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and the United States (A/CONF.25/C.2/L.123/Rev.1) in conjunction with the amendment by Belgium, Portugal and Spain (A/CONF.25/C.1/L.164).

The amendments were adopted by 52 votes to 4, with 4 abstentions.

80. The CHAIRMAN said that in consequence of that decision the amendment by the Netherlands (A/CONF.25/C.2/L.19) would not be put to the vote. The drafting committee would be instructed to prepare the optional protocol on acquisition of nationality.

The meeting rose at 12.55 p.m.

THIRTY-SECOND MEETING

Thursday, 28 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 53 (Beginning and end of consular privileges and immunities)

1. The CHAIRMAN invited the Committee to consider article 53 and the amendments to it.¹

2. Mr. CAMERON (United States of America) introduced his delegation's amendment (A/CONF.25/C.2/L.9) to paragraph 4 of article 53, calling for the deletion from that paragraph of the words "his personal inviolability and". He said that the meaning of personal inviolability was not clear in the context of paragraph 4. Quoting from the corresponding provision in the Vienna Convention of 1961 (article 39, paragraph 2, last sentence), he noted that it contained no such phrase. Paragraph 4 of article 53 should conform to the 1961 Convention in that regard.

3. Mr. HEPPEL (United Kingdom) withdrew the first of his delegation's amendments (A/CONF.25/C.2/L.137) to article 53. The purpose of the second amendment was to provide that members of the family of a consular official and the members of his private staff should not be eligible for the benefit of privileges and immunities before the consular official himself had become entitled to them as otherwise an absurd situation would arise. The United Kingdom delegation would vote for the United States amendment, but against the Japanese amendment, for it thought that the words which Japan proposed to delete from paragraph 2 should be retained. The United Kingdom delegation considered the Cambodian amendment inadvisable, for it introduced the question of the nationality of the members of the family of a consular official, a point which ought to be dealt with in article 69.

¹ The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.9; Japan, A/CONF.25/C.2/L.87; Cambodia, A/CONF.25/C.2/L.128; United Kingdom, A/CONF.25/C.2/L.137; Greece, A/CONF.25/C.2/L.162/Rev.1; South Africa, A/CONF.25/C.1/L.165.

4. Mr. PLANG (Cambodia) said that the sole purpose of his delegation's amendment (A/CONF.25/C.2/L.128) was to specify that the provisions of paragraph 2 were not applicable to persons who were locally recruited.

5. Mr. DONOWAKI (Japan) said that the purpose of his delegation's amendment (A/CONF.25/C.2/L.87) was to exclude the members of a consular official's private staff from consular privileges and immunities; but since article 48 granted them exemption from dues and taxes on the wages which they received for their services, the Japanese delegation would not press its amendment. It could not vote for the Cambodian amendment, for which article 53 was not the right context.

6. Mr. PAPAS (Greece) said that one could not speak of privileges and immunities in connexion with the members of the family of a member of a consulate, but only of advantages granted to those persons. That also applied to the private staff. The third of the Greek delegation's amendments (A/CONF.25/C.2/L.162/Rev.1), which might be referred to the drafting committee, made that point clear. The second of these amendments was designed to delete words which did not fit into the structure of the convention.

7. Mr. ENDEMANN (South Africa), introducing his delegation's amendment (A/CONF.25/C.1/L.165) to paragraph 3 of article 53, said that it dealt with the case where persons referred to in paragraph 2, having ceased to be members of the household or in the service of a member of a consulate, remained for some time longer in the territory of the receiving State. In that case they would continue to enjoy their privileges and immunities until their departure. In other respects, article 53, as amended by the United States proposal, seemed satisfactory, and the South African delegation would therefore vote against the other amendments.

8. Mr. MARESCA (Italy) said that it was important to note that a member of a diplomatic mission or of a consulate acquired his status from the fact of his admission. Hence, in order that the head of a consular post or a member of a consulate should be able to act in his official capacity, he must have been admitted, definitively or provisionally, on entering the territory of the receiving State. The Italian delegation would therefore have been ready to support the first of the United Kingdom's amendments; it regretted that the United Kingdom delegation had withdrawn that part of its proposal, which the Italian delegation wished to resubmit in its own name.

9. Mr. ALVARADO GARAICOA (Ecuador) said that he supported the Italian representative's views.

10. Mr. BOUZIRI (Tunisia) agreed with the Italian representative that it would be anomalous if a potential consul, on arriving in the receiving State, should be able to enjoy consular privileges and immunities before being admitted by the receiving State. He gathered that the Italian delegation, in resubmitting the first of the United Kingdom's amendments in its own name, intended to retain only the phrase specifying as the time as from which consular privileges and immunities should

be enjoyed the date of the admission or provisional admission of the member of the consulate.

11. The idea underlying the South African amendment was sound and the Tunisian delegation would vote for it as it aptly supplemented article 53. It would also vote for the United States amendment and the Greek amendment, and for the second of the United Kingdom's amendments; but it was unable to support the Cambodian amendment which it thought inexpedient.

12. Mr. USTOR (Hungary) disagreed with the Italian representative. Paragraph 1 of article 53 should be read in the context of the draft convention as a whole, and in particular in the light of articles 19 and 23 as adopted by the Committee. The situation envisaged by the Italian representative could therefore not arise. In any case, the amendment withdrawn by the United Kingdom and resubmitted by Italy was in contradiction with other provisions of the draft convention, and the Hungarian delegation would consequently vote against it. It would also vote against the United States and Greek amendments as it thought that the words it was proposed to delete should be retained.

13. Mr. DONATO (Lebanon) supported the United States and South African amendments, for the reasons already given by previous speakers. With regard to the first of the United Kingdom's amendments, now sponsored by Italy, he suggested that it could be retained if the words "in his recognized official capacity" [ès qualités admises] were inserted.

14. Mr. MARESCA (Italy) said that the remarks by the Tunisian and Hungarian representatives had been very pertinent. He thought that, while it went without saying that a consul could not enjoy consular privileges and immunities before being definitively or provisionally admitted by the receiving State, it would be better to say so. He had no objection to the Lebanese suggestion.

15. Mr. de MENTHON (France) said that the suggestions of the Italian, Tunisian and Lebanese representatives were very interesting. He was prepared to vote for the first of the United Kingdom's amendments now resubmitted by Italy, as modified in accordance with those suggestions.

16. Mr. DE CASTRO (Philippines) said he preferred the International Law Commission's original text. The objection raised by the Italian representative would be pertinent only in very exceptional cases. Any abuse would have very serious consequences. Moreover, there was normally little delay between the time when a duly appointed consular official crossed the frontier and the time when he took up his post. On the other hand, there might be some delay before the receiving State granted him definitive or provisional admission. With regard to paragraph 2, he was unable to support the Greek amendment; but the United Kingdom amendment to paragraph 2 seemed entirely acceptable. He could accept the South African amendment to paragraph 3 and the United States and Greek amendments to paragraph 4.

17. Mr. MARESCA (Italy), speaking on a point of order, said that his amendment related solely to that

part of the United Kingdom amendment under which the date of entry would be replaced by the date of definitive or provisional admission. He wished to re-submit only the words "from the date of his admission or provisional admission by the receiving State".

18. Mr. MOLITOR (Luxembourg) said he was grateful to the Italian delegation for having resubmitted the first of the United Kingdom's amendments. It was right that a consular official should not be entitled to consular privileges and immunities before the receiving State had given its consent. Provision should also be made for the case in which the consul was already in the territory of the receiving State — for instance, an honorary consul who was a national of the receiving State. It would be unreasonable to provide that such persons were entitled to consular privileges and immunities even before the sending State had given its consent. His delegation would therefore support the Italian amendment to paragraph 1 and the United Kingdom amendment to paragraph 2.

19. Mr. TSHIMBALANGA (Congo, Leopoldville) said he had been largely won over to the views of the Italian representative. Nevertheless, he wished to point out that draft article 53 was based on article 39 of the Vienna Convention on Diplomatic Relations; if the relevant phrase in article 53 were deleted, it would be difficult to justify its presence in the 1961 Convention. In his view, it would be better to retain it, out of respect for the Convention and in the interests of harmony.

20. Mr. RUDA (Argentina) agreed. So far as the other proposals were concerned, he supported the amendments submitted by the United States and South Africa.

21. Mr. MARAMBIO (Chile) said that he was unable to support the amendments before the Committee. Paragraph 1 of article 53 should be left as it stood and should be judged in the light of the draft as a whole. Difficulties would arise if the amendments were adopted; for instance, a consular official would not be entitled to customs exemption on his arrival in the territory of the receiving State. Furthermore, article 53 was modelled on article 39 of the Convention on Diplomatic Relations.

22. Mr. SILVEIRA-BARRIOS (Venezuela) expressed his support for the Italian and United States amendments. As he understood it, the text of article 53 would be brought into harmony with the other articles. Privileges and immunities could not be restricted to the senior personnel of the consulate.

23. Mr. PLANG (Cambodia) withdrew his delegation's amendment.

24. Mr. DONATO (Lebanon) said that, having listened to the comments of the Italian representative, he supported the substance of the first United Kingdom amendment. Nevertheless, to facilitate the Committee's work, he was willing to accept the International Law Commission's draft, with the possible addition of the words "in his recognized official capacity" [ès qualités admises].

25. Mr. BOUZIRI (Tunisia) requested that the International Law Commission's text should be voted on in parts.

26. Mr. TORROBA (Spain) said that the Spanish version of the United Kingdom amendment differed from the English and French versions.

27. Mr. SILVEIRA-BARRIOS (Venezuela) said that, while he would have voted for the original United Kingdom amendment, he failed to understand the Italian proposal.

28. Mr. WESTRUP (Sweden) said he would vote for the International Law Commission's draft. Admittedly, there was a risk of fraud and abuse but likewise — and in that respect the risk was greater and more general — the arrival of the notification might be delayed. It was essential that the consul should be properly received at the frontier. He thought there was an incipient tendency in the Committee to complicate the draft text in order to provide against all possible risks. The International Law Commission had certainly weighed them all. The Swedish delegation would not subscribe to that tendency.

29. Mr. USTOR (Hungary) suggested that under rule 42 of the rules of procedure the order of the voting might perhaps be reversed, so that the International Law Commission's draft of article 53 would be voted on first. That would have the advantage, if the article was adopted, of avoiding all the difficulties raised by the amendments.

30. Mr. AVILOV (Union of Soviet Socialist Republics) said he still thought that article 53 as drafted by the International Law Commission was more logical and more complete than any that might result from the various amendments submitted. The Hungarian suggestion was therefore attractive, especially as apparently no serious objection had been raised concerning the substance of article 53. It would also have the advantage of sparing the First Committee the procedural difficulties which had arisen in the Second Committee.

31. The CHAIRMAN said that it was not possible to treat article 53 and the relevant amendments as separate proposals under rule 42 of the rules of procedure. The appropriate rule would be rule 41.

32. Mr. USTOR (Hungary) said that, to save time, the Committee might consider voting on the principle of article 53.

33. Mr. KRISHNA RAO (India) pointed out that article 53 contained various principles. It would be unwise to leave it entirely to the drafting committee to draw up a final text on the basis of the principles adopted.

34. The CHAIRMAN agreed, and put to the vote the amendment submitted by Italy, reproducing the first United Kingdom's amendment (A/CONF.25/C.2/L.137) as orally sub-amended by the representative of Lebanon.

The amendment was rejected by 33 votes to 12, with 20 abstentions.

The third Greek amendment (A/CONF.25/C.2/L.162/Rev.1) was rejected by 48 votes to 2, with 12 abstentions.

The first Greek amendment (A/CONF.25/C.2/L.162/Rev.1) was rejected by 45 votes to 1, with 15 abstentions.

The second United Kingdom amendment (A/CONF.25/C.2/L.137) was adopted by 29 votes to 25, with 8 abstentions.

The South African amendment (A/CONF.25/C.1/L.165) was adopted by 22 votes to 20, with 17 abstentions.

The United States amendment (A/CONF.25/C.2/L.9) and the second Greek amendment (A/CONF.25/C.2/L.162/Rev.1) were adopted by 34 votes to 19, with 10 abstentions.

Article 53 as a whole, as amended, was adopted by 49 votes to none, with 15 abstentions.

Article 55 (Respect for the laws and regulations of the receiving State)

35. The CHAIRMAN invited discussion of article 55, the only amendment to which (A/CONF.25/C.2/L.187) had been submitted by Spain.

36. Mr. de ERICE y O'SEA (Spain) said that the object of his delegation's amendment was to extend the scope of article 55 in order that it would cover all the premises at the consulate's disposal in the same town.

37. In reply to Mr. BARTOŠ (Yugoslavia), he said that his amendment did not affect the first sentence in paragraph 3.

38. Mr. KEVIN (Australia) said that paragraph 3 of article 55 was unnecessary if the meaning of the expression "consular premises" was to be defined elsewhere, which seemed to be the case.

39. Mr. AVILOV (Union of Soviet Socialist Republics) said that paragraph 3 was indispensable as an explanatory provision, but he failed to see in what way the Spanish amendment differed from the International Law Commission's draft.

40. Mr. HEPPEL (United Kingdom) said that the Spanish amendment added some useful particulars. He agreed, however, with the representative of Australia that paragraph 3 of article 55 was perhaps not indispensable if the expression "consular premises" was defined elsewhere in the convention.

41. Mr. KRISHNA RAO (India) likewise agreed with the Australian representative: a definition of "consular premises" should normally be given in article 1. If, however, paragraph 3 was retained, he thought there would be no need for the Spanish amendment.

The Spanish amendment (A/CONF.25/C.2/L.187) was adopted by 31 votes to none, with 28 abstentions.

Article 55, as amended, was adopted unanimously.

The meeting rose at 5.25 p.m.