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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.[1]

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

[1] For a list of the amendments to article 35, see the summary record of the thirteenth meeting, footnote to paragraph 1.

that paragraph 5 of article 35 did not apply to honorary consuls. Since the decision that the drafting committee and the Committee would take when considering article 57, paragraph 1, should not be anticipated, he wished his oral amendment to be put to the vote.

7. Mr. DEJANY (Saudi Arabia) thought it desirable that the Committee should take a decision on the amended article.

8. Mr. JESTAEDT (Federal Republic of Germany) said that he would like Mr. Žourek, the Conference's expert adviser, to explain to the Committee what was meant by personal inviolability; the Committee would then be in a better position to consider article 41 when the time came.

9. Mr. NASCIMENTO e SILVA (Brazil) said that he accepted the principle stated by the Australian delegation in its oral amendment, but considered that the matter should be settled when the time came to discuss article 69 or article 57. The Brazilian delegation would vote against the oral amendment because it considered it to be out of place in article 35.

10. Mr. JESTAEDT (Federal Republic of Germany) pointed out that no definition of inviolability was given in article 41, and he therefore thought that Mr. Žourek's explanations would be of great value.

11. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, agreed that the term " personal inviolability " was not defined in article 41, but the context showed that it referred to the restricted inviolability granted to a consul. The consul could not be subjected to any restriction of his personal freedom. When the time came for the Committee to consider article 41, he would explain the circumstances in which the International Law Commission had been led to adopt the wording of that article. When studying article 35 the International Law Commission had unanimously considered it essential to state specifically that a consular courier enjoyed personal inviolability and should not be liable to any form of arrest or detention and thus to give him all the necessary safeguards for carrying out his work. Admittedly, consulates for the most part used diplomatic couriers, but it might happen that the consul's district was too remote from the capital or that there was no diplomatic mission accredited to the receiving State.

12. Mr. JESTAEDT (Federal Republic of Germany) asked whether it would not be sufficient to say that the consular courier could not be subjected to arrest or detention without making any mention of personal inviolability.

13. Mr. ŽOUREK (Expert) replied that in using those terms the International Law Commission had wished to emphasize the analogy that existed, having regard to the nature of their mission, between the diplomatic courier and the consular courier; it had intended to give the consular courier the same inviolability as that enjoyed by the diplomatic courier.

14. Mr. SAYED MOHAMMED HOSNI (Kuwait) considered that the Australian oral amendment served a very useful purpose in drawing attention to an important question, that of the application of personal inviolability to nationals of the receiving State. When the time came to ratify the Convention, some States might well hesitate to accept such a principle. Of the various solutions proposed by the Australian representative, the best seemed to him to be an amendment to article 57.

15. Mr. PEREZ HERNANDEZ (Spain) said that the drafting committee should study the term " consular courier " which in Spanish might lead to confusion. The delegations of the Spanish-speaking countries should, moreover, meet to study that question.

16. Mr. KHOSIA (India) said that in his view the Australian oral amendment did not serve a very useful purpose.

17. Mr. TILAKARATNA (Ceylon) agreed with the representative of Kuwait. His delegation also thought that article 57 should be amended and had grave doubts as regards the application of personal inviolability to honorary consuls.

18. Mr. SALLEH bin ABAS (Federation of Malaya) said that the Australian oral amendment would not limit the application of inviolability to the consular courier, but would restrict the number of persons that might be appointed consular couriers. His delegation would support the proposal.

19. Mr. JESTAEDT (Federal Republic of Germany) proposed that the words " shall enjoy personal inviolability and " should be deleted from paragraph 5 of article 35.

20. Mr. LEVI (Yugoslavia) said he would welcome the inclusion in the convention of a provision to the effect that a national of the receiving State could not be appointed a consular courier.

21. Mr. WOODBERRY (Australia) stated that if his oral amendment were adopted, he would withdraw the amendment previously submitted by his delegation (L.92).

22. Mr. BLANKINSHIP (United States of America) thought that article 35 should not apply to honorary consuls, who came under article 57. The oral amendment of the representative of the Federal Republic of Germany went a little too far and he would propose that the two parts of the last sentence should be combined in a single sentence, a task that might be left to the drafting committee. It was essential that the correspondence entrusted to the consular courier should not fall into other hands, and there should therefore be no difference of treatment between the consular courier and the diplomatic courier.

23. Mr. ALVARADO GARAICOA (Ecuador) said that he supported the solution proposed by the representative of the Federal Republic of Germany because

the principle of inviolability was implicit in the proposed formula and there was no point in stating it more plainly.

24. Mr. EVANS (United Kingdom) said he had listened with interest to the statements of the German and United States representatives. He was doubtful whether the adoption of the German oral amendment would provide a sufficient guarantee of inviolability for the consular courier. In the United Kingdom the Queen's Messengers were both diplomatic and consular couriers; they enjoyed complete personal inviolability. The establishment of a distinction between diplomatic and consular couriers with regard to the degree of inviolability enjoyed by them would place the United Kingdom — and doubtless other countries — in some difficulty. There was also the point that the words " arrest " and " detention " did not cover all the possibilities; it was, for instance, also necessary to give the courier immunity from search.

25. The arguments advanced by the representative of Australia in support of his amendment were very convincing, but he shared the view of the Brazilian representative that that difficulty could be solved when the Committee came to consider article 69. A provision might be added to paragraph 5 to the effect that a consular courier could not be a national of the receiving State nor a person permanently residing on the territory of that State without the consent of the receiving State. If the Committee accepted the principle of such a provision, the drafting committee might include it either in article 35 or article 69.

26. Mr. WOODBERRY (Australia) said that the oral amendment to his proposal submitted by the United Kingdom representative was acceptable to his delegation.

27. The CHAIRMAN invited the Committee to vote on the oral amendment of Australia, as amended by the United Kingdom to read " who shall, except with the consent of the receiving State, be neither a national of the receiving State nor a permanent resident thereof ".

28. Mr. HEUMAN (France) remarked that, if the proposed sentence were to come at the beginning of the paragraph, it might lead to misunderstanding.

29. The CHAIRMAN said that if the Committee approved the principle of the amendment, the drafting committee would be requested to draw up a text.

The oral proposal by Australia, as amended by the United Kingdom, was adopted by 43 votes to 2, with 26 abstentions.

30. Mr. BLANKINSHIP (United States of America) explained that he had voted for the amendment on the understanding that the provision adopted would be contained not in article 35, but elsewhere in the draft convention, perhaps in article 69.

31. Mr. VRANKEN (Belgium) said that he shared the view that the question of nationals of the receiving State should be dealt with under article 69. He regretted that the expression " nor a permanent resident thereof " was unacceptable to his delegation.

32. The CHAIRMAN said that as the Australian representative had withdrawn his amendment (L.92), there remained the amendment submitted orally by the delegation of the Federal Republic of Germany to delete the last sentence of paragraph 5, which would then read: " He shall not be liable to any form of arrest or detention."

The oral amendment by the Federal Republic of Germany was rejected by 27 votes to 14, with 29 abstentions.

Paragraph 5, as a whole, as amended, was adopted by 55 votes to 1, with 15 abstentions.

33. The CHAIRMAN, in reply to Mr. SHITTA-BEY (Nigeria), explained that, even though the drafting committee might decide to embody in another article the ideas in the amendment that had just been adopted, it would, in any case, be included in the draft convention.

New paragraph

34. The CHAIRMAN said that the Committee had before it proposals by the Netherlands (L.15) and by the Byelorussian SSR (L.70) to insert a new paragraph between paragraphs 5 and 6. Those proposals were very similar and might well be combined in a joint text.

35. Baron van BOETZELAER (Netherlands), introducing his amendment, said that, generally speaking, he did not consider that the draft convention should follow exactly the 1961 Vienna Convention on Diplomatic Relations, but in that particular case he saw no reason for any difference between the two texts. His delegation was prepared, in collaboration with the Byelorussian representative, to submit a joint proposal in which the beginning of his amendment — i.e., " The sending State may . . ." would be replaced by the beginning of the Byelorussian amendment — namely, " The sending State, its diplomatic mission and its consulate may . . ."

36. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that the opening phrase, as drafted in his delegation's amendment, was required for practical considerations. He agreed that the two texts should be combined in the manner suggested by the Netherlands representative. The differences of drafting in the second sentence could be left to the drafting committee.

37. Mr. LEVI (Yugoslavia) said that he had listened with interest to the Byelorussian representative's statement but he would find it difficult to accept the new joint amendment.

38. Mr. SERRA (Switzerland) said that he assumed that the amendments had been submitted before the Committee had reached agreement on paragraph 1 of the article, and he asked whether the use of the singular " courier " in the amendment was deliberately vague.

39. Baron van BOETZELAER (Netherlands) replied that his amendment had followed the text of article 27, paragraph 6 of the 1961 Convention. Moreover, the singular was already used in paragraph 6, but he had no objection to the phrase being put in the plural, a matter which might be left to the drafting committee.

The joint amendment submitted by the delegations of the Netherlands and the Byelorussian Soviet Socialist

Republic was adopted by 57 votes to 2, with 8 abstentions.

Paragraph 6

40. The CHAIRMAN invited consideration of paragraph 6 of article 35 and of the amendments by South Africa (L.75) and Italy (L.102).

41. Mr. DRAKE (South Africa) said that his delegation found the first part of the Italian amendment acceptable. It was not the purpose of his amendment to restrict the right of the consulate to make arrangements for the collection of the consular bag upon its arrival in the territory of the receiving State; on the contrary, the amendment was designed to facilitate the exercise of that right, in an orderly manner. He would be prepared to accept any other drafting amendment conveying the same sense.

42. Mr. HENAO-HENAO (Colombia) wondered whether the new paragraph was really necessary, in view of the adoption of the joint amendment by the Byelorussian SSR and the Netherlands.

43. Mr. MARESCA (Italy) explained that the first part of his amendment had a practical purpose since it extended the application of paragraph 6 to the captain of a passenger vessel, in view of the fact that delivery by sea was cheaper than carriage by air. The second part of the amendment was based on equity: the captain of a ship or an aircraft undertaking such responsibilities should be protected by certain safeguards.

44. Mr. NASCIMENTO e SILVA (Brazil) said that the amendments indicated that paragraph 6 of the International Law Commission's text was unsatisfactory. He was prepared to accept the basic idea of the South African amendment and he found the Italian amendment perfectly acceptable. But the drafting committee should have a certain latitude in settling the text of paragraph 6; for example, the adjective " commercial " was perhaps unsuitable, since a consular bag might be entrusted to a military aircraft.

45. Mr. MARAMBIO (Chile) submitted an oral amendment to paragraph 6 calling for the insertion for practical reasons, after the word " captain " of the words " or an authorized official ".

46. Mr. SPYRIDAKIS (Greece) stated that his delegation did not approve the principle of consular couriers. Nevertheless, since the Committee seemed in agreement on that point, he accepted the first part of the Italian amendment, but not the second part. His delegation was opposed to the South African amendment because it might create obstacles to consular services. He therefore proposed the addition at the end of paragraph 6 of the words " provided he carries a letter from the head of the consular post or his representative ".

47. Mr. NALL (Israel) said that the South African amendment was declarative of a well-established practice, and his delegation would not oppose it. He found the second part of the Italian amendment acceptable, but was in a difficulty so far as the first part was concerned. He thought that the representative of Italy had used the term " merchant marine ", whereas the text before him referred to " passenger vessels " only. He would be glad of an elucidation.

48. Baron van BOETZELAER (Netherlands) said that he was unable to support the Italian amendment, which might cause confusion. In the first part of that amendment it was proposed to add the words " of a passenger vessel or ", but he would point out that the purpose of the new paragraph inserted between paragraphs 5 and 6 had been to enable the captain of a vessel to be designated an *ad hoc* courier. It might be rather unwise to refer to both possibilities. With regard to the second part of the Italian amendment, he reminded the Committee that the diplomatic bag could be entrusted to the captain of an aircraft; but article 27, paragraph 7, of the Vienna Convention on Diplomatic Relations expressly stated that he would not be considerd to be a diplomatic courier. What then would be the captain's position if he were carrying both a diplomatic bag and a consular bag ? It would be preferable not to adopt the Italian proposal to delete the words in question, since they appeared in the 1961 Convention. Although the South African amendment appeared to be somewhat superfluous, he was prepared to vote for it.

49. Mr. JESTAEDT (Federal Republic of Germany) accepted the first part of the Italian amendment; he was surprised that the 1961 Convention did not contain a similar provision. With regard to the second part of the amendment, he agreed with the Netherlands representative.

50. Mr. PEREZ HERNANDEZ (Spain) supported both the Chilean oral proposal, which seemed logical since the captain of an aircraft had doubtless many other responsibilities, and the second part of the Italian amendment which applied not to the person entrusted with the consular bag, but to the transport of the bag, and so was in accordance with the intention of protecting the consular mail. He also supported the Brazilian representative's suggestion that the term " commercial " was too restrictive.

51. Mr. DAS GUPTA (India) thought that the International Law Commission's text was satisfactory and in harmony with the corresponding article of the 1961 Convention. He could, however, support the South African proposal if, before the words " local airport authorities ", the word " competent " were inserted. He found the first part of the Italian amendment acceptable but thought it undesirable to adopt the second part, which might lead to confusion.

52. Mr. LEVI (Yugoslavia) said that he accepted the Chilean representative's oral proposal. On the other hand, he could not accept the second part of the Italian amendment and, rather than delete the phrase in question, he proposed to replace it by the words " but he shall be considered to be a consular courier *ad hoc* ".

53. Mr. EVANS (United Kingdom) agreed almost entirely with the Indian representative regarding paragraph 6 and, in particular, the second part of the Italian amendment; he found the first part of that amendment

satisfactory. He regretted he could not accept the Chilean proposal. His delegation could support the South African amendment, as amended by the Indian representative.

54. Mr. ADDAI (Ghana) did not agree that the adoption of the joint amendment of the Byelorussian SSR and the Netherlands had rendered paragraph 6 superfluous. His delegation would vote for the first part of the Italian amendment and against the second part. Moreover, as it considered that the last sentence of paragraph 6 should be a corollary to the first part of the Italian amendment, his delegation proposed that the sentence be amended to read " to take possession of the consular bag directly and freely from the captain of the passenger ship or aircraft ".

55. Mr. SALLEH bin ABAS (Federation of Malaya) thought that paragraph 6 dealt with a mere question of procedure and that the first part of the Italian amendment was perfectly satisfactory.

56. Mr. MARESCA (Italy) pointed out that the Conference had been called to bring out the differences between diplomatic and consular services and not purely and simply to repeat the 1961 Convention.

57. Replying to the representative of Israel, he said that his delegation was prepared to revise the first part of its amendment to read " of a ship or ". The Yugoslav sub-amendment to the second part of the Italian amendment was more consistent with the purport of the article as it stood, and the Italian delegation would therefore accept it.

The meeting rose at 1.5 p.m.

FIFTEENTH MEETING

Thursday, 14 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) *(continued)*

Paragraph 6

1. The CHAIRMAN invited the Committee to continue consideration of the International Law Commission's draft of article 35, paragraph 6, and the amendments thereto.[1]

2. Mr. DAS GUPTA (India) said that in view of the statement made at the 14th meeting by the representative of Italy he wished to make his position clear. In practice, although not technically, the present conference was bound by the decisions of the 1961 Conference, in which the Member States of the United Nations had met to ascertain to what extent diplomatic privileges could be accorded in their mutual interest. Since it was universally recognized that the diplomatic service was of a higher category than the consular service, any consular privileges granted could not be greater than the diplomatic privileges established by the 1961 Conference.

3. The Yugoslav sub-amendment had not improved the Italian amendment, but had made explicit what had merely been implied. The revised amendment would lead to great confusion and was quite unacceptable to his government. In no circumstances could personal inviolability or immunity be extended to the captain of a commercial aircraft or the master of a ship, who was guided by the international laws on aviation or navigation. Under those laws he had many civil liabilities and responsibility for the safety of his passengers and cargo. The fact that he came entirely under the jurisdiction of national rules and regulations so soon as he entered the territorial jurisdiction of a country could not be changed by anything the conference could do. It would be a contradiction in law, and completely impracticable, to give a captain the immunities and inviolability of a consular courier simply because he was carrying a consular bag: to do so would mean that he would be unable to discharge his main responsibility as the commander of the vessel or aircraft. The question of inviolability arose in respect of the consular bag itself, which remained immune wherever it was. Since the principle of the inviolability of consular archives and documents always applied there was no reason to confer immunity on the captain, who was merely the carrier in the same way as his aircraft or vessel. In 1961 and 1962 there had been occasion in India to arrest at least six captains of aircraft and several ships' captains for smuggling gold into the country.

4. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that there was no reason to oppose the first part of the Italian amendment. Although the aircraft, as the fastest means of transport, was in widespread use for carrying consular correspondence, some countries also considered it necessary to use ships for that purpose. The second part of the Italian amendment, however, might give rise to difficulties. Article 27, paragraph 7, of the Vienna Convention on Diplomatic Relations provided that although a diplomatic bag might be entrusted to the captain of a commercial aircraft he should not be considered to be a diplomatic courier. If the captain of an aircraft carrying diplomatic correspondence was not given the privileges of a diplomatic courier it would be illogical to give a greater degree of immunity to a captain carrying consular correspondence. His delegation could not, therefore, accept the second part of the Italian amendment.

5. The term " commercial aircraft " used in the International Law Commission text of paragraph 6 was not the customary term used in international agreements such as the Warsaw Convention of 1929. If the word " commercial " were deleted the reference would be merely to " aircraft " in accordance with usage.

6. Mr. HERNDL (Austria) said that, as had been convincingly argued by the representative of India, the chief responsibility of the master of a vessel was for the

[1] Amendments had originally been submitted by South Africa (A/CONF.25/C.2/L.75) and Italy (A/CONF.25/C.2/L.102). For the oral amendments submitted subsequently, see the summary record of the fourteenth meeting, paras. 45-56.