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

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

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

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

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

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

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

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

The meeting rose at 6.50 p.m.

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

FOURTEENTH MEETING

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

Chairman: Mr. BARNES (Liberia)

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

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

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

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

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

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

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

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

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

article 19 that " the principle that only the head of consular post needs an exequatur or a provisional admission to enter upon his functions " was " well established in practice ".

7. The United Kingdom and many other countries followed a distinctly different practice. The principle referred to had no foundation in customary international law; it was an innovation introduced from diplomatic practice. Reference to the collection of bilateral consular treaties prepared by the Secretariat would show that all the older treaties, and most of the more recent ones, required all consular officials to obtain an exequatur. Of the consular conventions included in that collection, the earliest to exempt subordinate consular officials from the requirement of an exequatur had been the 1955 Consular Convention between France and Sweden. However, the majority of consular conventions signed since 1955 required an express admission in respect of consular officials.

8. Since the existing rule of international law was that an exequatur or some other form of authorization was required for a consular official to exercise his functions, the adoption of article 8 as drafted by the International Law Commission would introduce a major change of principle into consular law.

9. At the 5th meeting, his delegation had proposed the deletion of paragraph 4 from article 4 on the ground that its content was already covered by paragraph 1 of the same article. But the Committee had not shared that view and had preferred to state explicitly that the consent of the receiving State was also required if a consulate-general or a consulate desired to open a vice-consulate or an agency in a locality other than that in which it was itself established. The Committee had taken that course because of its anxiety to prevent a proliferation of consular posts. It was in the same spirit that his delegation proposed that it should not be possible for a sending State to increase, without any formality, the staff of consular officials in a consulate. It was all the more important to prevent increases in consular staff being made regardless of the receiving State because such staff were likely to be not in the capital, where the activities of diplomatic missions were part of the daily life of the authorities of the receiving State, but in more remote parts of the country, where control was particularly necessary.

10. He noted that article 19, paragraph 2, provided that " The sending State may, if such is required by its law, request the receiving State to grant the exequatur to a consular official . . . who is not the head of post." That provision did not fully meet the requirements of countries like the United Kingdom; it would enable them to satisfy their laws when acting as sending States, but would be of no assistance to them as receiving States.

11. Mr. BARTOŠ (Yugoslavia) pointed out that, in its discussions on article 8, the International Law Commission had gone very fully into the question and had ascertained that the practice referred to by the United Kingdom representative as a general one was, in fact, largely confined to the British Commonwealth countries and the United States of America. There were even some departures from that practice in the case of the United Kingdom, as shown by the 1951 Consular Convention between the United Kingdom and France,[2] which allowed subordinate consuls to exercise their functions and enjoy their immunities without prior notification to the receiving State, unless the latter objected.

12. The rule embodied by the International Law Commission in article 8 reflected the general practice of States. It also tended to facilitate consular relations. In the countries where an exequatur was required for all consular officials, it was not uncommon to have to wait as long as eight months or a year before permission could be obtained to dispatch a vice-consul to a consulate; thus the consulate had to be closed if the consul in charge was ill or absent for any reason, even if it included one or perhaps several persons with the rank of consular official.

13. Other articles of the draft afforded sufficient safeguards to the receiving State. In particular, article 23 made it possible for the receiving State to declare unacceptable any member of a consular staff, and not merely the head of consular post.

14. Mr. MIRANDA e SILVA (Brazil) said that his delegation had joined in sponsoring the joint amendment because, under Brazilian law, all consular officials were required to obtain an exequatur. He believed that that requirement facilitated consular relations: for example, in the event of the death or absence of the head of post, it was possible for another consular official, who already held an exequatur, to replace him immediately.

15. Mr. KNEPPELHOUT (Netherlands) supported the joint amendment. His delegation would prefer article 8 to refer not only to heads of consular posts, but to all consular officials, none of whom could act as such without being appointed by the sending State and being admitted to the exercise of their functions by the receiving State.

16. Mr. SILVEIRA-BARRIOS (Venezuela) also supported the joint amendment, which would help to ensure the proper exercise of consular functions.

17. Mr. PETRŽELKA (Czechoslovakia) opposed the joint amendment, because it disrupted the basic structure of the draft unanimously adopted by the International Law Commission. The principle adopted by the Commission made for the progressive development of international law. It was also in line with article 3, which provided that consular functions were exercised by consulates. The Committee, when it had adopted article 3, had agreed to consider the consulate as a unity; it was therefore with considerable misgivings that his delegation saw that unity being challenged by the amendment. Although he did not wish to raise a procedural issue at that stage, he emphasized that if the Committee adopted the joint amendment to article 8 it would be acting inconsistently with its earlier decision to approve article 3.

18. Mr. KEVIN (Australia), supporting the joint amendment, said that consuls were admitted individually

[2] United Nations, *Treaty Series*, vol. 330, p. 146.

to the exercise of their functions, so that there was no real analogy with diplomatic missions.

19. Mr. von HAEFTEN (Federal Republic of Germany) said that he had at first been inclined to favour the joint amendment. On reflection, however, he had come to the conclusion that it was too complicated a procedure to require formal appointment and admission for every consular official.

20. If it appeared appropriate at a later stage in the discussion, his delegation would submit an amendment to the effect that the name and rank of a consular official must be notified to the receiving State before the arrival of the official in its territory, and that the receiving State could refuse admission.

21. Mr. DADZIE (Ghana) appreciated the reasons underlying the joint amendment, but feared that it might lead to abuses. He had in mind, especially, the consular officials of small States which already had great difficulty in staffing their diplomatic and consular missions. He also thought that the joint amendment would set an unhappy precedent with regard to diplomatic missions. The requirement of the " agrément " was imposed only upon the ambassador and not upon other diplomatic agents sent to work under him.

22. When the joint amendment was put to the vote his delegation would abstain.

23. Mr. BOUZIRI (Tunisia) opposed the joint amendment; it went too far by comparison with what had been accepted for members of diplomatic missions. He recalled that at the 1961 Conference there had been a discussion on the question whether the sending State should have complete freedom to appoint subordinate diplomatic agents. He had favoured the introduction of certain safeguards for the receiving State, but the Conference had decided otherwise and the 1961 Vienna Convention had been adopted without any limitations on that freedom, except for article 7, which provided that " In the case of military, naval or air attachés, the receiving State may require their names to be submitted beforehand, for its approval."

24. The joint amendment would make it necessary for all consular officials to obtain authorization from the receiving State before they could exercise their functions. That requirement might raise no problem for large countries, but it would create insurmountable difficulties for the smaller ones, and might even hinder the conduct of consular relations.

25. He appreciated the spirit in which the representative of the Federal Republic of Germany had made his suggestion. The formula suggested would reduce the difficulty to some extent, but would not remove it altogether, since it would be necessary to await a reply from the receiving State before the consular officer could be dispatched.

26. Mr. de MENTHON (France) agreed with the representative of Tunisia. He regretted that he could not support the joint amendment, which was not consistent with the practice followed by the French Government or with the provisions of consular conventions to which it was a party.

27. Mr. OSIECKI (Poland) opposed the joint amendment, which like similar amendments to articles 10 and 11, would impose on all consular officials the obligation to obtain an exequatur from the receiving State. That obligation was contrary to the principle laid down in article 19, paragraph 1, that the sending State might freely appoint the members of the consular staff. The amendment would be a retrograde step, for contemporary practice was much more favourable to consulates.

28. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) drew attention to the provisions of article 1 (Definitions). Paragraph 1 (*c*) of that article defined the head of consular post as " any person in charge of a consulate " and paragraph 1 (*d*) defined a consular official as " any person, including the head of post, entrusted with the exercise of consular functions in a consulate ". It was clear from those definitions that there was a material difference between the head of post and other consular officials, so that the requirements imposed on the head of post were not necessarily applicable to consular officials generally. Proposals similar to the joint amendment had been made at various times during the discussion of the draft articles, but had always been rejected.

29. Mr. USTOR (Hungary) said that the point under discussion was one of the fundamental issues of the whole draft. The requirement of a separate commission and exequatur for every consular official was a rather antiquated practice to which the United Kingdom and some other countries still adhered. His country, and a great many others, did not follow that practice, and he saw no reason to reintroduce a cumbersome system which was considered obsolete in many parts of the world.

30. He urged the Committee not to depart from the system adopted by the International Law Commission, but to accept the arguments put forward by other speakers, in particular the representative of Yugoslavia, who was himself an eminent member of the Commission. The provisions of the draft constituted a compromise which could satisfy countries that followed the United Kingdom system. Article 19, paragraph 2, would enable those countries to obtain an exequatur for their consular officials in order to comply with their national law; even more important were the provisions of article 24, under which the appointment of all members of the consulate, and not merely of the head of post, had to be notified to the receiving State. Those provisions afforded ample safeguards for the receiving State.

31. Mr. RABASA (Mexico) said that, as a general rule, his delegation supported the provisions drafted by the International Law Commission. In the case of article 8, however, it supported the joint amendment, which would fill a gap in the draft. It was true that the Committee had approved an objective rule in article 3 — namely, that " consular functions are exercised by consulates ". The provisions of article 8, however, applied not to the consulate, but to consular officials. That article was therefore one of the cases in which a subjective rule would have to be laid down.

32. It seemed to him illogical to reject the proposition contained in the amendment. In the event of such rejec-

tion, the Committee would be suggesting that consular officials other than the head of post were neither appointed by the sending State nor admitted to the exercise of their functions by the receiving State.

33. He pointed out that, if the joint amendment were adopted, the title of the article should also be amended.

34. Mr. KONZHOUKOV (Union of Soviet Socialist Republics) said that his delegation could not support the joint amendment, which departed from the principle on which many of the provisions of the draft were based. The Committee had already approved article 3, which stated that consular functions were exercised by consulates. It would be altogether inconsistent with that decision to replace the words " heads of consular post " by the words " consular officials " in article 8. His delegation had nothing further to add to the excellent arguments advanced by other speakers against the joint amendment.

35. Mr. SHARP (New Zealand) supported the joint amendment for the reasons given by its sponsors. New Zealand practice was for all consular officials to hold commissions issued by the Head of State, which were presented for the issue of an exequatur. Judging by the number of consular commissions presented in New Zealand for the purpose of obtaining an exequatur, he could safely say that the practice was not confined to the Commonwealth countries and the United States.

36. Consuls and vice-consuls had always held a certain status in their own right and it was therefore appropriate to broaden the provisions of article 8 so as to cover all consular officials and not merely heads of post.

37. He agreed with the United Kingdom representative that the provisions of article 19 did not meet the purpose of the joint amendment: they afforded no protection whatsoever to the receiving State.

38. Mr. PALIERAKIS (Greece) supported the joint amendment. The reasons for requiring the head of post to be appointed by the sending State and admitted to the exercise of his functions by the receiving State also applied to other consular officials. Another argument in favour of the joint amendment was that it was better to learn of any objection to a consular official before, rather than after he arrived in the territory of the receiving State. His delegation favoured the suggestion put forward by the representative of the Federal Republic of Germany.

39. Mr. N'DIAYE (Mali) agreed with the views expressed by the representatives of Ghana, Tunisia and, in particular, Yugoslavia. He saw no reason to introduce into consular relations an idea which had not been embodied in the Convention on Diplomatic Relations, which were more important.

40. Mr. KRISHNA RAO (India) pointed out that the joint amendment represented a traditional practice, while the text drawn up by the International Law Commission represented the progressive development of international law, particularly in recent times. In that connexion, he drew attention to the recent practice in the United States of America and cited the United States *Regulations* (102.535 (*b*)):

" In countries where no document is issued a consular officer may enter upon his duties when notice of his recognition is either published in the official gazette or otherwise made known in accordance with the custom of the country." [3]

41. He also cited the case of *Moracchini* v. *Moracchini* in which the New York Supreme Court (New York County) had stated that recognition of a consul by the executive branch would be sufficient even in the absence of the exequatur.[4] That decision reflected the tendency to relax the requirement of consular commissions and exequaturs.

42. The United Kingdom also seemed to be relaxing that requirement. Under the provisions of article 4 (3) of the Consular Convention between the United Kingdom and France signed at Paris on 31 December 1951 [5] a consul appointed as head of a post was, pending receipt of an exequatur, provisionally entitled to exercise his functions and to enjoy the benefits accorded by the Convention unless the receiving State objected. Moreover, by virtue of the provisions of article 4 (4) of the same consular convention, a subordinate consul or consular agent was even allowed to perform his functions and enjoy the benefits in question " without prior notification " to the receiving State, unless the latter objected.

43. In the light of that trend, his delegation fully agreed with the International Law Commission's conclusion that article 8 should refer only to heads of consular posts and that the grant of the exequatur to the head of post covered *ipso jure* the members of the consular staff working under his orders and responsibility.

44. Mr. CAMERON (United States of America), speaking as one of the sponsors of the joint amendment, said that it was extremely important to a great many countries, including his own. Every delegation should make an effort to adopt amendments required by other delegations, even if those amendments were not necessary in order to conform to their own domestic practice.

45. Notwithstanding the passage in the United States regulations quoted by the previous speaker, it was the practice of his country to require separate recognition of every consular officer by the receiving State whenever possible. It was also the United States practice to grant separate recognition to all consular officers.

46. His delegation was not impressed by the argument sometimes advanced that a text should be accepted because it was the result of protracted work by the International Law Commission. He had the greatest respect for the members of the Commission, but he could not help noticing that some of the representatives who used that argument did not refrain from proposing amendments to the Commission's draft whenever they thought fit. He urged all delegations to consider each amendment on its own merits.

47. Nor could he see any force in the argument that, under the terms of the joint amendment, cumbersome

[3] Quoted by Luke T. Lee in his book *Consular Law and Practice*, London, Stevens & Sons Ltd., 1961, p. 29.

[4] *Ibid.*, p. 30.

[5] United Nations, *Treaty Series*, vol. 330, p. 152.

formalities would be imposed upon consular officials. According to the provisions of article 11, paragraph 1, any authorization to exercise consular functions, whatever its form, constituted an exequatur. In some countries, such authorization was given merely by issuing an identity card. Hence the joint amendment would not make it necessary to issue formal documents to all consular officials.

The joint amendment (A/CONF.25/C.1/L.74) was rejected by 38 votes to 25, with 9 abstentions.

Article 8 was adopted by 54 votes to 5, with 10 abstentions.

48. Mr. BREWER (Liberia) said that he had voted in favour of the joint amendment because it was consistent with the practice followed by his country. All the consular officials of Liberia held consular commissions.

Article 9 (Classes of heads of consular posts)

49. The CHAIRMAN drew attention to the amendment to article 9, paragraph 1, submitted by Switzerland (A/CONF.25/C.1/L.93) and to the South African amendment to paragraph 2 of that article (A/CONF.25/C.1/L.81).

50. Mr. REBSAMEN (Switzerland), introducing his delegation's amendment, said that the question of classes of consular representation, and particularly of heads of post, was of great importance to Switzerland. Under article 1, paragraph 1 (*a*), and article 9 of the draft, the four classes proposed were consulates-general, consulates, vice-consulates or consular agencies headed respectively by consuls-general, consuls, vice-consuls and consular agents. The Swiss delegation did not consider that arrangement satisfactory.

51. In the first place, it hardly seemed necessary to provide for four classes of consular representation. According to the importance which the sending State attributed to a consular post, it could confine itself to a choice between a consulate-general, a consulate and a vice-consulate. There was little reason to regard a consular agency as a consular post properly so-called, since it was difficult to distinguish it from a vice-consulate. If consular agencies were omitted from the list of regular consular posts, the structure of the convention would be simplified and the institution of the consular agency would not be given a status which it had never acquired in a number of States.

52. Secondly, in order to perform all the tasks which a government entrusted to its consular service, heads of consular posts and heads of diplomatic missions exercising consular functions could have recourse not only to their colleagues of the consular service, but also to persons who were in a position to assist them without being state officials. Those persons might not reside at the place where their superintending consulate was situated, might have no specific consular district and might have no consular commission or exequatur, but only a simple admission from the competent authority of the receiving State. Moreover, such persons usually carried out only a limited range of duties compared with those of the consul. Generally speaking, they acted on behalf of a consular official and represented him before the local authorities in certain circumstances. It was understood that the type of function they exercised was determined by agreement with the receiving State. That class of persons, who fulfilled certain official functions only on behalf of and at the instructions of a head of consular post, was the only one which Switzerland recognized under the name of consular agents. Some of them exercised their activities only in a specific consular district, others were not entitled to carry out all the consular functions listed in article 5, while yet others had certain specific tasks to perform. The institution was mentioned in article 4, paragraph 4, which stated specifically that consular agencies could be opened by consulates-general or consulates. It therefore seemed obvious that such a consular agent could not *stricto sensu* act as head of a consular post and that he had a special legal status.

53. Consular agents did not necessarily have the nationality of the State on behalf of which they were acting and were never career officials; they might therefore be assimilated to honorary consuls, although they would not necessarily enjoy the privileges and immunities provided for that class of heads of post. Generally speaking, they might be assimilated to honorary consuls in respect of the use of national emblems and of the inviolability of archives and documents relating to consular matters.

54. Switzerland had found the institution of consular agencies extremely useful in its relations with about thirty States. It had been able to send some seventy-five unofficial repersentatives to places where it would have been difficult to send consuls, and those consular agents had helped to establish and maintain friendly relations. The institution, as defined by Swiss law, might be used by other States which as yet had few consular officials; it had advantages not only for the sending State, but also for the receiving State.

55. His delegation would be interested to learn under what conditions other States had set up consular agencies, with a view to deciding how the institution should be developed. Meanwhile, it suggested that a new article be inserted between articles 67 and 68, providing that every State was free to decide whether it would establish or accept consular agencies, and that the conditions in which a consular agency could exercise its functions and the privileges and immunities to be enjoyed by consular agents should be determined by agreement between the sending State and the receiving State.[6] Article 1 (Definitions) should be amended accordingly.

56. The Swiss amendment was in no way intended to suppress consular agencies or consular agents. On the contrary, its aim was to clear the way for a specific regulation of the question of consular agencies, flexible enough to be acceptable to most countries. The Commission's text closed the door to any discussion of the institution, and its adoption would compel certain countries, including his own, to confer a different status on consular agencies, thus depriving those countries of

[6] A proposal to this effect (A/CONF.25/C.1/L.102/Rev.1) was subsequently submitted by Switzerland, and was adopted by the Committee at its twenty-eighth meeting.

an extremely useful means of conducting consular relations. On the other hand, if the Swiss amendment were accepted, the Committee would be free to give a wider definition of consular agencies and to adopt a general article on that institution, to the benefit of a number of countries. In any case, adoption of his delegation's amendment would in no way prejudge the final solution of the problem.

57. Mr. ENDEMANN (South Africa), introducing his delegation's amendment (L.81), observed that the Commission's text of article 9, paragraph 2, implied that all the States signatories to the convention had to fix the designation of consular officials. His delegation had submitted its amendment in order to clarify, in the text of the article itself, the point implied in paragraph 7 of the commentary — namely, that it was for the sending State and the receiving State to settle the matter between them. Since the question was one of wording, the Committee might agree to refer it to the drafting committee.

58. Mr. TSYBA (Ukrainian Soviet Socialist Republic) observed that the fact that consular agents could not be heads of post under Swiss law did not mean that they could not have that status under the law of other countries. In accordance with article 2, paragraph 1, there was nothing to prevent Switzerland from making any provisions it wished in bilateral conventions, and no State was obliged to maintain all four classes of heads of consular posts. His delegation could not support the Swiss amendment.

59. Mr. MAMELI (Italy) said he could not vote for the Swiss amendment, because Italy used the services of a number of consular agents and found them very valuable. For many States, the question of establishing consular agencies was an economic matter, and their whole system would be upset by the adoption of the Swiss amendment.

60. Mr. de MENTHON (France) said that, under the consular conventions concluded by France and in its legislation on the subject, consular agents were appointed by consuls-general and consuls, and were issued with letters patent. A consular agent had no district and was under the jurisdiction of the consul who had appointed him. He was usually a national of the receiving State and exercised a gainful private occupation. He therefore agreed with the Swiss representative that consular agents might be assimilated to honorary consuls in some respects. He would support the Swiss amendment and had no objection to the South African amendment.

61. Mr. von HAEFTEN (Federal Republic of Germany) said he could vote for the Swiss amendment. He could also support the South African amendment, but he submitted that a question of substance was involved in that proposal. The list of designations of consular officials was extremely long, and it was important for the States concerned to reach agreement on it.

62. Mr. SILVEIRA-BARRIOS (Venezuela) said he would vote for the Swiss amendment, because his country had appointed no consular agents since 1948. Of course, adoption of that amendment would not prevent countries which used consular agencies from maintaining the institution.

63. Mr. BARTOŠ (Yugoslavia) agreed with the representative of the Federal Republic of Germany that the South African amendment was substantive rather than formal; the Yugoslav delegation would vote in favour of it because it clarified paragraph 2.

64. He could not vote for the Swiss amendment, however. His country used the institution of consular agencies for consular representation proper. It established consular agencies in certain countries of immigration where Yugoslav nationals resided. The agents concerned were consular officials with a definite status and were acknowledged to be heads of post. Although they were not issued with an exequatur, they were admitted to their functions by the competent authorities of the receiving State. Under Yugoslav law and under the law of some other countries, consular agents were career officials, and could not always be assimilated to honorary consuls. Even if they could be thus assimilated, the draft contained no article on honorary heads of post; the general articles on consuls also applied to all categories of honorary consuls, apart from the exceptions expressly stated in the International Law Commission's draft — for instance, in article 57. His delegation, unlike the Swiss delegation, believed that the status of consular agents should be determined for every agent and for every State, even if no State was obliged to send or accept consular agents.

65. He saw no foundation for the argument that consular agents could not be heads of post because they were appointed by a consul-general or a consul. A vice-consul quite often not only served under but was appointed by a consul-general, and could be regarded as a head of post. The position was therefore the same for a consular agent too.

66. Finally, if the status of consular agents were to be settled by bilateral agreement only, and not by a multilateral convention, the position of those agents vis-à-vis a third State would be extremely precarious. Adoption of the Commission's text would eliminate that difficulty.

67. Mr. de ERICE y O'SHEA (Spain) supported both amendments.

68. Mr. HERNDL (Austria) said his delegation had been inclined to support the Commission's text, despite its doubts concerning the admissibility of consular agents acting as heads of post. Indeed, it had submitted an amendment to article 11 (L.27) providing for the replacement of the formal exequatur by an informal admission by the receiving State in the case of consular agents. Nevertheless, he had been convinced by the Swiss representative's arguments and would support the Swiss amendment, in the belief that it would not mean that States could not agree on a bilateral basis to set up consular agencies. He agreed with the views expressed by the representative of the Federal Republic of Germany and would support the South African amendment.

69. Mr. RUDA (Argentina) supported the South African amendment, which clarified the Commission's

text. He would also vote for the Swiss amendment and agreed with the Swiss suggestion that a special article on consular agents should be inserted.

70. Mr. WU (China) said he would vote for the Swiss amendment, because in his country a vice-consul was the lowest official in the consular hierarchy who could be appointed as head of post. He would also support the South African amendment.

71. Mr. MARTINS (Portugal) supported the Swiss amendment. In practice, the range of functions exercised by consular agents was so different from those performed by the other three classes listed that it could not be claimed that such agents could act as heads of post.

72. Mr. DEGEFU (Ethiopia) fully supported the Swiss amendment, because his country's consular regulations admitted only the first three classes of the Commission's enumeration of heads of consular posts. He did not object to the idea of inserting provisions on the institution of consular agents somewhere in the convention, provided that the consent of the receiving State was required for their admission.

73. Mr. DADZIE (Ghana) supported the Swiss amendment. There could be no agent without a principal and, since in article 9 the principal was the head of post, an agent could not be a head of post in his own right. The amendment to paragraph 2 removed an ambiguity from the Commission's text, and should be referred to the drafting committee; he could not agree with the representatives of the Federal Republic of Germany and Yugoslavia that any point of substance was involved.

74. Mr. TSHIMBALANGA (Congo, Leopoldville) said he would vote for the Commission's text. In newly independent countries, a consular agent was often a consular attaché or a probationer consul, serving temporarily in a consulate-general or a consulate pending his appointment as vice-consul. Such a consular agent might become a head of post before he became a vice-consul.

75. Mr. N'DIAYE (Mali) said his delegation would also vote for the Commission's text. The official at the head of a consular agency might carry out all consular functions on his own responsibility, and all the provisions applicable to a head of consular post should also apply to him. Moreover, it was stated in paragraph 2 of the commentary that the enumeration of four classes in no way meant that States accepting it were bound in practice to have all four classes. Under the Swiss amendment States would not be obliged to admit consular agents as heads of posts, but certain new States might find it necessary to appoint consular agents in that capacity. He would therefore vote against that amendment.

76. Mr. WESTRUP (Sweden) said he would vote for the Swiss and South African amendments.

77. Mr. EL KOHEN (Morocco) said he would vote for the Swiss amendment; it was not desirable to allow consular agents to be appointed heads of post, since they were usually not career officials, but exercised both public and private functions.

78. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that, although his country did not appoint consular agents, a multilateral convention should include that class of official, because some countries appointed them as heads of post. He would vote in favour of the Commission's text; the South African amendment to paragraph 2 should be referred to the drafting committee.

79. Mr. HEPPEL (United Kingdom) agreed that the Commission's text should be retained. Although his country seldom appointed consular agents, it did employ some, and it was laid down in its consular instructions that the four classes enumerated in article 9 existed and that the officials concerned were in charge of the posts. He also agreed that the South African amendment should be referred to the drafting committee.

80. Mr. DADZIE (Ghana) asked the Swiss representative to explain whether the object of his amendment was that no consular agents should be appointed, or merely that a consular agent could not be a head of post.

81. Mr. REBSAMEN (Switzerland) said that his delegation's amendment was in no way intended to eliminate the institution of consular agents who were heads of posts; its sole purpose was to make it clear that consular agents might not also be heads of posts. The amendment would enable the question of the status of consular agents to be settled to the satisfaction of all countries.

The Swiss amendment (A/CONF.25/C.1/L.93) was rejected by 29 votes to 26 with 10 abstentions.

82. The CHAIRMAN said that the South African amendment (L.81) would be referred to the drafting committee.

Subject to re-wording by the drafting committee in the light of the South African amendment (A/CONF.25/C.1/L.81), article 9 was adopted by 56 votes to 1, with 8 abstentions.

The meeting rose at 1.20 p.m.

FIFTEENTH MEETING

Thursday, 14 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

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

Article 10 (The consular commission)

1. The CHAIRMAN invited debate on article 10 of the International Law Commission's draft and on the relevant amendments.[1]

[1] The following amendments had been submitted: Brazil, A/CONF.25/C.1/L.64; Brazil, Canada, Ceylon, United Kingdom, United States of America, A/CONF.25/C.1/L.75; Italy, A/CONF.25/C.1/L.83, Venezuela, A/CONF.25/C.1/L.87.