United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.1/SR.12

12th meeting of the First Committee

Extract from the
Official Records of the United Nations Conference on Consular Relations, vol. I
(Summary records of plenary meetings and of meetings of
the First and Second Committees)

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 BARTOŠ (Yugoslavia) said that that procedure could have been followed if the United States representative had withdrawn his delegation's amendment to sub-paragraph (*h*).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.