

# **United Nations Conference on Consular Relations**

Vienna, Austria  
4 March – 22 April 1963

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**A/CONF.25/C.2/SR.13**

**13<sup>th</sup> meeting of the Second Committee**

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*the First and Second Committees)*

believe that the receiving State would be required to provide the members of the consulate with means of transport.

44. Mr. SALLEH bin ABAS (Federation of Malaya) proposed a compromise wording for article 34 which would include neither "permit" nor "ensure". Under his proposal, the article would read "subject to the laws and regulations of the receiving State concerning zones entry into which is prohibited or regulated for reasons of national security, all members of the consulate shall have freedom of movement and travel in the performance of their consular functions".

45. Baron van BOETZELAER (Netherlands) and Mr. UNAT (Turkey) asked that it be noted in the summary record that their delegations made the same reservations as those of the representatives of France and Belgium.

46. Mr. Von NUMERS (Finland) said that the corresponding article of the 1961 Convention (article 26) contained the word "ensure"; he thought it undesirable that a different wording should be used in the convention on consular relations. He would accordingly vote for the article as it stood.

47. Mr. MORGAN (Liberia) also supported the article as drafted.

48. Mr. NWOGU (Nigeria) thought that the oral amendment by the delegation of the Federation of Malaya constituted a happy compromise solution and he would vote for it.

49. Mr. MARESCA (Italy) said that the Netherlands delegation's proposal would improve the article, but it would restrict its scope if the words "in its territory" were eliminated.

50. Mr. ANGHEL (Romania) agreed that his amendment should be referred to the drafting committee.

51. Mr. WOODBERRY (Australia) announced that his delegation had decided to withdraw its amendment (L.72) and to support the oral proposal made by the representative of the Federation of Malaya.

52. The CHAIRMAN pointed out that the Australian amendment could be withdrawn only if the Netherlands delegation did not maintain its sub-amendment.

53. Baron van BOETZELAER (Netherlands) said that, since the Australian delegation wished to withdraw its amendment, he was prepared to withdraw his sub-amendment.

54. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he was opposed to the Federation of Malaya's proposal and in favour of maintaining the International Law Commission's text.

*The oral amendment of the Federation of Malaya was rejected by 26 votes to 17, with 22 abstentions.*

55. Mr. HEUMAN (France), on a point of order, said he was opposed to the drafting committee being given a choice between the words "grant" and "ensure", which bore on the very substance of the article.

56. The CHAIRMAN noted that the Romanian delegation had in fact withdrawn its amendment and that there was therefore only one text before the Committee — i.e., the article as drafted by the International Law Commission.

57. Mr. VRANKEN (Belgium) said that he wished to reintroduce the Romanian amendment and asked for it to be put to the vote.

*The Romanian amendment (A/CONF.25/C.2/L.99), reintroduced by Belgium, was rejected by 26 votes to 21, with 19 abstentions.*

*Article 34 was adopted by 61 votes to none, with 6 abstentions.*

The meeting rose at 12.55 p.m.

### THIRTEENTH MEETING

*Wednesday, 13 March 1963, at 3.15 p.m.*

*Chairman: Mr. GIBSON BARBOZA (Brazil)*

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

##### Article 35 (Freedom of communication)

1. The CHAIRMAN suggested that the Committee should consider article 35 and the amendments thereto paragraph by paragraph.<sup>1</sup>

##### Paragraph 1

2. The CHAIRMAN invited attention to the amendments submitted by Switzerland (L.42), Japan (L.55), South Africa (L.75) and Nigeria (L.108).

3. Mr. SERRA (Switzerland) explained that paragraph 1 of article 35 as drafted by the International Law Commission gave consulates the absolute right to make unrestricted use of the diplomatic or consular bag and the diplomatic or consular courier — a right which his government did not consider justified. The Swiss amendment (L.42) would subject freedom of communication to certain restrictions. Where the sending State had a diplomatic mission in the receiving State, the communications of the consular post with the government and with the diplomatic missions and consular posts of the sending State elsewhere than in the receiving State should be routed through that mission. That restriction on the use of the bag or courier (whether diplomatic or consular) was the best guarantee of their protection. If the sending State had no diplomatic representative in the receiving State, the consulate would be entitled to communicate directly as provided in paragraph 1.

<sup>1</sup> The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.15; Switzerland, A/CONF.25/C.2/L.42; Japan, A/CONF.25/C.2/L.55; Byelorussian Soviet Socialist Republic, A/CONF.25/C.2/L.70; Federal Republic of Germany, A/CONF.25/C.2/L.73; South Africa, A/CONF.25/C.2/L.75; Spain, A/CONF.25/C.2/L.91; Australia, A/CONF.25/C.2/L.92; Italy, A/CONF.25/C.2/L.102; Nigeria, A/CONF.25/C.2/L.108.

4. If paragraph 1 were adopted as drafted by the International Law Commission, the Swiss Government would be unwilling to apply it to honorary consuls as provided in article 57.

5. Mr. DRAKE (South Africa) said that his amendment (L.75) proposed to replace the words "free communication" by the words "freedom of communication"; it was intended to remove a possible ambiguity pointed out during the preliminary discussions. The wording of the draft might be taken as implying a guarantee of communication free of charge, whereas the International Law Commission's intention was that communication should be unrestricted, but subject to the normal charges for communications in the receiving State. He suggested that the paragraph should be referred to the drafting committee.

6. Mr. SHITTA-BEY (Nigeria) said that his amendment (L.108) to replace the last sentence of paragraph 1 by the following words: "The consulate may not, however, install and use a wireless transmitter except with the consent of the receiving State", was more restrictive than the original version, because he did not consider that the reasons for permitting consuls to operate their own transmitters were as strong as in the case of diplomatic missions. Moreover, in countries where the sending State had a diplomatic mission, the consulate was under the diplomatic mission's supervision and could make urgent communications through the wireless transmitter authorized under paragraph 1 of article 27 of the Convention on Diplomatic Relations. The installation of consular transmitters would deprive the receiving State of revenue and would cause further congestion on already over-loaded frequencies, two factors that might be considered under article 55 as constituting an interference in the internal affairs of the receiving State.

7. Mr. WASZCZUK (Poland) said that he could not support the Swiss amendment as it restricted direct communication between consulates, which was frequently necessary to consular functions; such direct communication existed and would undoubtedly increase. He was also opposed to the Japanese amendment (L.55) for although the consular courier was not yet widely used it was impossible to foresee future developments. He supported the International Law Commission's text.

8. Mr. KANEMATSU (Japan) said that his amendment (L.55) to delete the words "or consular" was linked with the Japanese amendment to paragraph 5. In view of paragraph 4 of the International Law Commission's commentary, he considered that paragraph 5 of the text was designed to cover special cases and was not in accordance with practice. Paragraphs 2 and 3 of article 35 and articles 40 and 41 adequately safeguarded the inviolability of consular officials; the post of consular courier was entirely new and would only lead to complications. He therefore proposed to eliminate reference to consular courier from paragraphs 1 and 5.

9. Mr. SPACIL (Czechoslovakia) said that although at first sight the proposed amendments to paragraph 1 might seem an improvement on existing practice, careful examination would show that they were not. He, and

doubtless other representatives who were experienced in consular functions, could give many examples to prove that the International Law Commission's draft was better and more flexible than any of the amendments. Under the Swiss amendment, for example, consulates would have to communicate with each other by means of a diplomatic courier who would have to make detours to visit the capital, and consulates would have to communicate with each other via the diplomatic courier on matters of purely consular concern. It was essential to ensure direct communication between consulates and he therefore opposed the Swiss amendment.

10. He also opposed the Japanese amendment, for although consular couriers might seem to be an innovation, it was essential to include them in the Convention for practical reasons. First, a courier carrying correspondence between the capital and a country where there was a consular but no diplomatic mission would, in effect, be a consular courier. Secondly, a head of a consular post or vice-consul carrying a bag to the capital would still be a consular and not a diplomatic courier for he did not appear on the diplomatic list. Thirdly, the representatives of the Netherlands and of the Byelorussian Soviet Socialist Republic had each proposed an amendment, which he supported, to the effect that *ad hoc* couriers appointed to carry the consular bag to the capital should be consular couriers. With regard to the Nigerian amendment, he understood the motive behind it and would be satisfied if it were submitted to the drafting committee.

11. Mr. SPYRIDAKIS (Greece) said that he was opposed to the introduction of a new element in international law and practice by the inclusion of provisions concerning the consular courier. In his opinion, articles 33, 34 and 40 provided an adequate safeguard for consular correspondence. He supported the Japanese and Swiss amendments; he also supported the South African and Nigerian amendments, but considered that they should be dealt with by the drafting committee.

12. The CHAIRMAN asked if the representative of Nigeria would agree to his amendment being submitted to the drafting committee. He pointed out that it was essentially the International Law Commission's interpretation of paragraph 1 as set out in paragraph 7 of its commentary.

13. Mr. SHITTA-BEY (Nigeria) concurred in the submission of his amendment to the drafting committee.

14. Mr. EVANS (United Kingdom) said that the Swiss amendment could cause great inconvenience and delay to the sending State's communications, for it seemed to imply that communications between consular posts could not be transmitted direct from one consulate to another, but would have to be routed via a diplomatic mission of the sending State or the capital of the sending State. It would be very awkward, for example, if communications in the United States, where the United Kingdom had many consulates, had all to be channelled through Washington.

15. The chief concern expressed in the Japanese amendment was that the draft convention should not

include a new category of courier or official to whom the immunities in paragraph 5 of article 35 would have to be accorded. The Japanese representative also considered that in so far as the courier was not a diplomatic courier he should only be treated as a consular official and given the corresponding limited inviolability and immunities. There were two objections. Firstly, couriers did not fall within the definition of consular officials in article 1. Secondly, and more important, it was essential for couriers to receive complete inviolability and not to have the limited inviolability given to consular officials. The situation that would result from the Japanese amendment — the existence of two categories of courier, with different degrees of inviolability — was neither satisfactory nor acceptable.

16. The South African and Nigerian amendments were purely drafting matters.

17. Mr. LEVI (Yugoslavia) said that he could not support the Swiss amendment. He understood the Swiss representative's point of view as he also came from a small country where there was no need for inter-consular communication. For large countries, however, he saw no reason for not allowing direct communication. He would support the Japanese amendment if it were understood that the consulate had the right to send its own diplomatic courier and did not have to rely on couriers detached from diplomatic missions.

18. Mr. WOODBERRY (Australia) pointed out that by virtue of article 57, article 35 was applicable to honorary consuls. If, therefore, it was intended that the complete inviolability proposed for consular couriers should extend to couriers appointed by honorary consuls who might be nationals of the receiving State, he could not support the idea. He would support the Japanese proposal if its intention was that, by eliminating consular couriers, consulates would use diplomatic couriers, who would be covered by diplomatic inviolability.

19. Mr. JESTAEDT (Federal Republic of Germany) endorsed the comments of the United Kingdom representative. The difference of opinion in the committee on the question of the consular courier arose because some countries were not accustomed to the common frontiers which existed between European countries, where there was no reason for couriers to call at the capital. The consular courier was accepted in practice and should be included in the Convention.

20. Mr. KONSTANTINOV (Bulgaria) opposed the Swiss amendment, which sought to eliminate an integral part of inter-consular functions. He also opposed the Japanese amendment, for without consular couriers the consuls would have to depend on diplomatic couriers, which would impede their communications. Provided the consuls had their own couriers it was unimportant whether they were called diplomatic or consular couriers.

21. Mr. MARESCA (Italy) remarked that the existence of several consulates in one receiving State implied the need for communication by correspondence and it would be unreasonable for a receiving State not to permit and

protect correspondence between consulates of the same State on its territory. The Swiss amendment was satisfactory as far as it concerned consulates not in the same receiving State, but was too stringent regarding consulates in the same receiving State. He proposed, therefore, that in the second sentence of the amendment the words "and the other consulates of the sending State in the receiving State" should be inserted after the words "diplomatic missions". With regard to the Japanese amendment, although he was in favour of any simplification of the Convention, he felt that there was a justification for consular couriers and that consuls should not be prevented from sending diplomatic bags to other consulates in the same country when necessary.

22. Mr. KHOSLA (India) shared the doubts expressed by a number of representatives on the Swiss amendment and appreciated the difficulties of which examples had been given. The International Law Commission was in favour of the principle of free and unrestricted communication which was also embodied in article 27 of the Convention on Diplomatic Relations. The consular officials knew the most efficient means of communication and it would be better as far as possible to leave it to them to decide their own methods.

23. The Italian representative's proposal would seem to provide that consulates could communicate with diplomatic missions in the receiving State but not outside it, and was therefore inconsistent with the provision regarding free communication. With regard to the Japanese amendment, it might be true that the term "consular courier" was a relatively new one, but it was a category that was going to figure increasingly in the world of consular relations and it should therefore be taken into account; it should be recognized and the consular courier himself given the privileges provided under article 35. He supported the suggestion that the South African amendment should be referred to the drafting committee.

24. Mr. SERRA (Switzerland) accepted the Italian sub-amendment to his amendment.

25. Mr. VRANKEN (Belgium) said that he could not accept the Swiss amendment even as amended by Italy. It was essential for consulates to be able to communicate direct with consulates in other countries. He supported the Japanese amendment because consular couriers were not recognized under international law. With regard to the use of a radio transmitter, he would accept the provision but pointed out that because of the limited medium and long wave frequencies allocated by the International Telecommunication Union, Belgium would not have any to spare for consulates.

26. Mr. von NUMERS (Finland) said that the essence of the question was the official bag rather than the person who carried it, for he derived his name from the kind of material he was carrying. If, therefore, it were decided to create a consular bag, it would also be necessary to create a consular courier.

27. Mr. PEREZ HERNANDEZ (Spain) supported the Swiss amendment as amended by Italy. It was an

objective and practical amendment and conformed with the principle that consular status should not be assimilated to diplomatic status. Moreover, since the First Committee had agreed to restrict consular functions to the territory of the receiving State, there was no need to extend the scope of the consular bag.

28. Mr. LEVI (Yugoslavia) supported the Italian sub-amendment as a compromise between the Swiss amendment and the opposing points of view, including his own.

29. Mr. HEUMAN (France), on a point of order, drew attention to the words "diplomatic missions" in the Swiss amendment and pointed out that there could be only one mission in one receiving State.

30. Mr. SERRA (Switzerland) proposed the insertion of the words "wherever they may be" after the words "diplomatic missions" in his amendment.

*The revised Swiss amendment (A/CONF.25/C.2/L.42), as amended by the representative of Italy, was rejected by 32 votes to 17, with 17 abstentions.*

31. The CHAIRMAN invited the Committee to vote on the Japanese amendment to paragraph 1.

32. Mr. LEVI (Yugoslavia), on a point of order, said that he could not vote until he knew whether a consulate had the right to have a diplomatic courier. If the answer were in the affirmative, he would vote for the amendment; otherwise he would vote against it.

33. Mr. KANEMATSU (Japan) said that the question was an important one; the answer would be found in the United Kingdom representative's interpretation of his amendment. He wished to remove the new idea of a consular courier, because in practice the function was performed by a kind of diplomatic courier between consulates.

34. Mr. LEVI (Yugoslavia) indicated his satisfaction with the explanation.

*The Japanese amendment (A/CONF.25/C.2/L.55) was rejected by 38 votes to 11, with 18 abstentions.*

35. The CHAIRMAN invited the Committee to vote on paragraph 1 of article 35 as drafted by the International Law Commission, on the understanding that the South African amendment (L.75) and the Nigerian amendment (L.108) would be referred to the drafting committee.

*Paragraph 1 was approved by 60 votes to none, with 10 abstentions.*

#### Paragraph 2

*Paragraph 2 was approved unanimously.*

#### Paragraph 3

36. The CHAIRMAN invited the Committee to consider paragraph 3 of article 35 and the four amendments thereto submitted by the delegations of the Federal Republic of Germany (L.73), South Africa (L.75), Spain (L.91), and Nigeria (L.108).

37. Mr. SHITTA-BEY (Nigeria) explained that the amendment submitted by his delegation had been introduced in accordance with the prevailing distinction between purely diplomatic bags and consular bags. The Committee had been working since the outset on the principle that there was a distinction between diplomatic and consular privileges. It was felt that the statement in the International Law Commission draft of paragraph 3, that the consular bag, like the diplomatic bag, should not be opened or detained, required qualification. His delegation had therefore submitted a new paragraph 3 setting certain limitations on the privileges accorded to the consular bag. The delegation of the Federal Republic of Germany had submitted a similar amendment in which the last sentence introduced the further condition that, should the request of the receiving State to open the bag be refused by the authorities of the sending State, the bag might be taken back by the sending State. His delegation was considering that addition with a view to combining its own amendment with that of the Federal Republic of Germany.

38. Mr. JESTAEDT (Federal Republic of Germany) said that his delegation had welcomed acceptance by the Committee, in article 30, of the principle that consular premises were inviolable with certain exceptions relating mainly to emergency situations. In the same spirit, it had put forward an amendment intended to rule out any possibility of the misunderstandings which sometimes arose in practice. It was, of course, desirable to establish the principle that the consular bag should be neither opened nor detained. Abuses of the consular bag did sometimes occur, however, and could be a subject of friction between States. His delegation had therefore sought a compromise and after stating the principle the amendment went on to provide that, should the competent authorities of the receiving State have serious reasons to believe that the bag contained something other than the correspondence, documents or articles referred to in paragraph 4 of article 35, they might with the authorization of the Ministry for Foreign Affairs of the receiving State request that the bag be opened in their presence by an authorized representative of the sending State. If the sending State refused the request it might take back the bag.

39. Mr. DRAKE (South Africa) withdrew his delegation's amendment in favour of the amendments submitted by the Federal Republic of Germany, Nigeria and Spain or, preferably, in favour of any joint proposal which might emerge from those amendments.

40. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that the amendments of the Federal Republic of Germany and of Nigeria allowed the consular bag to be opened in certain circumstances; his delegation found that totally unacceptable. An essential guarantee of the inviolability of consular correspondence was that the consular bag could not be opened or detained. The adoption of the proposed amendments would entirely change the situation and destroy the principle of absolute inviolability. Such phrases as "serious reasons" used in those amendments, or "cases of grave and well-founded suspicion", used in the Spanish amendment left wide

scope for interpretation by the receiving State and could lead to abuse and the restriction of the sending State's freedom of communication. His delegation considered that the essential principle was adequately expressed in paragraph 3 as drafted by the International Law Commission, and it would vote against all the amendments.

41. The CHAIRMAN pointed out that, although there were some differences between the remaining amendments, the principle was the same in each.

42. Mr. PEREZ HERNANDEZ (Spain) said that, in order to facilitate the discussion, his delegation wished to withdraw its amendment and to become a sponsor of the amendment submitted by the Federal Republic of Germany. That amendment represented a compromise between the rights of the receiving State and those of the sending State. It was apparent that diplomatic and consular bags could not be treated in exactly the same way.

43. Mr. JESTAEDT (Federal Republic of Germany) welcomed the delegation of Spain as co-sponsor of his amendment.

44. Mr. KAMEL (United Arab Republic) said that although his delegation had supported the inviolability of consular archives and documents, it reserved its position regarding the text of paragraph 3 in the International Law Commission's draft. It would therefore vote for the joint amendment, in accordance with the position taken by the United Arab Republic at the 1961 Conference with regard to the inviolability of the diplomatic bag. Any government would exercise the right to open a consular bag in certain circumstances with the greatest care, and both sending and receiving States would benefit from the proposed provision.

45. Mr. TÔN THẬT ÂN (Republic of Viet-Nam) supported the joint amendment. The consular function was essentially administrative, and his delegation felt that the respect accorded to the consular bag should be less absolute than that given to the diplomatic bag. The amendment offered adequate safeguards to the sending State.

46. Mr. LEVI (Yugoslavia) supported the International Law Commission's draft. The adoption of the proposed amendments would imply that diplomatic officials were not suspected of violating the law of the receiving State and it was therefore unnecessary to open diplomatic bags, but that suspicion did fall on consular officials and it must therefore be possible to open consular bags. His delegation would vote against any amendment which would restrict the inviolability established in paragraph 3.

47. Mr. SPACIL (Czechoslovakia) strongly opposed all the amendments which had been submitted to paragraph 3 and which would mean the complete rejection of the principle of inviolability of the consular bag. His delegation had consistently opposed all attempts to restrict consular immunities. The proposed amendments would leave it entirely to the discretion of the receiving government when to open a consular bag, and the

sending State would have no guarantee of the bag's inviolability. The situation would be particularly dangerous in periods of political tension. In practice the effect of the amendments would be to destroy inviolability of consular correspondence, since in order to determine whether the bag did, in fact, contain only official correspondence the receiving State would have to examine each document. The last sentence of the joint amendment was an attempt to compromise, but in practice the sending State would have to choose between taking back the bag unopened, which could be interpreted as an unfriendly gesture, and opening the bag with the consequent violation of its official correspondence. The principle established in the International Law Commission draft of paragraph 3, that the consular bag, like the diplomatic bag, could not be opened or detained, must be safeguarded. His delegation would therefore vote against the amendments.

48. Mr. KHOSLA (India) agreed that the consular bag should be treated like the diplomatic bag and that the International Law Commission draft should be accepted for the reasons so well expressed by the representatives of Yugoslavia and Czechoslovakia.

49. Mr. PETRENKO (Union of Soviet Socialist Republics) said that it would be preferable to adopt the International Law Commission's text since the proposed amendments would allow a partial violation of the principle that the consular bag should not be opened or detained. At the 1961 Conference a number of amendments had been introduced to restrict the inviolability of the diplomatic bag but that move had been defeated by more than a two-thirds majority of the Conference. At the thirteenth session of the International Law Commission (596th and 619th meetings), when the text now before the Committee was under consideration, a few members had favoured a limitation of the inviolability of the consular bag, but again a majority of the members had decided to uphold its absolute inviolability.<sup>2</sup> The proposed preamble expressed the belief that an international convention on consular relations would contribute to the development of friendly relations among nations: if it was desired to achieve that aim it would be better to exclude the possibility of friction between States which would inevitably arise if attempts were made to open diplomatic or consular bags. Soviet law and practice allowed no infringement of inviolability, and his delegation would vote for the International Law Commission draft.

50. Mr. EVANS (United Kingdom) said that in considering the amendments it was important to distinguish between the official correspondence and the consular bag. It was the official correspondence of the consulate which was given inviolability under paragraph 2 of article 35: the provision in paragraph 3 that the bag should not be opened was solely designed to protect the official correspondence. That provision was a special privilege accorded to the sending State, but

<sup>2</sup> For the discussion of this matter during the twelfth session, see also *Yearbook of the International Law Commission, 1960*, vol. I (United Nations publication, Sales No. 60.V.1, vol. I), 531st and 532nd meetings.

the receiving State also had an interest in seeing that the privilege was not abused. Abuses did occur, and articles were sometimes put in consular bags which had no right to be there. His delegation therefore felt it important to devise a procedure to protect the interests both of the sending State and of the receiving State. The joint amendment seemed to do so adequately. It protected the interests of the receiving State which, if it had a serious reason for doing so, and only then, could request the bag to be opened. On the other hand, the sending State retained the right to take back the bag unopened. Nothing in the amendment affected the inviolability of the official correspondence under paragraph 2. The inclusion in article 35 of the provisions proposed in the joint amendment would discourage abuse and would help to eliminate any possible cause of friction between sending and receiving States. The Nigerian amendment went rather further than the joint amendment and contained provisions to be found in a number of bilateral agreements into which the United Kingdom had entered. His delegation would therefore be able to accept that amendment. On the whole, however, it would seem that the joint amendment was a little more likely to commend itself to the Committee as a reasonable compromise. Nothing in the amendment affected the inviolability of the diplomatic bag.

51. Mr. SHITTA-BEY (Nigeria) said that, after listening to the views which had been expressed and conferring with the representative of the Federal Republic of Germany, he would withdraw his delegation's amendment (L.108, paragraph 2) in favour of a joint amendment which his delegation wished to sponsor together with the delegations of the Federal Republic of Germany and Spain. The proposed text of paragraph 3 would be that of the original amendment of the Federal Republic of Germany (L.73) with the deletion in the second sentence of the words "with the authorization of the Ministry for Foreign Affairs of the receiving State"; the last sentence would be re-drafted to read: "If the authorities of the sending State refuse this request they may take back the bag."

52. Mr. PEREZ HERNANDEZ (Spain) welcomed the delegation of Nigeria as a sponsor of the revised joint amendment.

53. Mr. KONSTANTINOV (Bulgaria) opposed the joint amendment; his delegation supported the International Law Commission's draft which embodied in a satisfactory manner the very important principle that the consular bag should be inviolable.

54. Mr. SRESHTHAPUTRA (Thailand) supported the first part of the joint amendment; but, although he appreciated its good intentions, he doubted whether the last sentence would produce the expected result of avoiding conflict. If a receiving State decided to request the bag to be opened it would be because it had serious reasons to believe that it contained something other than official correspondence. If the sending State then decided to take the bag back, the doubts of the receiving State would be reinforced and the bad feeling between the receiving and the sending States which had already

arisen since the receiving State made the request would remain. With the exception of the last sentence, however, his delegation would support the joint amendment.

55. Mr. SERRA (Switzerland) asked for an expert opinion on the introduction of the consular bag which for many countries was a new idea.

56. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, said that his reply was based on the International Law Commission's commentary on paragraph 3. The consular bag might take the form of a sack, box, envelope or any sort of package, but the essential criterion was that it should contain the official correspondence, documents or articles intended for official use. It must also bear visible external marks of its character.

57. Mr. SERRA (Switzerland) asked what distinction should be made between diplomatic and consular bags.

58. Mr. ŽOUREK (Expert) replied that the consular bag was a bag sent by a consulate. In practice a consulate often sent its bag to a diplomatic mission or to a central point from which it was transported jointly with other diplomatic or consular bags to its destination. By reason of its geographical position, a consulate might have to send a consular courier to the seat of the diplomatic mission in the receiving State or directly to the Ministry for Foreign Affairs in the sending State. The International Law Commission had felt that the consular bag should have the same inviolability as the diplomatic bag, whether it was carried by a consular courier or sent through the intermediary of the diplomatic mission or an intermediate post.

59. Mr. HARASZTI (Hungary) said that if the Committee admitted that the consular bag could be opened, it would be recognizing the right of the receiving State to examine official correspondence, which could not be identified without examining all the documents in the bag. The principle of the inviolability of official correspondence would therefore be completely invalidated and freedom of communication would be hampered. His delegation believed that consulates and diplomatic missions should be treated equally in that respect and would therefore vote against the joint amendment and in favour of the original text.

60. Mr. WASZCZUK (Poland) said that the amendment, which dealt with very exceptional situations, was totally unacceptable to his delegation, which would vote for the International Law Commission's text.

61. Mr. ZEILINGER (Costa Rica) pointed out the practical difficulty that if the consular courier was asked to open the bag he could not do so, since he never carried the key.

62. Mr. LEVI (Yugoslavia) stressed the fact that consular and diplomatic bags must be given the same degree of inviolability. The adoption of the joint amendment would mean that the consular courier would have the right to take back the bag if challenged. The diplomatic courier would be in a less favourable position should a receiving State decide to violate the Vienna Convention and open a diplomatic bag.

63. Mr. MARESCA (Italy) considered that the joint amendment was a well-balanced text. He proposed that the drafting committee should be requested to include in article 1 a definition of "consular bag".

64. Mr. DEJANY (Saudi Arabia) said that he had difficulty in accepting the principle of the joint amendment, but he regretted that in its latest revision the authorization of the Ministry for Foreign Affairs of the receiving State had been omitted. The retention of that reference might make the text more acceptable to those anxious to safeguard inviolability; it would help also if the reasons for which the receiving State might request the opening of the bag were stated to be "very serious".

65. Consular and diplomatic bags were sometimes sent through the regular mail. In such circumstances a bag could not be taken back by the sending State should the request to open it be refused since the bag would still be in the custody of the postal authorities. It might make the text more generally applicable if it were provided that, were the request to open the bag to be refused by the authorities of the sending State, the bag should be returned to its place of origin.

66. Mr. BOUZIRI (Tunisia) recalled that only after lengthy discussion had the 1961 Conference finally agreed that the diplomatic bag should be accorded complete inviolability. It would be difficult to grant the same degree of inviolability to the consular bag. The opening of a consular bag would not necessarily mean that the correspondence it contained would be read. It would be relatively easy to detect any unauthorized contents and to ascertain whether the bag contained only official correspondence. His delegation saw the practical necessity for the amendment which would provide that in certain cases — which, moreover, would be very exceptional — the consular bag could be opened. The authorities of the receiving State would unquestionably be wary of acting without due consideration and opening the bag without serious reasons to do so, for that would be a very grave matter and might involve the rupture of relations between the States concerned. His delegation would vote for the amendment but felt that the text might be further improved, particularly in the last sentence, which was slightly ambiguous.

67. Mr. AMLIE (Norway) said that his delegation strongly opposed the joint amendment. The Committee was treading a very dangerous path in contemplating its acceptance. Similar amendments had been before the 1961 Conference but had been rejected. Many excellent arguments had been put forward against the present amendment and he would draw attention only to one additional factor. The competent authorities of a receiving State could ascertain whether or not the correspondence contained in a consular bag was official correspondence only by reading it. Article 5 (c), however, listed among the consular functions "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 and

giving information to persons interested". The consular bag might contain, quite legitimately, an uncomplimentary report on the economic, scientific or cultural life of a country. Rather than allow the authorities of the receiving State to see that report the sending State might prefer to take back the consular bag, thus creating great embarrassment, although the bag contained no unauthorized article. The provision introduced by the amendment added no clarity and would not help to avoid friction. It would, on the contrary, only add to the possibility of friction, suspicion and misunderstanding. Although the intentions and fears of the amendment's supporters were understandable, the solution to the problem could not be found by a formula such as the one proposed.

68. Mr. MOUSSAVI (Iran) said he would vote for the joint amendment because he believed in the principle of relative rather than absolute inviolability.

69. Mr. DE CASTRO (Philippines) said he did not believe there was any real difference of opinion in the Committee, for he was sure that no one had any intention of using the consular bag for anything other than official matters. There was no reason for concern about the proposed amendments for he was convinced that governments which signed the convention would observe it in good faith.

70. Mr. SHITTA-BEY (Nigeria) recalled that the representative of Thailand had expressed doubts concerning the effect of the last sentence of the joint amendment. He had listened carefully to the discussion on the principle of complete inviolability as opposed to limited inviolability for the consular bag and believed that a balance between the two views would be achieved if the last sentence were re-drafted to read "If this request is refused by the authorities of the sending State the bag shall be returned to its place of origin."

71. The CHAIRMAN stated that if the representatives of Spain and the Federal Republic of Germany accepted the amendment it would be considered as a revision and not a sub-amendment of the joint amendment.

72. Mr. JESTAEDT (Federal Republic of Germany) and Mr. PEREZ HERNANDEZ (Spain) indicated their acceptance of the Nigerian proposal.

73. Mr. TOURE (Guinea) asked what would be the position of the receiving State in the eventuality provided for by the Nigerian amendment.

74. Mr. SHITTA-BEY (Nigeria) said he had proposed his amendment as a guarantee of the principle of inviolability. If the authorities of the sending State knew that there was nothing in the consular bag that would contravene the Convention, they would open the bag on request. But regardless of the attitude of the receiving State, they should be given the opportunity to refuse in accordance with the principles of international law.

75. The CHAIRMAN said that he would put the joint amendment to the vote.



76. Mr. SRESHTHAPUTRA (Thailand) requested a separate vote on the first and last sentences of the amendment.

77. The CHAIRMAN put to the vote the first sentence of the revised joint amendment by the Federal Republic of Germany, Spain and Nigeria.

*At the request of the representative of Czechoslovakia, a vote was taken by roll-call.*

*The United Kingdom, having been drawn by lot by the Chairman, was called upon to vote first.*

*In favour:* United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Republic of Viet-Nam, Algeria, Argentina, Australia, Belgium, Brazil, Canada, China, Colombia, Congo (Leopoldville), Denmark, Federation of Malaya, Federal Republic of Germany, Ghana, Greece, Indonesia, Iran, Ireland, Israel, Italy, Republic of Korea, Liberia, Libya, Liechtenstein, Mexico, Morocco, Netherlands, Nigeria, Pakistan, Philippines, Portugal, San Marino, Saudi Arabia, South Africa, Spain, Switzerland, Syria, Thailand, Tunisia, Turkey, United Arab Republic.

*Against:* Yugoslavia, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, France, Hungary, India, Japan, Mongolia, Norway, Poland, Romania, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

*Abstaining:* Austria, Cambodia, Finland, Guinea, Kuwait.

*The first sentence of the joint amendment to paragraph 3 was adopted by 44 votes to 15, with 5 abstentions.*

78. The CHAIRMAN invited the Committee to proceed to a vote on the second sentence of the revised amendment.

*At the request of the representative of Czechoslovakia, a vote was taken by roll-call.*

*Mali, having been drawn by lot by the Chairman, was called upon to vote first.*

*In favour:* Mexico, Morocco, Netherlands, Nigeria, Norway, Pakistan, Philippines, San Marino, Saudi Arabia, South Africa, Spain, Switzerland, Syria, Tunisia, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Republic of Viet-Nam, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Denmark, Federation of Malaya, France, Federal Republic of Germany, Ghana, Indonesia, Iran, Ireland, Israel, Italy, Japan, Republic of Korea, Kuwait, Liberia, Libya, Liechtenstein.

*Against:* Mongolia, Poland, Portugal, Romania, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Bulgaria, Byelorussian Soviet Socialist Republic, Czechoslovakia, Guinea, Hungary.

*Abstaining:* Sweden, Cambodia, Congo (Leopoldville), Finland, Greece, India.

*The second sentence of the joint amendment to paragraph 3 was adopted by 45 votes to 13, with 6 abstentions.*

79. The CHAIRMAN put to the vote the joint amendment in document A/CONF.25/C.2/L.73, as orally revised, as a whole.

*The amendment was adopted by 46 votes to 15, with 3 abstentions.*

The meeting rose at 7 p.m.

#### FOURTEENTH MEETING

Thursday, 14 March 1963, at 10.45 a.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

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

##### Article 35 (Freedom of communication) (continued)

##### Paragraph 4

1. The CHAIRMAN drew attention to an amendment by South Africa (L.75) to paragraph 4 of article 35.<sup>1</sup>

2. Mr. DRAKE (South Africa) explained that in proposing the insertion of the word "exclusively" after the word "intended", his delegation had wished to emphasize the official nature of documents or articles contained in the consular bag.

*The South African amendment (A/CONF.25/C.2/L.75) was adopted by 39 votes to none, with 16 abstentions.*

3. The CHAIRMAN noted that the Committee had thus approved paragraph 4.

##### Paragraph 5

4. The CHAIRMAN announced that the Japanese amendment to paragraph 5 (L.55) had been withdrawn. The Committee still had before it an amendment by Australia (L.92).

5. Mr. WOODBERRY (Australia) said that, by the terms of article 57 (Regime applicable to honorary consular officials), article 35 should apply to honorary consuls. His delegation wished to draw the Committee's attention to the position that would arise should those two articles be adopted. In that case, the honorary consul might be a citizen of the receiving State and appoint another citizen of the receiving State as consular courier, who would have inviolability in his own country. That was unacceptable to the Australian Government.

6. To solve the difficulty, the Australian delegation proposed an oral amendment to add in article 35, paragraph 5, after the words "consular courier", the words "who shall be neither a national of the receiving State nor a permanent resident thereof". Another solution would be to amend article 1 in such a way that, through article 41, paragraph 1 (Personal inviolability of consular officials) a consular courier who was a national of the receiving State could not have inviolability. Or again, it would be possible to amend article 57 by specifying

<sup>1</sup> For a list of the amendments to article 35, see the summary record of the thirteenth meeting, footnote to paragraph 1.