

# **United Nations Conference on Consular Relations**

Vienna, Austria  
4 March – 22 April 1963

Document:-  
**A/CONF.25/C.2/SR.15**

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

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

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.<sup>1</sup>

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. KHESTOV (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

<sup>1</sup> 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.

safety of his ship and passengers in accordance with regulations which were sometimes very strict. It would be impracticable, and might be dangerous, to consider him as a consular courier. The essential point was that the inviolability of the consular bag was ensured under article 35, and there was therefore no need to confer on the captain the immunities of a consular courier. His delegation could not support the revised amendment.

7. Mr. von NUMERS (Finland) said that the consular bag and the consular courier were two innovations and should be clearly defined. Definitions of those terms might be included in article 1.

8. The CHAIRMAN said that he would draw the attention of the drafting committee to the suggestion.

9. Mr. TILAKARATNA (Ceylon) endorsed the views of the representative of India, who had spoken from practical experience. In Ceylon too there had been occasions when captains had been caught smuggling. The main issue was the inviolability of the consular bag, and not of the vessel carrying it. That had been in the mind of the International Law Commission for the last sentence of paragraph 6 stated that the consulate might send one of its members "to take possession of the consular bag directly and freely from the captain of the aircraft".

10. Mr. HEUMAN (France) said that at the previous meeting the representative of Colombia had proposed, although not formally, that the whole of paragraph 6 should be deleted. He would suggest that the proposal should be put to the vote first, as the farthest removed from the original text.

11. Mr. HENAO-HENAO (Colombia) said that he had suggested that paragraph 6 would become redundant on the adoption of the Netherlands amendment (L.15); that would mean that the Committee had already taken a decision on *ad hoc* consular couriers. The acceptance of the Yugoslav sub-amendment to the Italian amendment (L.102) had made his point more valid. The adoption of the new provision in paragraph 5, that the consular courier could not be a national or a permanent resident of the receiving State, would create further difficulty since captains were almost always nationals of the receiving State. He would therefore formally propose that the International Law Commission text of paragraph 6 should be deleted.

12. Mr. HERNDL (Austria) said that his delegation strongly opposed the proposal. The deletion of paragraph 6 from the amended article 35 would mean that a captain could not carry a consular bag unless he was formally appointed as an *ad hoc* consular courier.

13. Mr. DAS GUPTA (India) and Mr. TILAKARATNA (Ceylon) endorsed that view.

14. Mr. SPYRIDAKIS (Greece) asked whether the South African amendment to the effect that the consulate might send one of its members to take possession of the consular bag "by arrangement with the local airport authorities", would mean that the airport authorities were prohibited from handling the bag, and whether it would be necessary to make a separate arrange-

ment with the airport authorities each time a consular bag arrived or a continuing arrangement agreed upon between the consular authorities and the airport authorities.

15. Mr. DRAKE (South Africa) explained that such arrangements as might be made between a consulate and the local authorities would depend on the local conditions. They might, perhaps, arrive at a blanket arrangement or, although that seemed unlikely, there might be a system of *ad hoc* permits. The amendment was not intended to hamper the arrangements in any way but merely to ensure that collection took place in an orderly fashion, and that the representative of the consulate should, for example, know where to go to collect the bag and need not enter areas where customs, immigration or health inspections were taking place.

16. Mr. SPYRIDAKIS (Greece) said that in the light of that explanation he would withdraw the oral sub-amendment submitted by his delegation at the previous meeting.

17. The CHAIRMAN put to the vote the proposal by Colombia to delete the whole of the International Law Commission's draft of paragraph 6.

*The proposal was rejected by 59 votes to 2, with 9 abstentions.*

18. The CHAIRMAN put to the vote the second part of the Italian amendment (A/CONF.25/C.2/L.102), as orally revised, to delete the words "but he shall not be considered to be a consular courier" in the second sentence of paragraph 6 and to replace them by the words "but he shall be considered to be a consular courier *ad hoc*".

*The second part of the amendment as orally revised was rejected by 42 votes to 6, with 22 abstentions.*

19. The CHAIRMAN put to the vote the first part of the Italian amendment (A/CONF.25/C.2/L.102) as revised, to add after the words "entrusted to the captain" the words "of a ship or".

*The amendment was adopted by 57 votes to none, with 11 abstentions.*

20. The CHAIRMAN suggested that the oral amendment to the last sentence of paragraph 6 introduced by Ghana at the previous meeting would be taken into account by the drafting committee as a consequence of the adoption of the revised Italian amendment, and that it would therefore be unnecessary to take a vote on it.

21. Mr. SHITTA-BEY (Nigeria) pointed out that the proposal of Ghana had been to amend the last sentence of paragraph 6 to read "... to take possession of the consular bag directly and freely from the captain of the passenger ship or aircraft". In the Italian amendment as adopted by the Committee, however, the word "passenger" had been omitted.

22. Mr. ADDAI (Ghana) said that he did not insist on the word "passenger" and would suggest, in the light of the text adopted by the Committee, that the last

sentence of paragraph 6 might read "... to take possession of the consular bag directly and freely from the captain of the ship or aircraft".

23. Mr. EVANS (United Kingdom) said that a fairly important drafting point was involved. It might be better to refer to "merchant ship". He would suggest that the drafting committee should be asked to consider the matter.

24. The CHAIRMAN said that the drafting committee would bring the whole article into agreement with the amendments adopted by the Committee.

25. He put to the vote the oral amendment submitted by the delegation of Chile, to add after the word "captain" in the first sentence of paragraph 6 the words "or an authorized official".

*The amendment was rejected by 39 votes to 13, with 18 abstentions.*

26. The CHAIRMAN put to the vote the South African amendment to paragraph 6 (A/CONF.25/C.2/L.75) as orally revised.

*The amendment was adopted by 26 votes to 10, with 34 abstentions.*

27. The CHAIRMAN put to the vote paragraph 6 as amended, which would become the new paragraph 7.

*Paragraph 6, as amended, was adopted by 66 votes to none, with 5 abstentions.*

*Article 35 as a whole, as amended, was approved by 52 votes to 1, with 17 abstentions.*

*Article 36 (Communication and contact  
with nationals of the sending State)*

28. The CHAIRMAN invited the Committee to consider article 36 and the amendments presented to it.<sup>2</sup> He announced that the amendment submitted by the delegation of Thailand (L.65) had been replaced by an amendment (L.101) to delete sub-paragraph (b) of paragraph 1. In addition to the written amendments, two further amendments had been presented to the Chair. The first, submitted by the delegation of India, was to delete the words "in appropriate cases" in paragraph 1, sub-paragraph (a). The second, submitted by the delegation of Australia, was to delete the same words in that sub-paragraph and to insert the words "subject to the wishes of the person concerned".

29. In the interests of orderly discussion, he suggested that article 36 should be examined paragraph by paragraph and that paragraph 1 should be examined sub-paragraph by sub-paragraph.

*It was so agreed.*

<sup>2</sup> The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.3; Belgium, A/CONF.25/C.2/L.25; Japan, A/CONF.25/C.2/L.56; Thailand, A/CONF.25/C.2/L.65; Federal Republic of Germany, A/CONF.25/C.2/L.74; Switzerland, A/CONF.25/C.2/L.78; Venezuela, A/CONF.25/C.2/L.100; United Kingdom, A/CONF.25/C.2/L.107; Spain, A/CONF.25/C.2/L.114; Greece, A/CONF.25/C.2/L.125. As explained above (para. 28), the amendment by Thailand was replaced by the amendment contained in document A/CONF.25/C.2/L.101.

*Paragraph 1 (a)*

30. The CHAIRMAN invited the Committee to consider the International Law Commission's text of paragraph 1, sub-paragraph (a), together with the amendment presented by the delegation of Venezuela (L.100), and the oral amendments submitted by the delegations of Australia and India.

31. Mr. ALVARADO GARAICOA (Ecuador) suggested that the text of paragraph 1, sub-paragraph (a), would be improved by the deletion of the redundant word "consular" in the phrase "the consular officials of that consulate".

32. Mr. PEREZ-CHIRIBOGA (Venezuela) explained that in presenting its amendment (L.100), his delegation had no intention of interfering in any way with the right of consular officials to have access to the nationals of the sending State. The objection to the International Law Commission draft was mainly one of form. The opening statement of sub-paragraph 1 (a), concerning the right of the nationals of the sending State to communicate with and to have access to the competent consulate, was inappropriate in a convention on consular relations. The Government of Venezuela considered that foreign nationals in the receiving State should be under the jurisdiction of that State and should not come within the scope of a convention on consular relations. The proposed amendment would not weaken the text of sub-paragraph (a) but would overcome the formal difficulties which arose from the International Law Commission text.

33. The drafting committee might perhaps consider whether the English phrase "have access to" and the Spanish translation were exactly equivalent.

34. Mr. WOODBERRY (Australia) said that the principle set out in paragraph 1, sub-paragraph (a), of article 36 — the right of communication and access of consuls to their nationals and *vice versa* — was a very important consular function, and particularly so in countries where there were a large number of foreign nationals. His delegation believed, however, that the fundamental right must be qualified with regard to the wishes of the individual. In its view, particular care must be taken in expressing the principle, and the International Law Commission draft left something to be desired. In particular, the phrase "in appropriate cases" in paragraph 1, sub-paragraph (a), was unduly vague and his delegation therefore proposed an oral amendment, to delete those words and replace them by the words "subject to the wishes of the person concerned". That amendment, in effect, extended to sub-paragraph (a) the essence of the amendment to sub-paragraphs (b) and (c) proposed by the delegation of Switzerland (L.78), which the Australian delegation would support. There was no need to stress the extreme importance of not disregarding, in the present or any other international document, the rights of the individual. Those rights were all-important, and were embodied in the principle upon which the United Nations was based. It seemed to his delegation that it would be a serious departure

from those principles to deny to the individual his right to say whether or not he wished to be approached by consular officials. In that, as in other respects, as provided by the Swiss amendment, he must be treated as a free agent. That was a fundamental matter.

35. Mr. PEREZ HERNANDEZ (Spain) supported the representative of Ecuador's drafting amendment and suggested that it should be referred to the drafting committee.

36. He did not fully agree with the arguments on which the Venezuelan amendment was based. The right of the nationals of a sending State to communicate with and have access to the consulate and consular officials of their own country, established by the International Law Commission's draft, was one of the most sacred rights of foreign residents in a country. The fact that it was established under national law in no way conflicted with the need to establish it under international law.

37. Mr. SAYED MOHAMMED HOSNI (Kuwait) remarked that in essence his argument had already been stated by the representative of Spain. He supported the Venezuelan amendment because the International Law Commission's text introduced a novelty to the convention by defining the rights of the nationals of the sending States and not, as stated in paragraph 1 of the commentary, the rights of consular officials. The International Law Commission's draft was, in fact, defining rights which were not established under international law, and it might follow that those rights would have to be established. In his view, the Venezuelan amendment was more in keeping with the intentions of the International Law Commission. As representative of a country with many aliens on its territory, he fully believed in the rights of nationals of sending States and was against restricting them; but they were irrelevant to the convention under discussion.

38. Mr. PEREZ-CHIRIBOGA (Venezuela) assured the representative of Spain that his amendment was not intended as an encroachment on the right of nationals of the sending State to communicate with their consulates. His objection to the International Law Commission's draft was that an article in a convention on consular relations should not start by referring to the nationals of the sending State. He was ready to accept any modification to this amendment that would make its purpose clear.

39. Mr. DAS GUPTA (India) noted that his amendment was in part similar to that submitted by Australia. He proposed the deletion of the words "in appropriate cases" because they would restrict the functions of the consular service and it would be necessary to decide what were appropriate circumstances. In order to carry out its responsibilities for the welfare of the nationals of the sending State, the consulate must have the right of access and communication. Similarly, residents abroad should have free access to their national consulates. The three words in question would curtail, if not remove, a government's inherent right to maintain contact with its nationals, and it would become questionable whether

there was any need for consulates. He could not accept the additional words proposed by the Australian representative.

40. Mr. HEUMAN (France) said the Venezuelan representative had raised a very interesting point of international law. At first sight it seemed that the principle of freedom of communication between consuls and nations abroad arose out of conventions on establishment of residence, but a closer look would show that it was based on an overlap between conventions on establishment and on consular conventions. The representative of Spain, whose views he supported, would confirm that the Franco-Spanish Treaty, which had existed for over 100 years, was made up of a mixture of consular and establishment clauses. The Venezuelan amendment had a strictly legal basis and had there been a universal convention on the establishment of residence he would have supported the amendment as falling in the province of that convention. As it was, however, the right of communication was guaranteed only by bilateral conventions and the draft convention on consular relations would have to fulfil not only its own functions but those of an international convention on establishment. He therefore supported the International Law Commission's draft, even though it was theoretical rather than practical.

41. With regard to the Australian amendment, which subordinated the right of access to a national abroad to his willingness or otherwise to accept it, he appreciated its respect for the rights of the individual but questioned its applicability to a free person. Any free national had the right not to accept a visit from a consul if he did not wish to; there was no need to make it a subject of an article in a convention. It might be possible to introduce the amendment under sub-paragraph (b) or (c) dealing with arrested persons, but he would prefer to abstain from voting on it.

42. Baron van BOETZELAER (Netherlands) favoured the Australian amendment but, like the representative of France, doubted the need for it. If it were included at all, it would be better in negative form. The Australian representative might consider re-drafting it on the following lines: "unless the person concerned objects to it".

43. Mr. JESTAEDT (Federal Republic of Germany) said that the International Law Commission's draft presented no difficulty. Article 27, paragraph 1, of the Vienna Convention on Diplomatic Relations provided that the receiving State "shall permit and protect free communication on the part of the mission for all official purposes"; and a similar provision had been approved in article 35 of the draft convention under consideration. In the International Law Commission's draft, free communication was interpreted as including free access for nationals of a sending State to its diplomatic missions, but no provision for free access to diplomatic missions had been included in the Vienna Convention. The principle was, however, particularly important to consular functions, and he welcomed its inclusion in the present draft.

44. The Australian amendment was important and he agreed with the representative of France that it might be dealt with under sub-paragraphs (b) or (c). He was unable to vote in favour of any reference to the wishes of the person concerned since it was a matter that could cause diplomatic friction between the receiving and the sending State.

45. Mr. MARAMBIO (Chile) said that, since the subject of chapter II, section I, was the facilities, privileges and immunities relating to a consulate, it would be better and more logical to begin the paragraph in the way proposed in the Venezuelan amendment, which might be supplemented. The Indian amendment was constructive and would render the paragraph less restrictive. The same train of reasoning led him to oppose the Australian amendment.

46. Mr. SHITTA-BEY (Nigeria) found the Australian amendment unacceptable, for the reasons advanced by the representatives of the Federal Republic of Germany and of Chile. He supported the Venezuelan amendment (L.100) because the convention was concerned primarily with consular functions. The nationals of sending States would be adequately protected by article 36 without the emphasis being placed on them in paragraph 1 (a). He suggested, however, that the Venezuelan amendment would be improved by the deletion of the words "if necessary". He agreed with the reasoning of the representative of India, but thought his amendment unnecessary.

47. Mr. ALVARADO GARAICOA (Ecuador) said that the freedom of nationals to communicate with and have access to their consulates came within the scope of the Declaration of Human Rights rather than of a convention on consular relations. He suggested the deletion of the words "The competent consulate and" and "if necessary" from the Venezuelan amendment.

48. Mr. BOUZIRI (Tunisia) said that he would abstain from voting on the Indian amendment because he was not convinced that the words which it was proposed to delete would in fact limit the freedom of consulates to communicate with their nationals. He understood paragraph 1 (a) to mean that the consular officials should be free to communicate with their nationals and to visit them when necessary. It was, he believed, linked with freedom of movement under article 34. He would vote against the Venezuelan amendment because it seemed ambiguous and he did not fully understand its purpose. He would also vote against the Australian amendment, though reluctantly, because he believed that it was well intentioned. A consul was free to visit his nationals just as the nationals were free not to receive him; a provision of the kind proposed would only be necessary in the case of a person detained or in prison.

49. Mr. SALLEH bin ABAS (Federation of Malaya) said that he did not support the Venezuelan amendment, since he did not agree that there was a conflict between the recognition of rights for the nationals of sending States under international law and the practice of establishing those rights under national law. Further, the words "if necessary" would give rise to the difficulty of decid-

ing in what circumstances consular officials should have access to their nationals. The Australian amendment had been submitted for humanitarian reasons; nevertheless he agreed with the representative of the Federal Republic of Germany that it might prove controversial. He might be able to support it if its sponsor could produce satisfactory explanations. The Indian amendment was the best; it would widen the range of a consular official's freedom of access to the sending State's nationals to include nationals in detention or in prison.

50. Mr. DAS GUPTA (India) maintained his amendment. The International Law Commission's draft, with the words "in appropriate cases" deleted, would ensure unrestricted two-way communication between consulates and their nationals. He could not accept the Venezuelan amendment, even with the change suggested by the Nigerian representative, for it only ensured communication and access by the consulate. Moreover, he did not agree that the International Law Commission's draft established a new right, for the right given to consulates implied a corresponding right for nationals.

51. Mr. PEREZ-CHIRIBOGA (Venezuela), commenting on the Malayan representative's remarks, insisted that he did not wish to limit the normal relations that existed between the consular officials and the nationals of sending States, or to deny that international agreement could be reached on the rights and duties of nationals. He merely wished to make it clear that the draft convention was not the appropriate instrument. He agreed to the sub-amendments to his proposal suggested by the representatives of Ecuador and Nigeria.

52. Mr. MARESCA (Italy) supported the Venezuelan amendment in its new form, since it correctly emphasized the consulate, which was the main subject of article 36. To enable consuls to meet their nationals, however, was only one side of the question, and he hoped that the representative of Venezuela would agree to provide in his amendment for nationals to meet their consuls. He supported the Indian amendment, for it was essential not to restrict communication between consuls and their nationals. He could not support the Australian amendment, although he appreciated the motives behind it, for it would restrict normal consular activities.

53. Mr. PEREZ HERNANDEZ (Spain) said that, as a former head of the Spanish diplomatic mission in Caracas, he was fully aware of Venezuela's respect for the interests and rights of foreigners. In spite of national legislation, however, circumstances sometimes arose where foreign nationals — possibly through differences of language or customs — might have a peculiar status and might need consular protection. But consular protection could only be provided if it were asked for, and two-way communication between consulates and their nationals was therefore essential. To meet the differences of opinion that had emerged during the discussion, he suggested that paragraph 1 (a) should be drafted on the following lines: "Nationals of the sending State as such, and in order, if necessary, to ensure protection and assistance by consular officials, shall be free to communicate . . ."

54. Mr. ALVARADO GARAICOA (Ecuador) proposed the addition to the Venezuelan amendment of the words "nationals of the sending State shall have the same rights".

The meeting rose at 5.45 p.m.

#### SIXTEENTH MEETING

Friday, 15 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 36 (Communication and contact with nationals of the sending State) (continued)

##### Paragraph 1 (a)

1. The CHAIRMAN invited the Committee to continue its consideration of article 36, paragraph 1 (a), and amendments relating to it.<sup>1</sup>

2. Mr. PEREZ-CHIRIBOGA (Venezuela), announcing the withdrawal of his delegation's amendment (L.100), said that Venezuela would instead submit, jointly with Ecuador, Spain, Chile and Italy, an alternative text for paragraph 1 (a) in the following terms:

"Consular officials shall be free to communicate with the nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officials of the sending State."

3. Mr. AJA ESPIL (Argentina) referred to the two important oral amendments proposed at the previous meeting, one by India (omission of the words "in appropriate cases") and the other by Australia to delete those words and to insert the words "subject to the wishes of the person concerned". He agreed to the first of those proposals, inasmuch as paragraph 1 (a) laid down a general principle which should not be weakened. The Australian amendment likewise appeared appropriate. The object was to lay down a right exercisable by a consular official vis-à-vis the receiving State, but not vis-à-vis a national of the sending State; the consent of the national in question was required.

4. Mr. LEVI (Yugoslavia) proposed two sub-amendments to the joint oral amendment just submitted: in the first sentence the words "in the exercise of their functions" should be added, and in the second sentence the words "for the same purposes" should be added.

5. Mr. EVANS (United Kingdom) said that article 36 was an important provision and should be drafted in unambiguous terms; it dealt with a matter which was

<sup>1</sup> At the fifteenth meeting, an amendment had been submitted by Venezuela (A/CONF.25/C.2/L.100) and oral amendments by Australia and India. For the full list of amendments to article 36, see the summary record of the fifteenth meeting, footnote to para. 28.

all the more delicate in modern times when means of transport and travel were developing steadily. On the other hand, it should be noted that the scope of the article was limited by the opening words: "with a view to facilitating the exercise of consular functions". His delegation supported the Indian amendment to omit the words "in appropriate cases". If those words were left in the text it would remain an open question who would decide in what cases there should be freedom of communication. Some such phrase as "subject to the express wish of the person concerned" would be preferable to "in appropriate cases". He realized the motives underlying the amendments before the Committee. In particular, he wished to mention that cases had occurred in which political refugees had been molested by consular officials of their State of origin. That was not a proper exercise of consular functions and his government had made it clear that it would not permit it. However, his delegation and others would propose a separate article of more general scope to deal with the broader question of political refugees.<sup>2</sup> For that reason, and because the Australian delegation's amendment, though attractive, introduced an element of uncertainty into article 36 and was open to certain technical objections, he thought it would be better simply to omit the words "in appropriate cases" without substituting the phrase proposed by Australia. He would prefer the text as drafted by the International Law Commission (without the words "in appropriate cases") to the joint amendment just submitted.

6. Mr. TILAKARATNA (Ceylon) supported the Australian delegation's amendment. He also supported the Swiss delegation's proposal (L.78) that another paragraph should be added. He agreed with the Italian delegation that the article should stress consular functions and that the drafting committee should be instructed accordingly.

7. Mr. SHITTA-BEY (Nigeria) said that the Indian delegation's amendment was acceptable to him. With reference to the Australian delegation's amendment and the United Kingdom's suggestion, he thought it would not be excessive to qualify the clause by some such phrase as "subject to the wishes of the person concerned". He thought there was little difference in substance between the new joint amendment and the original draft as amended by India.

8. Mr. ADDAI (Ghana) associated himself with the remarks of the United Kingdom representative.

9. Mr. WOODBERRY (Australia) said that article 36 suffered from the defect that it empowered the consul to get into touch with the nationals of the sending State regardless of their wishes. He opposed the Indian amendment, which would in effect strengthen the language of the existing text.

10. Mr. SRESHTHAPUTRA (Thailand) said that his delegation attached great importance to article 36. With regard to sub-paragraph (a) of paragraph 1, he shared

<sup>2</sup> See document A/CONF.25/C.1/L.124.