United Nations Conference on Consular Relations

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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),[1] 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 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

[1] 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.

than that proposed in the Canadian and Netherlands amendment — must be adopted. Unless the greatest possible measure of agreement were exploited, the Conference would not be fulfilling its responsibilities towards the States that were not represented, towards new States and, in fact, towards succeeding generations. It would therefore be advisable not to depart too far from the Commission's draft.

8. In view of the long history of the article in the Commission's deliberations, he proposed that Mr. Žourek, the Commission's special rapporteur on consular relations, should give the background of the article to the Committee and explain the reasons for the adoption of the Commission's text.

9. Mr. CAMERON (United States of America) associated himself with those who advocated a short form for article 5. He could not agree that consular functions could be performed without the permission of the authorities of the receiving State, any more than he could support the theory that all consular functions should be performed in accordance with the laws of the receiving State. He was sure that if the principle of the short form of article were adopted, the Canadian and Netherlands delegations would accept minor changes to their text, in order to accommodate the views of other countries.

10. His delegation's chief difficulty in accepting the Commission's text was that, as it stood, the article went beyond strictly consular functions, by introducing the transactional representation of individuals by consular officials. Although there had been considerable activity along those lines, that function was based on former practice included in some obsolete treaties, mainly in view of the shortcomings of communications systems in bygone years. When the absence of communications had been liable to entail months of delay, consuls had been empowered to act on behalf of nationals of the sending State, but the intention had not been to allow consuls to replace owners, claimants or heirs with whom it was now possible to establish communication. In 1906, when the United States Consular Service had been put on a career basis, consuls had been prohibited from acting as attorneys; the United States had since modernized consular functions, both in conventions on the subject which it had negotiated with other States and in its own legislation.

11. His delegation would be lacking in candour if it failed to point out that conferring transactional powers on consuls would make the convention unacceptable to the United States Government. Moreover, if the Canadian and Netherlands amendment were rejected and a much longer draft were adopted, the list of items would continue to grow, so that the views of all delegations could be accommodated. If the question of principle were decided in favour of the Commission's draft, his delegation hoped that its amendment to that text (L.69) would be acceptable to the Committee.

12. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said that, since article 5 was one of the most important in the draft convention, his delegation understood the serious and careful approach to it taken by many delegations.

13. The advocates of a general definition based their views on the difficulty of providing an exhaustive definition. They pointed out that consular functions were many and various and covered a wide range of subjects, and alleged that it was therefore difficult to enumerate such functions exhaustively. But their misgivings were not confirmed by practice. Moreover, the amendments submitted to the Commission's draft did not introduce any additional functions; that led to the conclusion that the Commission's draft indeed covered the main functions of consular officials.

14. Some representatives had asserted that an enumeration of consular functions could lead to confusion; but if an enumeration could lead to confusion, a general definition could only lead to a situation in which the convention would provide no guidance for consuls. The advocates of the general formula were following the line of least resistance by urging the adoption of a general definition, in the hope that all the amendments to the Commission's draft would thus automatically be disregarded and that there would be no need to discuss them further. The easy way out was, of course, always tempting, but was not always correct. The general formula would be of no practical use, but would serve as grounds for various disputes among States and would hamper the practical activities of consulates, particularly for countries which were as yet only beginning to establish consular relations. Furthermore, the main consular functions were enumerated in a number of recent conventions, and it would be unforgivable to abandon that principle in a multilateral instrument which should serve as a guiding instrument for consular relations between States. The object of the Conference was to codify consular law and to encourage the progressive development of consular functions. Those functions were now very much broader than they had been in the past. Consuls were now called upon to develop friendly relations between States, as was rightly said in the Czechoslovak, Hungarian and Romanian joint amendment (L.33). The Yugoslav delegation had very properly stated in its amendment (L.72) that consular functions likewise comprised functions to be performed under international agreements between the States concerned and functions entrusted to the consul by the sending State.

15. The USSR delegation would vote against the principle of a general definition and in favour of the system recommended by the International Law Commission. With regard to his delegation's attitude towards the substantive amendments to various sub-paragraphs of the article, it reserved the right to express its views when those amendments were discussed.

16. Mr. CABRERA-MACIA (Mexico) drew attention to paragraph 9 of General Assemby resolution 1685 (XVI), which referred the International Law Commission's draft to the Conference as the basis for its consideration of the question of consular relations, and to rule 29 of the rules of procedure, adopted unanimously at the second plenary meeting, which provided that the Commission's draft articles should constitute the basic proposal for discussion by the Conference. Any proposal

tending to restrict consideration of the Commission's draft articles was thus contrary to the will of the General Assembly and of the plenary conference, and was therefore out of order. Hence, the Committee should consider article 5 as drafted by the Commission, and not an incomplete definition of consular functions.

17. On the other hand, all delegations were free to make any proposals they wished within that framework. In the belief that the Canadian and Netherlands amendment would be rejected by the Committee, the Mexican delegation wished to propose a procedure in four stages for the consideration of article 5. First, a vote would be taken on the Canadian and Netherlands amendment, as a radical proposal to replace the Commission's article 5. When that proposal had been rejected, the Committee would proceed to consider the Commission's draft article. Then a separate vote would be taken on each paragraph of the Commission's article, with the amendments thereto. Finally, a vote would be taken on the whole text, as amended.

18. Mr. FUJIYAMA (Japan) observed that, while it was essential to adopt an article that would be acceptable to as many delegations as possible, the Committee's work must be expedited. His delegation believed that the general form proposed in the Canadian and Netherlands amendment was the more advisable in view of the controversy concerning the Commission's draft, but if the majority preferred to base its work on that draft his delegation reserved the right to press its amendment (L.54) to the Commission's text.

19. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) observed that, in addition to the two possible solutions of a general definition and a specific enumeration, there was also a third, represented by article 4 of the draft submitted to the Commission in 1960.[2] That compromise solution consisted of a brief and simple general text, followed by a list of specific cases shorter than the one now proposed by the Commission.

20. His delegation believed it was difficult to avoid a general definition entirely, although such a text by itself might indeed lead to conflicting interpretations. On the other hand, the Commission's present text of the article, consisting only of a list of examples without a general definition, gave rise to difficulties in respect of cases not enumerated in the article. His delegation therefore believed that the Commission's text should be taken as a basis, but that the enumeration should be preceded by a brief general definition on the lines of the Swiss amendment (L.16), to provide general criteria for deciding on the exercice of certain consular functions. Finally, in considering the examples to be included, it should be borne in mind that the role of the Conference was not only to codify existing rules, but to promote the progressive development of international law.

21. Mr. PALIERAKIS (Greece) observed that most of the speakers had admitted the quasi-impossibility of drawing up an exhaustive enumeration of consular functions. Even the eminent jurists of the International Law Commission had done so by including the words " more especially " in the opening sentence of article 5. The Greek delegation was therefore in favour of a general definition of consular functions.

22. There was clearly a group of functions governed by international law; it comprised functions relating to protection of and assistance to nationals of the sending State and to vessels and aircraft of that State. Another group of functions, also covered by the general definition, could be performed only if the legislation of the receiving State was not opposed to their exercise; it included acting as notary and civil registrar, safeguarding the interests of minors and persons lacking full capacity, and serving judical documents or executing letters rogatory. All the examples in the Commission's text fell into one or the other of those two groups; for instance, the functions specified in sub-paragraphs (*a*), (*e*) and (*l*) were in the first group, while these specified in sub-paragraphs (*b*), (*c*), (*d*), (*f*), (*j*) and (*k*) were in the second. The enumeration could thus be reduced to a general definition.

23. Mr. CHAVEZ VELASCO (El Salvador) said that the large number of amendments submitted to the Commission's text showed the difficulty of agreeing on questions so closely linked to the municipal law of the receiving State. Even with the incorporation of those amendments, the Commission's text would be incomplete and imperfect. His delegation was therefore in favour of a general and more flexible definition.

24. Mr. RAHMAN (Federation of Malaya) considered it necessary to adhere as closely as possible to the Commission's text. As the representative of a small and young nation, he could assure the advocates of the general definition that such nations understood their motives and reasons, but could not agree with them. Some decades ago, when the number of independent States had been much smaller than it was now, there had been no serious challenge to the interpretation of consular functions in accordance with the customs of the long-established States; but the world atmosphere had greatly changed and a new approach must be found to meet the needs of the many emerging countries which did not have the same advantages and traditions as older ones. Ambiguity and vagueness no longer had any value, and the aim of the conference should be precision and clarity. If the conference accepted the views set out in the Canadian and Netherlands amendment (L.39), it might be faced with the same failure as The Hague Codification Conference of 1930, when agreement had been reached on only a few minor points and the text adopted had been ratified by very few States.

25. Moreover, the Committee should be mindful of the provisions of Article 14 of the Charter, in pursuance of which the International Law Commission, with its special statute, had been set up, and which laid down as one of the tasks of the General Assembly that of encouraging the progressive development of international law and its codification. In view of these considerations, the Malayan delegation would support the Commission's draft of article 5.

[2] *Yearbook of the International Law Commission, 1960*, vol. II (United Nations publication, sales No. 60.V.1, vol. II), p. 33.

26. Mr. RUDA (Argentina) did not consider that the two possibilities before the Committee were quite as contradictory as they appeared. The question was whether the enumeration of functions should be more or less detailed, for both the Commission's draft and the Canadian and Netherlands amendment were, in fact, enumerative. The Argentine delegation did not consider that a general enumeration was particularly valuable, because consular officials had certain specific functions; on the other hand, an unduly detailed enumeration might raise difficulties in view of the wide differences in national legislation on the subject. Accordingly, the compromise solution was to specify the more important normal functions of consuls, particularly those governed by modern international law, providing, of course, that they must not conflict with the legislation of the receiving State. That was the Committee's duty in the matter of codifying consular law; it would not be fulfilled by adopting the Canadian and Netherlands amendment, which failed to enumerate the normal functions of consuls.

27. Mr. MARTINS (Portugal) said he would vote for the Commission's text with some minor amendments. His delegation was in favour of an enumeration of consular functions because, for the first time in history, the principles governing one of the oldest international institutions were to be codified. For centuries there had been no definitions or precise rules on the subject, and the Conference was called upon to fill those gaps at a most interesting point in the history of consular relations.

28. A number of far-reaching developments had taken place since the Second World War. Diplomatic missions had replaced consulates in many capital cities, and the range of consular functions had been considerably increased by the intensification of cultural, technical and scientific exchanges, tourism and air travel. All the new problems raised could not be solved in the traditional manner; old formulae could not determine whether the export of an atomic reactor, a visit by a symphony orchestra or the descent of a satellite in the territory of a foreign country were matters for consular officials or diplomatic agents to deal with. Furthermore, there was a strong tendency in modern times to assimilate consular functions to diplomatic functions.

29. The Conference should therefore avoid general and imprecise formulations which would not cover modern problems. Not only the many consular conventions concluded since the Second World War, but even older intra-European and European-Latin American conventions, prompted by such events as the opening of the Suez Canal, the improvement of communications and increased industrialization, contained provisions which were much more comprehensive than those proposed in the Canadian and Netherlands amendment. In fairness to the advocates of that amendment, it must be said that the countries concerned had themselves subscribed to much broader instruments. The Conference was responsible for drafting a convention which would improve international relations; caution and wisdom must therefore be exercised with a view to introducing elements of the future into the present.

30. The CHAIRMAN suggested that, in pursuance of the Hungarian representative's request and in accordance with rule 34 of the rules of procedure, Mr. Žourek, special rapporteur of the International Law Commission on consular relations, should be invited to explain the circumstances in which the Commission had adopted its present text of article 5.

It was so agreed.

31. Mr. ŽOUREK (expert) thanked the Chairman for the opportunity afforded him of giving a brief history of the origin of the provisions of article 5 and of explaining the reasons which had led the International Law Commission to adopt the approach it had.

32. From the outset of its work on consular relations — i.e., from its tenth session, in 1958 — the International Law Commission had been faced with the problem of whether to include in its draft a definition of consular relations. The Commission had been almost unanimous in its conclusion that such a definition was necessary and that without it the draft would be of little practical use.

33. Having thus agreed on the need for a definition of consular functions, the Commission had found itself faced with very much the same problem as the present Committee — namely, whether to adopt a definition couched in general terms or to attempt a detailed enumeration of consular functions.

34. In the initial stages of the discussion, there had been some support for a very general definition of the type embodied in the 1958 draft on diplomatic intercourse and immunities. The Commission, however, had soon realized that the analogy with diplomatic relations was not valid, because of the essential differences existing between the position of consuls and that of diplomatic agents and because of the great difference between consular functions and diplomatic functions. The head of a diplomatic mission represented the sending State in its relations with the receiving State; his functions were of a general character and included the consular functions themselves. It was therefore possible to define diplomatic functions in general terms. The position of consuls, on the other hand, was altogether different. A consul's powers were much more limited than those of a diplomatic agent, though they were extremely varied: a consul did not represent the sending State for the whole range of its relations with the receiving State.

35. Certain consular functions were based on customary international law and had been established for centuries. Others, however, had emerged in more recent times. It was clear to the International Law Commission that the exercise of those consular functions which were based on customary international law could under no circumstances be prevented by the receiving State. With respect to other functions, however, the position was that a consul could exercise them if they were entrusted to him by the sending State and if their exercise was not forbidden by the authorities of the receiving State.

36. In view of the great variety of consular functions and in view also of the legal basis for their exercise, the Commission had realized that it was impossible to define

those functions in general terms. Accordingly, from an early stage in its work, the Commission had sought an intermediate solution and had endeavoured to formulate a definition which would be neither too general nor too detailed. It had invited him, as special rapporteur, to prepare two variants for the article dealing with consular functions. The first variant was to be a general definition and the second an enumeration. Accordingly, he had prepared (1) a general definition and (2) a non-exhaustive enumeration along the lines of that contained in his 1957 report.[3]

37. At its twelfth session, in 1960, the Commission had discussed the two variants and had decided to submit to governments for their comments two different definitions of consular functions. The first, embodied in article 4, paragraph 1, of the 1960 draft, had contained a general definition followed by a non-exhaustive enumeration of six of the main functions exercised by consuls. The second definition, a broad enumeration of consular functions, had been included in the commentary on the article so as to give governments an opportunity to comment upon it as well.

38. Most of the nineteen governments which had sent in comments had expressed themselves in favour of the definition embodied in the 1960 draft. However, several of them had urged that that definition should be supplemented by the inclusion of further examples.

39. Taking those comments into consideration, the International Law Commission, at its thirteenth session, in 1961, had adopted the text of article 5 which was now under discussion. That text represented an intermediate solution between two extreme views. It had been accepted unanimously by the Commission, which included jurists representing the main legal systems of the world.

40. The text adopted by the Commission took a similar form to that adopted by the 1961 Vienna Conference as article 3 of the Convention on Diplomatic Relations. He recalled that the enumeration contained in that article was not exhaustive, as shown by its opening words: "The functions of a diplomatic mission consist, *inter alia*, in: ..."

41. The text of article 5 had the advantage of setting forth clearly the essential functions of consuls and thus dispelling doubts and misgivings which had arisen with regard to those functions among writers on international law. The Commission had been impressed by the consideration that a definition couched in very general terms would have little practical value because it would lead to different interpretations and even to disputes. It had also been guided by the consideration that the article on consular functions must as far as possible reflect the present state of international law, which had undergone considerable development in recent years.

42. The type of definition adopted by the Commission was consistent with current state practice. A number of consular conventions in force contained enumerations of consular functions which were much more detailed than that in article 5.

[3] *Yearbook of the International Law Commission, 1957*, vol. II (United Nations publication, sales No. 1957.V.5, vol. II), p. 91.

43. In adopting article 5, the Commission had rejected the view, which had sometimes been put forward in the past, that the exercise of all consular functions was dependent upon the consent of the receiving State — a view which would be tantamount to a denial of the existence of consular relations. There were, of course, certain consular functions which could only be exercised provided that they did not conflict with the law of the receiving State. For example, a consul could not solemnize a marriage if the law of the receiving State did not permit consuls to act as registrars. Similarly, a consul could not execute letters rogatory otherwise than by virtue of an international agreement or with the consent of the receiving State.

44. However, the exercise of such consular functions as protecting the interests of the sending State and of its nationals, promoting and furthering the development of friendly relations between the two States concerned, ascertaining conditions in the receiving State, issuing passports, assisting nationals and safeguarding their rights in estates, could not be prevented by the receiving State. Nevertheless, in carrying out those functions, a consul had the duty, expressed in article 66 of the draft, to respect the laws and regulations of the receiving State. The provisions of article 66 provided a sufficient safeguard for the receiving State. It should be remembered that consuls, unlike diplomatic agents, were subject to the jurisdiction of the receiving State. If, therefore, they violated its laws and regulations, the receiving State was in a position to enforce observance. There would thus be no difficulty in ensuring that, when a consul exercised one of the functions recognized by international law as a consular function, he would observe the relevant legislative provisions of the receiving State. For example, if a consul were called upon to represent the interests of one of his nationals who was absent, he would naturally have to observe such rules of the local law of procedure as the obligation to retain a lawyer.

45. In conclusion, he stressed that article 5 was one of the most important porvisions of the whole draft. Its text could no doubt be improved and supplemented in the light of the experience of governments, but he urged the Committee to weigh its decision carefully before departing from a formula which represented several years of work by the International Law Commission.

46. The CHAIRMAN thanked Mr. Žourek for his valuable contribution to the discussion.

47. Mr. PUREVJAL (Mongolia) said that his delegation would vote in favour of the presentation adopted by the International Law Commission for article 5 and against the very limited and narrow form of definition put forward in the amendment by Canada and the Netherlands (L.39).

48. The CHAIRMAN invited the Committee to vote on the question whether it preferred a short general definition of consular functions or not.

49. Mr. DADZIE (Ghana) said that, since the Committee had the International Law Commission's draft

before it, the question put to it should relate to that draft. He suggested that the Committee be invited to vote on whether it agreed to discuss the Commission's draft or not.

50. The CHAIRMAN pointed out that, since a number of amendments had been submitted to the draft, that form of submission of the question could lead to some confusion.

51. Mr. GUNEWARDENE (Ceylon) proposed that the vote on the question of principle should be deferred until the next meeting.

That proposal was adopted by 34 votes to 29, with 7 abstentions.

Article 6
(Exercise of consular functions in a third State)

52. The CHAIRMAN invited the Committee to consider article 6.

53. Mr. MAMELI (Italy) proposed the deletion of the word " express " from the final proviso " unless there is express objection by one of the States concerned ".

54. Mr. SOLHEIM (Norway) opposed that amendment.

55. Mr. KRISHNA RAO (India) also opposed the amendment. The word " express " had been used advisedly, as it had in the corresponding provision of the Vienna Convention on Diplomatic Relations. If the sending State wished to entrust a consulate established in a particular State with the exercise of functions in a third State, it should take some positive step in that direction; it was accordingly appropriate to provide that any objection by one of the States concerned should take an explicit form.

56. Mr. CAMERON (United States of America) said that he had no objection to the Italian amendment.

57. Mr. von HAEFTEN (Federal Republic of Germany) supported the Italian amendment. Any objection on the part of one of the States concerned would normally take the form of an express objection; however, it was useful to make provision for such an objection to be made informally.

58. Mr. SHARP (New Zealand) opposed the Italian amendment. New Zealand was a small country and it depended on the good offices of the United Kingdom for the conduct of its consular affairs in places where it had no consular representation. New Zealand consulates, moreover, also acted for an even smaller country — Western Samoa. For those reasons, his delegation preferred the text of article 6 as proposed by the International Law Commission. The deletion of the word " express " would detract from the flexibility of that text.

The Italian amendment was rejected by 48 votes to 16, with 6 abstentions.

Article 6 was approved unanimously.

Article 7 (Exercise of consular functions on behalf of a third State)

59. Mr. HEPPEL (United Kingdom) introduced the United Kingdom amendment (A/CONF.25/C.1/L.62) to article 7. By replacing the formula " With the prior consent of the receiving State " by the proviso " Unless the receiving State objects ", the United Kingdom amendment introduced a great degree of informality into arrangements such as those to which the New Zealand representative had referred in connexion with article 6. It was the experience of the United Kingdom that the type of arrangement by which one State could regularly perform consular work on behalf of another was usually adopted informally. There was no record of any receiving State making any objection to such an arrangement.

60. The exceedingly rigid provisions of the International Law Commission's text could lead to unnecessary difficulties. In particular, that text subordinated the exercise of consular functions on behalf of a third State to an agreement between it and the sending State. That suggested that, in order to carry out arrangements of the type he had mentioned, there must be a formal international agreement of the kind generally registered by member States with the United Nations. The United Kingdom amendment had the advantage of not implying the need for any such formal agreement.

61. He stressed that his delegation's amendment would reserve the absolute right of the receiving State to object to the exercise of consular functions on its territory.

62. Mr. ANIONWU (Nigeria) expressed his delegation's gratitude to the United Kingdom delegation for submitting its amendment (L.62) and recalled the reasons given by the New Zealand representative in favour of flexibility, in connexion with article 6. The matter under discussion was an important one to new States. It was necessary to deal with a situation in which a consular matter arose without the prior knowledge of the third State concerned. There was an understanding among the Commonwealth countries that in situations of that kind the United Kingdom would attend to such consular matters where there was no consular representative of the Commonwealth country concerned. That practice among Commonwealth countries had come to be generally recognized and had not given rise to any difficulties.

63. Mr. von HAEFTEN (Federal Republic of Germany) supported the United Kingdom amendment, but proposed, as a sub-amendment, that the additional words " upon notification " be inserted after the words " the sending State may ". It was necessary at least to inform the receiving State, in order to ascertain whether it had any objection to the exercise of such functions.

64. Mr. HEPPEL (United Kingdom) said that he had no objection to the idea that the receiving State should be informed. He stressed the fact, however, that the need to which the previous speaker had referred did not arise where one Commonwealth country had already

been performing consular work on behalf of another; the receiving State concerned would already be informed of that situation.

65. Mr. SOLHEIM (Norway) supported the United Kingdom amendment, which would serve the interests of small States very well. He was against the proposed sub-amendment because introducing the idea of notification would detract from the flexibility of the text.

66. Mr. PALIERAKIS (Greece) said that he was in favour of retaining article 7 as it stood. If the United Kingdom proposal were accepted, the Committee would be departing from the principle laid down in article 4, paragraph 1, that a consulate could only be establish with the consent of the receiving State. The fears expressed that the International Law Commission's text might prove too rigid were unfounded. The words " an agreement between the sending State and the third State " did not necessarily mean a written agreement.

67. Mr. BOUZIRI (Tunisia) opposed the United Kingdom amendment, which would reopen issues already settled by the Committee when it had adopted articles 2 and 4. The system proposed in the United Kingdom amendment would make it possible for the third State concerned to establish consular relations with the receiving State without the mutual consent provided for in article 2. He failed to see any reason why the third State should be treated more leniently in that respect than the sending State itself. The sub-amendment proposed by the representative of the Federal Republic of Germany showed that that representative realized the difficulties inherent in the United Kingdom proposal; unfortunately, the sub-amendment did not remove those difficulties.

68. Mr. DADZIE (Ghana) supported the United Kingdom amendment. He saw no need to specify in article 7 the manner in which the third State and the sending State must arrive at the arrangement whereby the latter took care of the consular affairs of the former. The opening words of the United Kingdom amendment " Unless the receiving State objects " clearly implied that the receiving State would be informed.

69. Mr. LEE (Canada) said that he was in favour of the United Kingdom amendment, with the proposed sub-amendment. His delegation's concern was to safeguard the arrangements whereby the United Kingdom had been performing consular functions on behalf of Canada for many years in a great many countries. If article 7 were adopted unchanged, Canada would have to enter into formal agreements in respect of all those arrangements. In that connexion, he drew attention to the terms of article 71 which safeguarded existing conventions and international agreements; that article did not cover existing informal arrangements such as those in which his government was interested.

70. Mr. KHLESTOV (Union of Soviet Socialist Republics) thought the United Kingdom amendment acceptable; it was an improvement on the text of article 7. His delegation did not support the sub-amendment, however, which would not add to the merits of the text in any way.

71. Mr. MARTINS (Portugal) stressed the fact that nothing could be done on the territory of the receiving State without its consent. That State would have to recognize the validity of the acts of the consul on behalf of a third State. As for existing situations, he felt that they were covered, because consent to the exercise of consular relations on behalf of third States had already been given.

72. Mr. SHARP (New Zealand) said that the arguments he had put forward in connexion with article 6 applied with even greater force to article 7. It was very important that existing informal arrangements should be preserved; for that reason, his delegation supported the United Kingdom amendment without the sub-amendment by the Federal Republic of Germany. He hoped that if article 7 were retained, the existing Commonwealth arrangements would be preserved without the requirement of a special notification, since in cases where one Commonwealth country already acted on behalf of another country, the consent of the receiving State could be assumed.

73. Mr. TÜREL (Turkey) endorsed the remarks of the Greek representative in favour of retaining article 7 as drafted by the International Law Commission.

74. Mr. BARTOŠ (Yugoslavia) expressed his delegation's willingness to accept the United Kingdom amendment provided its sponsor accepted the sub-amendment proposed by the representative of the Federal Republic of Germany. It was at least necessary for the receiving State to be informed that the consul would be acting for a third State, so that the authorities of the receiving State could ascertain whether the consul was duly authorized to act in the specific case concerned. He feared that, unless such notification were required, complete anarchy would result.

75. As to the Commonwealth practice, it had already been recognized by States. For example, in Yugoslavia, the United Kingdom Ambassador took care of the interests of all the member countries of the Commonwealth which did not have representation of their own.

76. Mr. HUBEE (Netherlands) drew attention to the co-operation within Benelux, which might at some future date also cover consular representation. He supported the United Kingdom amendment, with the sub-amendment by the Federal Republic of Germany.

77. He had not been convinced by the arguments put forward by the Tunisian representative. If, after notification, no objection were made by the receiving State, that State would have given its tacit consent and the terms of articles 2 and 4 would have been complied with.

78. Mr. D'ESTEFANO PISANI (Cuba) found the terms of article 7 somewhat rigid and formalistic. That article laid down two conditions for the exercise of consular relations on behalf of a third State: first, the prior consent of the receiving State, and, second, an agreement between the sending State and the third State. The United Kingdom formulation was more flexible and more in keeping with existing practice; it would serve to solve problems which arose in practice and would facilitate relations between States. The pro-

viso " Unless the receiving State objects " made adequate provision for the consent of the receiving State, and the United Kingdom proposal was therefore consistent with both the letter and the spirit of articles 2 and 4.

79. He felt that a distinction should be drawn between the case of two States which had direct consular relations, covered by article 2, and the case dealt with in article 7. In the latter case, the third State did not have consular relations with the receiving State and could only solve the practical problems involved through a State which did entertain consular relations with the receiving State concerned.

80. Miss ROESAD (Indonesia) expressed his support for the Commission's draft of article 7. Requirement of the prior consent of the receiving State would give that State enough time to notify its own authorities that consular relations would be exercised by the consulate on behalf of the third State. It would also give the receiving State time to decide whether it wished to allow the consulate so to act.

81. Mr. KRISHNA RAO (India) endorsed the Greek representative's reasons for opposing the United Kingdom amendment. He suggested, however, that the words " and by virtue of an agreement by the sending State and a third State " be deleted from article 7. That was necessary because the nature of the arrangements between the third State and the sending State was not relevant to the matter dealt with in article 7. Requirement of the prior consent of the receiving State should be retained, however, for the sake of consistency with article 2, which laid down that the establishment of consular relations between States took place by mutual consent.

82. Mr. WESTRUP (Sweden) said that his delegation could support the United Kingdom amendment with the sub-amendment proposed by the delegation of the Federal Republic of Germany. It could also support the formulation suggested by the representative of India.

83. Mr. ABDELMAGID (United Arab Republic) supported the United Kingdom amendment, with the proposed sub-amendment. In the United Arab Republic, United Kingdom consulates conducted consular affairs on behalf of New Zealand. When a new country was added to the Commonwealth, United Kingdom consulates also acted on behalf of that country. In a situation of that type, the least that could be asked was that the Ministry for Foreign Affairs of the United Arab Republic should be informed of the name of the new country on behalf of which the United Kingdom consulates were to act.

84. From a purely legal point of view, the arguments put forward by the representatives of Greece and Tunisia were correct, but he thought that an unduly legalistic approach should not be adopted in the matter and that the United Kingdom amendment, with the sub-amendment, should be accepted as conforming with existing practice.

85. Mr. ENDEMANN (South Africa) supported the United Kingdom amendment, with the sub-amendment. He thought it would be possible to cover arrangements between Commonwealth countries by referring to " an understanding " rather than " an agreement " between the sending State and the third State.

86. Mr. de ERICE y O'SHEA (Spain) supported the Indian suggestion. It was essential to require the consent of the sending State; the least that that State could ask was a notification to its Ministry for Foreign Affairs. He stressed that the future convention would not be applied at the level of embassies and governments; it would be applied by consulates in their relations with local authorities. It was therefore necessary that the Ministry of Foreign Affairs of the receiving State should be informed, so that it could in its turn inform the local authorities concerned that the consulate would exercise consular functions on behalf of a third State. The formulation suggested by the Indian representative should serve to preserve existing Commonwealth arrangements and he urged the United Kingdom representative to accept that suggestion.

The meeting rose at 1.30 p.m.

NINTH MEETING

Monday, 11 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

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

Article 7 (Exercise of consular functions on behalf of a third State) (*continued*)

1. Mr. KRISHNA RAO (India) read out an oral amendment, submitted by his delegation jointly with that of Greece, for changing article 7 to read: " A consulate may exercise in the receiving State consular functions of behalf of a third State with the express consent of the receiving State."

2. The CHAIRMAN announced that the United Kingdom amendment (A/CONF.25/C.1/L.62) had been withdrawn. He drew attention to another amendment, submitted jointly by the United Kingdom and the Federal Republic of Germany (A/CONF.25/C.1/L.79). Since the latter was the furthest removed from the original proposal, it would be put to the vote first.

3. Mr. PETRŽELKA (Czechoslovakia) said that he would vote for the amendment submitted jointly by the United Kingdom and the Federal Republic of Germany; if that amendment should not be adopted, he would vote for the oral amendment submitted by India provided that its sponsor consented to omit the word " express ".

4. The CHAIRMAN put to the vote the amendment (L.79) submitted jointly by the United Kingdom and the Federal Republic of Germany.

The amendment was adopted by 25 votes to 19, with 21 abstentions.