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33rd meeting of the First Committee

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THIRTY-THIRD MEETING

Friday, 29 March 1963, at 10.45 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 54 (Obligations of third States)

1. The CHAIRMAN drew attention to the amendments submitted to article 54.¹

2. Mr. WARNOCK (Ireland), introducing the joint amendment (L.174), pointed out that the provision in the Commission's draft of paragraph 1 that members of the family of a consular official should be granted personal inviolability and other immunities when accompanying him or travelling separately to join him or to return to their country would in practice cover such cases as the journeys of the official's children to and from school, and any holidays they might take on the way. Moreover, the third State might be called upon to accord personal inviolability and other immunities to such persons when they were travelling to and from countries with which it had no diplomatic or consular relations. The Belgian and Irish delegations considered that the provision could impose an intolerable burden on a third State in those circumstances, and they had therefore proposed to reduce the facilities to those specified in their amendment. They had also limited the scope of the provision to consular officials and members of their families, in the belief that the obligation of third States should be less onerous in the case of consular officials than in that of diplomatic agents.

3. Mr. SRESHTHAPUTRA (Thailand) said that his delegation had submitted its proposal (L.68) for the addition of the word "official" before the word "correspondence" in paragraph 3, because under paragraph 1 of article 35 (Freedom of communication), which had already been adopted by the Second Committee, the receiving State was obliged to permit and protect the passage of correspondence of the consulate for official purposes only. Moreover, under paragraph 2 of the same article only the official correspondence of the consulate was immune. Under the corresponding provision (article 40, paragraph 3) of the Vienna Convention on Diplomatic Relations the third State was under the obligation to permit and protect official correspondence only. The obligation in article 54, paragraph 3, and in article 65 should be brought into line with those other provisions. In order to expedite proceedings he would have no objection if the Committee should consider it appropriate to refer his delegation's amendment to the drafting committee.

¹ The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.10; Thailand, A/CONF.25/C.2/L.68; Japan, A/CONF.25/C.2/L.88; United Kingdom, A/CONF.25/C.2/L.138; Poland, A/CONF.25/C.2/L.141; Belgium and Ireland, A/CONF.25/C.2/L.174.

4. Mr. CAMERON (United States of America) withdrew part 2 of his delegation's amendment (L.10) in favour of the United Kingdom amendment (L.138). The purpose of his delegation's remaining amendment was not to reduce the immunities of a consular official under the provisions of the convention, but merely to clarify paragraph 1. The Commission's wording of the last clause of the first sentence of paragraph 1 might be interpreted as an obligation to grant the consular official immunities in excess of those accorded to him in the receiving State under the convention. The United States delegation had therefore specified that the immunities concerned were those "provided for by the other articles of this convention"; it believed that the phrase fully covered personal inviolability within the limits laid down in article 41.

5. Mr. FUJIYAMA (Japan) said that his delegation wished to delete the last part of its amendment (L.88) to paragraph 3, in the light of the Second Committee's decision to retain the reference to the consular courier in article 35, paragraph 5. The International Law Commission had drafted paragraphs 1 and 2 of article 54 on the same lines as article 40 of the Vienna Convention on Diplomatic Relations, but the Japanese delegation did not believe that consular officials should be accorded the same facilities as diplomatic agents when travelling through third States. The extension of such privileges and immunities to consular officials was not a firmly established principle of international law and was not even widely accepted in international practice. In particular, to grant personal inviolability to such officials and members of their families was going much too far. His delegation had submitted its amendment to paragraph 3 in order to bring the provision into line with article 40, paragraph 3, of the Convention on Diplomatic Relations.

6. Mr. HEPPEL (United Kingdom) said that the purpose of his delegation's amendments (L.138) to paragraph 3 was to establish that the standard for the treatment of consular officials in third States was the standard which the receiving State was bound to accord under the convention. There might not seem to be much difference between the words "as are accorded by the receiving State" and the words proposed by his delegation, but in practice the freedom and protection which the receiving State was bound to accord under the Convention would be more easily ascertainable. Similarly, the addition of the words "under this convention" at the end of the second sentence would further clarify the Commission's text.

7. Mr. KESSLER (Poland) said that at the end of the phrase "or making other official journeys" proposed in its amendment (L.141), his delegation wished to add the words "to the sending State". The purpose of the amendment was to fill a slight gap in the Commission's text. Article 54 as it stood set out the obligations of the third State only in cases where a consular official passed through its territory or was in its territory while proceeding to take up or return to his post or when returning to his own country. The Polish amendment also covered cases in which the consular official

was travelling home on official duty; it assumed, of course, that "returning to his own country" meant returning on termination of his functions.

8. Mr. PAPAS (Greece) drew attention to paragraphs 3 and 4 of the commentary on article 39 of the draft articles on diplomatic intercourse and immunities, which referred to the question whether a member of the diplomatic mission who was in the territory of a third State had the right to avail himself of the privileges and immunities to which he was entitled in the receiving State.² The Commission had noted that opinions differed and that practice provided no clear guide, and had felt that it should adopt an intermediate position. It had proposed that the diplomatic agent should be accorded inviolability and such other privileges and immunities as might be required to ensure his transit or return. In the case of diplomatic agents, therefore, it might be said that, while there was no established rule to codify, a rule was in process of formation.

9. That did not apply, however, to the situation of consular officials who passed through or were in the territory of a third State. The International Law Commission mentioned no such rule in the commentary on article 54, which thus exceeded the boundaries of even the most liberal codification. Moreover, the article might raise practical difficulties, since third States could not be expected to know the status of all persons passing through their territories. For those reasons, the Greek delegation would support the Belgian and Irish amendment and the Japanese amendment.

10. Mr. de ERICE y O'SHEA (Spain) said that his delegation could not support the addition which the Polish delegation had made to its own amendment. The original text of that amendment covered all official journeys — not only journeys to the sending State, but also those that a consular official might make to other countries in the course of his duties. He therefore requested that the original Polish amendment and the subsequent addition to it should be voted on separately.

11. He could support the United States amendment, but suggested that the word "such" should be replaced by the words "all the", so as to cover the whole convention.

12. The United Kingdom amendment was extremely important and strengthened the entire legal basis of the convention. It was important to stress that the receiving State was bound by the convention to accord freedom and protection of correspondence. The addition proposed by the United Kingdom delegation at the end of paragraph 3 raised no substantive point and could be referred to the drafting committee.

13. The Spanish delegation could not vote in favour of the first Japanese amendment, because the provision that the third State should not hinder transit through its territory was negative and restrictive. The second Japanese amendment, which coincided with the Thai amendment, was also restrictive and also had no practical value: once the envelope containing the corre-

spondence was sealed, the third State had no means of knowing whether the contents were official or private. The Japanese and Thai delegations might perhaps see fit to withdraw the amendment in order to expedite the Committee's work.

14. The phrase "all the necessary facilities" in the Belgian and Irish amendment was so vague that it might lead to confusion. It should be borne in mind that the convention would be applied mainly by minor local authorities, and provisions relating to privileges and immunities must be stated as clearly as possible.

15. Mr. de MENTHON (France) said he would vote for the joint Belgian and Irish amendment, but would have no objection to the introduction of the original Polish amendment into that text. If the joint amendment were rejected, the French delegation would vote for the United States amendment to paragraph 1 and for the United Kingdom amendment to paragraph 3. The Japanese and Thai proposal to insert the word "official" before "correspondence" in the first sentence of paragraph 3 was unnecessary, since the point was covered by the reference to "other official communications". He could not support the Japanese amendment to paragraphs 1 and 2, for the reasons given by the Spanish representative.

16. Mr. ALVARADO GARAICOA (Ecuador) agreed with the United States representative that the word "immunities" covered personal inviolability; he could therefore vote for the United States amendment. He also agreed with the Spanish representative that the addition which the Polish delegation had made to its amendment was undesirable; immunities should extend to all official journeys.

17. Mr. PRATT (Israel) said that his delegation was satisfied with the second sentence of paragraph 3 concerning protection for consular couriers and bags. It should be borne in mind, however, that at its 14th meeting the Second Committee had adopted a special provision concerning consular couriers *ad hoc* in article 35. No distinction should be made between consular couriers and consular couriers *ad hoc* where protection in third States was concerned.

18. The CHAIRMAN said that, if paragraph 3 of article 54 were adopted, the drafting committee could take the Second Committee's decision into account.

19. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) said that, in his delegation's opinion, the International Law Commission had been quite right to provide that the third State should accord to consular officials and members of their families the personal inviolability and other immunities provided for by the convention. He could not vote for the United States amendment, since the omission of the reference to personal inviolability would narrow the scope of the article.

20. His delegation found the first Japanese amendment quite unacceptable; it changed the substance of paragraphs 1 and 2 by depriving consular officials of privileges and immunities and placing them on the same level as consular employees. Similar objections applied to the Belgian and Irish amendment, and his delegation would

² See *Yearbook of the International Law Commission, 1958*, vol. II (United Nations publication, Sales No. 58.V.1, vol. II), p. 103.

vote against it. The United Kingdom and Thailand amendments clarified the Commission's draft, and could be referred directly to the drafting committee. The Polish amendment, on the other hand, made good an omission in the Commission's draft, and the Byelorussian delegation would support it.

21. Mr. DE CASTRO (Philippines) said that, on the whole, his delegation preferred the Commission's draft to any of the amendments; he thought, however, that the original Polish amendment would provide for cases not covered by article 54.

22. Mr. DJOUDI (Algeria) said he would support the joint Belgian and Irish amendment because it clarified the text and fell within the general framework of the convention. He approved of the words "necessary facilities" which reflected a spirit of courtesy to consular officials who, juridically speaking, were connected only with the receiving State, which alone was bound to accord them the privileges and immunities expressly provided in the convention. Moreover, the amendment summarized the provisions of paragraph 2 of the commentary and included the idea expressed in the Polish amendment. He agreed with the French representative that the amendment submitted by Thailand was unnecessary.

23. Mr. CHIN (Republic of Korea) said he would support the United States amendment to paragraph 1 and the United Kingdom amendment to paragraph 3, which would both bring the article closer to international practice. He would also support the Polish amendment in its original form.

24. Mr. KOCMAN (Czechoslovakia) considered that the obligations of third States in regard to personal inviolability should be similar to the obligations of the receiving State. Article 40 of the Convention on Diplomatic Relations was in conformity with the practice of the majority of States and also with the spirit of the convention under discussion. The exercise of consular relations would be impaired if third States did not accord consular officials the immunities and facilities provided for in the Commission's draft. His delegation could therefore not support the United States, Japanese or joint amendments, which were contrary to those principles, but it would vote for the Polish and United Kingdom amendments.

25. Mr. HEPPEL (United Kingdom) supported the United States amendment to paragraph 1. The proposed change of wording was very necessary, since the provisions of that paragraph covered a wide range of persons whose privileges and immunities varied considerably. For example, the provisions of article 41 on personal inviolability did not apply to members of the family of a consular official; hence the wording of paragraph 1 as it stood might be misleading. He also supported the proposal to introduce the word "official" before the word "correspondence" in paragraph 3, though the idea was already implied in the text. His delegation could not support the first Japanese amendment, however, which appeared to reduce the status of heads of consular post unnecessarily, while they were in transit through

a third State. In particular, the purely negative expression "shall not hinder the transit" was not strong enough.

26. As to the joint amendment submitted by Belgium and Ireland, his delegation appreciated its intention, but found the wording less satisfactory than that of paragraphs 1 and 2 of the International Law Commission's draft. The amendment made no provision at all for consular employees and their families. Furthermore, the expression "passing through or in the territory of a third State" was much too wide; it would include persons remaining in a third State for some time.

27. The situation envisaged in the Polish amendment was, he thought, already covered by the words "returning to his own country", which did not necessarily imply final return on completion of a mission. He could accept the addition of the words "to the sending State", because official journeys by consuls to third countries were rare and did not justify the only special provision in the convention.

28. Mr. CRISTESCU (Romania) opposed the amendments of the United States and Japan and the joint amendment submitted by Belgium and Ireland, because they would reduce the immunities of consular officials in third States and thereby create difficulties for the performance of consular functions. He strongly supported the draft of article 54, as clarified by the Polish amendment.

29. Mr. FUJIYAMA (Japan) said that in order to expedite the work of the Committee he would withdraw his amendment in favour of that submitted by Belgium and Ireland, on condition that the sponsors amended their text to cover consular employees too, as suggested by the United Kingdom representative.

30. The CHAIRMAN said that the sponsors of the joint amendment had agreed to do so.

31. Mr. DADZIE (Ghana) agreed with the Spanish representative in supporting the original text of the Polish amendment, the United States amendment with the substitution of the words "all the" for "such", and the United Kingdom amendment. He was opposed to the joint amendment by Belgium and Ireland.

32. Mr. SRESHTHAPUTRA (Thailand), replying to the representative of Spain, said that he was unable to agree with the reasons advanced by that representative in support of his idea that the correspondence of a non-official nature of the consulate should also receive protection under the article, for the consular privileges and immunities derived from consular functions. With regard to the argument of the Spanish representative that it would be difficult to see from the outside which correspondence of the consulate was official and which was not, he said that the difficulty could be overcome easily if the consulate would co-operate by putting a rubber stamp indicating the official nature of the correspondence in question. Moreover, he could not agree that diplomats used private correspondence less than consuls. He therefore asked that a vote be taken on his delegation's proposal for inserting the word "official".

As to the other amendments to the article, he said that his delegation would support the amendment to paragraph 1 submitted by the United States and the amendment to paragraph 3 submitted by the United Kingdom.

33. Mr. PAPAS (Greece), while supporting the joint amendment, said that it would have been preferable to specify in the text that consular officials must be treated with all the respect due to their official status.

34. Mr. CAMERON (United States of America) accepted the Spanish suggestion that the words "such immunities" in his amendment should be replaced by the words "all immunities". The purpose of his amendment was to make it clear that all immunities, including inviolability where applicable, must be granted to the persons concerned while in transit. The wording of paragraph 1 as it stood could be construed as granting inviolability under the terms of article 54 itself.

35. Mr. DEGEFU (Ethiopia) supported the United States and Polish amendments with the changes suggested by the Spanish representative. He was not in favour of the United Kingdom amendment to paragraph 3 and preferred the original draft of that paragraph.

36. His delegation found the joint amendment acceptable in principle, provided that the amendments submitted by the United States and Poland were incorporated in it. If the joint amendment were not adopted in that form, his delegation would support the retention of article 54 as drafted by the International Law Commission.

37. Mr. BREWER (Liberia) said that he was in favour of introducing the word "official" before the word "correspondence" in paragraph 3. His delegation would vote against the United States amendment; it had voted against a somewhat similar proposal to delete a reference to personal inviolability from article 53. He was opposed to the Polish amendment, because the question of special missions was still under study by the International Law Commission.

38. Mr. SASRADIPOERA (Indonesia) favoured the Commission's draft of article 54, subject only to the Polish amendment.

39. Mr. HERNDL (Austria) noted that reference had been made to the presence of consular officials at the conference as members of delegations, in support of the proposal to include the words "or making other official journeys" in paragraph 1. Under the agreement between the United Nations and the Federal Government of Austria on arrangements for the Vienna Conference on Consular Relations, the Austrian Government accorded to representatives attending the Conference the same privileges and immunities as were accorded to representatives to the International Atomic Energy Agency under the Headquarters Agreement between the Republic of Austria and the IAEA. Members of delegations thus enjoyed those privileges and immunities in their capacity as representatives at the Conference, regardless of whether they were consular officers or not.

40. The CHAIRMAN thanked the Austrian representative for his explanation and said that all represen-

tatives were very well satisfied with all the courtesies and privileges extended to them by the Austrian Government.

41. Mr. WESTRUP (Sweden) said that, as a matter of principle, once the contracting parties to the future convention on consular relations agreed to grant certain privileges as receiving States, they should grant the same privileges as transit States. It had been pointed out by the representative of Greece that the provisions of article 54 went beyond mere codification of existing international law. The Conference had been convened, however, not only to codify international law but also to contribute to its progressive development. Generally speaking, his delegation preferred the International Law Commission's draft, with the useful amendments proposed by the United Kingdom and Poland.

42. Mr. TSHIMBALANGA (Congo, Leopoldville) emphasized the fact that the newly independent States needed provisions of the broadest possible character, which provided a flexible framework for their development. His delegation would support the amendments which improved the text, such as those submitted by the United States of America and the United Kingdom and would oppose, or abstain from voting on, the others.

43. Mr. LEE (Canada) pointed out that the question of special missions would be considered by the International Law Commission at its next session. Attendance at Conferences would be covered by the provisions which the Commission would adopt on *ad hoc* diplomacy. As to other official journeys by consuls, the Commission might perhaps have to consider the question of *ad hoc* consular activities at some future time. His delegation accordingly considered it wiser not to take a decision on the Spanish proposal relating to the original Polish amendment, but to leave the matter to the International Law Commission.

44. The CHAIRMAN put to the vote the joint amendment submitted by Belgium and Ireland, the opening words of which had been altered to read: "If consular officials and employees or members of their families . . ."

The joint amendment (A/CONF/C.2/L.174), as so amended, was rejected by 35 votes to 15, with 13 abstentions.

45. The CHAIRMAN said that as requested by the Spanish representative, he would put to the vote the original Polish amendment adding the words "or making other officials journeys" in paragraph 1.

The amendment (A/CONF.25/C.2/L.141) was adopted by 41 votes to 10, with 11 abstentions.

46. Mr. KESSLER (Poland) said that he would not press for a vote on the words "to the sending State" which he had added to his original amendment.

47. The CHAIRMAN put to the vote the United States amendment to paragraph 1 as amended by its sponsor, the words "such immunities" being replaced by "all immunities".

The United States amendment (A/CONF.25/C.2/L.10) to paragraph 1, as so amended, was adopted by 34 votes to 16, with 12 abstentions.

The United Kingdom amendment to paragraph 3 (A/CONF.25/C.2/L.138) was adopted by 53 votes to 1, with 12 abstentions.

The amendment by Thailand to paragraph 3 (A/CONF.25/C.2/L.68) was adopted by 24 votes to 19, with 21 abstentions.

48. The CHAIRMAN noted that the adoption of the amendment submitted by Thailand covered paragraph 2 of the Japanese amendment (A/CONF.25/C.2/L.88) and invited the Committee to vote on article 54 as a whole, as amended.

Article 54, as amended, was adopted as a whole by 59 votes to none, with 7 abstentions.

49. Mr. DADZIE (Ghana) explained that he had voted in favour of the United States amendment to paragraph 1 although he had doubts about the proposed wording, the meaning of which seemed to be conveyed by the original draft of the article. He suggested that the matter should be referred to the drafting committee.

50. Mr. CAMERON (United States of America) said that he had pressed for a vote on his amendment because he believed that the change of wording was necessary. As he was a member of the drafting committee he would, however, be glad to examine the matter.

51. Mr. BARTOŠ (Yugoslavia) explained that he had voted for article 54 as a whole because it retained, in substance, the system adopted by the International Law Commission, even though he did not approve of some of the amendments made.

52. Mr. ABDELMAGID (United Arab Republic) said that his delegation had abstained from voting on article 54 as a whole.

The meeting rose at 12.55 p.m.

THIRTY-FOURTH MEETING

Wednesday, 3 April 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

Tribute to the memory of Mr. Quinim Pholsena, Minister for Foreign Affairs of Laos

On the proposal of the Chairman, the Committee observed a minute of silence in tribute to the memory of Mr. Quinim Pholsena, Minister for Foreign Affairs of Laos.

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

Article 1 (Definitions)

1. The CHAIRMAN announced that, at the 4th plenary meeting, it had been decided, on the recommendation of the General Committee, that the text

of article 1 prepared by the drafting committee (A/CONF.25/C.1/L.166) should be referred to the First Committee.

2. Mr. WESTRUP (Sweden) said that his delegation had received instructions from the Swedish Government to make a formal statement relating to a number of the draft articles. It had been decided to deliver that statement in connexion with the article containing the definitions.

3. The expression "members of their family", generally qualified by the phrase "forming part of their households" was used in certain articles of the draft. Except for the general statement in paragraph 3 of the commentary on article 48 (Exemption from taxation), the Commission had made no attempt to give any definition of that expression, although the French phrase "faisant partie de leur ménage" used in the 1961 Convention had now been replaced by the words "vivant à leur foyer", which were perhaps a little more specific.

4. During the 1961 Conference, at the 6th meeting of the Committee of the Whole, the United States delegation had tried to introduce a sub-paragraph defining members of the family as the wife and minor or otherwise dependent children of the person concerned and any other dependants who might be classed as members of the family by special agreement. When that proposal had been withdrawn, the Swedish delegation had carried on the endeavour to get some kind of definition adopted. The reason for its insistence had been that Swedish tax laws limited exemption to diplomatic agents, their wives and their children below a specified age. The Swedish delegation's proposals had been opposed by an overwhelming majority, however, and it had not pressed them.

5. The Swedish delegation to the present conference had been informed that its government could relax that somewhat rigid attitude and would be able to accept the international obligations in question. He wished to make it perfectly clear, however, that neither the 1961 Convention nor the draft before the Conference contained any definition of members of the families of consular staff which could in any way prevent States from deciding for themselves what privileges and immunities they considered equitable for the persons concerned. It was true that the last paragraph of the preamble adopted by the First Committee stated that the rules of customary international law should continue to govern matters not expressly regulated by the provisions of the convention, but that clause was not applicable, since the discussions in the International Law Commission and at both the Vienna Conferences led to the conclusion that there were no rules of customary international law on the matter in question.¹ The Commission itself had not claimed that the expression "forming part of their households" was an objective criterion; the status of the persons concerned was not defined by that expression, since there was no limit to the number of persons who could form part of a large household.

¹ For a discussion of this question, see the summary record of the 613th meeting of the International Law Commission, paras. 56 to 93.