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55. Mr. BOUZIRI (Tunisia) said he had not taken part in the vote because it was not clear whether the amendment applied to the French as well as to the English text.

The Indonesian amendment (A/CONF.25/C.2/L.61) was rejected by 48 votes to 3, with 15 abstentions.

The amendment of the Byelorussian SSR (A/CONF.25/C.2/L.104/Rev.1) was rejected by 32 votes to 13, with 20 abstentions.

56. The CHAIRMAN invited the Committee to vote on paragraph 1 as amended by the Netherlands amendment.

Paragraph 1, as amended, was approved by 49 votes to 6, with 11 abstentions.

The Yugoslav amendment to paragraph 2 (A/CONF.25/C.2/L.116) was rejected by 46 votes to 1, with 18 abstentions.

57. The CHAIRMAN invited the Committee to vote on paragraph 2 of the International Law Commission's draft.

58. Mr. EVANS (United Kingdom) pointed out that it was the same as paragraph 5 of the joint amendment except for the replacement of the word " liable " by the word " subjected ".

Paragraph 2 was approved by 61 votes to none, with 6 abstentions.

The South African amendment to paragraph 3 (A/CONF.25/C.2/L.148) was adopted by 47 votes to none, with 18 abstentions.

The Hungarian amendment to paragraph 3 (A/CONF.25/C.2/L.115) was rejected by 33 votes to 14, with 16 abstentions.

Paragraph 3, as amended, was approved by 63 votes to none, with 4 abstentions.

59. The CHAIRMAN invited the Committee to consider the proposals for additional paragraphs to article 41.

The Hungarian amendment (A/CONF.25/C.2/L.143) was rejected by 30 votes to 15, with 20 abstentions.

The Yugoslav amendment (A/CONF.25/C.2/L.116) was rejected by 36 votes to 13, with 18 abstentions.

60. The CHAIRMAN invited the Committee to vote on the new paragraph proposed in paragraph 7 of the joint amendment.

61. Mr. LEVI (Yugoslavia), speaking on a point of order, pointed out that the text already adopted referred to " grave crime " whereas the text now to be voted on referred to " grave offence ".

62. The CHAIRMAN said that the final text would be reviewed by the drafting committee.

Paragraph 7 of the joint amendment (A/CONF.25/C.2/L.168/Rev.1) was rejected by 29 votes to 25, with 13 abstentions.

Article 41, as amended, was approved by 53 votes to 7, with 9 abstentions.

63. Mr. EVANS (United Kingdom) explained that he had voted against the article because the text adopted would mean that if a consular officer were, for example, found in the act of committing murder, he could not be arrested without the previous decision of the competent judicial authority. He was surprised that such a situation should be acceptable to any of the governments represented in the Committee. It would certainly not be acceptable to his own government.

The meeting rose at 1.5 p.m.

TWENTY-FIFTH MEETING

Thursday, 21 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 41 (Personal inviolability of consular officials) (*continued*)

1. Baron van BOETZELAER (Netherlands) explained that he had abstained from voting on the joint amendment (L.168/Rev.1) as a whole because, as a result of the changes made to its paragraphs 1, 2, 3 and 4, it had become too far removed from the International Law Commission's draft of article 41, paragraph 1 of which provided a satisfactory safeguard for personal inviolability.

2. Mr. BOUZIRI (Tunisia) said that he had abstained from voting on article 41 because its provisions went beyond accepted international practice. The joint amendment did not satisfy him either; his delegation would have been in favour of a compromise solution.

3. Mr. JESTAEDT (Federal Republic of Germany) said he had voted against article 41 for the same reasons as the United Kingdom representative.

4. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that he had voted for article 41 on the understanding that the idea of the competent judicial authority included the procurator's office.

5. Mr. UNAT (Turkey) said that he had abstained from voting on the final text of article 41, since it did not include the provisions of paragraph 7 of the joint amendment, which would have given it a legal structure. The absence of any definition of the term " grave crime " might give rise to contradictory interpretations. He had also abstained from voting on the South African amendment (L.148), because too great haste in undertaking judicial proceedings could be harmful to the administration of justice.

6. Mr. DRAKE (South Africa) said that he had voted against article 41 as a whole for the specific reasons stated by the United Kingdom representative.

7. Mr. NEJJARI (Morocco) considered that article 41, which had been adopted in the absence of a better solution, went too far, whereas the joint amendment had been

too restrictive. He regretted that the sponsors of that amendment had not taken account of the comments made by Tunisia and France, which would have afforded an opportunity of achieving a successful compromise.

8. Mr. VRANKEN (Belgium) said that he had abstained from voting on article 41 for the same reasons as those given by the United Kingdom representative.

9. Mr. SRESHTHAPUTRA (Thailand) said he had voted against article 41 because it went too far. The provision in the last part of paragraph 1, that consular officials might be arrested only pursuant to a decision by the competent judicial authority, was in contradiction to the principle of criminal law and the legislation of his country whereby the administrative or police officers could arrest persons who were found committing a crime, without any decision by the judicial authority. Furthermore, the expression " grave crime " was too vague and might be the cause of controversy between the receiving and the sending States.

10. Mr. ANGHEL (Romania) said that his delegation had voted for article 41. It wished to state, however, that it regards the term " competent judicial authority " as including both the courts and all other bodies which, under Romanian legislation, exercised judicial authority.

11. Mr. MARESCA (Italy) considered it to be inconceivable that an article of the convention could contain both a legal absurdity and a grave omission. For that reason it should be understood firstly that a consul could not be arrested unless he had committed a grave crime or, if caught *in flagrante delicto* to avoid his doing further damage; and secondly that " grave crime " signified had what been established by long consular practice, that was to say a crime carrying a penalty of at least five years' imprisonment.

12. Mr. NASCIMENTO e SILVA (Brazil) also thought that a " grave crime " should be considered to be a crime punishable by at least five years' imprisonment under the laws of the receiving State.

13. Mr. LAHAM (Syria) said that he had abstained for the same reasons as those given by the Tunisian representative. The joint amendment was of great interest, but the changes that had been made it had obscured its meaning to such an extent that his delegation had been forced to abstain from voting.

14. Mr. SPYRIDAKIS (Greece) said that he had been in favour of most of the provisions of article 41, but had had to abstain from voting on the article as a whole, since it had not been amended as he had hoped. He had voted for the second part of the Yugoslav amendment (L.116) and for the South African amendment (L.148).

15. Mr. MARAMBIO (Chile) explained that he had abstained from voting on paragraphs 1 to 6 of the joint amendment because he doubted whether it was advisable that some of the proposed provisions should be so restrictive. In addition, he doubted whether the provisions in question were compatible with international law and whether, if adopted, they would be workable in practice. On the other hand, he had voted in favour of paragraph 7 of the joint amendment, because it defined the term " grave crime ". He had also voted for article 41 of the International Law Commission's draft as a whole, as amended by the South African amendment.

16. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that he had voted for article 41 on the understanding that, since his amendment (L.104/Rev.1) had been rejected, the term " competent judicial authority " would be taken to cover the procurator's office.

17. Mr. WALDRON (Ireland) said that he had abstained from voting on article 41 as a whole because it went too far and did not take account of the various restrictions that had been accepted.

18. Mr. PETRENKO (Union of Soviet Socialist Republics) said that he had voted for the amended text of article 41 on the understanding that the term " competent judicial authority " applied also to the procurator's office.

19. Mr. SILVEIRA-BARRIOS (Venezuela) said that he had voted against article 41 because it was incompatible with Venezuelan municipal law. On the other hand, he had voted for paragraph 7 of the joint amendment, which gave a useful definition of " grave crime ".

20. Mr. CHIN (Republic of Korea) said he had voted for article 41, on condition that it was understood that by a " grave crime " was meant a crime carrying a penalty of not less than five years' imprisonment.

21. Mr. OCHIRBAL (Mongolia) stated that he had voted for article 41 on the understanding that the term " competent judicial authority " applied to the procurator's office; in Mongolia the officers of the procurator's office were empowered to order an arrest.

Article 43 (Immunity from jurisdiction)

22. The CHAIRMAN invited the Committee to consider article 43 and the amendments thereto.[1]

23. Mr. KANEMATSU (Japan) pointed out that article 43, as drafted, did not provide for the case of a consul acting in a personal capacity. For that reason paragraph 1 of his delegation's amendment (L.80) dealt with that exception by reference to article 5, sub-paragraphs (*g*), (*h*) and (*i*). Paragraph 2 dealt more particularly with possible damage caused to third parties by vehicles, vessels and aircraft owned by a consular official or employee, and with the need for insuring against such risks. The United Kingdom amendment (L.139) contained a similar provision, but went further than the Japanese amendment by stipulating that the consul " shall comply with any requirement imposed by the law of the receiving State in respect of insurance against third-party risks ". He was nevertheless prepared to

[1] The following amendments had been submitted: Japan, A/CONF.25/C.2/L.80; Greece, A/CONF.25/C.2/L.96; Brazil, A/CONF.25/C.2/L.98; United Kingdom, A/CONF.25/C.2/L.139; Venezuela, A/CONF.25/C.2/L.167.

withdraw paragraph 2 of his amendment, should that of the United Kingdom be adopted.

24. Mr. SILVEIRA-BARRIOS (Venezuela) pointed out the lack of concordance between the term " members of the consulate " and the term " exercise of consular functions ". His amendment (L.167) to replace the words " members of the consulate " by " consular officials " was intended to eliminate employees and members of the service staff, who did not perform consular functions in the strict meaning of the words.

25. Mr. EVANS (United Kingdom) said that his delegation could accept the principle of draft article 43, but some further provisions were needed for the protection of third parties. That was the purpose of his amendment (L.139). A consular official or employee should not be permitted to claim immunity in a civil action arising from a contract concluded by him in which he did not contract expressly or impliedly as an agent of the sending State. Similarly, immunity should not be claimed in the case of damage caused to a third party in the receiving State by a vehicle, vessel or aircraft. A consular officer or employee could insure himself against liability in respect of such damage and the Convention should oblige him to do so if that was required by the law of the receiving State.

26. Mr. NASCIMENTO e SILVA (Brazil) drew attention to article 17, where it was stated that the head of a consular post might with the consent of the receiving State be authorized to perform diplomatic acts and observed that that circumstance was not provided for in article 43, which referred exclusively to the exercise of consular functions. For that reason, Brazil proposed an amendment (L.98) for the substitution of the words " official functions " for " consular functions ".

27. Mr. SPYRIDAKIS (Greece) submitted his amendment (L.96) to replace the word " authorities " by the word " courts ". In his opinion, the latter term was more comprehensive and clearer.

28. Mr. KHOSLA (India) said that he was in favour of article 43 as drafted by the International Law Commission. Immunity from jurisdiction should have as wide an application as possible within the limits of the functions to which it referred. The Greek and Brazilian amendments did not seem to be advisable. He also thought that immunity should be granted to nationals of the receiving State in the exercise of consular functions.

29. Mr. MARAMBIO (Chile) considered that the immunity established by article 43 was excessive and the Japanese amendment (L.80) seemed to serve a useful purpose. Paragraph 2 of that amendment in particular should be adopted; paragraph 1 was implied in the provisions of article 5. The Brazilian amendment (L.98) represented an excessive extension of the principle of immunity from the jurisdiction of the judicial and administrative authorities, all the more since, as the Venezuelan representative had very rightly pointed out, the term " members of the consulate " covered persons who could not exercise strictly consular functions. The United Kingdom amendment (L.139) deserved consideration since it was based on solid legal arguments.

30. Mr. CAMPORA (Argentina) recalled that the Committee had that morning taken an important decision concerning the personal inviolability of consular officials under article 41. Immunity from jurisdiction was its complement. Article 43 as drafted by the International Law Commission seemed acceptable to his delegation. The rule established in draft article 43 constituted, however, an exceptional rule in that it laid down in which cases the members of the consulate were not subject to the jurisdiction of the receiving State. It was therefore necessary to determine the meaning of the term " consular functions " a matter that was dealt with in article 5.

31. Mr. JESTAEDT (Federal Republic of Germany) thought that article 43 was generally acceptable. Nevertheless, most of the amendments submitted to that article had a certain value and improved the wording. Contrary to the view expressed by the Venezuelan representative he believed that all members of the consulate should benefit by the immunity in question. The Brazilian proposal (L.98) seemed judicious: it was preferable to refer to " official functions " rather than to " consular functions ". His delegation would vote for the United Kingdom amendment (L.139), which referred to civil actions and for paragraph 2 of the Japanese amendment (L.80). With regard to the Greek amendment (L.96) he recalled that the same question had arisen in connexion with article 31 of the 1961 Convention and he suggested to the Greek representative that he adopt the terms used in that convention.

32. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) stressed the importance of the principle laid down in article 43 and said he was in favour of the text of the International Law Commission, which incorporated the fundamental and typical elements of the national legislations. He did not think it would be wise to replace the words " consular functions " by " official functions ", since the latter term might be interpreted very widely by certain sending States. In its comments on the draft articles, the Canadian Government had also proposed to introduce that amendment to the text; but the term " consular functions ", which was more specific and had become a part of the terminology of international law, had been retained by the International Law Commission. With regard to the United Kingdom amendment, it was clear from the language of the International Law Commission's text that a consular official did not enjoy immunity in the case of a road accident, for example, and the amendment therefore seemed to be unnecessary. Further, he could not support paragraph 1 of the Japanese amendment. He would vote in favour of the International Law Commission's text.

33. Baron van BOETZELAER (Netherlands) said that, after having heard the explanations of the representative of the Federal Republic of Germany, he was still convinced that the term " official functions " might give rise to dangerous interpretations. The Committee might consider the following wording: " in respect of official acts performed in the exercise of their functions ".

34. Mr. BLANKINSHIP (United States of America) said that, in principle, he could accept the Commission's

text, although attention should be paid to paragraph 3 of the commentary, which stated that it was " very difficult to draw an exact line between what is still the consular official's official act performed within the scope of the consular functions and what amounts to a private act . . ." He noted that the United States adhered to the so-called official acts doctrine under which consuls were considered amenable to the jurisdiction of local courts as a matter of procedure, but if the local court decided the acts complained of were performed within the scope of their official duties, then consuls were not liable as a matter of substantive law. The provisions of the draft were not incompatible with the practice followed by the United States.

35. He fully supported the United Kingdom proposal to insert in the original text two new paragraphs which seemed to be very useful, and he preferred that text to the one proposed by Japan to the same effect. Lastly, if the Brazilian amendment were adopted, perhaps the Venezuelan representative might see his way to withdrawing his amendment.

36. Mr. MARESCA (Italy) said that the rule laid down in article 43 was based on two principles, first, that acts performed by members of the consulate in the exercise of their functions were subject to the jurisdiction of the sending State, and not to that of the receiving State, and, secondly, that an individual was not personally responsible for acts performed in the exercise of his functions.

37. Paragraph 1 of the Japanese amendment was necessary because the receiving State had the right to intervene, for example, in certain acts relating to succession or guardianship. The amendment should, however, be inserted elsewhere in the convention. The United Kingdom amendment would make good an omission; it was necessary that a distinction should be made between contracts concluded by a consul in his personal capacity and those concluded by him in his consular capacity. Paragraph 3 of that amendment confirmed the principle that the consul should be subject to the law of the receiving State. The Venezuelan amendment referred to a question of terminology and was quite logical. " Technical or administrative tasks " was the term to use in the case of " members of the consulate " and " consular functions " in the case of " consular officials ". The Brazilian amendment, which proposed the term " official functions ", seemed acceptable. With regard to the Greek amendment, he thought it better to retain the word " authorities ".

38. Mr. UNAT (Turkey) supported the Venezuelan amendment, because the Commission's text contained a contradiction of principle, as could be seen from sub-paragraphs (*d*), (*e*) and (*f*) of article 1. The United Kingdom amendment was acceptable. The idea contained in the Brazilian amendment seemed to be valuable, but the drafting was less satisfactory, and it might be better to add the following words at the end of article 43: " and any functions which may be entrusted to them under the provisions of article 17 of the present convention ". There was no need to refer to sub-paragraph (*i*) of article 5 in connexion with article 43, as proposed in the Japanese amendment; so far as sub-paragraphs (*g*) and (*h*) of that article were concerned, it would be better to leave to the receiving State the option of subjecting a consular official or employee to the jurisdiction of its judicial or administrative authorities. That procedure would conform more closely with current practice. The Greek amendment was one of terminology and should be referred to the drafting committee.

39. Mr. SCHRØDER (Denmark) considered that the United Kingdom amendment was acceptable and useful. He would also vote for the Brazilian amendment, in the form suggested by the Netherlands representative.

40. Mr. ADDAI (Ghana) said he could not support paragraph 1 of the Japanese amendment, but thought paragraph 2 was justified. He could not support the Brazilian and Venezuelan amendments, but considered that the United Kingdom amendment was most useful.

41. Mrs. VILLGRATTNER (Austria) also supported the United Kingdom amendment, which seemed to be in conformity with the 1961 Convention. She could not agree with the proposal in the Brazilian amendment, and would prefer the term " consular functions " to be retained. Paragraph 1 of the Japanese amendment seemed to be unnecessary and even dangerous, while paragraph 2 did not differ from the United Kingdom amendment. With regard to the Venezuelan proposal, she thought it preferable to retain the term " members of the consulate ", because in some cases consular functions might be performed by a person who did not hold the title of consul, but who nevertheless needed protection.

42. Mr. KANEMATSU (Japan) said that he was not certain that it was sufficient merely to specify the restrictions in article 5; in order to prevent any confusion in interpreting the Convention it would be better to include a reminder in article 43; that was the purpose of paragraph 1 of his amendment. Nevertheless, the final wording might be left to the drafting committee. He would be prepared to accept the United Kingdom amendment if the Committee preferred that text to paragraph 2 of the Japanese amendment.

43. Mr. SPYRIDAKIS (Greece) agreed that his amendment should be referred to the drafting committee, which might take it into account in drafting the final text of article 43.

44. Mr. SILVEIRA-BARRIOS (Venezuela) urged that his amendment should be put to the vote. He thought that the term " members of the consulate " might be dangerous, since it might apply equally to members of the staff; the Brazilian amendment did not seem to meet that point.

45. Mr. EVANS (United Kingdom), in reply to a remark by the Ukrainian representative, said he agreed that the act of driving a motor-car should not be regarded as constituting the performance of a consular function for the purpose of claiming immunity from jurisdiction, but his amendment was necessary to put the matter beyond doubt.

46. Mr. NASCIMENTO e SILVA (Brazil) endorsed the Ukrainian representative's remark that the use of the term " official functions " broadened the scope of the article; that had been the Brazilian delegation's intention in submitting its amendment. Some representatives had referred to article 17 in connexion with article 43, but article 17 provided that the head of a consular post might be authorized to perform diplomatic acts, and diplomatic acts could not be entirely assimilated to official acts. With respect to the question of nationals of the receiving State, the Committee might take it up when considering articles 57 and 69.

The Venezuelan amendment (A/CONF.25/C.2/L.167) was adopted by 30 votes to 23, with 9 abstentions.

The Brazilian amendment (A/CONF.25/C.2/L.98) was rejected by 38 votes to 13, with 11 abstentions.

The United Kingdom proposal to add a second paragraph to the article (A/CONF.25/C.2/L.139) was adopted by 45 votes to 10, with 5 abstentions.

The United Kingdom proposal to add a third paragraph to the article (A/CONF.25/C.2/L.139) was adopted by 48 votes to 9, with 5 abstentions.

Paragraph 1 of the Japanese amendment (A/CONF. 25/C.2/L.80) was rejected by 28 votes to 9, with 20 abstentions.

Article 43, as amended, was adopted by 50 votes to none, with 10 abstentions.

47. Mr. VRANKEN (Belgium) explained that he had abstained from voting on the Venezuelan amendment (L.167) because no decision had yet been taken on the definition of " members of the consulate " to be included in article 1.

48. Mr. JESTAEDT (Federal Republic of Germany) said that he had also voted against the Venezuelan amendment because his delegation's view was that all the members of the consulate should enjoy some degree of immunity. He wished to reserve his government's position on that point.

49. Baron van BOETZELAER (Netherlands) said he had supported article 43 taken as a whole; a consul was obviously not exercising " consular functions " when driving a motor-car.

Article 44 (Liability to give evidence)

50. The CHAIRMAN drew the Committee's attention to the amendments to article 44.[2]

51. Mr. von NUMERS (Finland), introducing his delegation's amendment (L.41) to delete the last sentence of paragraph 1 of draft article 44, said that its purpose was to provide that the members of the consulate might be called upon to attend as witnesses in the course of judicial or administrative proceedings in the same way as any other persons. Further, since in article 43 the term " consular officials " had replaced the term " members of the consulate ", the same expression should be used in article 44.

52. Mr. BLANKINSHIP (United States of America) said that his delegation's amendment (L.6) also proposed the deletion of the second sentence of paragraph 1. A consular official, who was subject to the jurisdiction of the receiving State, should not escape the obligation to give evidence. Moreover, the second sentence contradicted the first because it allowed consular officials to avoid complying with that obligation. It would give rise to difficulties in many countries in which an accused person was authorized by law to call witnesses. In view of the fact that three fairly similar amendments had been submitted on that point, his delegation considered that the Committee should uphold the principle they contained.

53. Mr. JESTAEDT (Federal Republic of Germany) thought on the contrary that the second sentence of paragraph 1 should be retained, since in approving article 40 the Committee had granted the consul the right to respect and special protection. If a consular official were to refuse to give evidence, the receiving State could protest to the sending State through the diplomatic channel and declare the official concerned unacceptable; that would certainly be a more severe penalty than any coercive measure that might be applied to him.

54. Mr. GARAYALDE (Spain) pointed out that his delegation's amendment (L.151) applied only to the Spanish text of the draft article and should be referred to the drafting committee.

55. Mr. KANEMATSU (Japan) said that the second sentence of paragraph 1 would be unnecessary if the Committee were to adopt paragraph 2. The proposal in part 2 of his delegation's amendment (L.81) to add a sentence which was included in many bilateral conventions should not meet with any objection.

56. Mr. MARESCA (Italy) mentioned the partial inviolability granted to consular officials by virtue of which no physical restrictions could be applied to them and said that the authorities of the receiving State should avoid interference with the exercise of consular functions. If they wished to take the evidence of a consular official, according to a long-established rule, they should do so at his residence. His delegation would oppose any proposal to delete the second sentence of paragraph 1.

57. Mr. EVANS (United Kingdom) said that the draft article was not entirely satisfactory. The second sentence of paragraph 2 was not in accordance with international practice and should be deleted. The Indian amendment (L.159) would be acceptable if the words " A consular employee " in the second sentence were replaced by " They " and the third sentence were deleted. If the Indian delegation could make those two changes, his delegation would support that amendment.

58. The United Kingdom amendment (L.135), which had much in common with that of Nigeria (L.118) ,would amend paragraph 2 of the draft article, which his delegation regarded as unduly peremptory. In providing that

[2] The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.6; Finland, A/CONF.25/C.2/L.41; Austria, A/CONF.25/C.2/L.50; Japan, A/CONF.25/C.2/L.81; Nigeria, A/CONF.25/C.2/L.118; United Kingdom, A/CONF. 25/C.2/L.135; Spain, A/CONF.25/C.2/L.151; India, A/CONF.25/C.2/L.159; Federal Republic of Germany, A/CONF.25/C.2/L.166.

" all reasonable measures shall be taken " the amendment ensured adequate protection for consular officials. In the second sentence, his delegation proposed the insertion of the words " and permissible " after " possible " because, although it was desirable that the judicial authority should take the testimony of the consular official either at his residence or at the consulate, there were cases in which testimony was required by law to be taken in court. The Japanese amendment (L.81) was entirely in accordance with international practice.

59. Mr. NWOGU (Nigeria) said that he shared the point of view of the United Kingdom representative. In paragraph 2 (*b*) of the commentary, the International Law Commission had explained that the insertion of the words " where possible " was intended to take account of " cases in which the consular official's appearance in court is, in the opinion of the court, indispensable ". His delegation also considered that it would be better to leave it to the court to decide whether the official's appearance was indispensable, but thought that it should be specified in the text of article 44. The only purpose of his delegation's amendment (L.118) was to give additional precision to the text of the International Law Commission.

60. Mr. AMLIE (Norway) said that in his statement during the discussion on article 41 he had said that he could not agree that coercive means should not be used against a consul who refused to appear in court in proceedings against himself. When the consul was only a witness, however, coercive measures should not be used against him. He might be faced with embarrassing and even dangerous situations if he were forced to give testimony as a witness. Thus, in testifying against a criminal, he might be exposed to reprisals from the local underworld. The difficult situation in which a consular official might find himself should be appreciated, and he should not be compelled to give evidence if he was unwilling to do so. If his refusal to testify was found by the receiving State to be unwarranted, an appeal could be made to the sending State, which could waive the consul's immunity.

The meeting rose at 6.5 p.m.

TWENTY-SIXTH MEETING

Friday, 22 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 44 (Liability to give evidence) (*continued*)

1. The CHAIRMAN invited the Committee to continue its examination of article 44 and the amendments submitted to it.[1]

[1] For the list of amendments to article 44, see the summary record of the twenty-fifth meeting, footnote to para. 50.

2. Mr. KHOSLA (India) presented his amendment to paragraph 1 (L.159), which was designed to remedy an omission in the otherwise acceptable text of the International Law Commission. The Commission had made a distinction between consular officials who were entitled to exercise consular functions and consular employees, who had other duties and were given privileges and immunities only in respect of the consular part of their duties. The distinction was clear from the definitions of " consular official " and " consular employee " in article 1 of the draft convention, and the International Law Commission had drawn attention to it in its commentary on article 41. In approving articles 40 and 41 and the Venezuelan amendment to article 43 (L.167), the Committee had agreed that consular officials should have privileges and immunities not granted to other staff, and there could be no valid reason for extending the provisions of paragraph 1 to consular employees. He believed that the International Law Commission intended paragraph 1 of article 44 to provide for the distinction, but it was not clearly evident in the text. For that reason he had proposed the additional wording in his amendment.

3. With regard to the other amendments, he was opposed to the deletion of the second sentence in paragraph 1, proposed by Finland (L.41), Japan (L.81) and the United States of America (L.6). He had discussed the matter with the United Kingdom representative and understood that the privilege to decline to attend as a witness in the course of judicial or administrative proceedings was granted by virtue of consular functions, so that consular officials should not be subject to coercive measures, particularly in view of the personal inviolability envisaged in article 41.

4. He saw nothing against the additional sentence to paragraph 2 proposed by Nigeria (L.118), which also appeared in the International Law Commission's commentary. He also had no objection to the Japanese amendment (L.81) to paragraph 3. It conformed with the provisions of a number of consular conventions and would improve the present convention.

5. Mrs. VILLGRATTNER (Austria) presented her amendment to paragraph 2 (L.50). Its purpose was to make it clear that the taking of evidence at the consul's residence or at the consulate or in the form of a written statement should not be the general rule; it should occur only when compatible with national legislation or if it was difficult or impossible for the consul to testify in person in court. Two of the main principles of Austrian criminal procedure were direct evidence and the immediate institution of proceedings, and in certain cases evidence could be given only in court. She was therefore anxious that the practice of receiving evidence elsewhere than in court should be the exception and not constitute an obligation on receiving States.

6. Mr. BLANKINSHIP (United States of America) said that in explaining his amendment (L.6) for the deletion of the second sentence of paragraph 1 he had perhaps failed to make his position quite clear.

7. Some reflection was necessary for in concentrating on individual cases and particular paragraphs and phrases, there was a danger of losing sight of the