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75. The CHAIRMAN put to the vote the Indian amendment (A/CONF.25/C.1/L.36), as orally amended by the Spanish representative.

The amendment was rejected by 37 votes to 23, with 14 abstentions.

Paragraph 2 of article 2 was adopted.

76. The CHAIRMAN invited the Committee to consider article 2, paragraph 3.

77. Mr. de ERICE y O'SHEA (Spain), introducing his delegation's amendment (L.22), said that its purpose was to establish a distinction between the "severance" of diplomatic relations and their "interruption or suspension". In his delegation's opinion, a violent breaking off of diplomatic relations implied the severance of consular relations also, whereas interruption or suspension of diplomatic relations meant that the work of the diplomatic mission ceased without actual severance of relations and without obligation on the part of either of the States concerned to give a reason for such cessation. The Spanish delegation believed that actual severance of relations called for a formal and solemn declaration and entailed cessation of consular functions as well as diplomatic functions. In other words, "severance" was too strong a word to use in cases where some kind of relations were to be maintained.

78. Mr. D'ESTEFANO PISANI (Cuba) said he could not agree with the Spanish representative. The amendment would entirely change the meaning of the paragraph.

79. Mr. BARTOŠ (Yugoslavia) observed that the term "severance" precisely conveyed the meaning of breaking off diplomatic relations in the legal sense. Perhaps the Spanish representative had meant to use the expression "severance and interruption".

80. Mr. WESTRUP (Sweden) agreed with the Yugoslav representative. The Spanish amendment as it had been explained would fundamentally alter the meaning of the article and was therefore unacceptable to the Swedish delegation.

81. Mr. DADZIE (Ghana) said that the word "severance" conveyed precisely the correct meaning in the English text; it included interruption and suspension of relations until they were resumed. Moreover, the words "*ipso facto*" had been chosen with great care, to show that consular relations would continue automatically after severance of diplomatic relations, unless the contrary intention was expressed. He could not support the Spanish amendment.

82. Mr. CAMARA (Guinea) observed that the Spanish amendment would add nothing to the text of paragraph 3, since, in the French text at least, the words "interruption ou suspension" conveyed the same meaning as "rupture". Moreover, if the severance of diplomatic relations did not *ipso facto* involve the severance of consular relations, suspension of diplomatic relations would obviously not involve suspension of consular relations.

83. Mr. RUEGGER (Switzerland) considered that the Law Commission's text should be retained. Severance of diplomatic relations was a recognized act of public

international law; the practical aim must be to protect individuals as far as possible, in the event of severance — and not only of interruption or suspension — of diplomatic relations. Furthermore, it was stated in paragraph 6 of the commentary on article 2 that paragraph 3 laid down a generally accepted rule of international law. It would be wise to respect as far as possible a text which had been discussed by eminent jurists for over eight years.

84. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) agreed that the Spanish amendment was unacceptable. The meaning of the word "severance" was perfectly clear from the very context of paragraph 3.

85. Mr. de ERICE y O'SHEA (Spain) regretted that the majority of representatives seemed to have misunderstood the purport of his delegation's amendment; in view of the consensus of opinion in the Committee, he withdrew it.

Article 2 was adopted, subject to the drafting committee's decision on the amendment submitted by the United Arab Republic (A/CONF.25/C.1/L.9).

The meeting rose at 6.15 p.m.

FOURTH MEETING

Thursday, 7 March 1963, at 10.35 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 3 (Exercise of consular functions)

1. The CHAIRMAN invited the comments of the members of the Committee on the amendments to article 3 of the International Law Commission's draft.¹

2. Mr. ABDELMAGID (United Arab Republic) said that his delegation's amendment (L.10) to article 3 was an amendment of form; he agreed that it should be referred to the drafting committee.

3. Mr. de ERICE y O'SHEA (Spain) explained that the purpose of the Spanish amendment (L.24) to article 3 was merely that the scope of the reference to article 68 should extend to the whole convention. As that might be regarded as purely an amendment of form, his delegation would agree to its being referred to the drafting committee.

4. The United States amendment (L.40) clarified the wording of the article. Consular functions were in fact exercised by consular officials, not by consulates. On the other hand, the Italian amendment (L.41) seemed unnecessary, since it had been established that the

¹ The following amendments had been submitted: United Arab Republic, A/CONF.25/C.1/L.10; Spain, A/CONF.25/C.1/L.24; United States of America, A/CONF.25/C.1/L.40; Italy, A/CONF.25/C.1/L.41; Japan, A/CONF.25/C.1/L.46.

exercise of consular functions was in fact dependent upon the consent of the receiving State.

5. Mr. BARUNI (Libya) supported the United States amendment (L. 40), which was in conformity with the definitions in article 1.

6. Mr. CRISTESCU (Romania) said that he was in favour of article 3 as worded in the International Law Commission's draft. The United States amendment (L.40) indeed ran counter to present-day developments in international law, according to which functions were exercised by bodies and not by individuals. The Romanian delegation would therefore vote against the United States amendment. It would likewise vote against the Spanish amendment (L.24), which would reduce the part played by consulates. Lastly, and for the same reason, it would vote against the Italian amendment (L.41).

7. Mr. WU (China) said that the first sentence of article 3 was redundant and the second was unnecessary. If, however, it was absolutely necessary to retain the substance of the article, then its proper place was in article 5. The Chinese delegation would support the United States amendment (L.40) as well as the Italian amendment (L.41) with the proviso that the latter was more applicable to article 68.

8. Mr. KESSLER (Poland) said that he had studied all the amendments to article 3 and was convinced that it would be better to retain the wording of the draft. The Polish delegation deplored the great number of amendments to the International Law Commission's draft, which ought to be treated with greater respect.

9. Mr. FUJIYAMA (Japan) pointed out that his delegation had proposed (L.46) the deletion of article 3 for the reasons so ably explained by the representative of China. The second sentence of the article alone had a certain degree of importance, but the consideration involved had already been dealt with in article 68.

10. Mr. TSYBA (Ukrainian Soviet Socialist Republic) stated that his delegation could not accept the Italian amendment (L.41), which had already been rejected by the International Law Commission. Nor was the United States amendment acceptable to the Ukrainian delegation, since it ran counter to what had been established by the Vienna Convention on Diplomatic Relations. The amendment (L.24) submitted by Spain recognized a very widespread usage, and might be referred to the drafting committee.

11. Mr. MAMELI (Italy) explained that the Italian delegation had submitted its amendment to article 3 because article 68 on the exercise of consular functions by diplomatic missions made no mention of the consent of the receiving State, and that gap would have to be filled.

12. Mr. BARTOŠ (Yugoslavia) stressed the need to retain the International Law Commission's draft as far as possible. Admittedly, it could be improved upon; but it should not be completely rewritten from start to finish. At first glance, the United States amendment (L.40) appeared to be an amendment of form, but in

fact it touched the very basis of the system, and raised a point that had been debated exhaustively in the International Law Commission. The Commission had finally decided in favour of the conception that the functions should be exercised by bodies and not by individuals, and it was on that conception that the entire system of consular relations was based.

13. It would be dangerous to delete article 3 as proposed by Japan. The Italian amendment (L.41) was of a restrictive nature; that was not justifiable, since article 3 referred to article 68, which set no limits to the exercise of consular functions by a diplomatic mission.

14. The Spanish amendment (L.24) might of course be referred to the drafting committee, but the question of substance would have to be decided first, because the drafting committee was not competent to do so.

15. Mr. DOHERTY (Sierra Leone) thought there was no need to substitute the words "consular officials" for the word "consulates" as proposed in the United States amendment, as consular functions were not exercised by individuals, but by bodies. The delegation of Sierra Leone would therefore vote against the United States amendment.

16. Mr. CAMERON (United States of America) said that if the Japanese amendment (L.46) were put to the vote, his delegation would vote in favour of it. If, however, article 3 were to be retained, the United States delegation proposed that it should be modified as in the United States amendment (L.40), which affected only the first sentence. Furthermore, to bring the wording of the article into line, the United States delegation saw no objection to substituting the words "members of diplomatic mission" for the words "diplomatic missions" in the second sentence of the article. Lastly, the United States delegation would support the amendments submitted by Spain (L.24) and Italy (L.41).

17. Mr. DADZIE (Ghana) said that the amendment of the United Arab Republic improved the text of article 3; his delegation would therefore support it. The United States amendment clearly introduced an inconsistency between the first and second sentences of the article. The United States representative had made a constructive proposal on that point which the Ghanaian delegation would study, but on which it reserved its position for the time being. The value of the Italian amendment was not very clear since the establishment of consular relations was only possible with the mutual consent of the States concerned. The Ghanaian delegation could not approve the Japanese amendment.

18. Mr. de MENTHON (France) expressed his appreciation of the work of the International Law Commission, but thought that the text of article 3, as adopted by the Commission, called for comment. Despite the arguments of the Yugoslav representative it was hard to see why the consent of the receiving State, expressly required under article 4 for the establishment of a consulate in its territory, should not be required for establishing a consular section in a diplomatic mission, which was current practice. It was true that article 3, paragraph 2, of the Vienna Convention on Diplomatic Relations

specified that nothing in that convention should be construed as preventing the performance of consular functions by a diplomatic mission; but it did not follow from that that a consular section could be established by a diplomatic mission without the consent of the receiving State. The French delegation was therefore in favour of the amendment submitted by Italy (L.41), which only filled a gap. The French delegation felt more hesitant about the United States amendment for that involved changing a basic text which amplified article 2 by specifying the two means by which consular relations were conducted. The French delegation therefore adhered to the existing text of article 3 as amended by the Italian proposal and recast in accordance with the drafting amendment submitted by Spain.

19. Mr. D'ESTEFANO PISANO (Cuba) said that he was in favour of the existing text of article 3, which was the fruit of the excellent work done by the International Law Commission.

20. Mr. MARTINS (Portugal) thought that article 3 was essential to the structure of the draft, as it specified the organs which could exercise consular functions. The Spanish amendment would clarify article 3 by widening the scope of the reference to the relevant provisions. The Portuguese delegation would therefore vote for article 3 as amended by the Spanish proposal.

21. Mr. ENDEMANN (South Africa) supported the Spanish amendment which, without making any change in substance, better expressed the intention of the International Law Commission. The South African delegation would also support the United States amendment; many consular functions in fact involved activities which could only be carried out by consular officials. On the other hand, it could not support the Italian amendment.

22. Mr. CAMARA (Guinea) opposed the Japanese amendment calling for the deletion of article 3. That article was essential, for it stated by whom consular functions could be exercised. While it understood the intentions of the United States delegation in submitting its amendment, the delegation of Guinea felt that the convention under discussion should be modelled, in that respect, on the 1961 Convention, which spoke of the functions exercised by diplomatic missions. The delegation of Guinea would therefore be obliged to vote against the United States amendment.

23. The amendment submitted by Italy seemed hardly necessary. The obligation to obtain the consent of the receiving State when establishing consular relations was already laid down in articles 2 and 4 and there was no need to repeat it in article 3. The delegation of Guinea would therefore vote against the Italian amendment. It was, however, prepared to vote for the Spanish amendment (L.24) if its author would agree to delete the word "also". That proposal constituted a formal sub-amendment submitted by the Guinean delegation.

24. Mr. EL-SABAH EL-SALEM (Kuwait) said that the real purpose of article 3 was to confirm a development of international law which was tending to combine diplomatic and consular functions in a single mission. Hence the insertion of the second sentence of

article 3 in a convention on consular relations would, in his opinion, be a most important advance in the codification of international relations. Not to adopt the article would be a retrograde step. It established the existence of a suppletory rule recognizing the right of diplomatic missions to exercise consular functions, unless otherwise provided. He therefore considered that the substance of article 3 should be retained in one form or another. The wording was perhaps not sufficiently clear and the formula proposed by the United Arab Republic would be an improvement; the delegation of Kuwait was therefore prepared to support that proposal.

25. Mr. DAVOUDI (Iran) said he could support the Spanish amendment, which would remove certain inconsistencies.

26. Mr. NEJJARI (Morocco) said that for reasons which had already been explained by other representatives, and more particularly because the provisions of article 3 took account of the situation of certain countries whose means were limited, he would support the retention of article 3 with the amendment proposed by Italy.

27. Mr. SILVEIRA-BARRIOS (Venezuela) pointed out that under the municipal law of Venezuela one and the same person could not combine diplomatic and consular functions. The Venezuelan delegation would therefore vote against article 3 in its existing form and would be obliged to formulate reservations if it were adopted. The case might be different if the Italian and Spanish amendments were accepted.

28. Mr. ANIONWU (Nigeria) stressed the importance of conventions such as that which the Committee was endeavouring to draft for, once adopted, they might serve as a basis on which countries could draw up their municipal law on consular relations. In instruments of that sort, there were often repetitions which sometimes made it easier to interpret the text. The Nigerian representative saw no objection to the repetition in article 3 of what had already been said elsewhere. There seemed no need for any addition to the draft text, and the Nigerian delegation therefore did not support the Italian amendment. It was inclined to favour the United States amendment but was reluctant to take up a definite position until article 1, containing the definition of "consular official", had been studied.

29. Mr. CASAS-MANRIQUE (Colombia) supported the adoption of article 3 in the International Law Commission's text with the Spanish amendment which, by deleting the reference to article 68, had the advantage of avoiding difficulties of interpretation.

30. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said that he would be in favour of the Spanish amendment provided that the beginning of the second sentence of article 3: "They are also exercised by diplomatic missions . . ." was retained as drafted. He further formally proposed the deletion of the word "may" which seemed to impose a restriction on the activities of diplomatic missions. If that double modification were adopted, the text would read: "They are also

exercised by diplomatic missions in accordance with the provisions of the present convention.”

31. Mr. PALIERAKIS (Greece) said that to avoid any errors of interpretation it would be better not to reject the Italian amendment. As article 68 did not mention the consent of the receiving State and referred to articles 5, 7, 36, 37 and 39, but not to article 4, one might be led to conclude that consent of the receiving State was not necessary. The addition proposed by Italy seemed therefore indispensable.

32. Mr. DONATO (Lebanon) said he thought it valuable to retain article 3. He was not entirely opposed to the United States amendment and felt that the amendment submitted by the United Arab Republic would unquestionably improve the text. But the Spanish amendment seemed best of all as it did not refer to article 68, but to the convention as a whole. His delegation would therefore vote for the Spanish amendment.

33. Mr. HEPPEL (United Kingdom) endorsed the remarks of the Greek and Lebanese representatives. In his opinion, the Italian amendment was indispensable as it brought out a point which was not sufficiently clearly expressed in the text. With regard to the United States amendment, he recalled that the definition of “consular official” contained in article 1 had not yet been adopted. He would like the expression “consular official” to be replaced in the English text by some other term.

34. Subject to any improvements in form which the drafting committee might introduce, his delegation favoured the formula according to which consular functions were exercised by consular officials and members of diplomatic missions.

35. In conclusion he said that he was prepared to support all the amendments mentioned except that of the United Arab Republic, which had already been sent to the drafting committee.

36. Miss ROESAD (Indonesia) supported the retention of article 3 as drafted. Consulates were the organs normally entrusted with the exercise of consular functions. But if a country lacked the financial means, it could entrust those functions to a single mission fulfilling diplomatic functions at the same time. The Indonesian delegation would therefore vote against the Japanese amendment and also against the United States amendment, which would not improve the text.

37. Mr. WESTRUP (Sweden) said that he shared the opinion expressed by the Swiss representative, that great care should be exercised in modifying the text worked out by the International Law Commission, and he had been deeply impressed by the logical statement of the French representative. The difficulty in connexion with article 3 was to find some way of preventing a State from sending an embassy secretary on a consular mission to a town where, he feared, the receiving State might refuse authorization to set up a consulate. He was therefore inclined to support the Italian amendment.

38. Mr. KONZHUKOV (Union of Soviet Socialist Republics) expressed the opinion that the text of article 3 should be retained as drafted by the International Law

Commission, as the rules stated therein conformed to a generally admitted practice according to which diplomatic missions could exercise consular functions. The Soviet delegation would vote against the Japanese amendment to delete article 3 and against the amendments contained in document L.41. It would support the Ukrainian sub-amendment to the Spanish amendment.

39. Mr. N'DIAYE (Mali) said that article 3 was needed in the Convention, and there could accordingly be no question of supporting the Japanese amendment. Neither could he accept the United States amendment, for the reasons which had been given by the Yugoslav representative. The Italian amendment was superfluous. He favoured retaining the first part of the Spanish amendment while deleting the word “also”, which seemed pointless. The existing text should be voted together with the amendment which the Guinean representative had proposed to bring it into line with the 1961 Vienna Convention on Diplomatic Relations.

40. Mr. RUDA (Argentina) expressed his support of the International Law Commission's text. He would, however, support the United States amendment, while drawing the attention of representatives to sub-paragraph (d) of article 1. He was also inclined to support the Spanish amendment.

41. Mr. RABASA (Mexico) supported the amendment to the title in Spanish of section I of chapter I proposed by the representative of Spain.

42. With regard to article 3, he hoped that the text prepared by the International Law Commission would be retained. It was indeed a question of an axiom, but it was sometimes necessary to enunciate axioms to avoid upsetting the structure of a juridical text. He would therefore vote in favour of that text and of the Spanish amendment in which there was no reason for deleting the word “may” as desired by the Ukrainian representative. On the other hand, the word “convenio” in the Spanish text of that amendment should be replaced by the word “convención”.

43. Mr. PETRŽELKA (Czechoslovakia) thought that article 3 was a fundamental article of the Convention which it was essential to retain. He would therefore vote against the Japanese amendment.

44. So far as the United States amendment was concerned, he considered that the draft as a whole was based on the essential idea of the institution of the consulate. Consular officials were only individuals. Consulates had functions and duties which should not be performed by certain individuals only. Substitution of the words “consular officials” for the word “consulates” might affect the general idea of the draft. It was illogical to attribute to individuals functions pertaining to consulates. That would imply that there were as many consulates as consular officials, which would be an absurdity. Hence the Czechoslovak delegation could not accept the United States amendment.

45. He reminded the Committee that article 3, paragraph 2, of the Vienna Convention on Diplomatic Relations provided that “Nothing in the present convention

shall be construed as preventing the performance of consular functions by a diplomatic mission." But if the Italian amendment were adopted, every official performing consular functions would need a special authorization, which would be senseless.

46. With regard to the Spanish amendment, he shared the views of the representative of the Ukrainian Soviet Socialist Republic. He proposed that separate votes be taken on the two phrases "may also be exercised" and "in accordance with the provisions of the present convention". The Czechoslovak delegation would vote for the second phrase only.

47. Mr. FUJIYAMA (Japan) said that his delegation was not convinced by the arguments advanced in favour of retaining article 3; but in view of the opinion prevailing in the Committee, he would not insist on his amendment being put to the vote.

48. Mr. WARNOCK (Ireland) said he had no strong views on the matter. The purpose of the conference would be achieved if article 3 as drafted by the International Law Commission were retained; but he would gladly support the Italian and Spanish amendments, and was also in favour of the United States amendment.

49. Mr. CHIN (Republic of Korea) was in favour of adopting the text of the draft, with the United States amendment.

50. Mr. de ERICE y O'SHEA (Spain) said that he was prepared to support article 3 as drafted by the International Law Commission, merely substituting the words "in accordance with the present convention" for the words "in accordance with the provisions of article 68". Perhaps the Czechoslovak representative would then be able to withdraw his proposal for separate votes on the two parts of the sentence.

51. Mr. BREWER (Liberia) thought that the United States amendment would improve the wording of article 3. He was also in favour of the Spanish amendment.

52. Mr. RABASA (Mexico) insisted that the word "convención" be substituted for the word "convenio" in the Spanish text, to bring it into line with the other languages. He pointed out in addition that the word "convención" would appear in the title of the Convention.

53. Mr. de ERICE y O'SHEA (Spain) thought it would be better not to delete the word "also". That would bring the text into conformity with the International Law Commission's draft. The comment made by the representative of Mexico concerned the Spanish text only; the matter could be settled privately.

54. Mr. PALIERAKIS (Greece) proposed a sub-amendment to the United States amendment. He asked the United States representative if he would be willing to substitute the words "by diplomatic officials" for the words "by diplomatic missions" in the second sentence, so as to bring both parts of the article into line.

55. Mr. CAMERON (United States of America) said that, if the representative of Greece wished to make that proposal, he would gladly support it.

56. Mr. BOUZIRI (Tunisia) thought that article 3 as it stood was quite satisfactory, but that the Spanish amendment would improve it. He would therefore support that amendment as finally revised by the representative of Spain, retaining the word "also", which had its meaning and effect.

57. He did not quite understand the point of the United States amendment. If it was merely a matter of drafting, it should be referred to the drafting committee. If it affected the substance, he did not see that it served any useful purpose. He would therefore vote against it, and against the Italian amendment.

58. Mr. KRISHNA RAO (India) was opposed to the Greek sub-amendment, which was intended to interpret the 1961 Convention, because it was not possible to make changes, even indirectly, in the scope of a convention which had already been adopted and ratified — namely, the Vienna Convention on Diplomatic Relations, 1961.

59. Mr. USTOR (Hungary) warmly supported the representative of India. He thought that the Greek and United States amendments would destroy the harmony of article 3, as well as the harmony between the convention being drawn up and the Convention on Diplomatic Relations. The draft of article 3 as it stood seemed more in line with the Convention on Diplomatic Relations, and with international practice.

60. The CHAIRMAN put the amendments to the vote.

The Italian amendment (A/CONF.25/C.1/L.41) was rejected by 44 votes to 19, with 9 abstentions.

The United States amendment (A/CONF.25/C.1/L.40) was rejected by 40 votes to 19, with 13 abstentions.

The verbal sub-amendment submitted by Guinea, to delete the word "also" from the Spanish amendment (A/CONF.25/C.1/L.24) was rejected by 52 votes to 4, with 13 abstentions.

The Spanish amendment (A/CONF.25/C.1/L.24) was adopted by 57 votes to 5, with 6 abstentions.

Article 3, as amended, was adopted by 64 votes to 1, with 6 abstentions.

The meeting rose at 1.15 p.m.

FIFTH MEETING

Thursday, 7 March 1963, at 3.15 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 4 (Establishment of a consulate)

Paragraph 1

1. The CHAIRMAN announced that no amendments to paragraph 1 had been submitted; he therefore sug-