. Mr. HENAO-HENAO (Colombia) asked for separate votes on the appointing and receiving of honorary consular officials.

105. Mr. TOURE (Guinea) opposed the motion.

106. Miss ROESAD (Indonesia) also opposed the motion because the rejection of the proposal to delete the article implied that it had been accepted in its entirety.

The proposal for separate votes was rejected by 55 votes to 6, with 10 abstentions.

Article 67 was adopted by 63 votes to 3, with 6 abstentions.

The meeting rose at 1.10 p.m.

FORTY-THIRD MEETING

Wednesday, 3 April 1963, at 3.15 p.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

Tribute to the memory of Mr. Quinim Pholsena, Minister for Foreign Affairs of Laos

On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. Quinim Pholsena, Minister for Foreign Affairs of Laos.

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 57 (Regime applicable to honorary consular officials) (*continued*) *

1. Mr. REBSAMEN (Switzerland) said he wished to amend the explanation of his delegation's vote on article 57, and especially on the Japanese amendment (L.217) to that article. His delegation had acted on the assumption that the Committee had adopted the Japanese amendment as drafted in French, but if the English text, which was slightly different, was authentic, his delegation's position no longer had any meaning. He reserved the right to return to that point in plenary session.

2. The CHAIRMAN explained that the English text was correct and had been put to the vote after the Japanese representative had rectified, during the forty-first meeting, an error in paragraph 2 of his amendment (L.217), pointing out that the words " nor to a consular employee " should be replaced by the words " or of a consular employee ".

3. Mrs. VILLGRATTNER (Austria) and Mr. JESTAEDT (Federal Republic of Germany) associated themselves with the Swiss representative's remarks and said that their explanations of the vote also required some amendment.

Article 69 (Members of the consulate, members of their families and members of the private staff who are nationals of the receiving State)

4. The CHAIRMAN invited the Committee to consider article 69 and the amendments thereto.[1] Those submitted by the United States, India and Australia were identical.

5. Mr. ENDEMANN (South Africa) introduced a joint amendment (A/CONF.25/C.2/L.229) submitted by the delegations of Brazil, Canada, Ceylon, India, Japan, the Netherlands and South Africa. The object was to insert the words " or permanently resident in " in paragraph 1, which represented a substantive amendment to the International Law Commission's draft. In addition, the sponsors of the joint amendment proposed a new draft for paragraph 2 as a whole, since the Commission's draft contained no provision concerning the members of the families of consular officials and other members of the consulate who were permanently resident in the receiving State. The separate amendments previously submitted by the sponsors had been withdrawn.

6. Mr. LEVI (Yugoslavia), supported by Mr. HEUMAN (France), said that the joint amendment was rather complicated, in that the second sentence of paragraph 2 more or less restated the first sentence. He asked for some explanations on that point.

7. Mr. AMLIE (Norway) said that, on reconsidering his amendment (L.228), he thought that his reference to article 41, paragraph 3, second sentence, was not quite accurate. He would therefore alter the amendment to read: " Add the following new sentence to article 69, paragraph 1: ' If criminal proceedings are instituted against such an official the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.' "

8. Mr. VRANKEN (Belgium), supporting the Norwegian representative's proposal, said that his government had made an analogous proposal. The Belgian delegation opposed the addition of the words " or permanently resident in ", which had appeared in the first draft prepared by the International Law Commission, but had subsequently been dropped. It would be helpful if the special rapporteur of the International Law Commission would explain the circumstances in which that decision had been taken.

9. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, said that the International Law Commission had considered the question at its thirteenth session, when it had taken into account the outcome of the Vienna Conference of 1961. It had then laid down the principle that the provisions of the Vienna Convention on Diplomatic Relations should be followed as closely as possible in the draft on consular relations. After an exchange of views, the Commission had decided to include the expression " or permanently resident in " in article 69; the matter had then been referred to the drafting committee, which had unanimously recommended that the expression should not appear in the final draft. Two arguments had been advanced in support of that recommendation: first, the question had a different aspect for consular officials who, unlike diplomatic agents, were subject to the jurisdiction of the receiving State, except in respect of acts performed in the exercise of their functions; secondly, in the particular case the position of honorary consuls had to be taken into account.[2] For those two important reasons, the Commission had decided to accept the drafting committee's recommendation that the expression " or permanently resident in " should not appear in article 69.

10. Mr. BLANKINSHIP (United States of America) said that on several occasions his delegation had stressed the importance it attached to the addition of the phrase " or permanently resident in ", and had submitted its amendment (L.12) to that effect as early as 5 March. His country, which received many immigrants every year, supported the principle that those permanent residents, who often acquired United States citizenship after five years, should not only enjoy the privileges of United States citizens, but should also assume some of their obligations. Without wishing to press the Committee, he felt obliged to warn it that his government might consider the convention unacceptable if it did not mention permanent residents.

* Resumed from the forty-first meeting.

[1] The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.12; Netherlands, A/CONF.25/C.2/L.21; Japan, A/CONF.25/C.2/L.90; Canada, A/CONF.25/C.2/L.112; Brazil, A/CONF.25/C.2/L.161; India, A/CONF.25/C.2/L.180; Australia, A/CONF.25/C.2/L.192; Norway, A/CONF.25/C.2/L.228.

[2] See *Yearbook of the International Law Commission, 1961*, vol. I (United Nations publication, sales No. 61.V.1, vol. I), summary records of the 603rd and 623rd meetings.

11. Article 69 was an extremely important provision; indeed, the French representative had asked that it should be considered as a matter of priority. He had been surprised by the categorical opposition of the Belgian delegation to the addition of the words " or permanently resident in ", and reserved the right to raise that point again.

12. Mr. WOODBERRY (Australia) said that his delegation considered that permanent residents should not, under the instrument being drafted, possess privileges and immunities; the Vienna Convention of 1961 constituted the correct precedent. It would be paradoxical if the members of the family of a consular official had more extensive privileges and immunities than the consular official himself. For that reason, he was in favour of the joint amendment (L.229). If that amendment was adopted, article 69 should appear as the first of the provisions in section II of chapter II, so as to show quite clearly that it applied to all the succeeding articles.

13. Mr. NASCIMENTO e SILVA (Brazil) said that in taking a decision on article 69, the Committee should take account of the United States representative's remarks. The question of permanent residents had been raised on several occasions in the past, and the Brazilian delegation had opposed special clauses regarding such persons, for it had expected that a general restrictive clause having reference to them would be added later in the convention. Hence, it found itself under a moral obligation to press for the inclusion of such a clause in article 69. Brazil had always considered that compromise solutions should be adopted, and that some delegations should not be obliged to submit to the wishes of the majority. For that reason, he urged the Committee to approach the question not merely in the context of article 69, but from a more general point of view, with the intention of drafting a convention acceptable to the largest possible number of States.

14. Mr. SMITH (Canada) said that the object of the changes proposed in the joint amendment was to ensure that the members of the family of a consular official would not enjoy more extensive privileges and immunities than the official himself: that would be an absurd position. Both from their statements and from their votes it appeared that many delegations shared that view. That had been the case, for instance, during the consideration of articles 47 and 48. Although the International Law Commission had not considered itself bound by the 1961 Convention, it had clearly indicated that the two instruments should as far as possible be parallel, and one of the advantages of the joint amendment was that it would achieve that purpose. The rejection of the joint amendment would make it impossible for some governments to ratify the convention. So far as Canada was concerned, he said that he was as certain as an official could be that no Minister of Finance would agree to exempt permanent residents in the country from normal taxation.

15. In reply to the Yugoslav representative, he explained that the second sentence of paragraph 2 of the joint amendment, while repeating a considerable part of the first sentence, also mentioned another category of persons. It was not therefore purely repetitive, and it might be left to the drafting committee to solve any drafting difficulty.

16. Mr. HEUMAN (France) said that the question was not as simple as some seemed to believe. The position of honorary consuls raised a specific problem, in no way relevant to the 1961 Convention. Besides, if permanent residents were to be debarred from privileges and immunities, the whole of chapter III might well be regarded as unnecessary, for, with very rare exceptions, honorary consuls were nearly always permanent residents. Article 69 was a general provision, and there was no difference between the 1961 Convention and the present convention so far as career consuls and members of the consulate were concerned. Consequently, apart from the provisions concerning honorary consuls, the position resulting from the adoption of the joint amendmend would be identical to that covered by the 1961 Convention. He was accordingly inclined to support the joint amendment. For the benefit of countries for which the question of honorary consuls was of great importance, he suggested that a separate clause might be added relating to that category of consul.

17. So far as the members of the families of consular officials were concerned, the joint amendment had the further advantage of endorsing an idea reflected in an amendment submitted by Japan to another article, which had drawn a distinction between the position of a woman married to a consular official who enjoyed privileges and immunities and that of a man who was married to a female consular official. That distinction was undoubtedly necessary.

18. While he had no objection to the Norwegian proposal, he did not fully understand the point of quoting words from another article when a reference to that article would have sufficed.

19. Mr. SALLEH bin ABAS (Federation of Malaya) said that he was in favour of the joint amendment to paragraph 1, since no distinction should be drawn between permanent residents and nationals of the receiving State. Despite some doubts expressed on the subject, he considered that the amendment to paragraph 2 represented a useful clarification without making any change of substance. He suggested that the expression " consular officials " in article 69, paragraph 1, should be amplified by the addition of the words " whether career or honorary officials ".

20. Mr. LEVI (Yugoslavia) said that he approved of the joint amendment to paragraph 1 and also of the re-draft proposed for paragraph 2, provided that a clearer form of words were used. In his opinion, the second sentence should constitute a separate paragraph.

21. Mr. RUSSELL (United Kingdom) said that his delegation was strongly in favour of the insertion of the words " or permanently resident in ". It would not be acceptable to extend the various privileges and immunities accorded to consular personnel in the draft articles to those who were either permanent residents of the receiving State or nationals of that State. He recognized that, as the French representative had pointed

out, the introduction of those qualifications would make chapter III more or less superfluous; that conclusion confirmed the aptness of the proposal that had been made by the Japanese delegation (L.89/Rev.1) for the replacement of the entire chapter by a single article.

22. Mr. VILLGRATTNER (Austria) said that it was amongst persons " permanently resident in the receiving State " that the sending State would find the persons best qualified to perform consular functions, by reason of their knowledge of the laws and usage of the receiving State. The Committee might perhaps accept a compromise wording and, instead of the phrase " permanently resident in " refer to " nationals of the receiving State or stateless persons resident in the territory of the receiving State " in paragraph 1. The Austrian delegation hoped that the sponsors of the joint amendment would be able to amend their proposal in that way, in which case she would be prepared to vote for it. She also hoped that the Norwegian amendment would be adopted and that the exemptions granted to consular posts would not be made dependent on whether the head of post was an honorary consular official or a career consul.

23. Mr. SRESHTHAPUTRA (Thailand) said that his delegation's position with regard to the question of permanent residents of the receiving State had already been explained to the Committee when he had introduced his amendment to article 48, paragraph 2. He would therefore say only that he fully agreed with the point of view of the United States and Canadian representatives and that he would vote for the joint amendment.

24. Mr. SHARP (New Zealand) said that the joint amendment was likewise acceptable to his delegation. New Zealand received large numbers of immigrants who could apply for naturalization after five years and were encouraged to do so. Some declined to make application, for reasons which had to be respected, but others sometimes questioned the practical advantages to be gained by becoming naturalized. If they were honorary consuls, the Government could not grant them more privileged conditions than those enjoyed by New Zealand nationals. The Norwegian amendment was acceptable, and his delegation would also endorse the amendments proposed by the representative of Norway during the meeting.

25. Mr. JESTAEDT (Federal Republic of Germany) said that honorary consuls who were nationals of the sending State or of a third State should enjoy privileges and immunities. The formula proposed by the Austrian delegation was a welcome compromise solution. The Committee might also decide to add a separate clause concerning honorary consular officials who were nationals of the receiving State.

26. Mr. AMLIE (Norway) said that there was a considerable difference between an honorary consul who was a national of the receiving State and an honorary consul who was merely a permanent resident of that State. The difference consisted in the fact that the second category comprised honorary consuls who were nationals of the sending State. There was no reason so far to place the latter consuls in a better position than consuls who were nationals of the receiving State. The reason why such persons had not become nationals of the receiving State was either that they did not wish to acquire such nationality, or that they were not allowed by the receiving State to acquire its nationality. Consequently they were not to such a degree as nationals of the receiving State affiliated with the latter State. They should therefore be placed in a better position, so far as privileges and immunities were concerned, than consuls who were nationals of the receiving State. He would especially warn the representatives of small countries against the joint amendment, which he considered an attack on the very institution of honorary consuls.

27. Mr. MARESCA (Italy) said that the Vienna Conference of 1961 had set limits to the extension of privileges and immunities to all members of diplomatic missions. The diplomatic status carried much broader privileges than did consular status. Article 69 did not apply to career consuls, who were always nationals of the sending State. For persons permanently resident in the receiving State, however, special conditions should be laid down in paragraph 1 of article 69.

28. Mr. SPYRIDAKIS (Greece) said that his delegation would vote for the Norwegian amendment. Although the joint amendment might be held to improve the draft article, it was not acceptable to his delegation, which would abstain in the vote on that amendment.

29. Mr. VRANKEN (Belgium) expressed the hope that the Conference would draft a convention acceptable to all countries. Article 69 raised an important problem, which might be solved if, after the inclusion of the words " or permanently resident in ", the phrase " who are not nationals of the sending State " were added.

30. Mr. TILAKARATNA (Ceylon) said that in sponsoring the joint amendment his delegation had in no way intended to prejudice the institution of honorary consuls. He had welcomed the Austrian proposal and thought that a compromise solution could be found, although the expression " stateless person " was not very suitable, since the expression was differently interpreted in different countries.

31. Mr. MOLITOR (Luxembourg), comparing the status of consular officials who were nationals of the receiving State with that of honorary consuls under the provisions drafted by the Committee, said that all the articles concerning consulates headed by an honorary consul, as well as articles 42, 43 and 44, paragraph 3, were applicable to both categories. The real distinction between them was drawn in articles 62 and 63, which did not apply to honorary consuls who were nationals of the receiving State. Hence the differences of status were not very important. For the reasons given by the Norwegian representative, he would oppose the inclusion of the term " or permanently resident in " in article 69.

32. Mr. REBSAMEN (Switzerland) said that he shared the opinions of the representatives of Norway and Luxembourg. Switzerland appointed as honorary consular officials only persons having Swiss nationality, and he could see no justification in applying discriminatory conditions to that category of consular official. His

delegation would support a compromise solution such as that proposed by the Belgian representative, but it would oppose the inclusion of the words " or permanently resident in " in the article.

33. Mr. DE CASTRO (Philippines) said that the article as drafted by the International Law Commission was acceptable to his delegation.

34. Mr. HEUMAN (France) explained that he had not made any formal proposal for a separate clause concerning honorary consuls. If other delegations were to put forward a proposal along those lines, the French delegation would raise no objections. Nevertheless, if such a course were adopted, the result might be that a more favourable status would be granted to the members of their families than to the consular officials themselves. If the Committee were to accept the inclusion cast of the words " or permanently resident in ", the votes at the previous meeting should perhaps be reconsidered.

35. Mr. SCHRØDER (Denmark) said that honorary consuls generally carried on a gainful occupation and hence did not qualify for most of the exemptions granted. As the Luxembourg representative had said, there was no great difference in status between the two categories of consular official.

36. Miss LAGERS (Netherlands) expressed the view that honorary consuls who were permanently resident in the receiving State should not enjoy more favourable conditions than the nationals of that State.

37. Mr. KHOSLA (India) said that if, by virtue of article 57, privileges and immunities were granted to honorary consuls who were permanently resident in the receiving State, they would in effect form a privileged class in that State; for that reason the words " or permanently resident in " should be included in paragraph 1 of article 69.

The meeting rose at 6 p.m.

FORTY-FOURTH MEETING

Thursday, 4 April 1963, at 10.15 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 69 (Members of the consulate, members of their families and members of the private staff who are nationals of the receiving State (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 69 and the amendments to it.[1]

2. Mr. WALDRON (Ireland) said that he supported the joint amendment (L.229). The reasons had been fully explained during the discussion of article 69 and more particularly of the other articles involved. Nevertheless, he did not consider that the implications of the amendment really justified the strong views expressed at the previous meeting. The amendment was not concerned with the question of the greater and the lesser powers.

3. Mr. ENDEMANN (South Africa) said he was grateful to the representative of France for his lucid statement at the previous meeting, and particularly for pointing out that article 69 applied to career consular officials as well as to honorary consular officials. The article was not part of chapter III, dealing with honorary consular officials; the International Law Commission had placed it in chapter IV (General provisions) because it was a general provision applicable to both categories. Moreover, it applied only to persons and did not affect the privileges and immunities given for the consular post and the consular premises. He also thanked the representative of Luxembourg for putting the matter in its true perspective.

4. The effect of article 69 would be seen by examining the articles applicable to honorary consular officials and consulates set out in article 57. Articles 28 (Use of the national flag and of the state coat-of-arms), 29 (Accommodation), 33 (Facilities for the work of the consulate), 34 (Freedom of movement), 35 (Freedom of communication), 36 (Communication and contact with nationals of the sending State), 37 (Obligations of the receiving State), 38 (Communication with the authorities of the receiving State) and 39 (Levying of fees and charges) would not be affected. The provisions of article 41, paragraph 3 (Personal inviolability) would be safeguarded if the Norwegian amendment (L.228), which he supported, were adopted. The provisions of article 42 (Duty to notify in the event of arrest, detention or pending trial or the institution of criminal proceedings) were safeguarded by reference in article 69; so too were the provisions of article 43 (Immunity from jurisdiction), which were quoted, and of article 44 (Liability to give evidence) which was referred to. Article 45 (Waiver of immunities) was a negative article and therefore had little relevance. Article 49, sub-paragraph 1 (*a*), would stand, as it applied to articles for the official use of the consulate. Articles 58, 59 and 60 would also stand, as they did not apply to persons. Article 67 (Optional character of the institution of honorary consular officials) was not relevant.

5. The articles which would no longer apply were: article 53 (Beginning and end of consular privileges and immunities) which was functional and did not itself confer privileges; article 61 (Special protection) which was less important than protection for the consulate; article 62 (Exemption from obligations in the matter of registration of aliens and residence permits) which was of no real significance because there already was an exception in the case of private gainful occupation, article 63 (Exemption from taxation) in which the concessions were limited because salaries and emoluments

[1] For the list of the amendments originally submitted to this article, see the summary record of the forty-third meeting, footnote to para. 4. The amendments submitted by Brazil, Canada, India, Japan and the Netherlands had been withdrawn in favour of a joint amendment (A/CONF.25/C.2/L.229) which was also sponsored by Ceylon and South Africa. The text of the amendment by Norway (A/CONF.25/C.2/L.228) had been revised by its sponsor at the forty-third meeting.

of honorary consuls were usually small and their exemption from taxation would not be acceptable to tax authorities in respect of nationals or permanent residents; and article 64 (Exemption from personal services and contributions) which was of no importance because no doubt in most countries, like his own, only nationals were called up for military service.

6. It was therefore clear that, as contrary to what the Norwegian representative had maintained at the previous meeting, article 69 was not directed against honorary consular officials. If anything, it was directed against career consular officials, for it reproduced the provisions of article 38 of the Convention on Diplomatic Relations. Despite the suggestion during the discussion at the preceding meeting that there were nowhere career consular officials who were permanent residents of the receiving State, he could call to mind four cases of career consular officials who were nationals of the sending State but permanent residents of the receiving State. It would be unreasonable to expect the receiving State to cease regarding such persons as no longer permanent residents and thus freed from their obligations. That was the reason for the clause in the Convention on Diplomatic Relations and the reason why a similar provision was needed in the consular convention.

7. The country he represented was not a great power; it received and appointed honorary consuls who might be its own nationals or nationals of the receiving State or of a third State. In jointly sponsoring the amendment in L.229, he was not attacking the system of honorary consuls. With regard to the joint amendment itself, the second sentence of paragraph 2 was intended to cover the case where the members of the family of a consular official were nationals of or permanent residents in the receiving State, while the official himself was not; and the members of the family should not share the benefits to which the official was entitled.

8. Mr. SMITH (Canada) said that after the South African representative's comprehensive review he would merely comment on questions raised in the discussion. The First Committee was examining, in connexion with article 1, the term " consular official " which had caused the Malayan representative some difficulty. If the matter were not settled by the First Committee he suggested that the drafting committee should take the Malayan representative's comments into consideration. The two suggestions by the representative of Yugoslavia were sensible and could also be dealt with by the drafting committee. With regard to the suggestions by the representatives of Austria, Belgium and the Federal Republic of Germany, he had consulted most of the other sponsors of the joint amendment (L.229) and regretted that the suggestions were not acceptable because they would constitute a considerable derogation from the purpose of the amendment. If they were adopted, over half the persons concerned would receive privileges to which they were not entitled. The essential purpose of the amendment was to secure equal treatment for ordinary citizens and residents of the receiving State.

9. The sponsors of the joint amendment were not against the interests of the smaller States, as some representatives had suggested; they merely wished to protect nationals and other permanent residents of the receiving State. If the amendment were adopted there would be little loss to countries using honorary consuls; but much would be lost if the amendment were rejected.

10. Mr. BLANKINSHIP (United States of America) said he had little to add to the excellent statements by the representatives of the Netherlands, Ceylon, South Africa, Canada and other countries, except some interesting facts to refute the argument that the inclusion of permanent residents would destroy the system of honorary consuls. There were twenty-one honorary consular officals in Vienna, of which seventeen or eighteen were of Austrian nationality. In Amsterdam, where he himself was posted, there were about twenty honorary consuls or consuls-general, of whom all but one were nationals of the Netherlands. Countries which had honorary consuls there of very long standing included Norway, Austria, Sweden, Denmark, Finland and Gerece; and the first of the newly independent countries to appoint an honorary consul-general, Sierra Leone, was also appointing a national of the Netherlands. Similar information could be quoted for his own country. It was clear therefore that many countries were using permanent residents of receiving States and the inclusion of that category of persons in the convention could not be an attack on the system of honorary consuls. It was a practice to be encouraged and developed, and provision for it in the convention was a logical consequence of its wide development in practice.

11. It had also been suggested that the term " permanent residents " was too vague, but it was no vaguer than the term " nationals " used in article 69.

12. When it came to the vote, his delegation would support the joint amendment, but if it should be rejected he wished the United States amendment to be put to the vote.

13. Mr. LEVI (Yugoslavia) drew attention to a redundancy in paragraph 2 of the joint amendment. The second sentence referred to all categories of members of families and thus covered the particular category referred to in the first sentence.

14. Mr. CONRON (Australia) said that the Australian amendment (L.192), though not identical with the joint amendment, was essentially the same. The discussion at the previous meeting had turned mainly on honorary consuls; but in making provision for honorary consuls the Conference was concerned with a much wider group of persons, and the amendments introducing permanent residents were concerned with consular representation as a whole and not merely with honorary consuls. They were designed to ensure that persons who were permanent residents in but not nationals of receiving States were not treated more favourably than nationals — which was a matter of great importance to governments and finance departments and might well affect the willingness of governments to accept the convention. The amendment in question would not take much away from honorary consuls. They would keep their immunity from jurisdic-

tion and their personal inviolability in respect of official acts. If they were permanent residents they would lose only the privileges given by articles 62, 63 and 64, the most important of which was the tax concession. But that, too, should amount to very little for an honorary consul should draw little or no income: otherwise he would not be honorary. The Committee should also bear in mind that by trying to give permanent residents who were not nationals of the receiving State more privileges than governments were normally able to extend, it might not improve their position; the result might be to discourage governments of receiving countries from accepting such permanent residents as honorary consuls.

15. A serious practical consideration was that if permanent residents were excluded from article 69 much of the Second Committee's work would have to be done again in plenary meeting; if that was not successful, some countries would find it difficult to ratify the convention. It should also be remembered that some articles had already been amended to exclude permanent residents from the benefits of the convention; for example, by the adoption of the amendment by Belgium and Chile (L.146) to article 50 and Australia's amendment (L.156) to article 64.

16. Mr. AMLIE (Norway), in reply to a question by the representative of France at the previous meeting, said that he had revised his amendment (L.228) because of a technical flaw in the presentation.

17. Mr. MARESCA (Italy) said that the word " unduly " in the penultimate line of paragraph 2 of the joint amendment was superfluous and potentially dangerous. As applied to families it did not make sense, for they did not perform consular functions; as applied to consular employees it conflicted with the purpose of consular immunities — namely, that the exercise of consular functions should not be hampered. He proposed that the word should be voted on separately.

18. The CHAIRMAN invited the Committee to proceed to a vote on paragraph 1 of the joint amendment (A/CONF.25/C.2/L.229).

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

Bulgaria, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Cambodia, Canada, Chile, Ecuador, Federation of Malaya, France, Ghana, India, Indonesia, Ireland, Israel, Japan, Republic of Korea, Liberia, Libya, Mexico, Netherlands, New Zealand, Nigeria, Pakistan, Saudi Arabia, Sierra Leone, South Africa, Spain, Syria, Thailand, Tunisia, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Republic of Viet-Nam, Yugoslavia, Algeria, Argentina, Australia, Brazil.

Against: Cuba, Luxembourg, Norway, Portugal, San Marino, Switzerland, Austria, Belgium.

Abstaining: Bulgaria, Byelorussian Soviet Socialist Republic, China, Congo (Leopoldville), Costa Rica, Czechoslovakia, Denmark, Finland, Federal Republic of Germany, Greece, Hungary, Iran, Italy, Liechtenstein, Mongolia, Philippines, Romania, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Paragraph 1 of the joint amendment was adopted by 38 votes to 8, with 20 abstentions.

19. The CHAIRMAN invited the Committee to vote on the Norwegian amendment (A/CONF.25/C.2/L.228) as orally revised by its sponsor to add the following to the last sentence of paragraph 1: " If criminal proceedings are initiated against such an official, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible."

The amendment was adopted by 50 votes to none, with 18 abstentions.

20. The CHAIRMAN invited the Committee to vote on paragraph 1 of article 69 as amended by the joint amendment and with the additional wording proposed in the Norwegian amendment.

Paragraph 1, as amended, was adopted by 48 votes to 5, with 16 abstentions.

21. The CHAIRMAN invited the Committee to vote on the word " unduly " in paragraph 2 of the joint amendment.

The Committee decided by 28 votes to 15, with 25 abstentions, that the word " unduly " should be retained.

Paragraph 2 of the joint amendment was adopted by 48 votes to 5, with 16 abstentions.

Article 69 as a whole, as amended, was adopted by 46 votes to 5, with 17 abstentions.

22. Mr. SILVEIRA-BARRIOS (Venezuela) said that his delegation had voted for the joint amendment in accordance with its general policy with regard to the privileges and immunities which should be accorded to honorary consular officials.

23. Mr. ALVARADO GARAICOA (Ecuador) explained that his delegation had supported the joint amendment because it made satisfactory provision concerning the extent to which privileges and immunities should be accorded to honorary consular officials. It was very important that the receiving State should be allowed to exercise its jurisdiction over its nationals or permanent residents.

24. Mr. JESTAEDT (Federal Republic of Germany) said that his delegation had voted against paragraph 2 of article 69 because, as adopted, it granted no immunity from the jurisdiction of the receiving State to other members of the consulate.

25. Mr. REBSAMEN (Switzerland) said that, in accordance with the instructions of his government, he had voted against the inclusion in paragraph 1 of the words " or permanently resident in " and against the draft of paragraph 2 as proposed in the joint amendment. His government held that it was essential to do every-

thing possible to maintain and safeguard the institution of honorary consuls, who should as far as possible be placed on the same footing as career consuls and not treated as private persons. Under paragraph 2 as adopted by the Committee, a consular employee who was a national of the sending State was not given wider protection with regard to his consular activities than that to which he was entitled as a permanent resident of the receiving State or as a national of that State. His delegation understood the motives of those sponsoring the amendment and had, therefore, abstained from the final vote. It was possible that at the plenary meeting, it might receive different instructions. Article 69 as adopted by the Second Committee should not, however, prevent his government from accepting the convention as a whole.

26. Mr. MARESCA (Italy) said that his delegation had been unable to support paragraph 2 in view of the inclusion of permanent residents, which would deprive important consular employees of the legal status to which they were entitled.

27. Mr. VRANKEN (Belgium) endorsed the views expressed by the representative of Switzerland, but added that his government might be unable to accept the convention as a whole if article 69 remained as approved by the Second Committee.

Proposed new article (Members of the consulate, members of their families and members of the private staff who carry on a private gainful occupation)

28. The CHAIRMAN invited the Committee to consider the proposal by Belgium and France to add a new article (A/CONF.25/C.2/L.230).

29. Mr. HEUMAN (France) said that, in the view of the sponsors, it was necessary to exclude two categories of persons from enjoyment of the privileges and immunities granted in chapter II of the draft convention: nationals, or permanent residents, of the receiving State; and those carrying on a private gainful occupation in the receiving State, in cases where it was not expressly permitted in chapter II. The Committee had approved article 69 which, as amended, dealt comprehensively with the persons in the first category and governed all the other provisions of the Convention: it dealt both with consular officials, in paragraph 1, and with members of the consulate and members of their families, as well as members of the families of consular officials, in paragraph 2.

30. Article 56 also governed the remaining articles of the convention, but was not so comprehensive as article 69, since it dealt only with consular officials and members of their families: it did not apply to consular employees or members of their families who carried on a private gainful occupation in the receiving State and who were therefore not excluded from enjoyment of the privileges and immunities under chapter II. The proposed addition to the convention was not, in fact, intended to be a supplement to article 69, although it had been headed article 69 A; it was intended to form the second part of article 56. Since it was intended to add to, and not repeat the provisions of article 56, the text of paragraph 2 (*b*) of the proposed new article should be revised to refer to members of the family of a " consular employee " instead of " a member of the consulate ", a term which included consular officials who were already dealt with in article 56.

31. Mr. HARASZTI (Hungary) supported the principle embodied in the proposed text, but pointed out that the First Committee had approved in article 1, paragraph 1 (*e*), a definition of the term " consular employee " which excluded service staff. It would, however, seem to be the intention of the sponsors to include such staff under the provisions of paragraph 2 (*b*) of their proposal.

32. Mr. HEUMAN (France) confirmed that the intention was to include service staff. In view of the definitions approved by the First Committee, which contained nothing corresponding to the definition of " consular employee " in the International Law Commission draft of article 1, paragraph 1 (*e*), it would be necessary to add the words " and members of the service staff " after the words " consular employees " each time that expression was used in the joint proposal.

33. Mr. SALLEH bin ABAS (Federation of Malaya) said that the effect of sub-paragraph (*a*) and sub-paragraph (*b*) of paragraph 2, as drafted, would appear to be the same. Sub-paragraph (*a*) referred to members of the family of a consular employee " coming within the scope of paragraph 1 " who would therefore be carrying on a private gainful occupation, while sub-paragraph (*b*) referred to members of the family of a consular employee " who carry on a private gainful occupation ".

34. Mr. LEVI (Yugoslavia) endorsed that view and suggested that to make the intention clear, the words " not coming within the scope of paragraph 1 of this article " should be added in sub-paragraph (*b*).

35. Mr. SMITH (Canada) suggested that sub-paragraph (*b*) might be amended to read " to members of the family of a consular employee who themselves carry on a private gainful occupation in the receiving State."

36. Mr. MOLITOR (Luxembourg) said that the intention of paragraph 1 was not clear. The reference to article 69 seemed redundant in view of the text of that article as approved by the Committee. It would also seem impossible to extend to all consular employees who carried on a private gainful occupation in the receiving State the provisions of chapter III, which concerned the facilities, privileges and immunities of honorary consular officials.

37. Mr. MARESCA (Italy) endorsed that view and suggested that the phrase " to the extent permitted by the context " should be added in paragraph 1 of the proposed text.

38. Mr. HEUMAN (France) agreed that the reference to article 69 had become redundant and should be

deleted. He also accepted the formula proposed by the representative of Italy.

39. Mr. ANGHEL (Romania) said that when the definitions in article 1 were finally drafted the expression " consular employees " might include members of the service staff so that separate reference to them in sub-paragraph (*b*) would be unnecessary.

40. Mr. HEUMAN (France) said that the Romanian representative was correct in one sense and mistaken in another. In the new draft of the definitions in article 1 (A/CONF.25/C.1/L.166), the expression " members of a consulate " had disappeared. In its place were " members of the consular post ", in sub-paragraph (*g*) and " members of the consular staff " in sub-paragraph (*h*), but both of those referred to consular officers and were therefore covered by paragraph 2 of article 69. If he had used those phrases he would therefore have been encroaching on article 69. He thought that his text provided the only possible solution which both respected article 69 and covered service staff.

41. Mr. RUSSELL (United Kingdom) said that there was one aspect of the proposal which he did not fully understand; the effect of the present structure of the draft articles was to place consular employees who carried on a private gainful occupation in the same position for certain purposes as honorary consular officials. He wished to know what was the position of consular employees who did not carry on a private gainful occupation, who were therefore full-time consular employees. Article 43, as adopted, related only to career consular officials; but the effect of article 57 was to extend the same immunities to honorary consular officials, and the effect of the new article would be to extend the same immunities to consular employees who carried on a private gainful occupation, and consular employees who did not do so were apparently excluded. He asked if that were the intention of the sponsors of the proposal.

42. Mr. HEUMAN (France) said that the United Kingdom representative had apparently overlooked the proposal of the Italian representative which the sponsors had accepted and which consisted of adding to paragraph 1 of the proposal the words " to the extend permitted by the context." The point raised by the United Kingdom representative had therefore been answered by the Italian proposal, which avoided the absurdity to which he had drawn attention, and by the Luxembourg representative's statement.

43. Mr. RUSSELL (United Kingdom) said that he was aware of the statements made by the Luxembourg and Italian representatives. However, the Italian proposal did not cure the absurdity. An expression such as " to the extent permitted by the context " was far too loose.

44. Mr. ENDEMANN (South Africa) said that paragraph 1 of the proposal was not clear, for chapter III did not deal with employees to any extent.

45. Mr. LEVI (Yugoslavia) asked for a suspension of the meeting to enable sponsors to reconsider the text of their amendment in the light of the comments made.

The meeting was suspended at 12.10 p.m. and resumed at 12.50 p.m.

46. The CHAIRMAN announced that the text of the proposal had been revised to read:

Consular employees, members of the service staff and members of their families who carry on a private gainful occupation and members of their private staff

Privileges and immunities provided in chapter II of the present convention shall not be accorded:

(*a*) To a consular employee or to a member of the service staff who carries on a private gainful occupation in the receiving State;

(*b*) To members of the family of a person referred to in sub-paragraph (*a*) or to his private staff;

(*c*) To members of the family of a consular employee or a member of the service staff who themselves carry on a private gainful occupation in the receiving State.

47. Mr. KANEMATSU (Japan) inquired whether it was the intention that the privileges and immunities of chapter II should be denied to the persons mentioned in the title in so far as they were not specifically accorded in the articles under section II.

48. Mr. VRANKEN (Belgium) said that the supposition of the Japanese representative was correct: the persons enumerated in the title of the new article would not benefit from the provisions of chapter II.

49. Mr. MARESCA (Italy) said that the new article denied certain privileges and immunities to certain categories of persons, but it did not say anything about the status of those persons. Not only the new article, but the text of the convention as a whole, passed over the status of employees in consulates headed by honorary consuls in complete silence, and in that instance, silence might be dangerous.

50. Mr. SMITH (Canada) said that the question raised by the Japanese representative had also occurred to him and he did not know if it had been answered.

The amendment by Belgium and France, as revised, was adopted by 60 votes to 1, with 9 abstentions.

51. The CHAIRMAN said that the drafting committee would decide on the number and place to be given to the new article.

52. Mr. DE CASTRO (Philippines) said that he had voted against the proposal because it discriminated against subordinate employees and members of their families who were not adequately paid for their work in consulates. It said nothing about consular officials who carried on a private gainful occupation, but was unduly harsh against members of the service staff and their families. In his country there were no restrictions on subsidiary employment for consular employees and members of the service staff of consulates. He thought

that the new proposal was a mortal blow to the institution of honorary consular employees.

53. Mr. KANEMATSU (Japan) said that as no answer had been given to the important question raised by the Italian representative, he would revert to the matter in plenary meeting.

Completion of the Committee's work

54. After the customary congratulations and expressions of thanks, the CHAIRMAN declared that the Committee had completed its work.

The meeting rose at 1.45 p.m.

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