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10th meeting of the First Committee

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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. BINDSCHIEDLER (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) constituted 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 Federal 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 be 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 HEERSWIJNGHEL (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 proposal 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.