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the protection that should be enjoyed by consular officials. There was no question of granting to consulates the same inviolability as that accorded to the diplomatic mission, but the protection due to consular officials should not be qualified in any way.

31. Mr. WOODBERRY (Australia), Mr. MOUSSAVI (Iran), Mr. TOURE (Guinea), Mr. RUSSELL (United Kingdom), Mr. BOUZIRI (Tunisia) and Mr. VRANKEN (Belgium) expressed support for the United States amendment, which had been supported by sound arguments.

32. Mr. DAS GUPTA (India) said that he had listened with interest to the Czechoslovak representative's statement, but he had doubts about the scope of " special protection "; the provisions of the Vienna Convention of 1961 had no relevance in the case under consideration. There was a risk that honorary consuls might also claim the enjoyment of that special protection.

33. Mr. ALVARADO GARAICOA (Ecuador) said that the article as drafted was perfectly clear. " Special protection " was granted to consular officials by reason purely of their official position, and that sufficed to limit the field of application.

34. Baron van BOETZELAER (Netherlands) said that he would vote for the United States amendment but suggested that in the French text the word " appropriées " should be substituted for the word " raisonnables " as in the 1961 Vienna Convention. He added that, in some cases, for example during a press campaign, the receiving State had no means of assuring the protection of consular officials.

35. Mr. HEUMAN (France) said that article 29 of the 1961 Vienna Convention spoke only of the " respect " due to the diplomatic agent, but at the same time under that convention the diplomatic agent enjoyed absolute inviolability, which was not the case with consular officials. In reply to the Indian representative, he said that article 57 contained no reference to article 40 and that an honorary consul did not therefore come within its scope. His delegation could not support the United States amendment, because it did not guarantee special protection for consular officials.

36. Mr. WASZCZUK (Poland) said that the United States amendment unduly narrowed the scope of the article. His delegation would support the article as drafted by the International Law Commission.

37. Mr. MARESCA (Italy) said that under the Vienna Convention the inviolability of the diplomatic agent was guaranteed in absolute terms. The consul, however, since he had partial inviolability, should be entitled, in addition to the respect normally due to him, to special protection in the performance of his functions.

38. The CHAIRMAN put to the vote the United States amendment; the words " raisonnables " would be replaced by the word " appropriées " in the French text.

The United States amendment (A/CONF.25/C.2/L.5) was adopted by 37 votes to 22, with 11 abstentions.

39. The CHAIRMAN said that the decision just taken made it unnecessary to vote on the Greek amendment (L.95) or on the article as drafted by the International Law Commission.

40. He suggested that the Committee should proceed to discuss article 42, since article 41 had given rise to many amendments, whose sponsors might with advantage confer with a view to facilitating debate.

It was so agreed.

Article 42 (Duty to notify in the event of arrest, detention pending trial or the institution of criminal proceedings)

41. Mr. PEREZ-CHIRIBOGA (Venezuela) said that the phrase " a member of the consular staff " was extremely vague. It might be taken to mean any person employed in the consulate, which would be going too far. The obligation provided in the article could not be extended to nationals of the receiving State, whatever their consular rank might be. His delegation would vote for the draft article on that understanding.

Article 42 was adopted unanimously.

The meeting rose at 5.20 p.m.

TWENTY-SECOND MEETING

Wednesday, 20 March 1963, at 10.45 a.m.

Chairman: Mr. KAMEL (United Arab Republic)

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

Article 41 (Personal inviolability of consular officials)

1. The CHAIRMAN invited the Committee to consider draft article 41 together with the amendments thereto.[1]

2. Mr. SERRA (Switzerland) withdrew his amendment (L.105) which had been submitted to effect uniformity between the terminology of the International Law Commission's text and that of his government's penal legislation. He hoped that representatives who had submitted amendments for similar reasons would also respond to the Chairman's appeal. He now fully supported the International Law Commission's draft. It

[1] The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.16; Indonesia, A/CONF.25/C.2/L.61; Federal Republic of Germany, A/CONF.25/C.2/L.62/Rev.1; Brazil, A/CONF.25/C.2/L.64; Byelorussian Soviet Socialist Republic, A/CONF.25/C.2/L.104/Rev.1; Switzerland, A/CONF.25/C.2/L.105; Hungary, A/CONF.25/C.2/L.115 and L.143; Yugoslavia, A/CONF.25/C.2/L.116; Italy, A/CONF.25/C.2/L.117; Cambodia, A/CONF.25/C.2/L.126; United Kingdom, A/CONF.25/C.2/L.134; South Africa, A/CONF.25/C.2/L.148; Romania, A/CONF.25/C.2/L.149; Spain, A/CONF.25/C.2/L.150.

was the result of long study and discussion; it upheld the principle that consular officials should not enjoy the full inviolability accorded to diplomats; it was comprehensive and to the point.

3. Mr. CAMPORA (Argentina) said that the Committee had accepted the principle of relative inviolability for the consular premises and the consular bag and should therefore accept the principle of relative personal inviolability. Otherwise the Convention would be neither consistent nor well balanced. The International Law Commission had itself accepted the principle of relative personal inviolability by stating in paragraph 1 that except in the case of a grave crime and pursuant to a decision by the competent judicial authority, consular officers were not liable to arrest or detention.

4. Article 41 laid down that the personal inviolability of the consular official could not extend to grave crime. If he committed a grave crime he lost his inviolability and could be detained. It was therefore essential that the idea of a grave crime should be stated and clearly defined so that it should have the same meaning for all the authorities who would be governed by the article. The most acceptable definition would be to determine the gravity of the crime according to the duration of imprisonment applicable under the law of the receiving State. It was an objective and unequivocal criterion and was embodied in most of the amendments presented. If it were accepted, the word "grave" would be redundant; moreover, it introduced a subjective criterion which was incompatible with the criterion of duration of imprisonment.

5. Mr. JAMAN (Indonesia) presented his amendment (L.61) which was similar to the original Byelorussian amendment (L.104). It was intended to provide for the varying systems and practice in the different countries. Indonesia, for example, was one of the few countries which accorded almost the same privileges and immunities to consular as to diplomatic officers. His government's concern was to help the officials of sending States to do their work and not to hamper them by charges for minor offences. In case of arrest, the judicial authorities were not empowered to issue a warrant: the police authorities could detain a person without reference to the court. The amendment also took into account the fact that consular employees, who might be nationals of the sending State, the receiving State, or a third State, did not enjoy personal inviolability.

6. Mr. EVANS (United Kingdom) informed the Committee that a new joint amendment (A/CONF.25/C.2/L.168) had been submitted, combining the amendments of Brazil (L.64), the Federal Republic of Germany (L.62/Rev.1), Italy (L.117), Spain (L.150) and the United Kingdom (L.124). He pointed out first that, while article 43 (Immunity from jurisdiction) provided immunity in respect of official activities, article 41 was concerned only with personal inviolability. Bearing in mind that nothing under article 41 should detract from the immunities under article 43, paragraph 1 of article 41 would give consular officials a higher degree of personal inviolability than actually existed under international law. The main defect of the paragraph was that it referred to arrest or detention only pursuant to a decision of the judicial authority, whereas an individual could also be arrested by the police, or in some circumstances by a private individual, without a previous decision by a judicial authority: for example, if he were caught *in flagrante delicto*, or if there were grounds for believing that he had just committed a serious offence. In such cases it was essential to allow the authorities to take him into custody and detain him until he had established his identity. The same would apply in cases where a warrant had been issued for his arrest. The joint amendment was intended to cover such cases. It was also possible that an official might be arrested or detained in custody pending trial, with the consent of the sending State: that should be specifically covered in article 41.

7. Paragraph 1 of the joint amendment followed the pattern adopted by the Committee concerning other articles by stating a general proposition. Paragraph 2 stated the cases where arrest was permissible and mentioned only cases of arrest for an offence. The essential difference between the joint amendment draft and that of the International Law Commission was that under the latter a consular official could only be arrested — even for a grave crime — pursuant to a decision by the competent judicial authority. Paragraph 3 of the amendment established the principle that except in the case of a grave offence or at the request or with the consent of the sending State, the consular officer should be released immediately he had established his identity. Paragraph 4 was a valuable safeguard because it provided that the consular official should be brought before the competent judicial authority within 48 hours of his arrest. Paragraphs 5 and 6 were the same as paragraphs 2 and 3 of the International Law Commission's draft and paragraph 7 was a definition of "grave offence".

8. Mr. ALVARADO GARAICOA (Ecuador) supported the International Law Commission's draft. He was strongly opposed to the replacement of the word "crime" by "offence" for the two words had very different meanings and involved very different types of punishment. The International Law Commission, by choosing the words "a grave crime", had made its meaning perfectly clear without the need to lay down fixed rules.

9. Mr. HARASZTI (Hungary) introduced the two Hungarian amendments. The first (L.115) was to remedy an omission in paragraph 3 of article 41. It was obvious from paragraph 2 that coercive measures could not be applied to a consular official who refused to appear before the court, but that would not be deduced from paragraph 3 as drafted. The second (L.143) was to clarify the inviolability of the consular courier. At the 14th meeting, the representative of the Federal Republic of Germany had drawn attention to the fact that the inviolability of the consular correspondence and courier provided under article 35 was not defined in article 41. It was essential for it to be clearly stated that the consular courier could not be arrested or detained, so that there should be no possibility of misinterpretation.

10. Mr. HONG (Cambodia) presented his amendment (L.126) the aim of which was to make it clear that the inviolability accorded under paragraph 1 was solely in respect of consular activities and was not personal immunity. He regretted that the original text of article 40, which had made the position quite clear, had been rejected. He was proposing to introduce the idea of immunity in respect of consular functions because, as indicated in paragraph 2 of the commentary to article 43, it was a part of international law. If it were not clearly stated, article 41 would imply absolute instead of relative immunity.

11. Mr. ANGHEL (Romania) introduced his delegation's amendment to paragraph 1 (L.149). Article 41 was intended to ensure the inviolability of consular officials. In drafting it, therefore, it was important to avoid vague terms which permitted of different interpretations and might be misused. Terms such as " grave offence " and " grave crime " were not precise. They needed defining, and there should be an objective criterion which would afford a sufficient guarantee of the inviolability of consular officials. The duration of imprisonment would constitute such an objective criterion. He was therefore proposing an amendment introducing the definition of " serious offence " as one for which the maximum penalty was a term of imprisonment of at least five years. A clear definition would prevent any dispute between the receiving and the sending State on what constituted a serious offence in the event of the receiving State having arrested a consular official. He would be willing to associate himself with the sponsors of the joint amendment in respect of paragraph 7.

12. Mr. DRAKE (South Africa) remarked that paragraph 1 of the International Law Commission's draft gave consular officers a wider personal inviolability than they enjoyed under international law. The United Kingdom representative had lucidly explained the need for limiting the scope of the inviolability, and the joint amendment, which he would vote for, achieved the purpose. He welcomed the reference to " grave offence " rather than to " grave crime " as it had a wider legal meaning. He also welcomed the definition of " grave offence " in paragraph 7.

13. His own amendment (L.148) could be incorporated in paragraph 3 of the International Law Commission's draft or paragraph 6 of the joint amendment, both of which contained safeguards. Paragraph 4 of the joint amendment also contained certain safeguards, but nowhere was there a specific provision to ensure that if an official were detained, proceedings should be instituted without delay. It was essential in the interests of both the consular official and the consulate itself which would be deprived of his services, that all uncertainty should be removed at the earliest possible moment.

14. Mr. NASCIMENTO e SILVA (Brazil) said that his instructions concerning article 41 were similar to those of the Romania representative: to approve a text which would avoid any uncertainty and include a positive rule fixing a minimum term of imprisonment. Although he would prefer the five-year limit proposed in his amendment (L.64), he had joined the sponsors of the joint amendment and would accept any term that met with general approval. It was impossible to provide for every facet of national law. In connexion with the question of language referred to by the representative of Ecuador, he thought that any difficulties could be safely left to the drafting committee, whose members included representatives of all the official languages of the United Nations and of the principal legal systems of the world.

15. With regard to the other amendments, he understood the reasons for the Hungarian amendment, but did not agree that consular officials included consular couriers. Consular couriers had absolute inviolability and were not subject to the restrictions in the joint amendment. The Cambodian amendment was covered by article 43. The Indonesian amendment was unacceptable because it would change the whole intention of the article by subjecting the principle of inviolability to decision by administrative or police authorities. Paragraphs 2 (*b*) and (*c*) of the joint amendment were fully covered by paragraph 3.

16. Mr. LEVI (Yugoslavia) presented two amendments (L.116). In paragraph 2 it was essential to set a time limit to any term of imprisonment that might be imposed. He did not insist that the limit should be two years as long as the matter was not left open. His second amendment, which was similar to the Spanish amendment, was an additional paragraph to provide for the inviolability of the residence of the consular official. It provided for the inviolability of all consular residences, but he would agree to its being limited to the residence of the head of post if the Committee desired.

17. Mr. JESTAEDT (Federal Republic of Germany) said that the joint amendment was much clearer than the International Law Commission's draft, and would be easier for practical use and for the reader of the convention to understand. He supported the Hungarian amendment (L.115), but thought it would be better in paragraph 1 than in paragraph 3.

18. Mr. KHOSLA (India) said that his delegation had misgivings about the Indonesian amendment (L.61). While an authority other than the judicial authority might, of course, issue or, more particularly, carry out an order for temporary arrest or detention, in India the judicial authority only was entitled to judge in cases of crime. His delegation had no objection to the principle of the Hungarian amendment (L.143) but considered that there was no need to refer in article 41 to the situation of consular couriers which had been adequately dealt with elsewhere in the draft articles.

19. With certain exceptions, his delegation was in principle in agreement with the joint amendment (L.168). It supported sub-paragraphs (*a*) and (*b*) of paragraph 2, but felt doubtful about the necessity of sub-paragraph (*c*): it was clear that a consular official would not be covered by the provisions of article 41 until he was able to establish his identity, since otherwise the officer effecting the arrest would not be aware that he was dealing with a consular official. It would seem undesirable to include in paragraph 7 of the joint amendment a

definition of the expression " grave offence " which would be binding on all States: in view of the wide variation from country to country it would be better to leave the interpretation open. The joint amendment was, in fact, an expansion of the original text, going into the specific detail which the International Law Commission had deliberately and wisely avoided. His delegation fully approved the International Law Commission's draft, but was not opposed in principle to the joint amendment, if the details therein were acceptable to the Committee generally, as that would achieve the purpose that the International Law Commission had had in mind.

20. Mr. MARESCA (Italy) said that the personal inviolability of consular officials was an important and complicated matter. The delegation of Cambodia had proposed in its amendment (L.126) that personal inviolability should be conferred on consular officials " in the exercise of their functions ". In fact, all consular immunities were granted so that the consular functions might be freely discharged. In the case of activities performed in the exercise of those functions, therefore, the consular official enjoyed complete inviolability: article 43 provided that members of the consulate should not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions. Article 41, however, dealt with the consular official's personal inviolability, to which there were certain exceptions. The joint amendment (L.168), of which his delegation was one of the sponsors, had the advantage of specifying those exceptions clearly, and struck a proper balance between the interests of the sending and those of the receiving State.

21. Mr. ADDAI (Ghana) suggested that, since the United Kingdom representative had explained that the main objection to the International Law Commission draft was that it conferred a greater degree of personal inviolability than was afforded by existing international law, the purpose of the joint amendment might be achieved simply by the substitution of the word " or " for " and " between the words " grave crime " and " pursuant to a decision " in of paragraph 1 of the International Law Commission's draft. His delegation would favour that draft, which had the advantage of brevity, with the addition of paragraph 7 of the joint amendment. It would also support the amendments proposed by Indonesia (L.61) and the Netherlands (L.16).

22. Mr. SPACIL (Czechoslovakia) expressed his support for the International Law Commission's draft, as opposed to the joint amendment. The existing draft of article 41 conferred on consular officials the proper degree of inviolability to enable them to discharge their functions. It was sufficiently general to allow its practical application yet specific enough to ensure that its objectives would be achieved. Most of the amendments submitted, and the Committee's discussion of them, had revived arguments already carefully considered but rejected by the International Law Commission.

23. The joint amendment (L.168) was unacceptable to his delegation. The direct statement in paragraph 2 of the International Law Commission draft " except in the case specified " was preferable to the vaguer expressed used in paragraph 2 of the amendment " in respect of any offence " which would be open to misinterpretation. The United Kingdom representative had explained that the sponsors of the joint amendment had wished to remove the condition that the arrest or detention pending trial of consular officials must only be pursuant to a decision by the competent judicial authority. His delegation could not accept that view, nor could it accept the suggestion by the representative of Ghana that paragraph 1 of the International Law Commission draft might be amended to make that condition an alternative, rather than an obligatory, condition. It was of the utmost importance that consular officials could not be placed under arrest or detention pending trial except under an order of the competent judicial authority. To allow the arrest of consular officials by any other authority, such as the police or army, would open the way to abuse. Paragraph 2 of the joint amendment enumerated the cases in which consular officials would be liable to arrest. Sub-paragraph (*a*) specified a " grave offence " similar to the reference to " grave crime " in paragraph 1 of the International Law Commission draft. The remaining sub-paragraphs, however, listed exceptional cases in unnecessary and dangerous detail which might further open the way to abuse. It was also obvious that the list was not exhaustive. The International Law Commission had wisely decided not to go into such detail in its draft. In practice, for example, a consular official detected *in flagrante delicto* would be released after he had produced proof of his identity. A specific provision, as in paragraph 2 (*b*) of the joint amendment, that the consular officer was liable to arrest if he was so detected, might be abused. The police, having arrested the consular official, might detain him for several days, and then plead that they had not understood that he was a consular official. Similarly, the introduction of the provision in paragraph 2 (*c*), that a consular officer should be liable to arrest if he was unable to establish his identity, was undesirable. In practice, he would always be able to produce evidence of identity, but a specific provision could be abused by a police officer. The exception made in paragraph 2 (*d*) concerning a request for the arrest made by the sending State or its consent to the arrest would be a rare occurrence and it was unnecessary to include it in an international convention. In practice, if the sending State waived an official's immunity the result would be his arrest.

24. His delegation would prefer to retain the expression " grave crime " used in paragraph 1 of the International Law Commission draft, which had been established after careful consideration. It had no firm opinion as to whether that expression should be defined but would have no objection should a majority of the Committee favour the inclusion of a definition.

25. His delegation would support the Hungarian proposals to amend paragraph 3 of article 41 (L.115) and and to add a new paragraph clarifying the situation of consular couriers (L.143). In general, however, it considered that the existing text of article 41 was satisfactory.

26. The joint amendment (L.168) was so different from the original text that he would welcome the Chairman's ruling as to whether it came within the definition of an amendment in the last sentence of rule 41 of the rules of procedure, or whether it must be considered as an entirely new proposal.

27. The CHAIRMAN replied that in his opinion the joint amendment came within the definition given in rule 41.

28. Mr. SALLEH bin ABAS (Federation of Malaya) agreed with the representative of the United Kingdom that paragraph 1 of the International Law Commission text conferred too great a degree of personal inviolability on consular officials. He welcomed the enumeration, in paragraph 2 of the joint amendment (L.168), of the circumstances in which a consular official would be liable to arrest. The expression " grave crime ", which was not a term used in the penal law of his country, would lead to serious misunderstandings in the future, and it would be preferable to define it as in paragraph 7 of the joint amendment. His delegation had no objection to paragraph 3 of that amendment, and would accept the provision in paragraph 4 that a consular officer who had been arrested and not released must be brought before a competent judicial authority not later than forty-eight hours after his arrest, since the maximum length of detention after arrest in his own country was twenty-four hours.

29. Should the joint amendment be accepted by the Committee, the delegation of Indonesia might perhaps consider the withdrawal of its amendment (L.61) since the sponsors of the joint amendment had merely listed the circumstances in which an arrest might be made and wisely avoided any attempt to regulate the procedure for arrest, a matter which should be left to the municipal law of the receiving State. If the joint amendment was rejected and the International Law Commission's text approved by the Committee, however, his delegation would have no difficulty in accepting the Indonesian amendment although in the Federation of Malaya a warrant for arrest was, in fact, always issued by the competent judicial authority. To object to the practices of other countries, however, would be to cast doubt on the legal systems of those countries. His delegation supported the South African amendment (L.148) since it agreed that the accused person should always be tried with the minimum of delay in order to avoid unnecessary anxiety for him and his family.

30. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that article 41 contained a number of important provisions concerning the personal inviolability of consular officials. In general, the effect of the joint amendment was to diminish the degree of that inviolability and to weaken the International Law Commission's text, because it did not state as a general principle that consular officials might not be liable to arrest or determine pending trial, except in the case of a grave crime and under an order of the competent judicial authority. His delegation would prefer to retain that statement of principle, although it realized that the interpretation of " grave crime " might present certain difficulties. Paragraph 2 of the joint amendment was less specific and clear than paragraph 1 of the original draft, and distorted its purpose, which was to prevent the arrest or detention of a consular official pending trial. There might be exceptions to that general principle, but they should not be enumerated as standard provisions, as was done in the joint amendment, and even in those exceptional cases, arrest or detention must be under an order of the competent judicial authority or of the State legal department. The amendment would have the effect of allowing the police, or an authority other than the judicial authority, to decide on the arrest of a consular official; that would be most undesirable and lead to abuse and conflict between the authorities of the two States. The list of exceptions in paragraph 2 of the joint amendment might be lengthened or shortened according to the various legal systems in the different countries. In the view of his delegation, such exceptional cases should be dealt with by diplomatic negotiations between the parties concerned. The consent of the sending State to the detention in custody of the consular official was governed by article 45 (Waiver of immunities). The adoption of the joint amendment would also weaken article 40 (Special protection and respect due to consular officials). His delegation advocated the maintenance of the International Law Commission's text and the adoption of the amendment proposed by the Byelorussian Soviet Socialist Republic (L.104/Rev.1) whcih would be in accordance with the legal system of the Ukrainian Soviet Socialist Republic. It would also support the Hungarian amendments (L.115 and L.143). It could not, however, support the Indonesian amendment (L.61), which would bestow on an authority the right to arrest a consular official, with the consequent undetermined difficulties of interpretation and the possibility of friction.

31. Mr. PEREZ HERNANDEZ (Spain), speaking as one of the sponsors of the joint amendment, said that he did not agree that it weakened article 40, which dealt with the duty of the receiving State to give special protection to consular officials by reason of their official position and to treat them with due respect. The purpose of article 41 was to establish rules which would ensure the reasonable, although not absolute, personal inviolability of consular officials. The joint amendment defined " grave offence " as any offence that entailed a maximum penalty of at least five years' imprisonment under the law of the receiving State. In view of the complexity of the legal considerations and legal terms involved, he would ask the Chair to take note of his intention to consult with the other Spanish-speaking members of the Committee with a view to presenting an agreed Spanish text to the drafting committee which would conform in substance and form with the French and English texts.

32. The provision in paragraph 2 (*b*) of the joint amendment for the arrest of a consular officer detected *in flagrante delicto*, which had been criticized by one speaker, had been included with a view to the maintenance of public order and respect for public opinion in the receiving State. Paragraph 4 of the joint amendment provided that a consular officer who had been arrested and not released must be brought before a competent

judicial authority not later than forty-eight hours after his arrest: it would be desirable, particularly in a large country, to allow the police time to obtain the required warrant but the difficulties should not be so great that they could not do so within the specified period. The expression " competent judicial authority " did not refer only to a judge or court, but included all those with judicial functions, the independent exercise of which had for long ensured that a judicial decision would be objective and fair. Paragraph 2 (*d*) of the joint amendment provided a logical method for the solution of a conflict should one arise. The amendment had been drafted with the express intention of avoiding the possibility of friction between States, a possibility which would be removed by the consent of the sending State to the consular officer's arrest. The provision in paragraph 2 (*c*) had been included because, unless a consular officer could establish his identity, the police would not know that he was a consular officer and would arrest him. If a consular officer should leave his means of identification at home, he would have to rely on the courtesy of the police.

The meeting rose at 1.5 p.m.

TWENTY-THIRD MEETING

Wednesday, 20 March 1963, at 3.15 p.m.

Chairman: Mr. KAMEL (United Arab Republic)

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

Article 41 (Personal inviolability of consular officials) *(continued)*

1. The CHAIRMAN invited the Committee to continue its consideration of article 41 and the amendments relating to it.[1]

2. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that article 41 had very understandably given rise to likely discussion in the International Law Commission, where it had been said, incidentally, that there was a tendency to interpret the idea of immunity too liberally. That opinion had been confirmed by the adoption of the Vienna Convention of 1961, which drew an implied distinction between consular and embassy staff.

3. The joint amendment (L.168) comprised restrictive features, but they were very difficult to define precisely. What was meant, for instance, by a " grave offence " ? Why did it specify a five-year term of imprisonment as the criterion for defining such an offence ? The same offence might carry different penalties in different countries, and it would be preferable to leave it to each State to solve that problem. It was not always easy to establish that an offender had been taken *in flagrante delicto*, and so far as identification was concerned the individual in question might not at all times carry on his person the papers enabling him to establish his status and identity. Paragraph 2 (*d*) of the joint amendment dealt with a rather improbable situation, which was essentially a matter for the receiving State. He considered that the enumeration in paragraph 2 of the amendment was entirely superfluous, and he would vote against the amendment. On the other hand, he would vote for the International Law Commission's draft and for the Hungarian amendment (L.143).

4. Mr. SRESHTHAPUTRA (Thailand) said that his delegation regarded the article concerning the personal inviolability of consular officials as one of the more important articles and preferred more precise language to that proposed by the International Law Commission because that might facilitate matters and to some extent prevent controversy between the receiving and the sending States. Accordingly, he approved of the joint amendment. However, the forty-eight-hour clause in paragraph 4 was liable to raise practical difficulties in his country, where a longer time-limit might be necessary by reason of local conditions; for instance, in some cases, owing to the difficult terrain, it took more than forty-eight hours to bring the arrested person back to the police station, and the investigation would begin as from then. For that reason, he asked for a separate vote on paragraph 4 of the joint amendment.

5. Mr. SPYRIDAKIS (Greece) said that the joint amendment was an improvement on the article as drafted by the International Law Commission, in that it was more precise, notably in the provisions concerning grave offence and *in flagrante delicto*. In addition, paragraph 2 (*c*) and paragraph 3 were useful clauses in that they provided for the release of the person concerned after he had established his identity. Although he had some doubts about the forty-eight-hour time limit — a twenty-four-hour time limit applied in Greece — he would vote for the amendment. He was entirely in favour of the South African amendment (L.148), which supplemented the joint amendment. He had no objection in principle to the amendments of Cambodia (L.126) and Romania (L.149), which were actually covered by draft article 43 and the joint amendment, respectively. On the other hand, he failed to see the object of the Byelorussian amendment (L.104/Rev.1) which would add nothing, at all events so far as Greek law was concerned. The Indonesian amendment (L.61) was, he thought, unacceptable, because it would grant excessive powers to nonjudicial authorities. He was prepared to accept the second part of the Yugoslav amendment (L.116), if the joint amendment was adopted.

6. Mr. HEUMAN (France) said that he shared the concern expressed at the previous meeting by the Czechoslovak representative. He thought that a text which so thoroughly revised the original draft as did the joint amendment (L.168) could hardly be described as an " amendment ". If a provision laid down a principle, then it was wrong to nullify the principle by subsequent

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[1] For a list of the amendments to article 41, see the summary record of the 22nd meeting, footnote to para. 1. During that meeting, the amendments by Brazil (L.64), the Federal Republic of Germany (L.62/Rev.1), Italy (L.117), Spain (L.150) and the United Kingdom (L.134) had been withdrawn in favour of a joint amendment (L.168). The amendment by Switzerland (L.105) had been withdrawn.