United Nations Conference on Consular Relations

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13th meeting of the First Committee

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also covered such other steps as, for instance, an examination by experts [expertise].

70. As to the Austrian amendment (L.26), he agreed with its purpose, which was to exclude the service of documents in criminal cases. That purpose, however, would not be adequately served by introducing the words " In civil and commercial matters ". A great many matters coming under the heading of family law, which were traditionally regarded in most countries as questions of civil law, were at present governed in certain countries by provisions of public law. Many matters which under, say, German or Austrian law, were regarded as questions of commercial law were at present, even in some capitalist countries, considered as belonging to administrative law. The International Law Commission had therefore been well advised not to confine the operation of sub-paragraph (*j*) to civil and commercial matters. He suggested that the purpose of the Austrian amendment could be achieved by introducing at the beginning of the paragraph some such proviso as " Except in criminal matters . . ."

71. Referring to the French amendment, he explained that the International Law Commission had used the term " serving " [signifier] to denote a document normally served by a process server [acte d'huissier]. The term " to transmit " was wider in scope and more in keeping with the purpose of the convention.

72. The French and Czechoslovak amendments (L.32 and L.34) were intended to cover not only the service of documents which were of a purely legal character, but also documents which did not emanate from a court of law. For example, under German law, many decisions in family matters were taken by administrative authorities. His delegation favoured those amendments in principle. It also accepted the Hungarian amendment (L.14).

73. As to the Ukrainian amendment (L.15), his delegation would support it, but did not wish to exclude the possibility of a consul transmitting a judicial document to a person who was not a national of the sending State, in cases where the authorities of the receiving State did not object. Such a possibility would be useful in cases of urgency.

The meeting rose at 1.10 p.m.

THIRTEENTH MEETING

Wednesday, 13 March 1963, at 3.5 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 5 (Consular functions)

Sub-paragraph (*j*) (continued) [1]

1. Mr. PALIERAKIS (Greece) endorsed the Yugoslav representative's remarks at the twelfth meeting concerning the service of judicial documents and their transmission to persons other than nationals of the sending State. He supported the French proposal (L.32) concerning the service of extra-judicial documents, but opposed the Austrian amendment (L.26) limiting the service of judicial documents to civil and commercial matters.

2. Mr. KOCMAN (Czechoslovakia) said that the purpose of his delegation's amendment (L.34) was to extend the scope of the provisions of sub-paragraph (*j*). If, however, the Committee approved the French amendment (L.32) which was based on the same idea, he would not press his delegation's amendment. He supported the Hungarian amendment (L.14), for consuls should be free to serve judicial documents on nationals of the sending State. He would vote for the Ukrainian amendment (L.15), but against the Austrian (L.26) and Japanese (L.54) amendments, which tended to impose limits on important consular functions.

3. Mr. CAMERON (United States of America) said that he supported the International Law Commission's text, which might perhaps be improved by the Japanese amendment (L.54).

4. Mr. RUDA (Argentina) supported the International Law Commission's text, provided that the expression " in any other manner compatible with the law of the receiving State " was interpreted to mean that, if no convention was in force, consuls could serve judicial documents only if the receiving State did not object.

5. Mr. ABDELMAGID (United Arab Republic) said that the International Law Commission's text was a satisfactory statement of the existing practice; but some of the amendments submitted should be approved, for example the French (L.32) and Czechoslovak (L.34) amendments which improved the text, and the Austrian amendment (L.26), which was in conformity with the general rules of law. The Austrian amendment would, however, be improved if the words " in civil and commercial matters " were replaced by the words " in non-criminal matters ". The Ukrainian amendment (L.15) was acceptable, although consuls could, in fact, serve judicial documents on any persons other than nationals of the receiving State. The Hungarian amendment (L.14) was entirely acceptable to his delegation.

6. Mr. PUREVJAL (Mongolia) supported the Hungarian (L.14) and Ukrainian (L.15) amendments, which clarified sub-paragraph (*j*). He could not, however, support the Austrian amendment (L.26), which was too restrictive, nor the Japanese amendment (L.54), which was based on a confusion of terms.

7. Mr. MARTINS (Portugal) supported the French amendment (L.32) replacing the word " Serving " by the word " Transmitting ". For the remainder of the sub-paragraph, he preferred the text of the International Law Commission.

8. Mr. USTOR (Hungary) said that, under the sub-paragraph as originally drafted, consuls could only serve judicial documents or execute letters rogatory if conventions in force so permitted or, in the absence of such conventions, if the mode of service was compatible with

[1] For a list of the amendments to article 5, sub-paragraph (*j*), see twelfth meeting, para. 60.

the law of the receiving State. The qualifying Austrian amendment (L.26) was therefore unnecessary.

9. He supported the French and Czechoslovak amendments, but could not accept the Japanese amendment since the execution of letters rogatory and the taking of depositions were two entirely different things.

10. Mr. TSYBA (Ukrainian Soviet Socialist Republic) withdrew his amendment (L.15). He would support the Hungarian proposal, which mentioned nationals of the sending State.

11. Mr. DJOKOTO (Ghana) said that he supported the French amendment, which improved the text. He opposed the Austrian and Japanese amendments, which restricted the scope of the sub-paragraph.

The Austrian amendment (A/CONF.25/C.1/L.26) was rejected by 25 votes to 6, with 27 abstentions.

The Hungarian amendment (A/CONF.25/C.1/L.14) was rejected by 21 votes to 15, with 23 abstentions.

The French amendment (A/CONF.25/C.1/L.32) was adopted by 43 votes to 6, with 14 abstentions.

12. Mr. FUJIYAMA (Japan) withdrew his amendment (L.54).

13. The CHAIRMAN said that, as a result of the adoption of the French amendment, there was no need for a vote on the Czechoslovak amendment (L.34). He put sub-paragraph (*j*), as amended, to the vote.

Sub-paragraph (j), as amended, was adopted by 61 votes to 1, with 1 abstention.

14. Mr. HEPPEL (United Kingdom) explained that he had voted for the French amendment although he was not sure that the word " transmit " was equivalent to the technical term " serve ".

15. Mr. von HAEFTEN (Federal Republic of Germany) said that he felt the same doubts as the United Kingdom representative but that, on reflection, he had voted for the amendment because he thought that the act of transmitting covered that of serving.

16. Mr. SHARP (New Zealand) said he had voted against the French amendment because he was very doubtful whether the word " transmitting " meant the same as " serving ".

17. Mr. PALIERAKIS (Greece) and Mr. SOLHEIM (Norway) said they had voted for the French amendment for the same reasons as the representative of the Federal Republic of Germany.

Sub-paragraph (k)

18. The CHAIRMAN pointed out that amendments to sub-paragraph (*k*) had been submitted by Venezuela (L.20), Austria (L.26), Cambodia (L.38) and Japan (L.54).

19. Mr. ULLMANN (Austria), introducing his delegation's amendment (L.26), said that the rules governing the nationality of a sea-going vessel were laid down in article 5 of the Geneva Convention on the High Seas, 1958. As Austria had not ratified that convention, his delegation thought that sub-paragraph (*k*) should specify the sea-going vessels over which consulates could exercise rights of supervision and inspection.

20. Mr. SILVEIRA-BARRIOS (Venezuela) said that his delegation's amendment (L.20) completely changed the sense of the paragraph, since it provided that rights of supervision and inspection on sea-going vessels and inland craft should be exercised pursuant to the law of the receving State, not of the sending State.

21. Mr. FUJIYAMA (Japan) explained that the purpose of his delegation's amendment (L.54) was to enable consulates to exercise rights of supervision in respect of seamen having the nationality of the sending State in cases such as that of a chartered vessel, even if such vessel belonged to a foreign State.

22. Mr. PLANG (Cambodia) said that his delegation's amendment (L.38) was designed to broaden the rights of supervision and inspection exercised by consulates.

23. Mr. BARTOŠ (Yugoslavia) said he was unable to accept any of the four amendments submitted to sub-paragraph (*k*) since all of them conflicted with the international law of the sea. The right of inspection introduced by the Cambodian amendment, for example, only applied to warships and was not within the competence of consuls. The Japanese amendment would eliminate the exercise of the rights of supervision and inspection on vessels used for inland navigation, which was of great importance for inland navigation in the countries of Europe. The Yugoslav delegation therefore supported the International Law Commission's text.

The Venezuelan amendment (A/CONF.25/C.1/L.20) was rejected by 50 votes to 3, with 8 abstentions.

The Japanese amendment (A/CONF.25/C.1/L.54) was rejected by 48 votes to 2, with 9 abstentions.

The Austrian amendment (A/CONF.25/C.1/L.26) was rejected by 33 votes to 9, with 20 abstentions.

The Cambodian amendment (A/CONF.25/C.1/L.38) was rejected by 48 votes to 1, with 12 abstentions.

24. The CHAIRMAN said that since all the amendments to sub-paragraph (*k*) had been rejected, it remained for the Committee to vote on the sub-paragraph as drafted by the International Law Commission.

Sub-paragraph (k) as drafted by the International Law Commission was approved by 62 votes to 1, with 1 abstention.

Sub-paragraph (l)

25. The CHAIRMAN invited the Committee to consider sub-paragraph (*l*), to which amendments had been submitted by Austria (L.26), Cambodia (L.38), Italy (L.43), Japan (L.54), Norway (L.63) and the United States (L.69).[2]

[2] The amendment by Greece (L.80) had been withdrawn (see the summary record of the twelfth meeting, para. 2).

26. Mr. HERNDL (Austria) said that the consular functions defined in sub-paragraph (*l*) were very important, but those functions should be exercised without prejudice to the relevant powers of the receiving State. That was the consideration underlying Austria's amendment (L.26).

27. Mr. PLANG (Cambodia) said that the functions listed in sub-paragraph (*l*) were within the competence of the sending State. The qualifying clause which appeared at the end of the paragraph was therefore superfluous and could be deleted. That was the sense of the amendment (L.38) submitted by the Cambodian delegation.

28. Mr. CAMERON (United States of America) said that in the United States, as in many other maritime states, the superior right of the administrative or judicial authorities of the receiving State to take cognizance of crimes or offences which disturbed the peace of the port and to enforce the laws of the receiving State applicable to vessels of any State within its waters had long been recognized. The proposed amendment would continue that practice.

29. The words " of any kind " were too broad. The consul in such instances had normally been authorized to act only with respect to disputes occurring on board before the vessel entered the waters of the receiving State, and with respect to matters of internal administration while within those waters, concerning which there would be no reason for the receiving State to interfere. In the absence of the proposed amendment, controversy might develop as to who would be entitled to settle labour disputes or similar matters involving the vessel while in the waters of the receiving State.

30. Mr. FUJIYAMA (Japan) withdrew his delegation's amendment (L.54).

31. Mr. de ERICE y O'SHEA (Spain) supported the Austrian amendment (L.26).

32. Mr MAMELI (Italy), introducing his delegation's amendment (L.43), said that it was important to distinguish, as the International Law Commission had done, between consular functions authorized by municipal law and those not so authorized; the authorities of the receiving State should be able to satisfy themselves that the functions exercised by consuls were provided for in the laws of the sending State. The restrictive clause at the end of sub-paragraph (*l*) was therefore inappropriate and the Italian amendment proposed the deletion of that clause.

33. Mr. SOLHEIM (Norway) said that the word " necessary ", in the first line of sub-paragraph (*l*) was superfluous, for it was for consuls to decide if they should extend assistance to the vessels and aircraft mentioned in sub-paragraph (*k*).

34. Mr. von HAEFTEN (Federal Republic of Germany) supported the Austrian amendment (L.26).

35. Mr. KRISHNA RAO (India), referring to the provisions of articles 5 and 10 of the Geneva Convention on the High Seas, said it would be preferable to adopt sub-paragraph (*l*) as drafted by the International Law Commission.

36. Mr. WESTRUP (Sweden) supported the Norwegian amendment (L.63). The word " necessary " was pointless and open to misinterpretation.

37. Mr. PALIERAKIS (Greece) supported the Norwegian amendment (L.63). He thought it would be desirable to insert a reference to the powers of the receiving State, as proposed in the Austrian amendment (L.26). With regard to the Italian amendment (L.43), he agreed that the phrase " in so far as this may be authorized by the law of the sending State " might give rise to misunderstanding. He also accepted the amendment proposed by the United States (L.69).

38. Mr. HERNDL (Austria) explained that his delegation's amendment was in no way intended to impair the competence of consuls; its object was to state expressly that the receiving State also had the right to conduct investigations.

39. Mr. RUDA (Argentina) said that, for the purposes of the sub-paragraph under discussion, incidents occurring during the voyage, before a vessel entered territorial waters, and questions relating to the internal administration of vessels, which were outside the jurisdiction of the receiving State, should be distinguished from offences liable to lead to a breach of the peace in harbour, which were within the jurisdiction of the authorities of the receiving State. He thought that the International Law Commission's text took account of all those points and he saw no need to modify it.

40. Mr. HEPPEL (United Kingdom) said he was unable to support the Cambodian amendment (L.38). He agreed with the Norwegian delegation that the word " necessary " could be deleted. Both the Austrian (L.26) and United States (L.69) amendments providing for reference to the law of the receiving State deserved consideration, and of the two he preferred the Austrian amendment by reason of its form.

41. Mr. CAMERON (United States of America) said that he was prepared to modify his delegation's amendment and to support the formula proposed by the Austrian delegation. In his opinion, it was possible to harmonize the two amendments, and he proposed that they should be referred to the drafting committee.

42. Mr. MAMELI (Italy) withdrew his delegation's amendment (L.43) and announced that he would support the Austrian amendment (L.26).

43. Mr. HERNDL (Austria) said that the Austrian amendment was not intended to subordinate to the laws of the receiving State the functions which a consul would exercise under the sub-paragraph in question.

44. Mr. WU (China) said that he would gladly support the amendment submitted by the United States, but he thought that the formula " to the extent consistent with the laws of the receiving State " could be placed at the beginning of the sentence. It would thus qualify the entire sub-paragraph.

45. Mr. D'ESTEFANO PISANI (Cuba) agreed with the Argentine representative's remarks on the Austrian amendment (L.26) and said that he would vote for the International Law Commission's text.

46. Mr. SILVEIRA-BARRIOS (Venezuela) associated himself with the Cuban representative's statement and added that in Spanish the words " buque " and " barco " were absolutely synonymous. He hoped that the drafting committee would take account of that remark in preparing the final Spanish text.

47. Mr. PLANG (Cambodia) withdrew his amendment (L.38).

48. Mr. TSHIMBALANGA (Congo, Leopoldville) said that he also was prepared to support the International Law Commission's text, but proposed that it should be improved by deleting the phrase " in so far as this many be authorized by the law of the sending State ", which merely affirmed an idea already implicit in the text.

49. The CHAIRMAN said that he would treat the proposal of the representative of Congo (Leopoldville) as an oral amendment.

50. Mr. EL KOHEN (Morocco) said that he found it hard to understand the United States representative's proposal to harmonize his amendment (L.69) with that of Austria (L.26). The formulations used in the two amendments were not equivalent. The Austrian amendment accorded to consuls a special right of intervention, whereas the United States amendment simply limited his competence. He asked whether the two amendments would be voted on separately.

51. The CHAIRMAN stated that the two amendments would be voted on separately.

52. Mr. von HAEFTEN (Federal Republic of Germany) supported the oral proposal by the representative of the Congo (Leopoldville) which simply restored the amendment withdrawn by the Italian delegation (L.43).

53. Mr. HUBEE (Netherlands) said that he would vote for the Congolese amendment. He also favoured the Austrian amendment (L.26), but found it difficult to harmonize it with the United States amendment, since there was a considerable difference between them. He did not think that the drafting committee could solve the difficulty.

54. Mr. DJOKOTO (Ghana) said that the phrase " in so far as this many be authorized by the law of the sending State " was quite unnecessary; in any case, the question was purely one of drafting.

55. Mr. PALIERAKIS (Greece) disagreed: it was a question of substance.

56. Mr. TSHIMBALANGA (Congo, Leopoldville) said that both form and substance were involved. If the phrase was retained, the effect would be to require the express authorization of the receiving State; if it was deleted, that authorization would no longer be necessary.

57. Mr. CAMERON (United States of America) said that he did not believe that the Austrian and United States amendments differed in substance; he regarded them as identical. However, as a number of delegations preferred the form of the Austrian amendment, he had decided to withdraw his delegation's amendment.

The Austrian amendment (A/CONF.25/C.1/L.26) was adopted by 31 votes to 14, with 16 abstentions.

The Norwegian amendment (A/CONF.25/C.1/L.63) was adopted by 36 votes to 3, with 23 abstentions.

The oral amendment submitted by the Congo (Leopoldville) was rejected by 19 votes to 18, with 23 abstentions.

58. Mr. TSHIMBALANGA (Congo, Leopoldville) asked for a recount, as he thought there might have been a mistake.

59. The CHAIRMAN said that a recount was not possible, because it would involve another vote on the same proposal, which would be contrary to rule 33 of the rules of procedure. The representative of the Congo (Leopoldville) could ask for the reconsideration of its proposal, but that would require a two-thirds majority.

60. Mr. TSHIMBALANGA (Congo, Leopoldville) explained that he was not asking for another vote on his amendment; he was merely asking for a recount of the votes.

61. Mr. COLOT (Belgium), Mr. PALIERAKIS (Greece) and Mr. TÜREL (Turkey) said that they shared the view of the representative of the Congo (Leopoldville).

62. Mr. de ERICE y O'SHEA (Spain), Miss ROESAD (Indonesia) and Mr. KRISHNA RAO (India) referred to rules 33 and 46 of the rules of procedure and said that they could not agree to a recount.

63. The CHAIRMAN decided, under rule 33 of the rules of procedure, to put to the vote the reconsideration of the oral amendment submitted by the Congo (Leopoldville).

The result of the vote was 19 in favour and 26 against, with 3 abstentions. The motion for the reconsideration of the oral amendment was rejected.

64. The CHAIRMAN put to the vote sub-paragraph (*l*) of article 5, as amended.

Sub-paragraph (l), as amended, was adopted by 59 votes to none, with 5 abstentions.

65. Mr. SOLHEIM (Norway) pointed out that the words " and to their crews ", in sub-paragraph (*l*), implied that the consular functions in question extended to all the members of the crew, whatever their nationality.

66. Mr. HUBEE (Netherlands) said that sub-paragraph (*l*), and more particularly the phrase " in so far as this may be authorized by the law of the sending State " could not be construed *a contrario*. All the functions enumerated in article 5 were naturally subject to the authorization of the sending State. Consular

officials of the Netherlands, for example, were not empowered to exercise all the functions mentioned in article 5.

New sub-paragraph proposed by Austria

67. Mr. HUBINGER (Austria) said that the substance of the Austrian proposal (L.26) had already been embodied in the Special Rapporteur's 1957 draft. The proposal had a practical purpose. It concerned, among other things, the payment of pensions in respect of which a life certificate had to be produced. The beneficiary, however, might need his pension urgently, and the consul should accordingly be empowered to receive the pensions and pay them to the persons concerned.

68. Mr. de ERICE y O'SHEA (Spain) said that he shared the view of the Austrian delegation with regard to the new sub-paragraphs (*j*) and (*k*) proposed in document L.26. He proposed that the first part of sub-paragraph (*j*) in that proposal, the meaning of which was somewhat obscure in the Spanish version, should be referred to the drafting committee.

69. Mr. de MENTHON (France) regretted that he was unable to accept the Austrian amendment. In the first place, the proposed additions would burden the catalogue of consular functions in article 5; moreover, the cases contemplated were covered by the additional sub-paragraphs proposed by India (L.37) and Yugoslavia (L.72). Secondly, the adoption of the new sub-paragraphs proposed by Austria might give rise to some problems for France. Under French social legislation, a beneficiary could delegate his rights to a third person; but, as yet, consuls had not been held to be empowered to receive pensions or other benefits without having to produce a power of attorney. Bilateral agreements with various countries provided for methods of paying benefits which did not call for action by consuls.

70. Mr. von HAEFTEN (Federal Republic of Germany) said that, while he had no objection to the substance of the Austrian proposal, he thought that it would be better not to insert the proposed sub-paragraph (*k*) in the list of consular functions, which could not cover everything. Furthermore, the functions in question in the new clause were governed by the municipal law of both the receiving State and the sending State. It was therefore preferable to close the list of the various functions. Besides, the amendments submitted by India (L.37) and Yugoslavia (L.72) covered, among many others, all the cases dealt with in the Austrian proposal.

71. Mr. MARAMBIO (Chile) said that he was in favour of including the new sub-paragraphs proposed by Austria and thought they should be referred to the drafting committee.

72. Mr. BARTOŠ (Yugoslavia) said that the functions in question were referred to in paragraph (13) (*d*) and (*e*) of the International Law Commission's commentary and were part of a consul's normal duties. It was only right that consuls should have authority to protect the nationals of the sending country, more particularly in the matter of social security. He would therefore vote for the new sub-paragraphs (*j*) and (*k*) proposed by Austria.

73. Mr. HEPPEL (United Kingdom) agreed with the representatives of France and the Federal Republic of Germany. Matters of detail were involved, but they were important. They could be settled by bilateral agreements without any need to specify such functions in the convention. The best course would be to insert a new sub-paragraph providing for the exercise of such functions, but not itemizing them.

74. Mr. WESTRUP (Sweden) said that, notwithstanding his interest in matters of social security, he agreed with the representatives of France, the Federal Republic of Germany and the United Kingdom that there was no need to burden the list contained in article 5 by inserting provisions concerning matters of detail.

75. Mr. RUDA (Argentina) said he was in sympathy with the motives underlying the Austrian amendment. The proposed clauses did not, however, refer to matters which were among a consul's essential functions, and he was therefore unable to support the amendment.

76. Mr. BARUNI (Libya) said he could not vote for the Austrian amendment as it stood. With regard to sub-paragraph (*j*) he said that, in Libya, for instance, a consul could only transmit funds from abroad through the local authorities; and in many countries it was unlawful to transfer sums of money to anyone without the express permission of the local authorities.

77. Mr. HERNDL (Austria) thanked the delegations which had expressed support for his delegation's amendment. In view of the difficulties it had created in the Committee, however, he had decided to withdraw it. He thought that such cases might be covered by the more general provisions proposed by India and Yugoslavia.

New sub-paragraph proposed by India and Yugoslavia

78. The CHAIRMAN drew attention to the amendment submitted jointly by India and Yugoslavia (A/CONF.25/C.1/L.100).

79. Mr. KRISHNA RAO (India) explained that the joint amendment superseded the earlier amendments submitted by India (L.37) and Yugoslavia (L.72). The underlying idea was that only essential functions should be explicity listed, and that the others should be dealt with in a general clause which would be added to the list. Some latitude should be allowed, for consular functions might vary according to time and place. Furthermore, judicial decisions in various countries had recognized in principle that consular functions were not restricted to those specifically cited in international instruments. The joint amendment was fully in conformity with the considerations in paragraphs 24 to 26 of the International Law Commission's commentary to article 5.

80. Mr. JAYANAMA (Thailand) said that, while he was in favour of a general clause in addition to the list of consular functions, he thought it superfluous to mention in the amendment international agreements between the sending State and the receiving State, since there could be no doubt that the provisions of such

agreements would apply. Besides, article 71 of the draft expressly stated that the provisions of the convention would not affect international agreements in force as between the States parties to them.

81. Mr. ABDELMAGID (United Arab Republic) supported the joint Indian and Yugoslav amendment which was, he considered, in complete harmony with the text of article 5 as a whole.

82. Mr. KESSLER (Poland) thought it would be advisable to insert in paragraph 5 a provision supplementing the catalogue of the principal consular functions, and he accordingly endorsed the substance of the joint amendment. Nevertheless, the words " and to which no objection is taken by the receiving State " might serve as a pretext, in certain circumstances, for unduly restricting consular activities by giving the subordinate authorities of the receiving State the possibility of opposing the exercise of consular functions. He therefore asked that the passage in question should be put to the vote separately.

83. Mr. MIRANDA e SILVA (Brazil) approved the substance of the joint amendment. To lighten the Committee's work and that of the drafting committee, he proposed that the new paragraph should follow the text of paragraph 26 of the International Law Commission's commentary on article 5, subject to the substitution of the words " consular officials " for the word " consuls ".

84. Mr. de ERICE y O'SHEA (Spain) supported the joint Indian and Yugoslav amendment. As he had said before, it would be dangerous to try to draw up an exhaustive list of consular functions. The sponsors of the amendment might perhaps accept the suggestion of the representative of Poland for deleting the words " and to which no objection is taken by the receiving State "; the words " which are not prohibited by the laws and regulations of the receiving State " were surely adequate.

85. Mt. HUBEE (Netherlands) said he would vote in favour of the joint amendment. He would likewise vote for the retention of the passage " and to which no objection is taken by the receiving State ", if it was put to the vote separately.

86. Mr. DADZIE (Ghana) supported the substance of the joint amendment. So far as the wording was concerned, however, he thought that the word " or " should be substituted for the word " and " after the words " receiving State ".

87. Mr. USTOR (Hungary), supporting the joint amendment, said it was in line with the International Law Commission's text and with paragraphs 24 to 26 of the commentary to article 5. The commentary showed that consular functions could be divided into three categories: those arising out of the principles of international law, those specified in international agreements, and those which could be vested in consular officials of the sending State, subject to the right of the receiving State to prohibit the exercise of certain activities.

88. Those safeguards were sufficient for the receiving State. He therefore thought that in that respect the amendment went perhaps too far. If a separate vote were taken on the words " and to which no objection is taken by the receiving State ", the Hungarian delegation would vote for their deletion.

89. Mr. ANIONWU (Nigeria) said that the addition of a general clause to article 5 would dispel his delegation's doubts with regard to article 38 of the draft, which dealt with communication between consular officials and the authorities of the receiving State. He would therefore vote in favour of the joint amendment, provided that the words " and to which no objection is taken by the receiving State " were deleted.

90. Mr. de MENTON (France) approved the substance of the joint amendment. At first glance, however, the passage " which are not prohibited by the laws and regulations of the receiving State " and the passage " and to which no objection is taken by the receiving State " seemed repetitious. He suggested that the language of the original Yugoslav amendment (L.72) " provided that the exercise of these functions is not prohibited by the law of the receiving State " might be preferable.

91. Mr. von HAEFTEN (Federal Republic of Germany) supported the joint amendment, but could not accept the French representative's suggestion. He attached some importance to the words " and to which no objection is taken by the receiving State ". Some activities not expressly mentioned in the earlier paragraphs of article 5 and not expressly forbidden by the law of the receiving State might nevertheless be regarded as undesirable by the authorities of that State. If the words in question were deleted, the receiving State would have no option but to enact laws and regulations on the matter, which might annoy the sending State. Accordingly, he thought that the words in question should stand.

92. Mr. MARAMBIO (Chile) supported the Brazilian proposal that the Committee should follow the language of paragraph 26 of the International Law Commission's commentary to article 5, without the words " or the authorities ".

93. Mr. WESTRUP (Sweden) agreed with the representative of the Federal Republic of Germany that the words " and to which no objection is taken by the receiving State " should stand. He would vote for the joint amendment without any deletion.

94. Mr. PALIERAKIS (Greece) said that the joint amendment was most interesting. The wording, however, was repetitious. The words " which are not prohibited by the laws and regulations of the receiving State " should be omitted, for the receiving State would automatically put a stop to any activities which were prohibited by its laws and regulations.

95. Mr. HEPPEL (United Kingdom) said that he shared the opinion of those representatives who had spoken in favour of the joint amendment and in favour of retaining the words " and to which no objection is taken by the receiving State ". Provision should be made concerning possible objections not based on laws and regulations. From the point of view of drafting, he

agreed with the representative of Ghana that in the new sub-paragraph the word " or " should be substituted for the word " and "

96. The CHAIRMAN announced that the sponsors of the amendment agreed to substitute " or " for " and ".

97. Mr. MIRANDA e SILVA (Brazil) said that, although he approved the substance of the Indian and Yugoslav amendment, he still preferred the language of paragraph 26 of the International Law Commission's commentary, slightly amended to read: " Consular officials may also perform other functions which are entrusted to them by the sending State, provided that the performance of these functions is not prohibited by the laws of the receiving State."

98. Mr. TSHIMBALANGA (Congo, Leopoldville) agreed with the representative of France and other speakers that the words " and to which no objection is taken by the receiving State " to some extent duplicated the words " which are not prohibited by the laws and regulations of the receiving State ". He asked for explanations.

99. Mr. BARTOŠ (Yugoslavia) replied that the reference to objection on the part of the receiving State and the passage " which are not prohibited by the laws and regulations " of that State were not pleonastic. That had been recognized by the International Law Commission itself in the proviso at the end of paragraph 26 of its commentary. In other words, the Commission drew a distinction between prohibition of certain acts on grounds of law and prohibition on political grounds, between unlawful activities and undesirable activities.

100. The speakers who had quoted paragraph 26 of the International Law Commission's commentary appeared to have overlooked paragraph 25. The joint Indian and Yugoslav amendment merely repeated those two paragraphs as a whole, but in a rather condensed and simplified form.

101. Furthermore, in drafting article 5, the International Law Commission had considered whether States should be free to conclude bilateral agreements departing from the provisions of the multilateral convention, and it had decided that they should. That was the principle underlying the concluding phrase of the joint amendment.

102. Apart from the replacement, already approved, of the word " and " by the word " or ", other drafting improvements might be desirable, in particular the replacement of the words " referred to " by the words " provided for ".

103. Mr. TSHIMBALANGA (Congo, Leopoldville) said that, to emphasize the political aspect referred to by the Yugoslav representative, the words " or to which no objection is taken by the receiving State " should perhaps be replaced by the words " or to which no objection is taken by the authorities of the receiving State ".

104. Mr. JAYANAMA (Thailand) agreed with the opinions expressed by the Brazilian and Chilean representatives.

105. Mr. SOLHEIM (Norway) supported the request for a separate vote on the passage " or to which no objection is taken by the receiving State ". He would vote for the joint amendment, but against that passage. The express terms of the law should be paramount; if the passage in question were retained, it might invite arbitrary decisions by central or local authorities of the receiving State —which would be most undesirable.

106. The CHAIRMAN said that under rule 42 of the rules of procedure the joint amendment (L.100) (the word " and " being replaced by " or "), would be put to the vote first. The Committee would then, depending on circumstances, vote on the oral amendment submitted by the representatives of Brazil and Chile, which incorporated the text of paragraph 26 of the International Law Commission's commentary on article 5 (without the words " or the authorities "). As requested, he put to a separate vote the words " or to which no objection is taken by the receiving State " in the joint amendment.

The Committee decided by 35 votes to 15, with 7 abstentions, to retain the words " or to which no objection is taken by the receiving State ".

The joint amendment of India and Yugoslavia (A/CONF.25/C.1/L.100) was approved by 46 votes to 5, with 12 abstentions.

107. Mr. TSHIMBALANGA (Congo, Leopoldville), referring to the last statement by the Yugoslav representative, asked whether, in the text just adopted, the words " referred to " had been replaced by the words " provided for ".

108. The CHAIRMAN stated that the text approved was that appearing in document A/CONF.25/C.1/L.100, apart from the replacement of the word " and " by the word " or ". The drafting committee could in any case make any stylistic changes it thought desirable.

Proposal to alter the structure of article 5

109. Mr. KIRCHSCHLAEGER (Austria) said that although, as a result of the joint amendment just adopted, the Austrian amendment (L.26) modifying the structure of the article had perhaps to some extent lost its points, he wished to maintain that proposal.

110. Mr. HEPPEL (United Kingdom) approved the Austrian amendment and suggested that the order of the sub-paragraphs in article 5 might be slightly changed and that they might be regrouped into paragraphs.

111. Mr. USTOR (Hungary) said that the approval of the joint amendment had unquestionably altered the position and that it was doubtful whether the Austrian amendment were still relevant. In view of the considerable divergence between the Austrian amendment and the International Law Commission's text, it would perhaps be better, before coming to a decision, to ask the opinion of the special rapporteur of the International Law Commission. The Hungarian delegation did not wish to have to vote before considering the matter further.

112. Mr. WESTRUP (Sweden) warmly supported the United Kingdom representative's idea of regrouping the

various consular functions into separate paragraphs according to their character. The diversity of the formulae used in the different sub-paragraphs might make the task a little difficult, but from a logical point of view the effort seemed worth while.

113. Mr. BOUZIRI (Tunisia) proposed the adjournment of the debate on the Austrian amendment, particularly since it would be desirable to consult the former special rapporteur and to consider the Swedish representative's suggestion.

114. Mr. PALIERAKIS (Greece) proposed that the drafting committee should be instructed to study the Austrian amendment and the Swedish representative's suggestion.

115. Mr. RAHMAN (Federation of Malaya) supported the Greek representative's proposal.

116. The CHAIRMAN said that, if there were no objection, he would adopt the solution proposed by the representatives of Greece and the Federation of Malaya.

117. He put to the vote article 5, as amended, without prejudice to any drafting changes which might be made by the drafting committee.

Article 5, as amended, was approved by 59 votes to none, with 1 abstention.

118. Mr. HEPPEL (United Kingdom) drew attention to the memorandum of the United Nations' High Commissioner for Refugees (A/CONF.25/L.6). That memorandum, which referred particularly to article 5, subparagraph (*a*), and to article 36 of the draft articles on consular relations, took into account the case of persons who did not wish or could not have recourse to the protection of consular officials of their country of origin. A very important point was involved which should be dealt with either in a separate article or in an additional clause to one of the existing articles. The United Kingdom delegation, which had not submitted an amendment on that point in connexion with article 5, intended to submit an appropriate text later.[3]

The meeting rose at 6.50 p.m.

[3] A joint proposal (A/CONF.25/C.1/L.124) was submitted at the twenty-fourth meeting.

FOURTEENTH MEETING

Thursday, 14 March 1963, at 10.40 a.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 8 (Appointment and admission of heads of consular posts)

1. The CHAIRMAN invited the Committee to consider article 8 and the joint amendment thereto by Brazil, Canada, Ceylon, the United Kingdom and the United States of America (A/CONF.25/C.1/L.74).[1]

2. Mr. LEE (Canada), introducing the joint amendment replacing the words " heads of consular posts " by the words " consular officials ", said that throughout the draft far too much emphasis was placed on the legal status of heads of consular posts as compared with consular officials in general. The head of a consular post was not in the same position with respect to the other officers as the head of a diplomatic mission. The members of a diplomatic mission derived their status from the fact that the head of the mission was formally accredited to the receiving State. The position of consular officials was completely different: they derived their status — and accordingly their privileges and immunities — individually and separately from their respective commissions of appointment. Consular officials were also individually and separately recognized and admitted by the government of the receiving State.

3. It was at present as important as ever for the receiving State to retain strict control over the consuls exercising their functions in its territory. Canada, as a comparatively small country, acted more often as a receiving State than as a sending State, and found it essential to continue to exercise the right to request a *curriculum vitae* for every foreign consular official before he came to serve on Canadian territory.

4. He stressed the important difference, from the point of view of security control, between diplomatic agents who performed their duties in the capital of the country and consular officials who worked outside the capital.

5. Mr. HEPPEL (United Kingdom), speaking as one of the sponsors of the joint amendment, said that it involved an important change in the structure of an otherwise excellently drafted set of articles. There was no real analogy between the head of a consular post and the head of a diplomatic mission. An ambassador, as the representative of the head of his State, was entitled to a special status, and the privileges of his staff derived from his special position. The position of consular officials was quite different. It was of course true that where several of them served on the staff of the same consulate the senior consular official would act as the head of the consular post, but that was purely a matter of internal administration and did not confer any special quality upon the head of post. It was significant that the eighth edition of Oppenheim's *International Law*, published in 1955, made no mention of the head of a consular post possessing any quality different from that of other consular officials.

6. He saw no reason for the statement in paragraph 7 of the commentary on article 11, that " The grant of the exequatur to a consul appointed as head of a consular post covers *ipso jure* the members of the consular staff working under his orders and responsibility. It is therefore not necessary for consular officials who are not heads of post to present consular commissions and obtain an exequatur." Nor was there any justification for the statement in paragraph 7 of the commentary on

[1] The Japanese amendment (A/CONF.25/.C1/L.55) had been withdrawn.