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TWENTY-SEVENTH MEETING

Monday, 25 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 71 (Relationship between the present articles and conventions or other international agreements)

1. The CHAIRMAN invited the Committee to consider article 71 and the amendments thereto by Austria, Canada and the Netherlands (A/CONF.25/C.1/L.154) and by India (A/CONF.25/C.1/L.155).[1]

2. Mr. KNEPPELHOUT (Netherlands), speaking on behalf of the sponsors of the joint amendment (L.154), said they had agreed to change the wording to read: "The provisions of this convention shall not affect other existing or future conventions or international agreements between States parties to them."

3. The purpose of the amendment was to supplement the text of article 71 by specifying that not only existing international instruments, but future instruments as well would be unaffected by the multilateral convention. With that amendment, the way would be left open for two or more States to enter into more extensive agreements on the subject of consular relations.

4. Mr. KRISHNA RAO (India), introducing his amendment (L.155), said he realized that it raised very important and complicated legal questions relating to the binding nature of the provisions of the multilateral convention.

5. Broadly speaking, four different approaches could be adopted. The first was to provide that, if an existing or future agreement on the same subject contained provisions conflicting with those of the multilateral convention, the States parties to that agreement were free to apply the rules agreed by them therein. Such a provision would greatly impair the value of the multilateral convention and would not advance the progressive development of international law. A State which had signed the multilateral convention should not be permitted to enter into agreements at variance with its provisions without first denouncing the convention. To that extent, the exercise of a signatory State's sovereign rights should be limited by the convention. Such an approach would, moreover, represent a retrograde step. The rules of consular law were at present scattered in customary international law, in provisions of municipal law and in a large number of consular conventions; Article 13, paragraph 1 (*a*), of the Charter called for the codification and the progressive development of international law, and States should not be encouraged to disregard the provisions of a multilateral convention codifying international law in order to apply instead the provisions of particular consular conventions.

6. The fact that a provision similar to article 71 had been included in article 24 of the 1928 Havana Convention regarding Consular Agents [2] and in article 25 of the 1958 Geneva Convention on the Territorial Sea,[3] did not seem to his delegation a sufficient reason for including such a provision in the multilateral convention on consular relations, the object of which was to achieve harmony in consular practice. That purpose would be defeated if particular arrangements were allowed to override the provisions of the multilateral convention.

7. The multilateral convention would be mainly of interest to the countries of Asia and Africa. The American countries had concluded the 1928 Havana Convention; the European countries had entered into a large number of bilateral consular conventions, and the Legal Committee of the Council of Europe was considering the question of consular relations. It would be unsatisfactory to give the impression that the American and European States were going to be left free to apply their own particular agreements, and that only the Asian and African States would be bound by the multilateral convention formulated by the present conference.

8. The second approach was to declare that the multilateral convention did not affect existing international instruments, but that parties to it should refrain in the future from concluding conventions incompatible with its terms. That approach would also be inadequate, because it would favour the existing conventions concluded between American and European States, to the detriment of States in other continents.

9. The third approach was that adopted in Article 103 of the Charter, which provided that in the event of conflict between the obligations of Members of the United Nations under the Charter and their obligations under any other agreement, their obligations under the Charter should prevail. If that approach were adopted for the multilateral convention on consular relations, its provisions would constitute a sort of overriding higher law — a system which would be open to criticism because, under international law, general multilateral agreements did not necessarily abrogate the provisions of particular existing conventions.

10. There remained the fourth approach, which was that adopted by his delegation in its amendment. As amended, article 71 would provide, first, that States were not precluded from concluding bilateral agreements confirming or supplementing or extending or amplifying the provisions of the multilateral convention; secondly, that States parties to the multilateral convention should review and revise existing bilateral agreements if necessary in so far as they were incompatible with the basic rules embodied in the multilateral convention.

11. Paragraph 1 of his delegation's proposal would make it clear that in the future, consular conventions could be concluded on matters of detail by the parties

[1] The separate amendments by the Netherlands (A/CONF.25/C.1/L.8), Austria (A/CONF.25/C.1/L.29) and Canada (A/CONF.25/C.1/L.136) had been withdrawn.

[2] League of Nations, *Treaty Series*, vol. CLV, 1934-1935, No. 3582, p. 301.

[3] *United Nations Conference of the Law of the Sea, Official Records*, vol. II (United Nations publication, Sales No. 58.V.4, vol. II), p. 135.

to the multilateral convention. That provision was in line with the system adopted by the Conference when dealing with a number of articles of the draft, such as article 70, in relation to which it had been agreed that States could adopt more liberal provisions than those of the multilateral convention. A new convention could supplement, extend or amplify the provisions of the multilateral convention, but it must not reverse those provisions.

12. The approach adopted in his amendment was more satisfactory than any of the other three. It would not serve any useful purpose to prepare a mere set of model rules on the subject of consular relations, as had been done on the subject of arbitration. It was undesirable to leave States free to contract out of the basic rules of international law laid down in order to rationalize and harmonize consular law.

13. Mr. CAMERON (United States of America) said that his delegation could not support the Indian amendment (L.155), paragraph 1 of which would seem to permit future agreements only in so far as they confirmed, supplemented, extended or amplified the provisions of the multilateral convention on consular relations. Bilateral agreements that derogated or varied from those provisions would accordingly seem to be forbidden. The multilateral convention would thus be laying down rules of consular law for an indefinite future — rules which would not be susceptible to change by agreement between two States. That would be going far beyond the intention of the International Law Commission, which had stated in paragraph 2 of its commentary that " The Commission hopes that the draft articles on consular relations will also provide a basis for any particular conventions on consular relations and immunities which States may see fit to conclude." It was clear from that commentary that in drafting article 71 the Commission had not intended to preclude particular conventions which, as between the States parties to them, derogated from the rules laid down in the draft articles. Because of the special relations between them, or their co-ordinated legislation on a certain subject, or for some other reason, two States might well desire to adopt for their own purposes a rule different from that embodied in the multilateral convention on consular relations. He saw no good reason to prevent them from doing so and therefore opposed paragraph 1 of the Indian amendment.

14. As to paragraph 2, its provisions were directly contrary to the Commission's intention and he could not support it. Article 71 had been drafted in such a manner as not to interfere with existing bilateral conventions.

15. His delegation urged the Committee to retain the system adopted by the International Law Commission and supported the joint amendment (L.154) which made the meaning of the article clear.

16. Mr. BARTOŠ (Yugoslavia) commended the Indian representative for his valuable analysis of the legal position.

17. He found the joint amendment surprising; its provisions appeared contrary to the whole idea of the codification of international law. If adopted, it would introduce into the multilateral convention the seeds of its own destruction. The joint amendment would in effect make the multilateral convention state explicitly that parties to it could enter into agreements at variance with its provisions. A State would thus be able to sign and ratify the multilateral convention, while remaining free not to comply with its provisions. Freedom of contract could not be carried to that extremity: States were only free to enter into agreements within the framework of the international order, which was based on the codification of international law. He could understand a system which left existing conventions unaffected, but not one which would enable parties to a general multilateral convention to disregard it and enter into bilateral conventions which conflicted with its provisions.

18. He fully supported the Indian amendment which laid down that any future agreements must be confined to confirming, supplementing, extending and amplifying the provisions of the multilateral convention. That approach was consistent with the purpose of codification of international law pursuant to Article 13, paragraph 1 (*a*), of the Charter. It would defeat the whole purpose of codification if the provisions of consular law, as codified in the multilateral convention, could be set aside by two States at any moment.

19. His delegation accordingly opposed the joint amendment, and unreservedly supported paragraph 1 of the Indian amendment. As to paragraph 2 of that amendment, his delegation viewed with sympathy the recommendation embodied in it, but felt that it would not be advisable to include such a recommendation in the multilateral convention.

20. Mr. de ERICE y O'SHEA (Spain) noted that the joint amendment supplemented the text of article 71 by introducing a reference to future agreements. That raised the old problem of the validity of conventions in international law. For his part he did not hesitate to affirm that a bilateral agreement could not nullify a multilateral convention. Two parties to a multilateral convention could not, for the purposes of a bilateral agreement between them, regard the multilateral convention as *res inter alios acta.*

21. His delegation could not support the proposition which appeared to be embodied in the letter — though not, he was sure, in the spirit — of the joint amendment. He was referring to the proposition that if one hundred and ten countries had signed a general multilateral convention, it was possible for two of them to set it aside. Such a proposition would be contrary to the principle of legal continuity and would be detrimental to the interests of the other one hundred and eight parties to the convention.

22. He did not believe that the joint amendment had been proposed in that spirit and he accordingly suggested adding, at the end, the words: " in so far as they do not conflict with the provisions of this convention while those States remain parties thereto ". That formulation would incorporate in the joint amendment the idea embodied in paragraph 1 of the Indian amendment. It

recognized the sovereign right of States to enter into bilateral agreements, provided that their terms did not conflict with the multilateral convention on consular relations.

23. His delegation could not support paragraph 2 of the Indian amendment, which it considered unnecessary. Upon the multilateral convention being signed and ratified by a country, its provisions would be incorporated into that country's municipal law. They would accordingly repeal all provisions of municipal law which conflicted with them. There could be no doubt that conventions on consular relations previously entered into by States parties to the multilateral convention and embodied by them in their municipal law would be superseded by the provisions of the multilateral convention. The only problem which could arise was that of an existing bilateral consular convention between a country which was a party to the multilateral convention and one which was not. The latter country would not, he thought, refuse to revise the bilateral convention in order to bring it into line with the general multilateral convention.

24. Mr. KRISHNA RAO (India) pointed out that in his introductory statement he had not advocated the approach adopted in Article 103 of the Charter.

25. Mr. MARAMBIO (Chile) said that both the amendments under discussion aimed at filling a gap in the text of article 71, which did not lay down any rule regarding the relationship between the proposed multilateral convention and future conventions or other international agreements between States parties to it.

26. The joint amendment adopted a flexible approach, whereas the Indian amendment limited the scope of future agreements to provisions which confirmed, supplemented, extended or amplified those of the multilateral convention. His delegation favoured paragraph 1 of the Indian amendment and shared the views put forward by the representative of Spain on that point. It could not support paragraph 2 of the Indian amendment, because it could have the effect of disturbing existing international agreements.

27. The Spanish proposal to introduce the idea of paragraph 1 of the Indian amendment into the joint amendment might well provide a satisfactory basis for a compromise solution acceptable to the majority of delegations.

28. Mr. LEE (Canada) urged the Committee to take a practical view of the existing state of international law. The Indian amendment endeavoured to attain an ideal goal, but was unfortunately entirely impracticable. All States should be free to decide whether or not they wished to enter into agreements of their own choice on consular relations. It was clear that the International Law Commission had not intended to inhibit the further development of international law. States should be free to enter into agreements which would grant either more or less than what was set out in the draft articles. It was only in that manner that future changes could be taken into account and that progress could reasonably be made.

29. It was essential to adopt the joint amendment in the interests of the universality of the convention on consular relations. Unless a provision on those lines was incorporated in the convention, many States would be unable to ratify it.

30. Mr. MARESCA (Italy) pointed out that the purpose of the multilateral convention on consular relations was to codify customary international law. The purpose of bilateral consular conventions was to improve customary international law by adjusting the often-conflicting interests of the receiving State and the sending State. Accordingly, the multilateral convention on consular relations should not prevent two States from entering into a particular agreement on questions of interest to themselves. His delegation supported the joint amendment, which would make it clear *ex abundante cautela* that the provisions of article 71 applied not only to existing agreements, but also to those that might be concluded in the future.

31. Paragraph 1 of the Indian amendment had the merit of making it clear that future consular conventions would serve the purpose of confirming, supplementing, extending or amplifying the provisions of the multilateral convention. He was opposed to the use of the adjective " bilateral " in that paragraph, however; there was no reason to exclude such regional multilateral agreements as the Havana Convention regarding Consular Agents.

32. His delegation could not support paragraph 2 of the Indian amendment and believed that every State should remain the sole judge of its interests regarding existing agreements. He accordingly asked that the two paragraphs of the Indian amendment should be put to the vote separately.

33. Mr. HEPPEL (United Kingdom) fully agreed with the representative of Canada. Room must be left for the progressive development of internatonal law. A flexible approach would also make it possible to accommodate the different points of view and practices which were bound to exist in regard to consular relations. He saw no reason why a multilateral convention on consular relations should in any way restrict States which were parties thereto from concluding bilateral or regional arrangements with different provisions. States might wish to make their particular provisions broader or, conversely, less onerous.

34. As an example, he cited the provisions of article 37 on the obligation of the receiving State to give certain information to the consulate of the sending State. There was no reason to prevent two States from waiving any of those provisions. If paragraph 1 of the Indian amendment were adopted, parties to the multilateral convention would be precluded from entering into bilateral or regional agreements other than for the purpose of confirming, supplementing, extending or amplifying the provisions of the multilateral convention. In fact, the States concerned might wish to waive one of the provisions of the multilateral convention or lay down lesser obligations.

35. He could not agree with the Indian representative that, if existing and future bilateral or regional conven-

tions were permitted to contain provisions different from those in the multilateral convention before the Conference, the only States bound by the multilateral convention would be the African and Asian States. The fact that two European or American States had a bilateral convention between them would not in any way affect their rights and obligations with regard to African or Asian States which were co-signatories with them of the multilateral convention.

36. If the proposed inflexible rule set out in paragraph 1 of the Indian amendment was introduced, it could well hinder the fruitful development of international law and night deter many States from ratifying the multilateral convention.

37. Furthermore, his delegation could not support paragraph 2 of the Indian amendment, which would place an unnecessary and burdensome obligation on States to review existing bilateral agreements.

38. His delegation supported the joint amendment, which provided a flexible framework that would not unduly restrict the freedom of the contracting parties.

39. Mr. ABDELMAGID (United Arab Republic) pointed out that, when signed and ratified, the multilateral convention on consular relations would become a law-making treaty [traité-loi] for the signatory States; its provisions would become part of the legal system of each contracting State.

40. As to the relationship between the multilateral convention and existing treaties, his delegation was satisfied with the text of article 71. As to the relationship with future agreements, it had been suggested, in support of the joint amendment, that the multilateral convention would be codifying customary international law and should therefore leave some scope to consular conventions. But the preamble to the multilateral convention would, like that of the 1961 Convention on Diplomatic Relations, affirm that the rules of customary international law should continue to govern matters not expressly regulated by the convention; that meant only those matters which were not covered by provisions in the multilateral convention.

41. Paragraph 1 of the Indian amendment would usefully supplement article 71, to which it could be added with suitable drafting changes. His delegation could not support paragraph 2 of that amendment, which seemed outside the scope of the articles under discussion. Perhaps it could be embodied in a separate optional protocol, in order to meet the wishes of certain delegations.

42. Mr. KIRCHSCHLAEGER (Austria) expressed surprise at the criticisms made against the joint amendment. It was a matter of common knowledge that many multilateral agreements left the way open for further agreements. For instance, the 1954 Hague Convention relating to civil procedure did not prevent the contracting parties from entering into additional agreements which differed from its provisions. Austria had, in fact, concluded additional agreements with other States parties to the 1954 Convention to serve particular needs. He saw no reason why that system, which had been adopted in a number of multilateral conventions, should not also be adopted in the convention on consular relations. It was all the more necessary since the multilateral convention would deal with many matters not exclusively concerned with consular relations and immunities. For example, article 47 dealt with social security exemption; but social security was the subject of many bilateral agreements and there was no reason to preclude States parties to the convention on consular relations from making special social security arrangements applicable to certain categories of consular service staff. States should be left free to make their own decisions concerning such special arrangements. The freedom of States to enter into special agreements did not affect the rights of other contracting States, which were protected by the provisions of article 70 (Non-discrimination).

43. Mr. BARTOŠ (Yugoslavia) said that, in invoking the progressive development of international law in favour of their amendment, the sponsors of the joint text were, in fact, speaking against it, and in favour of paragraph 1 of the Indian amendment. Article 70 had been cited in support of the argument that the validity of the Convention would not be affected, since any State was free to supplement its provisions by bilateral or regional conventions; that was clearly stated in paragraph 1 of the Indian amendment, but not in the joint amendment. The latter text contained no restrictions as to the content of future agreements, and thus permitted provisions contrary to the basic ideas on which the convention would rest. As the representative of the United Arab Republic had rightly pointed out, international law could be developed within the framework of the convention, but provisions contrary to those of the convention did not represent freedom of contract. That freedom was clearly expressed in paragraph 1 of the Indian amendment, but the joint amendment was based on the anachronistic idea that a State was sovereign in all its acts and was not limited by the rules of international law. Hence the joint amendment was contrary to the very principle of the codification of international law.

44. Mr. TSYBA (Ukrainian Soviet Socialist Republic) observed that the reference to future agreements in the joint amendment, which was the only respect in which it differed from the Commission's text, altered the whole meaning of the article and opened the way for complete disruption of the convention. The Conference's task of preparing an instrument to serve as a basis for future agreements would be vain if the principle of compliance with the convention were abandoned. It should be noted that the Netherlands member of the International Law Commission had argued against such a formula, drawing attention to its omission from the Conventions on the Law of the Sea. The Ukrainian delegation could not vote for the joint amendment.

45. Paragraphs 1 and 2 of the Indian amendment seemed to be somewhat contradictory, since paragraph 1 was concerned with supplementing the provisions of the Convention, while paragraph 2 proposed the revision of existing agreements to bring them into line with that instrument. He hoped that the Indian delegation

would take into account some of the statements made in the debate, particularly those of the representatives of Yugoslavia and the United Arab Republic.

46. Mr. RABASA (Mexico) observed that the Committee was faced with two alternatives; it could prepare either a multilateral convention which represented immutable and supreme international law, or a flexible instrument which, while establishing a multilateral system, would respect existing bilateral and multilateral agreements. His government's policy was to reserve the former treatment for such far-reaching international instruments as the United Nations Charter and the Charter of the Organization of American States, and to leave wider freedom of interpretation for other multilateral conventions.

47. The draft article clearly provided that agreements already in force should be respected, while in paragraph 2 of the commentary the Commission expressed the hope that the article would also provide a basis for any particular conventions on consular relations and immunities which States might see fit to conclude. The Mexican delegation believed that the system recommended by the Commission should be adhered to and that the joint amendment would serve to introduce into the text of the article itself what the Commission had meant in paragraph 2 of its commentary. He would therefore vote for that amendment.

48. Mr. N'DIAYE (Mali) agreed with the Yugoslav representative that the joint amendment should be rejected, because its adoption would run counter to the very principle of a universal convention. There seemed to be no purpose in drafting and signing a multilateral instrument which could at any moment be rendered ineffective by subsequent bilateral agreements.

49. On the other hand, paragraph 1 of the Indian amendment allowed for the development and improvement of the system through bilateral and other international agreements, and the Malian delegation would support that text. It could not vote for paragraph 2 of the Indian amendment, since the revision of existing agreements might give rise to unnecessary legal and practical complications. He agreed with the representative of the United Arab Republic that paragraph 1 of the Indian amendment should be added to the Commission's text of article 71.

50. Mr. BREWER (Liberia) supported paragraph 1 of the Indian amendment, which was consistent with the progressive development of international law. The task of the Conference was to codify consular law for the future, and the work of both the International Law Commission and the Conference would be nullified if the provisions of the convention could be set aside by the conclusion of subsequent agreements. The Commission had made a genuine attempt to take existing agreements into account, for it had realized that all the provisions of those agreements could not be included in the Convention. Nevertheless, the Commission's text referred only to existing agreements, and paragraph 1 of the Indian amendment improved it by adding a constructive proposal with regard to future agreements. Paragraph 2 of that amendment would lead to undue interference with existing agreements; the Liberian delegation could not support either that text or the joint amendment.

51. Mr. WESTRUP (Sweden) thought that the opponents of the joint amendment seemed to be basing their arguments on a false analogy with municipal law. For obvious reasons, individuals could not be allowed to conclude contracts which were incompatible with laws enacted by the legislature, which represented the majority of the people; but the case of two or more States which wished to conclude an agreement exceeding the scope of a universal convention could not be regarded as parallel. On the other hand, he was not sure whether the joint amendment in its present form provided sufficient guarantee against the conclusion of bilateral agreements which would affect the obligations of other States parties to the Convention. He would therefore abstain from voting on that amendment.

52. Mr. PETRŽELKA (Czechoslovakia) said he was convinced that the joint amendment was more restrictive than the Commission's text and that its adoption would be contrary to Article 13, paragraph 1 (*a*), of the Charter, which recommended Member States to encourage the progressive development of international law and its codification. Moreover, if, as the United Kingdom representative had indicated, the joint amendment applied to agreements which did not directly concern consular relations, it was entirely out of place in a convention on that subject. He would therefore vote against the joint amendment, but he agreed with the views expressed by the representatives of the Ukrainian Soviet Socialist Republic and the United Arab Republic concerning paragraph 1 of the Indian amendment.

53. Mr. DE CASTRO (Philippines) said his delegation preferred the International Law Commission's text to any of the amendments submitted, because it both preserved the validity of existing agreements and left States free to conclude agreements on consular relations in the future. If that text were adopted, the multilateral instrument would have the force of law in the absence of contrary provisions in bilateral agreements and where such agreements were silent it would constitute a supplementary rule. The joint amendment, on the other hand, gave States undue freedom to deviate from the basic provisions of the conventions. Those were the principles which would guide the Philippine delegation in voting on all the amendments.

54. Mr. EL KOHEN (Morocco) agreed with the Yugoslav and Malian representatives that there seemed to be no purpose in drafting a detailed convention which could be nullified by the provisions of subsequent bilateral or other agreements. Moreover, the Spanish representative had rightly pointed out that, in international law, multilateral conventions superseded bilateral agreements. The Spanish representative's oral proposal to add the words " in so far as they do not conflict with the provisions of this convention " might provide a way out of the Committee's dilemma. Perhaps the sponsors of the amendments and the delegations

which had made suggestions during the debate might meet to agree on a compromise text.

55. Mr. BOUZIRI (Tunisia) observed that ratification of an instrument, whether multilateral or bilateral, to some extent indicated that earlier obligations were superseded. The multilateral convention that the Conference was preparing would supersede existing agreements, but the subsequent conclusion of agreements containing contrary provisions would constitute tacit denunciation of the convention by the States concerned. Hence a State which ratified the convention could not enter into an agreement containing previsions incompatible with it. His delegation could not support the joint amendment, but would vote for paragraph 1 of the Indian amendment.

56. Mr. KRISHNA RAO (India) agreed that paragraph 1 of his delegation's amendment could be regarded as supplementary to the Commission's text. Since the consensus of opinion in the Committee seemed to be that paragraph 2 of that amendment was unduly idealistic, he thought that it might serve as the basis for a recommendation in the form of a resolution attached to the convention.

57. He asked that the debate be adjourned to enable him to confer with other representatives with a view to preparing a revised text of his amendment.

It was so agreed.

Proposed new article to be inserted between articles 5 and 6 (Refugees) (*continued*)

58. The CHAIRMAN recalled the Committee's decision at its 26th meeting to set up a sub-committee to reach a compromise solution on the joint proposal for a new article to be inserted between articles 5 and 6 (A/CONF.25/C.1/L.124/Rev.1). The draft resolution (A/CONF.25/C.1/L.160) now before the Committee was the result of that sub-committee's deliberations.

59. Mr. RAHMAN (Federation of Malaya), speaking as chairman of the sub-committee, commended the draft resolution to the Committee.

60. Mr. RUEGGER (Switzerland) said that his delegation had grave doubts about the advisability of adopting the draft resolution. In view of the breadth of the discussion in the Committee — which had strayed from the purely legal context — he wished to make his delegation's position quite clear at that juncture. He fully agreed with the view expressed by the representative of Ceylon during the debate, that it would have been well to avoid any division of opinion concerning a matter which had been discussed in other United Nations organs; but he could not agree with that representative's proposal that the matter should be referred to those organs. They had disposed of it after long deliberation, and to refer it back to them would be unnecessary. In his delegation's opinion, there were two over-riding considerations. First, human rights should be respected at all costs. Next, nothing should be done which, instead of contributing to the development of international law regarding humanitarian questions, might, even indirectly, cast a shadow of doubt on the progress made in that respect in other organs. The doubts which had been expressed during the debate might be used as support for a retrogression of the law regarding humanitarian questions, which was a living reality. It therefore seemed inadvisable to refer the matter back, as proposed in the resolution.

61. In particular, his delegation had not been convinced by the argument that the refugee problem would no longer exist when the Convention entered into force; it could not accept the pessimistic view that the entry into force of that instrument would be delayed for several years.

62. As a country which had given asylum to refugees for centuries past, Switzerland believed that the refugee problem would, unfortunately, always exist. Switzerland had given asylum to refugees who had subsequently played an outstanding part in politics — to give just a few examples, two presidents of the Republic of Poland and a name which belonged to history, that of Lenin. Switzerland would remain true to its traditions, which had become part of the customary law of the land.

63. In his delegation's opinion, it was deplorable to include in international instruments vague provisions which were open to a variety of interpretations. Despite its earnest wish to participate effectively in the codification of consular law, Switzerland would be obliged either to make a specific reservation on the refugee question or to seek other means of clarification on the matter. No provision of the convention should clash with those of other international instruments on behalf of refugees.

64. Mr. WESTRUP (Sweden) said that, as a co-sponsor of the proposed new article, his delegation had agreed without enthusiasm to the proposal for a compromise solution, for it had hoped that the proposal would be discussed in the same objective spirit as other articles. Nevertheless, the opponents of the new article had alleged that the Committee was being drawn into a political debate and had even appealed to the sponsors to withdraw it. The Swedish delegation was grateful to the sub-committee for its efforts, but it did not find the compromise solution satisfactory from a legal point of view, since the draft resolution in effect said absolutely nothing and could not replace a clear rule based on a humanitarian principle.

65. His delegation wished to state formally, first, that it interpreted the draft resolution to mean that the problem which the High Commissioner for Refugees had brough before the Conference had not been solved; secondly, that the convention would suffer from a serious omission; and thirdly, that the Swedish Government would maintain its freedom to act according to its own principles in the matter of contact between refugees and consuls of the sending State.

66. Mr. HEPPEL (United Kingdom) recommended the Committee to adopt the draft resolution. His delegation had from the first been anxious to approach the drafting of the Convention in a spirit of co-operation. Hence, although the proposed new article had been given widespread support in the debate, his delegation, which had served on the sub-committee at the Chairman's request, believed that the compromise solution achieved

would give general satisfaction. The main point of the draft resolution was that the Conference had decided not to take any decision on the question, but to transmit all documents and records pertaining to the discussion to the appropriate organs of the United Nations. Accordingly, any issue that might arise between two States in connexion with the refugee question would be settled without reference to the convention, and in whatever manner and in accordance with whatever principles those States would have adopted prior to the convention. That solution was the best that could be found to reconcile the conflicting positions taken during the debate.

67. Mr. DADZIE (Ghana) congratulated the sub-committee on its useful work, and said he would support the draft resolution.

68. Mr. KEVIN (Australia) observed that the draft resolution merely meant that all States would maintain their positions on the matter. It seemed a pity, however, to narrow the context of the problem, which was not limited by time.

69. Mr. EL-SABAH EL-SALEM (Kuwait) welcomed the draft resolution, which clearly showed that there was no difference between the basic motives of the members of the Committee. The refugee problem was of great concern to all States, as the humanitarian arguments advanced during the debate had amply proved. Many delegations had, however, doubted whether the convention was the proper place to express their support of refugees, particularly as the question had been raised unexpectedly and they had had no instructions on the subject from their governments.

70. Mr. AVILOV (Union of Soviet Socialist Republics) thanked the members of the sub-committee for the spirit of co-operation and goodwill they had shown in helping to break a deadlock which had threatened the harmonious progress of the Committee's work. The solution proposed took account of the impossibility of settling, in three or four meetings of a technical conference, a complex problem which specialized organs of the United Nations had failed to solve after years of work.

The draft resolution (A/CONF.25/C.1/L.160) was approved by 61 votes to none, with 6 abstentions.

71. Mr. RUDA (Argentina), explaining his delegation's vote on the joint draft resolution, said that he had voted for it without, however, abandoning the idea of the nine-power proposal (L.124/Rev.1) for a new article. His vote was in keeping with Argentina's traditional policy of supporting conciliatory moves in international relations.

72. Mr. TSHIMBALANGA (Congo, Leopoldville), explaining his vote on the draft resolution, said that his country was deeply concerned over the refugee question for two reasons. First, the tragic situation of refugees all over the world could leave no one indifferent; not only material and moral aid, but assistance with a view to repatriation should be extended to all those unfortunate people. Secondly, the Congo (Leopoldville) had given, and was still giving, shelter to thousands of refugees, to mention only those from Angola and Rwanda. His delegation had been surprised that the political aspects of the refugee question had been raised at a purely technical conference and regretted that the debate had taken the unfortunate, though usual, form of a difference of opinion between two blocs.

The meeting rose at 1.10 p.m.

TWENTY-EIGHTH MEETING

Monday, 25 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*)

New article to be inserted after article 67 (Optional character of the institution of consular agents who are not heads of post)

1. The CHAIRMAN invited debate on the new article which Switzerland proposed should be inserted after article 67 (A/CONF.25/C.1/L.102/Rev.1).

2. Mr. REBSAMEN (Switzerland) said that article 9 of the International Law Commission's draft mentioned four classes of heads of consular post, including consular agents. Some countries had consular agents who conducted consular agencies but who had not been appointed by the sending State as heads of consular posts. The future convention made no provision for that class, and it was to fill in that gap that Switzerland had submitted the draft of a new article leaving each State free to decide whether it would establish or admit consular agencies conducted by that class of consular agents, whose privileges and immunities would be determined by agreement between the sending State and the receiving State. The system had proved successful and should be provided for in a convention. It was not merely a matter affecting the codification of international law; it was also a question of equity.

3. Mr. de MENTHON (France) agreed with the Swiss representative. France did not regard its many consular agents throughout the world as heads of posts. A consular agent was appointed as such by the head of post under whose superintendence he was placed. He had no consular district and performed whatever consular functions were delegated to him. He was either a national of the sending State living in the town in which the agency was situated, or a national of the receiving State resident in the town; or also he could be a national of a third State, who, in most cases, carried on a gainful occupation.

4. The consular agent's status corresponded to that of honorary consuls or vice-consuls of foreign countries in France. Other countries had a different system, and there was nothing in article 9 to prevent consular agents who were not heads of post from conducting consular agencies. Accordingly, the manner in which consular