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

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

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

The meeting rose at 6.45 p.m.

NINTH MEETING

Friday, 10 March 1961, at 10.30 a.m.

Chairman: Mr. LALL (India)

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

Article 3 (Functions of a diplomatic mission) *(continued)*

1. The CHAIRMAN invited the Committee to continue its debate on article 3 of the International Law Commission's draft (A/CONF.20/4), in particular on the new sub-paragraph proposed by Spain (A/CONF.20/C.1/L.30) concerning the exercise of consular functions by a diplomatic mission.

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

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

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

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

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

certain consular functions and that in practice it was not necessary to obtain the consent of the receiving State. The International Law Commission draft of article 3 could very well be adopted as it stood, since it in no way prevented diplomatic missions from performing consular functions. In fact, for example, the functions mentioned in sub-paragraphs (*a*) and (*b*) of the article implied consular functions. It would therefore appear wise to retain the original text, which had the merit of being sufficiently flexible; for the adoption of the Spanish amendment would mean that the express consent of the receiving State was required. In deference to the views of some delegations, however, he suggested that the Committee might approve the principle embodied in the Spanish amendment and instruct the drafting committee to draw up a suitable text.

7. Mr. GASIOROWSKI (Poland) said that customary law already entitled diplomatic missions to perform consular functions without having to obtain the consent of the receiving State. The adoption of the Spanish amendment would establish a new rule of international law at variance with the present practice. Since the purpose of the convention was to facilitate diplomatic relations between States the Committee might, at the most, refer to the drafting committee the question whether the text should expressly state that diplomatic missions could exercise consular functions; the drafting committee would not, of course, express a judgement on the alleged right of the receiving State to withhold its consent — that being the essence of the Spanish amendment.

8. Mr. de ERICE y O'SHEA (Spain) accepted the suggestion of the Soviet Union representative.

9. Mr. OJEDA (Mexico) proposed that a new paragraph 2 should be added to article 3, reading: " No provision in the present Convention shall prohibit diplomatic missions from performing consular functions."

10. The CHAIRMAN noted that the procedure suggested by the representative of the Soviet Union and agreed to by the representative of Spain appeared to have met with general support in the Committee.

11. Mr. BARTOŠ (Yugoslavia) stated that the Yugoslav delegation did not approve that procedure.

12. Mr. VALLAT (United Kingdom) said he did not object to the procedure, but suggested that the drafting committee should be asked to take the Mexican delegation's proposal into account.

13. Mr. BOUZIRI (Tunisia) supported the principle that diplomatic missions could perform consular functions, but could not accept a provision requiring the consent of the receiving State. He proposed that the drafting committee should consider the following text: " Performing consular functions in conformity with international practice and under the conditions laid down by the receiving State."

14. Mr. de ROMREE (Belgium) supported that proposal. In his view, the drafting committee would be expected to draft simply a provisional text which would not bind the Committee.

15. Mr. GLASER (Romania) and Mr. MATINE-DAFTARY (Iran) supported the first part of the Spanish delegation's amendment only, and thought that the question of the receiving State's consent should not be referred to the drafting committee.

16. The CHAIRMAN suggested that the Committee should provisionally accept the principle that diplomatic missions could perform consular functions, and that the drafting committee should be asked to draft an appropriate text in the light of the comments made in the discussion.

It was so agreed.

17. The CHAIRMAN said that the amendment submitted by Ceylon to sub-paragraph (*d*) (L.27) related purely to drafting. Accordingly, he suggested that the Committee should provisionally approve sub-paragraph (*d*) and ask the drafting committee to take the amendment into account.

It was so agreed.

18. The CHAIRMAN drew attention to the amendments to sub-paragraph (*e*) submitted by Spain (L.30) and Belgium (L.31); the amendments did not affect the substance of the provision.

19. Mr. de ROMREE (Belgium) said that, in a conciliatory spirit, his delegation would withdraw its amendment.

20. Mr. TUNKIN (Union of Soviet Socialist Republics) said he had no fundamental objection to the Spanish amendment, though he thought the Commission's text was less restrictive. Since the two texts were not really irreconcilable, the Spanish delegation might perhaps be willing to withdraw its amendment, and the drafting committee could reconsider the final wording of the text without altering its substance.

21. Mr. de ERICE y O'SHEA (Spain) announced that his delegation had decided to withdraw its amendment and would support the International Law Commission's text.

Article 3, as amended, was adopted, subject to revision by the drafting committee.

Proposed new article concerning the protection of interests of a third State

22. The CHAIRMAN drew attention to the proposal (L.103) submitted by Colombia, Spain and Guatemala that a new article should be inserted between articles 3 and 4 of the draft.

23. Mr. AGUDELO (Colombia), introducing the proposal, said it embodied a principle which was constantly applied in practice; hence it should be written into the convention.

24. Mr. TUNKIN (Union of Soviet Socialist Republics), speaking on a point of order, said that the proposal raised a question closely related to article 43 of the draft. Accordingly, the Committee could either discuss the proposal forthwith or else, as he would prefer, discuss it in connexion with article 43.

25. The CHAIRMAN suggested that the Committee should consider the proposal in connexion with article 43.

It was so agreed.

Article 4 (Appointment of the head of the mission: agrément)

26. The CHAIRMAN invited debate on article 4 and drew attention to the amendments submitted by the United States (L.18), Spain (L.42), Ceylon (L.28), Italy and the Philippines (L.43) and Argentina (L.37).

27. Mr. VALLAT (United Kingdom) said he approved of article 4 as drafted by the International Law Commission. While appreciating the point of the United States amendment (L.18), in so far as it interpreted "agrément" to mean the agreement of the receiving State to the appointment of any head of mission, including a chargé d'affaires, he suggested that the United States representative might consider withdrawing it.

28. Mr. CAMERON (United States of America) accepted the suggestion and withdrew the amendment.

29. Mr. REGALA (Philippines) explained that the purpose of the amendment submitted jointly with the Italian delegation was to bring article 4 into line with other provisions of the draft. Articles 8, 10 and 38, for example, used the expression "reasonable time". It seemed natural, therefore, to provide a time limit for the grant or refusal of the agrément. The principle was recognized in modern law. The agrément involved, first, a request and then consent, which constituted the actual agrément. The interval between those two formalities should not exceed a certain period, and that rule should be laid down in the text. In reply to the United Kingdom representative, he said that the agrément was restricted to heads of mission — in other words, to ambassadors or ministers, excluding chargés d'affaires.

30. Mr. GLASER (Romania) saw no objection to a reasonable time being provided for in the convention, but doubted whether the proposed addition was really advisable, for it was an implied term of all the provisions that they would be applied in good faith and in a reasonable manner. It would be better to keep to the International Law Commission's draft of article 4, which his delegation considered entirely satisfactory.

31. Mr. BOLLINI SHAW (Argentina) said he had no objection to article 4, but thought its scope should be broadened by the addition of the sentence proposed by his delegation (L.37).

32. Mr. NAFEH ZADE (United Arab Republic), referring to the amendment submitted by Ceylon (L.28), agreed that the agrément should be given in the shortest possible time; that was a condition for good relations between the two States. Various circumstances might, however, cause delay; for instance, inquiries might have to be made or the head of State might be away from the capital. Moreover, the agrément should be given as the result of a considered decision and without restrictions.

33. Commenting on the Argentine amendment, he said there was no real reason for stating expressly what was a unanimously accepted custom.

34. The Spanish delegation's amendment (L.42) was open to conflicting interpretations. A head of mission held, by definition, a permanent appointment; in the case of a special mission the acceptance of his letters of credence took the place of the agrément. So far as the joint amendment (L.43) was concerned he said it was standard practice to observe a reasonable time limit, and hence he could not support that amendment either. Consequently, his delegation considered that no change should be made in article 4.

35. Mr. BARTOŠ (Yugoslavia) said that the idea underlying the Ceylonese amendment was unexceptionable, but the amendment could hardly be said to lay down a rule of law. It was the duty of the receiving State to give its reply as soon as possible; however, a period of time might be considered reasonable by one State and not by another. If no precise time limit were specified, there was no point in referring to the matter. In fact, if a request for agrément was followed by a long silence, the sending State should draw the necessary conclusion. The substance of the article as it stood was acceptable to his delegation.

36. With regard to the Spanish amendment (L.42), he considered that, in the case of a permanent mission, the head of the mission was presumed to be permanent. Accordingly, the amendment served no purpose.

37. He approved of the Argentine amendment (L.37) in principle, but considered that the International Law Commission had been wise not to mention the question.

38. Although commending the ideas put forward in the various amendments, except that proposed by Spain, he did not consider that they would contribute anything very useful to the drafting of the convention.

39. Mr. TUNKIN (Union of Soviet Socialist Republics) said that, though not opposed to the amendments submitted for article 4, he did not think they were necessary. The Ceylonese amendment (L.28) and the joint amendment of Italy and the Philippines (L.43) had the same object: to speed up the agrément of the receiving State. Although in practice quite rare, a delay by the receiving State in granting agrément could be embarrassing for the sending State. But there were cases where the receiving State had solid reasons for withholding its agrément, and its silence was then a polite form of refusal. In any case the wording of the Ceylonese amendment was not very fortunate and should be modified. The Argentine amendment (L.37) merely confirmed a generally established practice and was therefore superfluous. Similarly, the Spanish amendment (L.42) was unnecessary, since in the draft articles a head of mission was by definition a permanent diplomatic agent.

40. Mr. MENDIS (Ceylon) thanked the Soviet representative for his suggestion concerning the Ceylonese amendment. However, the wording was secondary. What was important was that the principle of a time limit within which the receiving State should grant its

agrément should be written into the convention. It was not enough to say that the time limit should be reasonable, as in the amendment of Italy and the Philippines. That reasonable time limit should be specified. What was the criterion ? The Ceylonese amendment was more categorical and unequivocal.

41. Mr. CARMONA (Venezuela) said that, as his delegation had stated before, the receiving State should have the right not to give its reasons for refusing the agrément. He therefore supported the Argentine amendment (L.37), which codified a universally accepted principle of international law.

42. The time limit within which the receiving State should grant its agrément was the subject of two similar amendments (L.28 and L.43). It was a fact that excessive delay by the receiving State in granting the agrément created an equivocal situation which in some cases had led to the rupture of diplomatic relations. For that reason the amendments, each of which had its merits, were justified.

43. Mr. de ERICE y O'SHEA (Spain) said that, in view of the remarks of the United Kingdom and Soviet representatives, his delegation withdrew its amendment (L.42) to article 4. It would support the joint amendment of Italy and the Philippines (L.43) and the Ceylonese amendment (L.28), although the wording of the latter was not entirely satisfactory, since it imposed an uncalled-for obligation on the receiving State; the word " reasonable " should be deleted from the joint amendment. The Spanish delegation also supported the Argentine amendment (L.37), which affirmed a generally accepted practice.

44. Mr. MAMELI (Italy) stated that, in a conciliatory spirit and in agreement with the Philippine delegation, he would not press the joint amendment (L.43) to a vote, though he hoped that it would be referred to the drafting committee with a recommendation.

45. Mr. KRISHNA RAO (India) said he was satisfied with the text of article 4, but would not have opposed the amendment submitted by Italy and the Philippines (L.43). He agreed with the United Kingdom representative's interpretation of the word " agrément ". He supported the Argentine amendment (L.37), but suggested that it should be revised to read: " If the receiving State refuses agrément it need not give its reasons."

46. Mr. TAWO MBU (Nigeria) said he would not support any of the amendments proposed for article 4, since he considered it fully satisfactory.

47. Mr. OJEDA (Mexico) supported the Argentine amendment (L.37).

48. Mr. LINARES (Guatemala) did not consider it necessary to impose a time limit for the agrément. It would be better to retain article 4 as it stood.

49. Mr. PINTO de LEMOS (Portugal) was of the same opinion. A time limit could create difficulties more serious than those it was designed to avoid. A time limit would in any case depend on the circumstances, of which the receiving State should be the sole judge.

50. Mr. VALLAT (United Kingdom) said he understood the concern of those delegations which wished to codify the right of the receiving State not to give reasons for its refusal, and to impose a reasonable time limit for the decision concerning the agrément. But was it really wise to write those principles into the convention ? First of all, the provisions of the convention would clearly be applied in a reasonable manner. Furthermore, if the principle of non-obligation of the receiving State in a certain respect were stated in one article, it must also be stated in regard to other cases in other articles. The United Kingdom representative therefore appealed to the Argentine delegation to withdraw its amendment.

51. Mr. BOLLINI SHAW (Argentina) regretted that he could not oblige the United Kingdom representative. An important question was at stake; moreover, the Argentine delegation had the impression that its proposal was supported by a majority.

52. The CHAIRMAN put the Argentine amendment to article 4 (L.37) to the vote.

The amendment was adopted by 31 votes to 9, with 28 abstentions.

53. Mr. PINTO de LEMOS (Portugal) explained that, though supporting the Argentine amendment in principle, he had not voted for it in view of its possible effects on the general structure of the convention.

Article 4, as amended, was adopted.

The meeting rose at 12.55 p.m.

TENTH MEETING

Friday, 10 March 1961, at 3 p.m.

Chairman: Mr. LALL (India)

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

Article 5 (Appointment to more than one State)

1. The CHAIRMAN invited debate on article 5 of the International Law Commission's draft (A/CONF.20/4) and drew attention to the amendments to that article submitted by a number of delegations.[1]

2. Mr. CASTREN (Finland), introducing his delegation's amendment (L.75), said that it conformed to international practice, improved the wording, and made

[1] For a list of the amendments to article 5, see the summary record of the fifth meeting (footnote to para. 1).