

# **United Nations Conference on Consular Relations**

Vienna, Austria  
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Document:-  
**A/CONF.25/C.1/SR.7**

**7<sup>th</sup> meeting of the First Committee**

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*Official Records of the United Nations Conference on Consular Relations, vol. I*  
*(Summary records of plenary meetings and of meetings of*  
*the First and Second Committees)*

42. The CHAIRMAN said he regarded that suggestion as a sub-amendment to the proposal by Mexico, Tunisia and Hungary.

43. Mr. GUNewardENE (Ceylon) said that he did not see any important difference between the two joint proposals. It seemed to him to be a matter of form of which the drafting committee would be the best judge. The same applied to the order of the articles. He requested therefore that both proposals should be sent to the drafting committee.

44. The CHAIRMAN said that, as it was a question of substance, he could not take up the suggestion of the representative of Ceylon.

45. Mr. SOLHEIM (Norway) said he would vote for the proposal by Hungary, Tunisia and Mexico without accepting the modification of the final phrase proposed by the United Kingdom.

46. Mr. RUDA (Argentina), speaking on a point of order, moved the closure of the debate under rule 26 of the rules of procedure.

47. The CHAIRMAN noted that no members desired to speak on the motion and put the closure of the debate to the vote.

*The motion to close the debate was adopted by 59 votes to nil, with one abstention.*

48. Mr. ABDELMAGID (United Arab Republic) said that, in order to facilitate the work of the Committee, his delegation withdrew its amendment.

49. The CHAIRMAN invited the Committee to vote on the joint proposal (A/CONF.25/C.1/L.68) from which the word "express" had been deleted.

50. Mr. RABASA (Mexico), speaking on a point of order, said that, under rule 41 of the rules of procedure, the proposal by Hungary, Mexico and Tunisia constituted an amendment to the original proposal (L.68) and should therefore be voted on first.

51. The CHAIRMAN said that he regarded the proposal of Hungary, Mexico and Tunisia as a separate proposal from that of the other countries which, as it had been submitted first, should be voted on first.

52. He put the joint proposal (A/CONF.25/C.1/L.68) to the vote.

*The proposal was adopted by 31 votes to 30, with 9 abstentions.*

53. The CHAIRMAN stated that, as the joint proposal L.68 had been adopted, there was no necessity to put the proposal of Hungary, Mexico and Tunisia to the vote.

The meeting rose at 1.15 p.m.

## SEVENTH MEETING

Friday, 8 March 1963, at 3.15 p.m.

Chairman: Mr. SILVEIRA-BARRIOS (Venezuela)

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

#### Article 5 (Consular functions)

1. The CHAIRMAN drew attention to the fact that, in the various stages of the work on the article dealing with consular functions, there had been a division of opinion, both among the members of the International Law Commission and among the governments, concerning the choice between a general definition and an enumerative definition.

2. For the final draft adopted at its thirteenth session, the International Law Commission had decided in favour of the non-exhaustive enumeration of consular functions set out in article 5 of the draft.

3. The Committee had before it no less than twenty amendments to article 5,<sup>1</sup> most of which related to the various sub-paragraphs of the enumerative definition. In order to facilitate the work, he proposed that the choice between a general definition and an enumeration be discussed first; if the Committee decided in favour of a general definition, many of the amendments submitted need not be discussed.

4. Mr. BARTOŠ (Yugoslavia) observed that, out of the twenty amendments submitted, only the joint amendment by Canada and the Netherlands (L.39) changed the whole system of article 5 by replacing the enumeration of consular functions by a general definition. The Austrian amendment (L.26) also replaced the whole of article 5 by a new text. It did not, however, depart from the system on which the International Law Commission's draft was based, but divided the various functions enumerated into two categories: general functions and specific functions.

5. The eighteen amendments which called for changes in the various sub-paragraphs of article 5 or the addition of new paragraphs raised some fifty different specific issues. The Committee was thus presented with a formidable task and it was necessary to consider the best method of work. He suggested that the Committee should begin by considering the general amendments to article 5. If, as he hoped, it decided in favour of a

<sup>1</sup> The following amendments had been submitted by the date of the meeting: Hungary, A/CONF.25/C.1/L.14; Ukrainian Soviet Socialist Republic, A/CONF.25/C.1/L.15; Switzerland, A/CONF.25/C.1/L.16; Venezuela, A/CONF.25/C.1/L.20; South Africa, A/CONF.25/C.1/L.25; Austria, A/CONF.25/C.1/L.26; France, A/CONF.25/C.1/L.32; Czechoslovakia, Hungary and Romania, A/CONF.25/C.1/L.33; Czechoslovakia, A/CONF.25/C.1/L.34; India, A/CONF.25/C.1/L.37; Cambodia, A/CONF.25/C.1/L.38; Canada and the Netherlands, A/CONF.25/C.1/L.39; Italy, A/CONF.25/C.1/L.43; Spain, A/CONF.25/C.1/L.45; Indonesia, A/CONF.25/C.1/L.51; Mexico, A/CONF.25/C.1/L.53; Japan, A/CONF.25/C.1/L.54; Australia, A/CONF.25/C.1/L.61; Norway, A/CONF.25/C.1/L.63; United States of America, A/CONF.25/C.1/L.69.

definition on the lines proposed by the International Law Commission, it could then deal with the detailed amendments, taking each sub-paragraph and the amendments thereto separately.

6. He suggested that a synoptic table of the detailed amendments should be prepared by the secretariat. In that connexion, he was glad to note the presence at the Conference, as an expert, of Mr. Žourek, the eminent special rapporteur on consular relations, who had served on the International Law Commission for so many years; the secretariat could draw upon his unrivalled experience in preparing the proposed table, which he believed would be of great assistance to the Committee in its work.

7. Mr. RUEGGER (Switzerland) paid a tribute to the valuable services rendered by Mr. Žourek over a number of years as special rapporteur of the International Law Commission on consular relations. His delegation had always thought that the Committee should avail itself of the presence of that eminent jurist to obtain information on the considerations which had led the International Law Commission to propose some formulae rather than others, and was convinced that Mr. Žourek would paint a full and objective picture of the views — the divergent views, perhaps — which had been put forward in the Commission.

8. Referring to the draft of article 5, he wished to stress the fact that it was the consistent policy of his delegation — a policy which Swiss delegations had followed at all previous conferences of plenipotentiaries on the codification of international law — not to submit any amendment to the texts so carefully prepared by the International Law Commission, unless an amendment was rendered desirable by some overriding interest.

9. His delegation had submitted an amendment to the opening sentence of article 5 (L.16); but as a result of the Committee's decision at the previous meeting to introduce a new article on the exercise of consular functions outside the consular district, the words "which must be exercised within the limits of the consular district," were redundant and had been deleted from that amendment. His delegation still believed that the proper place for the provision in question was article 5, but since the Committee had decided to embody it in a new article, he would naturally not press the point and would support the new article. The Swiss amendment was thus limited in effect to the insertion of the words "in so far as the law of the receiving State does not provide otherwise". The purpose of the Swiss amendment was to provide an essential saving clause which would make it unnecessary for the Committee to discuss a great many details.

10. The Swiss amendment was consistent with existing customary international law, which reserved the necessary right of the State. The fact that the receiving State could impose such restrictions did not mean, however, that it would not be useful to give an enumeration of consular functions in the future convention. Quite the reverse: such an enumeration would be extremely useful to States which had no consular regulations specifying consular functions.

11. Unless a clause on the lines proposed by his delegation were adopted, the Committee might be faced with difficulties in regard to many of the functions enumerated in article 5. For instance, in sub-paragraph (f) it was stated that a consul could act "as notary and civil registrar"; in fact, not all States allowed foreign consuls to exercise those functions and it would therefore be necessary to specify that they could only be exercised in so far as the law of the receiving State did not provide otherwise. Again, sub-paragraph (h) referred to safeguarding the interests of minors; there, too, it would be necessary to provide for respect of the law of the receiving State, for in some countries the law on the protection of minors did not provide for intervention on the part of foreign consular officials.

12. He emphasized the fact that, generally speaking, it was not the purpose of the Swiss amendment to encourage restrictive legislation on consular functions by the receiving State. Indeed, his delegation was only too anxious not to detract from existing international custom, both general and local, in regard to consular relations.

13. Mr. LEE (Canada) said that the suggestion put forward by the Yugoslav delegation would be acceptable to his delegation in the event of the Committee not deciding to adopt a general definition. However, his delegation, together with that of the Netherlands, had proposed (L.39) a general definition of consular functions to replace the detailed formulation set out in article 5.

14. A general definition of consular functions would be preferable to a detailed list, especially as all delegations would naturally have many suggestions to make regarding any detailed enumeration of functions. Such an exercise might well prove so time-consuming as to affect the successful conclusion of the conference. Moreover, the main purpose of the draft was to regulate the privileges and immunities of consular officials and not to describe the functions to be performed by them.

15. The joint amendment (L.39) drew a distinction between those general functions that were so universal and inherent in the consular position that they were not subject to the laws of the receiving State, and other functions that might be exercised by consuls. It was preferable for the main consular functions of protection of the rights and interests of the sending State and of its nationals to be stated as general principles of international law, not subject to the laws of the receiving State.

16. The purpose of the amendment was to promote development of the recognition of the basic functions of consular officials as general principles of international law and to ensure that they were not prevented from exercising their essential functions by restrictive national laws. However, because many of the other functions of a consul were closely linked with the relevant municipal laws of the receiving State, they should be declared generally subject to such laws; that was true, for example, of functions relating to minors, estates and service of judicial documents.

17. The object of paragraph 2 of the joint amendment was simply to make clear that the nationals of the sending State could not claim a right to consular protection by virtue of paragraph 1. The relations between the sending State and its nationals with regard to consular protection belonged exclusively to the competence of the sending State.

18. Mr. N'DIAYE (Mali) proposed that article 5 be amended by inserting the following words at the end of sub-paragraph (a): "and ensuring that the sending State and its nationals enjoy fully all the rights, prerogatives and advantages which the law and custom of the receiving State accord to aliens generally."<sup>2</sup>

19. Paragraph (a) as it stood specified the consular function of protecting in the receiving State the interests of the sending State and of its nationals. That function could be held to include that of ensuring that the sending State and its nationals enjoyed such rights as were granted to them by the law and custom of the receiving State. It was, however, preferable to include a specific provision on the subject, so as to rule out any interpretation which might be placed in doubt the right of a consul to take action to enable his nationals to exercise their legal rights.

20. In order to show that the words proposed were not superfluous, he cited the terms of a recent consular convention between France and Italy, which specified that consuls were empowered to protect their nationals and to safeguard their rights; the use of that wording indicated that the protection of nationals and the safeguarding of their rights had not been considered synonymous.

21. Mr. MARTINS (Portugal) said that he was in favour of retaining the text of article 5 as drafted by the International Law Commission; too many detailed amendments to that text might detract from its clarity.

22. Several of the amendments proposed were based on the idea of subordinating the exercise of consular functions to the consent of the receiving State. His delegation was opposed to those amendments. It would serve no useful purpose to specify in a multilateral convention the right of consuls to exercise certain functions, if that right could be nullified by the law of the receiving State. Article 5 was one of the most important in the draft.

23. Consular functions should be extended to include, as stated in paragraph 26 of the commentary to article 5, other functions not prohibited by the laws and regulations of the receiving State. Portuguese law was particularly liberal in the matter; it permitted foreign consuls to exercise all the functions specified in article 5, and many others as well.

24. His delegation would oppose all amendments to article 5, except those designed to enlarge the scope of consular functions, such as the amendments submitted by Spain (L.45) and Mexico (L.53).

<sup>2</sup> This amendment was subsequently circulated as document A/CONF.25/C.1/L.73.

25. Mr. KIRCHSCHLAEGER (Austria), introducing the Austrian amendment (L.26), said that it was intended to serve two purposes: first, to change the arrangement of article 5, and secondly to make some alterations and additions to the various sub-paragraphs. In accordance with the Chairman's proposal, he would deal only with the first aspect of his amendment at that stage.

26. The work on the article on consular functions had been marked by a division of opinion regarding the choice between a general definition and a detailed enumeration. The amendment submitted by Canada and the Netherlands (L.39) represented the general type of definition. The Austrian delegation felt, for its part, that that type of definition had a number of negative aspects. In the first place, the Conference was called upon, by virtue of article 13 of the United Nations Charter, to codify the international law of consular relations. It would not be performing that duty if it merely adopted a definition of consular functions which referred back to international law and to the laws of the receiving State. Moreover, the provisions of article 5 would have an effect on other provisions of the draft, in particular article 43, which provided for immunity of members of a consulate from the jurisdiction of the receiving State "in respect of acts performed in the exercise of consular functions". It was of the greatest importance to determine which were the consular functions to which such immunity applied. In particular, the courts of the receiving State should be able to ascertain those functions from an international convention. That was especially important in a country such as Austria, which had no internal legislation on consular functions. For those reasons, his delegation was opposed to the amendment submitted by Canada and the Netherlands (L.39).

27. Referring to the Austrian amendment (L.26), he pointed out that the various functions enumerated in sub-paragraphs (a) to (l) of article 5 were not all of the same character. An examination of the functions specified in sub-paragraphs (d) to (l) showed that they were only an implementation of those listed in sub-paragraphs (a), (b) and (c). His delegation had therefore proposed that the three main consular functions specified in sub-paragraphs (a), (b) and (c) of the draft should form paragraph 1 of article 5. That arrangement would be similar to the one adopted for diplomatic functions in article 3 of the 1961 Vienna Convention. A new paragraph 2 would then state that, in the exercise of those main functions, consular officials could, in particular, perform any of the acts listed in the other sub-paragraphs.

28. He urged the Committee to concentrate its discussion on the system to be adopted for article 5, in order to decide whether it wished to adopt a general definition as proposed by Canada and the Netherlands (L.39), the arrangement of the Austrian amendment (L.26), or that of the International Law Commission's draft.

29. Mr. KRISHNA RAO (India) pointed out that the text of article 5 drafted by the International Law Commission was a satisfactory compromise between two extreme views: that which would restrict the consular

functions specified to a bare minimum; and that which favoured an exhaustive enumeration of consular functions.

30. It was, in fact, difficult to enumerate consular functions exhaustively, since they were defined by international law, national laws and consular instructions. The International Law Commission had devoted no less than eleven meetings to the discussion of the matter and the present conference should not repeat that discussion. Any attempt to do so would unduly prolong its work.

31. His delegation considered that article 5 was eminently suitable for inclusion in a multilateral convention on consular relations. In the first place, it laid down a fairly objective rule of international law on consular functions, to serve as a framework within which the sending State could give general instructions to its consuls. It had the further advantage that the enumeration it contained was not exhaustive, and would therefore not have a restrictive effect. There was nothing to prevent the sending State from entrusting its consul with any other functions which could be exercised without breaking the law of the receiving State. Lastly, by virtue of article 71 of the draft, the provisions of article 5 would not affect any consular conventions in force which made provision for other consular functions.

32. In the discussions of the International Law Commission, some members had pointed out that a general definition of consular functions would be of little practical value. The example of the Vienna Convention on Diplomatic Relations could not be followed because the functions of consuls were much less general than those of diplomatic agents. He thought that governments were far more likely to accept a detailed enumeration of consular functions than a general definition, which might give rise to difficulties of interpretation. All recent consular conventions defined consular functions in detail.

33. For those reasons, his delegation was opposed to the proposal by Canada and the Netherlands (L.39), paragraph 1 of which had the drawback of leaving many points undecided. As to paragraph 2 of that proposal, he was at a loss to understand its purpose; the question of the relations between the sending State and its own nationals had no place in a multilateral convention.

34. In the event of the Committee rejecting the idea of a general definition and retaining the International Law Commission's draft of article 5, as he hoped it would, his delegation would support the suggestion of the Yugoslav delegation that a synoptic table be drawn up of the amendments to the various paragraphs.

35. The CHAIRMAN said that the Committee should first decide whether it preferred a general definition or an enumeration on the lines of draft article 5. He invited representatives to speak on that question, before discussing the detailed amendments.

36. Mr. von HAEFTEN (Federal Republic of Germany) urged that the Committee should take the text proposed by Canada and the Netherlands (L.39) as the basis for its discussion. It was almost impossible to

enumerate all consular functions. Any catalogue, however good — and that drawn up by the International Law Commission was excellent — could never be exhaustive. An enumeration would have the great disadvantage of having an inevitably restrictive effect. The authorities of the receiving State would have a tendency to maintain that, if a foreign consul exercised any functions other than those enumerated in the list, he was exceeding his powers. For those reasons, his delegation preferred a general definition of consular functions. The definition proposed by Canada and the Netherlands had the merit of setting forth the principal functions of consuls: to protect the rights and interests of the sending State and its nationals and to give assistance to those nationals in accordance with international law. The second sentence of paragraph 1 of the proposal covered also the other functions that a consul might exercise under international agreements or that had been entrusted to him by the sending State the exercise of which was compatible with the laws of the receiving State.

37. For those reasons, his delegation favoured that joint amendment (L.39). If that amendment were not accepted, his delegation would favour the Austrian amendment (L.26) in preference to article 5 as drafted by the International Law Commission.

38. Mr. MARAMBIO (Chile) also supported the amendment proposed by Canada and the Netherlands (L.39). It was practically impossible to make a complete enumeration of the consular functions. Any attempt to draw up a detailed list involved the danger of leaving gaps and would thus do more harm than good. For those reasons, his delegation supported the formulation in the joint amendment (L.39) which contained all the necessary elements of a satisfactory definition of consular functions; it laid down that those functions were to protect the rights and interests of the sending State and its nationals and to give assistance to those nationals in accordance with international law. It stated further that consuls could exercise other functions specified in the relevant international agreements or entrusted to them by the sending State, provided that their exercise was compatible with the laws of the receiving State.

39. Mr. BARTOŠ (Yugoslavia) said that he would confine his remarks to the choice between a general definition and the enumeration contained in article 5 as drawn up by the International Law Commission. The Commission's text contained an element of progressive development of international law. Certain functions attributed to consuls in the course of centuries had long been universally recognized; other functions had developed more recently.

40. Certain States wished to restrict consuls to such narrow traditional duties as giving protection and assistance to nationals of the sending State. The exercise of other functions, it was suggested, was possible only under a treaty or a specific authorization of the receiving State.

41. In illustration, he drew attention to the functions specified in sub-paragraph (c) of "Ascertaining conditions and developments in the economic, commercial,

cultural and scientific life of the receiving State, reporting thereon to the government of the sending State . . .” That function did not come under the heading of protecting, helping and assisting nationals, but it had come to be generally recognized in international practice. The International Law Commission, by embodying that provision in its draft, had consolidated a gain in the progressive development of international law.

42. Another example could be found in sub-paragraph (I), which set forth certain consular functions relating to shipping. The International Law Commission had added a reference to the settlement of disputes between the master, the officers and seamen as far as that might be authorized by the law of the sending State; under that text, it was not necessary for the consul to have any previous authorization from the receiving State. That provision also represented an element of progressive development of international law.

43. The Committee was thus faced with the choice between two methods of approach. The International Law Commission’s method made for the progressive development of international law in the interest of friendly relations between States, whereas the joint amendment (L.39) would put consular functions back where they were at the end of the eighteenth century, by stipulating that a treaty provision or a specific authorization on the part of the receiving State was necessary to perform any function other than that of protecting the rights and interests of nationals and giving them assistance.

44. The International Law Commission had not overlooked the question of international agreements in force between the sending State and the receiving State; it had pointed out in paragraph 25 of its commentary to article 5 that consuls could exercise the functions entrusted to them by such agreements. Similarly, paragraph 26 of the commentary stated that consuls might also perform other functions entrusted to them by the sending State, provided that the performance thereof was not prohibited by the State of residence.

45. His delegation would strongly oppose the proposal by Canada and the Netherlands (L.39).

46. Mr. SHARP (New Zealand) favoured the trend represented by the joint amendment submitted by Canada and the Netherlands (L.39). The Committee’s business would be materially speeded up if it first discussed and voted upon the joint amendment. If that proposal were approved, it would be unnecessary for the Committee to consider many other amendments which had been submitted to article 5.

47. Mr. de MENTHON (France) said that the question whether article 5 should consist of a general definition or of a detailed enumeration had given rise to long discussion in the International Law Commission itself. Indeed, paragraph 4 of the commentary stated that the majority of the governments which had sent in comments on the Commission’s draft had expressed a preference for the general definition. The French delegation was also in favour of that solution, since detailed enumeration would entail more drawbacks than advan-

tages. Despite the use of the words “ more especially ”, the enumeration might lead to equivocal situations in which consular functions might actually be restricted, since States would be offered an opportunity to refuse to allow consuls to exercise functions not mentioned in the Convention. The French delegation’s views had been strengthened further by the large number of amendments that had been submitted to the article. It would therefore vote in favour of the Canadian and Netherlands amendment (L.39) and hoped that priority would be given to a vote on that amendment.

48. Mr. WARNOCK (Ireland) supported the New Zealand representative’s suggestion that the preliminary decision for which the Chairman had asked should be taken as soon as possible. His delegation was in favour of a general article as in the Canadian and Netherlands amendment, mainly because it was very difficult to draw up an exhaustive list. If, however, the majority of the Committee decided in favour of an enumerative article, the Irish delegation would support the Commission’s text, in the belief that the Conference should keep as closely as possible to that draft. Its approach to any amendments to the Commission’s text was one of extreme caution.

49. Mr. D’ESTEFANO PISANI (Cuba) said that his delegation could not accept the proposal to substitute a general article for the Commission’s enumeration of essential functions. In article 3 of the Vienna Convention on Diplomatic Relations, five principal diplomatic functions were enumerated; it was perfectly understandable that consular functions, which were more complex than diplomatic functions, should be enumerated in greater detail. Moreover, as the Yugoslav representative had pointed out, the progressive development of international law would be delayed by the adoption of a general definition. The Cuban delegation could therefore not vote in favour of either the Canadian and Netherlands amendment or the Swiss amendment (L.16), since it could not agree that the law of the receiving State was involved in the definition of consular functions.

50. Mr. HUBEE (Netherlands) said that, although it was true that the majority of the International Law Commission had opted in favour of the enumerative system, as expressed in the Commission’s text of article 5, yet the decision had not been unanimous. The various arguments which might be traced in the Commission’s report showed that a valid defence could be found for both theses. The Netherlands delegation itself had hesitated before deciding in favour of a general definition. Its decision had been swayed by the fact that the majority of the governments which had sent in comments on the articles had been in favour of a general definition as in article 3 of the Vienna Convention on Diplomatic Relations. Secondly, the solution would facilitate the Committee’s work by avoiding controversial discussions in the First Committee, in the drafting committee and in the plenary conference. Of the large number of contradictory amendments, many would not even obtain a simple majority, while others would fail to obtain a two-thirds majority in the plenary conference, and the resulting text was hardly likely to be satisfactory to

anyone. It was much easier to agree on a general outline than on the many practical details of an enumeration. Thirdly, an enumeration was undesirable because no international instrument could lay down functions to be performed by all consuls; the provisions might be too narrow for some countries and too broad for others. Fourthly, it should be borne in mind that consular functions entailed the competence of the sending State to exercise certain powers in the receiving State and, in view of the usually jealous defence of the rights of the receiving State, undue precision of the definition would make it difficult to establish amicable consular relations among States.

51. His delegation had therefore decided in favour of a general definition, in the belief that details could be settled more satisfactorily in bilateral agreements.

52. Mr. MAMELI (Italy) expressed his delegation's conviction that the Commission's text should be retained wherever possible. As the Yugoslav representative had pointed out, a general definition could be dangerous. If the Committee decided to discuss the amendments in detail, the Italian delegation would support the Yugoslav proposal that a synoptic table of amendments should be drawn up. Finally, he suggested that the words "more especially" in the first line of draft article 5 should be replaced by "*inter alia*".

53. Mr. OSIECKI (Poland) said he could not support the Canadian and Netherlands amendment, which would destroy the very essence of article 5. The article as drafted by the International Law Commission represented a set of precise instructions on the basis of which future consuls could perform their duties, whereas a general definition would give rise to many difficulties of interpretation. His delegation considered that article 3 of the Vienna Convention on Diplomatic Relations was insufficiently detailed and should therefore not be used as a precedent. The task of the Conference was to create a homogeneous and progressive consular law and thus to promote the development of friendly international relations.

54. Mr. ABDELMAGID (United Arab Republic) recalled that the Canadian and Netherlands representatives had invoked the time factor as an argument in favour of the system advocated in their amendment. Members of the Committee were, of course, fully aware that the adoption of the Canadian and Netherlands amendment would save a considerable amount of time; they were also aware, however, that they were dealing with what was perhaps the most important article of the Convention. The fact that so many amendments had been submitted to the Commission's draft indicated that the Committee was generally in favour of adopting the Commission's approach. Moreover, the enumeration was not exhaustive and could be supplemented during the Conference. His delegation could also support the Swiss amendment (L.16), which should dispel a number of misgivings and enable some delegations to withdraw similar amendments.

55. Mr. JAYANAMA (Thailand) said that his country's experience as a receiving State led it to support

the International Law Commission's draft of article 5, since the absence of enumeration of functions was likely to lead to controversies over interpretation. Accordingly, his delegation believed that the Commission's draft, supplemented by the Indian amendment (L.37), which should suffice to allay all doubts concerning loopholes in the text, should be taken as a basis for the Committee's discussions.

56. Mr. DADZIE (Ghana) said it should be borne in mind that the text of all the draft articles was the result of some eight years of conscientious and devoted work by distinguished jurists. His delegation could not easily dismiss such long research and consideration, and was therefore in favour of using the Commission's text as a basis. Moreover, it agreed with the Indian representative that the Commission's text of article 5 was a fair compromise between an exhaustive list and a general definition. The opening words showed that the enumeration was not meant to be exhaustive, but merely gave some examples of the most important consular functions. It was a fact that existing international law on consular functions was confused and that consular functions were not defined in the legislation of most countries. The Conference would be failing in its duty if it were to leave the subject in that stage of confusion, since the purpose of international conventions was to obviate existing confusions in the law. The question was whether the Committee agreed with the examples enumerated by the International Law Commission. It should discuss the amendments to the Commission's text on the basis of the synoptic table proposed by the Yugoslav representative.

57. Mr. GUNWARDENE (Ceylon) said that, if the Committee's aim was vagueness and simplicity, the Canadian and Netherlands amendment would fully meet that objective; if the time factor was the most important, then the general definition could be made even simpler. If, however, the purpose of the Conference was to render the maximum assistance to the countries of the world, the problem should be faced fairly and squarely. The fact that it was impossible to specify all consular functions did not mean that the most important ones should not be enumerated. The list in the Commission's text was not exhaustive, but there were certain consular functions which must be defined and could not be left vague forever. The custom and usage of the older nations had been invoked, but if those nations wished to help other countries, they should specify the important consular functions. It was not enough to refer to differences of opinion in the International Law Commission, since the majority of that body had opted for the enumerative system.

58. Mr. PETRŽELKA (Czechoslovakia) agreed with the speakers who had advocated adhering to the Commission's draft. His delegation believed that a general definition could settle nothing, but might create confusion and controversy among States. The argument that an enumerative article could not be exhaustive was unconvincing, since the Commission did not claim that the list covered all possible consular functions. The purpose of the Conference was not merely to save

time, but to codify international law and to render the maximum assistance to all States. He hoped that the question of principle could be settled as quickly as possible and supported the Yugoslav representative's proposal that a synoptic table of the various amendments be drawn up.

59. Mr. RUSSELL (United Kingdom) said that his delegation, like that of the Netherlands, had hesitated before concluding that the best course was to adopt an article along the lines of the Canadian and Netherlands amendment. In reply to the Yugoslav representative, he wished to say that the United Kingdom was fully aware of the progressive development of consular functions in the last century or so, and particularly in recent years. The bilateral consular conventions which the United Kingdom had concluded in the past ten to fifteen years dealt with consular functions in considerable detail. It was precisely because that sector of international law and practice was developing so rapidly that the United Kingdom had hesitated to support the Commission's draft of article 5, in the belief that the adoption of that text would hinder rather than help further development.

60. Although he could agree with some of the arguments advanced by the Indian representative, he was unable to agree on two important points. In the first place, his delegation did not believe that a general definition tended towards vagueness, while a detailed enumeration tended towards precision. No enumeration could be exhaustive; it could only be a multiplication of specific examples and, as such, would lead to vagueness rather than precision. Secondly, the United Kingdom delegation considered that the second paragraph of the Canadian and Netherlands amendment was valuable. Similar provisions were contained in a number of bilateral conventions and, although the effect of the multilateral convention that would emerge from the Conference would be to place obligations on individual States, it was important to make it clear that the relationship between the sending State and its nationals was a matter for decision by the sending State.

61. If the Committee decided to reject the Canadian and Netherlands amendment (L.39), the United Kingdom delegation would be inclined to favour the text considered by the Commission at its twelfth session,<sup>3</sup> which was in many respects more satisfactory than the draft article before the Committee.

62. His delegation could not support the Austrian amendment (L.26).

63. Mr. Wu (China) said that the Canadian and Netherlands amendment should be discussed first, since it was the furthest removed from the original text of all the amendments before the Committee.

64. Mr. REZKALLAH (Algeria) considered that the Commission's text of article 5 should be satisfactory to everyone, since it would allow consular functions to be either limited or extended. Neither the Canadian and Netherlands amendment nor the Austrian amendment

met the needs of new States, which had to base their consular systems on international law, and not on well-developed national usage. The consuls of those new States should know what their functions were to be, without the restriction of bilateral conventions or of the laws of the receiving State. He had not been convinced by references to article 3 of the Vienna Convention on Diplomatic Relations, since there was a basic difference between consular functions and diplomatic functions. His delegation would support the Commission's text, which provided a basis on which every State was free to restrict or expand the functions of its consuls.

65. Mr. BOUZIRI (Tunisia) said that his delegation was in favour of the system adopted by the International Law Commission, which represented progressive development of international law. Moreover, since the functions enumerated in the Commission's text were actually performed by the consuls of many countries, the article could be regarded as a work of codification. The system proposed by the Canadian and Netherlands delegations was not only anachronistic, but was not in fact as general as its advocates claimed, since the amendment stated specifically that the principal functions exercised by consuls were to protect the rights and interests of the sending State and its nationals and to give assistance to the nationals of the sending State. A really general text should contain no mention of specific functions. In any case, although protection had been an important consular function in the past, other functions had since become even more important.

66. It should be borne in mind that the Commission had never claimed to have enumerated all consular functions in its article; the words "more especially" implied that other functions existed. Moreover, exactly the same had been done by the Conference on Diplomatic Intercourse and Immunities, and he had been surprised to hear article 3 of the Vienna Convention cited in support of the system of general definition. Article 3 of the Vienna Convention contained an enumeration of the five most important diplomatic functions; if the Vienna Conference of 1961 had wished to confine itself to a general definition, it would have included only paragraph (a) or (e) of the article.

67. Mr. ANIONWU (Nigeria) said that he was considering the question from the viewpoint of a new country. He agreed with the representative of Ceylon that the Commission's text of article 5 contained a useful list on which a new country could base the functions to be performed by its consular officials. He had also been interested by the Yugoslav representative's remarks concerning the Committee's task of codifying consular law, but he believed that that objective could be achieved without enumerating consular functions in detail. Moreover, he doubted whether the process whereby countries learnt from the experience of others really constituted progressive development of international law. Since the countries with the greatest experience in consular affairs could not agree on whether a specific or general system should be applied, a new country might prefer not to have consular functions enumerated, but to follow examples simply by accepting what suited

<sup>3</sup> See *Yearbook of the International Law Commission, 1960*, vol. II (United Nations publication, sales No. 60.V.1, vol. II), p. 33.



it and rejecting what did not. His delegation was therefore in favour of the Canadian and Netherlands amendment. In addition, he drew attention to draft article 38 (Communication with the authorities of the receiving State) and asked whether the Commission's intention in drafting that article had been that it should apply only to the functions enumerated in article 5. If the Commission's article 5 were retained as it stood, another article would have to be drafted to cover communication in the exercise of functions not listed in article 5.

The meeting rose at 6.10 p.m.

### EIGHTH MEETING

Monday, 11 March 1963, at 10.40 a.m.

Chairman : Mr. BARNES (Liberia)

#### Observance of the twenty-fifth anniversary of the Anschluss

1. The CHAIRMAN said he was sure that the Committee would wish to take note of the Austrian Government's observance of the twenty-fifth anniversary of the Anschluss.

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

##### Article 5 (Consular functions) (continued)

2. The CHAIRMAN invited the Committee to continue consideration of the question of principle whether article 5 should be drafted in a short general form, along the lines proposed by the Canadian and Netherlands delegations in their amendment (L.39),<sup>1</sup> or whether it should consist of a non-exhaustive enumeration of consular functions — the method used by the International Law Commission. When the delegations remaining on his list of speakers had delivered their statements, he proposed to put the question of principle to the vote. If the decision was in favour of a short, general article, the Committee would proceed to discuss the Canadian and Netherlands text, with any amendments thereto; if it was in favour of an enumeration, the Commission's proposal and the amendments thereto would be discussed. Although the vote would be on the question of principle only, and would not relate to any specific proposal before the Committee, it would have the effect of eliminating consideration, either of the Commission's draft and amendments thereto, or of the Canadian and Netherlands proposal and relevant amendments.

3. Mr. SOLHEIM (Norway) observed that the Commission's draft was the result of years of work

<sup>1</sup> For the list of the amendments originally submitted to the article, see seventh meeting, footnote to paragraph 3. Subsequently, in addition to the amendment (A/CONF.25/C.1/L.73) introduced by Mali during the seventh meeting, the following amendments had been submitted: Yugoslavia, A/CONF.25/C.1/L.72; Greece, A/CONF.25/C.1/L.80.

and deliberation and that its provisions had undergone continuous development. Moreover, in considering and reconsidering the articles, the Commission had at various stages submitted the texts to States Members of the United Nations for comment and had studied the articles on the basis of the comments received.

4. Article 5 had given the Commission more work than any other, and for a while it had hesitated between a detailed enumeration of consular functions and a short formula defining them. It had concluded that neither alternative was fully satisfactory and had evolved a system comprising a general definition which could include an explanation of the most important consular functions. The Committee was now faced with an amendment, submitted by the Canadian and Netherlands delegations, which introduced a technical formula to define consular functions, despite the fact that the International Law Commission had decided against that method at an early stage of its work.

5. As the result of the submission of that amendment, the impression had been given during the debate that the choice lay between a general and a detailed definition. But that was not the case; the choice was, in fact, between a general definition containing specific examples of consular functions and a definition which, while purporting to be general, was really no definition at all. If the Canadian and Netherlands amendment were adopted, countries resorting to the convention for guidance on consular functions would search in vain, and would find only an empty formula, containing absolutely no indication of the many and various existing consular functions. The Commission's draft of the article provided the minimum information required to give the reader an idea of what the convention was about, what a consul could do and why he was such an important official that over seventy articles on his work were necessary. If a provision on the lines of the Canadian and Netherlands amendments were adopted, the entire convention would be reduced to an empty framework.

6. Mr. USTOR (Hungary) said that article 5 was the very cornerstone of the convention. In view of the wide variety of consular functions, it had obviously been difficult for the Commission to produce an enumeration, and the reasons underlying the Canadian and Netherlands amendment were to some extent understandable. Nevertheless, his delegation was strongly opposed to that amendment and urged the Committee to abide by the text finally recommended by the Commission.

7. The Conference's task of agreeing on a text in accordance with the rules of international law might be difficult in view of the presence of so many States with widely different national regulations on the subject, but the value of such a text depended on the depth of agreement reached. If the text adopted consisted of vague commonplaces and general platitudes, the standards set would be very low and the value of the convention would be correspondingly reduced. While it might be true that the adoption of very detailed regulations would not be practicable at such a large conference, the highest common factor — which was much higher