United Nations Conference on Consular Relations

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" 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

reason for privileges and immunities. The purpose of privileges and immunities was to enable the consular official to carry out his official duties; they were really granted to the sending State and not to individuals. Privileges and immunities should not therefore be wider than necessary nor so limited as to prejudice the sending State's interests. The Committee had been seeking to establish a balance between the conflicting interests of the sending State and the receiving State and its nationals — an extremely difficult and delicate task especially in respect of the last three or four articles discussed.

8. The liability to give evidence in article 44 was a very special type of limitation on immunity for specific cases. Paragraph 3 stipulated that there was no obligation to give evidence on matters that concerned official activities; but in paragraph 1 the International Law Commission clearly recognized that it was highly desirable and in accordance with long established consular law that the consular official should not enjoy complete inviolability with regard to his private actions and that he could be called as a witness. In paragraph 2 the International Law Commission recognized that the receiving State should make it as easy as possible for the consular official to give evidence and should make every effort to see that his official work was not interfered with.

9. The crucial point was in the second sentence of paragraph 1, which meant that if, in connexion with his private activities, he was called upon to testify, the consular official should not be subjected to coercive measures or to penalties. That provision, however it was worded, was unfortunate, for it was in effect an invitation to the consular official not to carry out his obligations under the first sentence of paragraph 1. If a consul were the principal witness of a serious crime, failure to give evidence could lead to a grave miscarriage of justice, and such action could reflect adversely on the consular corps as a whole. Moreover, it was setting up a special group or category of persons who need not comply fully with local procedures for administering justice and who could thus disrupt day-to-day life in the receiving State by refusing to comply with local law.

10. The right of an accused to summon witnesses in his defence was a time-honoured principle in national law. In some countries, the right was considered so important that if the exception embodied in the second sentence of paragraph 1 remained, they would be obliged to lodge reservations. It would thus be impossible to achieve the desired aim of a universal convention signed and ratified by the greatest possible number of States.

11. At the previous meeting, the Norwegian representative had made what appeared to be a very telling case for the retention of the sentence. On reflection, however, his argument seemed less persuasive. He had stressed the possible consequences of compulsion to testify in the case of consuls in isolated places. But the cases he had cited were not typical and were comparatively rare. Most consulates were situated in metropolitan areas where police protection would be available in the occasional case of the kind cited by the representative of Norway. The possibility of embarrassment to a consular official coerced or penalized should not be a major concern, for a request to testify was much more likely to be sent in the form of a letter, with the possibility of negotiating a suitable time, than by a summons in the middle of the night. Nor was it likely, save in very exceptional cases, that a consular official's life would be endangered by his giving evidence. In the unusual event of reprisals, he would undoubtedly receive greater help and protection than the nationals of any receiving State represented in the Committee.

12. He had carefully considered the amendment by the Federal Republic of Germany (L.166), which would limit the nature of coercive measures or penalties, but did not find it adequate. The Conference was trying to produce a convention whose rules would be automatically enforceable. It was essential for it to contain a rule that consular officials should appear as witnesses and that there should be reasonable means to ensure that he appeared in order to safeguard the interests of justice. The question was not a technical one: it was the essence of the Conference's task. The ends of consular inviolability and immunity would be best attained if the consular officer were required to appear as witness in connexion with his personal activities, and the deletion of the second sentence of paragraph 1 would provide a good balance between the interests of the sending State and the receiving State, especially as regards justice for the nationals of the receiving State.

13. Mr. PEREZ-CHIRIBOGA (Venezuela) strongly supported the proposals by Finland, Japan and the United States for deleting the second sentence of paragraph 1. In Venezuela, under article 347 of the Code of Civil Procedure, every person not under disability was compelled to give evidence. The exceptions from that rule referred to in article 360 of the Code dit nod include consular officials, nor were they exempt under article 166 of the Venezuelan Code of Criminal Procedure. He did not consider it proper to provide that, if a consular official refused to testify, no coercive measure or penalty might be applied to him; that was tantamount to interfering with the ends of justice. Paragraphs 2 and 3 provided adequate safeguards for the consular official so far as his own convenience and professional secrecy were concerned. He would vote in favour of the joint amendment.

14. Mr. MYRSTEN (Sweden) also supported the deletion of the second sentence of paragraph 1 and agreed with the arguments put forward. Like the United States representative, he had been impressed by the case stated by the Norwegian representative and would certainly wish to provide against such possibilities in the convention. He was not fully convinced, however, that there was a true connexion between the Norwegian case and the second sentence of paragraph 1, for it was a fact that officials of sending States could be murdered even if they had never been asked to testify. In any case, article 40 placed an obligation on the receiving State to protect consular officials. The arguments for deleting the sentence were more wieghty than those retaining it; one of the most important tasks of foreign consuls was to help the smooth functioning of the machinery of justice in the receiving State. He therefore supported the

deletion of the second sentence of paragraph 1 for that would not run counter to the general opinion of the Committee nor to the principle of consular inviolability.

15. Mr. WASZCZUK (Poland) said that bilateral consular conventions had long respected the principle of exemption from testifying at court. It was recognized, for example, in article 4 of the agreement between Austria and Italy of 1874, which provided that where evidence was needed, it should be obtained at the consul's residence or in the form of a statement in writing. Nevertheless, consular officials were not absolved from the obligation to give evidence, though they had the right to refuse to give evidence or to produce correspondence or documents concerning matters connected with the exercise of their functions. The amendment submitted by Finland, Japan and the United States was a dangerous one for it would allow consular officials to be subjected to police control. Consuls were representatives of sending States; they were not usually criminals and they should not be subjected to humiliation. Moreover, the privilege in the second sentence of paragraph 1 was already confirmed by a large number of consular conventions, as stated in paragraph 1 of the commentary to article 44. He therefore opposed the amendment.

16. With regard to paragraph 2, the Nigerian amendment (L.118) was too far-reaching, for even though it made attendance at court the exception, there was still the question whether coercive measures should be exercised if the consular official were unable or unwilling to attend. The International Law Commission's draft of paragraph 1 was more precise and allowed greater freedom and continuity for carrying out consular functions than the United Kingdom amendment (L.135). He would, however, vote in favour of the Austrian amendment (L.50) and support the Japanese amendment to paragraph 3 (L.81). Subject to the Austrian and Japanese amendments, he found the International Law Commission's text acceptable.

17. Mr. SRESHTHAPUTRA (Thailand) said that he supported the amendments by Finland, Japan and the United States of America, proposing the deletion of the last sentence of paragraph 1, because he did not think it advisable that those words should appear in the convention. For the same reason, he opposed the amendment by the Federal Republic of Germany. If the joint amendment were rejected, he would support the Indian amendment, provided the Indian representative accepted the United Kingdom representative's suggestion that the words " consular employee " should be replaced by the word " they " and that the last sentence of that amendment should be deleted. Failing that, he would accept the International Law Commission's draft. He supported the Austrian amendment to paragraph 2 (L.50) and the Japanese amendment to paragraph 3 (L.81).

18. Mr. WOODBERRY (Australia) supported the deletion of the second sentence of paragraph 1 for the reasons given by the sponsors of the amendments. He supported the United Kingdom amendment (L.135) for the reasons given by the United Kingdom representative. He also supported the Japanese amendment to paragraph 3 (L.81).

19. Mr. SPACIL (Czechoslovakia) said that the most interesting amendment was the one proposed by Finland, Japan and the United States of America because it was a fundamental change of text. He would prefer to see the International Law Commission's text retained. He did not agree with the United States representative's argument concerning the creation of a special category of citizen, for the very fact of drafting a consular convention showed that consular officials were in a special category and could not be considered as ordinary citizens.

20. The question was being approached in the Committee from two entirely different angles. One view was that the consul would refuse to give evidence and that coercive measures must therefore be provided. His own view was that a consul, if invited to give evidence on a matter not relating to his official functions, would agree to do so; there was no reason to expect that he would refuse. But a criterion was needed for determining, under paragraph 3, who would decide whether the evidence required related to consular functions or not. In his opinion the question could only be decided by the consular official himself or by the sending State, but the deletion of the second sentence of paragraph 1 would have the effect of leaving the decision to the authorities of the receiving State. That would be an undesirable situation and could only lead to bad relations between the receiving State and the sending State. Furthermore, the consul would have no right of appeal, he would no longer be the judge of his own actions, and he would also be liable to be summoned at any time of day or night to give evidence. He opposed the amendment, because it was concerned with exceptional cases, whereas it was the purpose of the convention to provide for normal circumstances.

21. Mr. CAMPORA (Argentina) said that the International Law Commission draft of article 44 was in general satisfactory and logically arranged. His delegation understood that " administrative proceedings " in paragraph 1 referred to litigation within an administrative court and not to the proceedings of any administrative authority whatsoever, so that there was no chance of the consular official being called upon to give evidence before a political body, for example.

22. His delegation could accept the proposal to delete the second sentence of paragraph 1; but the omission of that sentence should not be considered as a complete reversal of the situation and as meaning that any kind of pressure might be applied to a consular official declining to give evidence. The type of measure which might be applied to a consular official was governed by the provisions of article 41 (Personal inviolability of consular officials) and article 43 (Immunity from jurisdiction). It would be preferable to delete the second sentence of paragraph 1 because, as drafted, it might be interpreted as sanctioning an uncooperative attitude towards the authorities of the receiving State.

23. Mr. SPYRIDAKIS (Greece) supported the International Law Commission's text, which was in accordance with the general view of his delegation that the situation of the consulate and consular officials should be

strengthened. The safeguards provided by article 44 could be found in many bilateral consular conventions and had been proved by long experience to be useful and necessary to ensure the proper functioning of the consulate and the protection of consular officials. His delegation could not, therefore, accept any amendment that would weaken article 44, although it recognized that it might create difficulties for certain States in view of the feeling of the public or the legislative body on the acceptance of such an obligation. The Greek delegation would vote against the amendments submitted by Finland, India, Japan, Nigeria, the United Kingdom and the United States of America. It fully supported the amendment by the Federal Republic of Germany, which improved the text and filled a gap. It would also vote for the Austrian amendment (L.50) and for the Spanish amendment (L.151) which, although merely a question of drafting, expressed more clearly and accurately the meaning of the text.

24. Mr. SALLEH bin ABAS (Federation of Malaya) said that liability to give evidence was limited by paragraph 3 of the article which stated that members of the consulate were under no obligation to give evidence concerning matters connected with the exercise of their functions. In matters unconnected with the exercise of their functions, the liability to give evidence was governed by paragraphs 1 and 2 which should be taken together and not read separately. The last sentence of paragraph 1 plainly referred, in the context of the paragraph, to the refusal of a consular official to attend as a witness in court and dealt only with the place in which the evidence was to be given. Although the consular official could not be forced to give evidence in court, his liability to give evidence still remained, however; paragraph 2 provided that he might give evidence elsewhere, at his residence or at the consulate. If that view was accepted, there was no need to delete the second sentence of paragraph 1. Those who did not accept that interpretation, however, would have to fall back on the proposals to delete that sentence. The law of the Federation of Malaya was in accordance with the principle expressed in the sentence, yet his delegation thought, after listening to the arguments which had been put forward, that the choice lay between possible miscarriage of justice and the harm which might be caused to the consular official as a result of his giving evidence in court. It had therefore concluded that the solution lay in the consul's discretion to decide whether or not he wished to give evidence. Presumably, as a reasonable man of the highest integrity, he might not refuse to give evidence. The argument of the United States representative seemed equally valid, however, and his delegation was therefore of the opinion that it must abstain from voting on the deletion of the last sentence of paragraph 1.

25. His delegation would support the Indian amendment (L.159) which made a desirable distinction between the obligation of consular officials and of consular employees to give evidence. It could support either the Nigerian (L.118) or the United Kingdom (L.135) amendments for the re-drafting of paragraph 2 and would also vote for the Austrian amendment (L.50) to that paragraph and the Japanese amendment (L.81) to paragraph 3.

26. Mr. BOUZIRI (Tunisia) said that paragraph 1 of article 44 made a clear distinction between " members of the consulate " in the first sentence, a term which included both consular officials and consular employees, and the " consular official " who was covered by the second sentence. The paragraph should therefore be interpreted as meaning that, although all members of the consulate could be called upon as witnesses, it was only the consular official who should not be subjected to coercive measures or penalties if he should decline to attend as a witness. There seemed to be some contradiction, however, between paragraph 1 of the article and paragraph 1 of the International Law Commission's commentary, which began with a statement corresponding to the first sentence of paragraph 1 of the article but went on to say that " if they should decline to attend, no coercive measure or penalty may be applied to them " which, in the context, referred to all members of the consulate. Before explaining further the views of his delegation he would welcome an explanation of the apparent contradiction between the commentary and the article.

27. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, explained that the decision of the International Law Commission was embodied in paragraph 1 of article 44 and that the second sentence of paragraph 1 of the commentary was, in fact, inaccurate owing to the pressure under which the International Law Commission had completed its work. The sentence should read: " However, the Commission agreed that if they should decline to attend, no coercive measure or penalty may be applied to consular officials."

28. Mr. BOUZIRI (Tunisia) thanked Mr. Žourek for his explanation. The delegation of Tunisia, as had already been stated, favoured a balance between the need to protect the freedom and dignity of consular officials and the need to safeguard the interests of the receiving State. There must be a clear distinction between the diplomatic agent who represented the sending State, as was laid down in the Vienna Convention on Diplomatic Relations, and the consular official who did not do so and whose inviolability must therefore be sufficient only to allow him to exercise his consular functions in an atmosphere of freedom and dignity and compatible with the interests of the sending State. It was not in accordance with the definition of consular functions that the consular official could decline to attend as a witness in the course of judicial or administrative proceedings. His delegation therefore supported the deletion of the second sentence of paragraph 1, since it believed it to be the bounden duty of the consular official to attend. He should not be allowed to decline and thereby possibly cause grave prejudice to one of the parties in the proceedings. If he was himself directly accused he must, of course, be given certain protection.

29. For the same reasons his delegation would vote against the amendment of the Federal Republic of Germany (L.166) which would strengthen the privileges of the consular official. The Indian amendment (L.159) improved the International Law Commission's text although it did not go far enough. His delegation had

no difficulty with regard to the Spanish amendment (L.151) which was not a matter of substance and could be referred to the drafting committee. It would give favourable consideration to the United Kingdom amendment to paragraph 2 (L.135) although it was not certain that, as drafted, it was an improvement on the International Law Commission text. The Nigerian amendment (L.118), which was acceptable to his delegation, was perhaps more restrictive, for the consular official would appear in court only in exceptional cases at the invitation of the court: the use of the term " court " was perhaps not entirely appropriate and might be considered by the drafting committee. His delegation would also vote for the Austrian amendment (L.50) but considered that the inclusion of the Japanese amendment (L.81) might not be entirely appropriate in the present convention.

30. Mr. HARASZTI (Hungary) reminded the Committee that it had rejected an amendment (L.115) submitted by his delegation to article 41 for the inclusion of a provision that, save where arrest pending trial was admissible under paragraph 1 of that article, no coercive measure might be applied against a consular official who refused to appear before the court. It considered it all the more necessary to ensure that there was no possibility of coercion under the present article. The deletion of the last sentence of paragraph 1 would prejudice the vital paragraph 3 of the International Law Commission's text, which depended on the existence of the safeguard in the sentence which it was proposed to delete. His delegation agreed that members of the consulate might be called upon to attend as witnesses as provided in the first sentence of paragraph 1 and that they should not refuse to do so except as provided in paragraph 3, but their liability could not be accompanied by the threat of coercive measures since only the consular official himself could judge whether his evidence would prejudice the performance of his official functions or not.

31. Mr. ANGHEL (Romania) said that the International Law Commission's text was a logical outcome of the law and practice. Paragraph 3 established that members of the consulate were under no obligation to give evidence concerning matters connected with the exercise of their functions and the second sentence of paragraph 1 provided the minimum guarantee which must be accorded to consular officials against any measures of coercion in the event of their refusing to bear witness, in order to ensure that the exercise of their functions was not hampered. Similar provisions were contained in many consular conventions. His delegation would therefore oppose the Japanese and United States amendments for the deletion of that clause, because the absence of such provisions would be in contradiction with the remaining provisions of the article and the other provisions approved by the Committee, such as article 40 on the special protection and respect due to consular officials. If the receiving State could apply coercive measures, the inviolability, freedom and dignity of the consular official would be endangered and there might be grave abuses. For the same reasons his delegation opposed the amendment submitted by the Federal Republic of Germany (L.166), and the Spanish amendment (L.151). It would vote for article 44 as drafted by the International Law Commission, though accepting the Austrian amendment to paragraph 2 (L.50).

32. Mr. NALL (Israel) said that if the titles of the articles were retained — a possibility indicated by the Chair — the title of article 44 should be changed to " Obligation to give evidence " which would accord with the substance of the article itself.

33. With regard to the substance, his delegation found itself at variance with the sponsors of the amendments requiring the deletion of the second sentence of paragraph 1, although the force of their arguments had not eluded his delegation. It found itself in agreement with most of the points raised by the representative of the Federation of Malaya. It was indeed unquestionable that members of consulates were not exempt by international law from the obligation to attend as witnesses in courts of law or in the course of administrative proceedings. It was, however, equally irrefutable, and ample support was found for the proposition in the works of many learned authors on international law, that consular officials were entitled to the privilege of giving oral or written testimony in the consulate or at their residence. In fact, paragraph 2 embodied that privilege, which was also contained in some sixteen bilateral conventions concluded since 1948 and as recently as 1959.

34. The exemption of consuls from giving evidence relating to matters within the scope of their official duties, and the principle concerning the non-disclosure of information or evidence relating to their official functions or contained in consular archives, sprang from the two universally recognized and well-established rules of international law — namely, the inviolability of consular archives and the consul's non-amenability to local jurisdiction in respect of acts performed in the course of his functions. Those provisions were now contained in articles 32 and 43, as approved by the Committee, and paragraph 3 of article 44 followed from those principles.

35. It was, of course, within the discretion of the sending State to withdraw or to modify by its domestic laws and regulations the privilege of giving evidence outside the precincts of the courts of law. With the permission of the French representative, he would point out that the consuls of France were encouraged in their manual to co-operate with local courts by giving testimony, except in so far as it might involve consular archives, the disclosure of which was naturally forbidden. It was, indeed, a question for the sending State alone to decide whether and to what extent its consuls should render assistance in court proceedings.

36. All consular privileges, except the two universally recognized rules which he had already mentioned, took root in agreements, reciprocal arrangements, courtesies, domestic laws and the official policies of States. Apart from that, in particular cases resort might always be had to diplomatic channels whenever disagreements existed between the court and the consul, and proceedings could be adjourned pending enquiry. Thus, article 17

of the Franco-Swedish Consular Convention of 1955 provided that the consul should be accorded the necessary time to consult his government if he considered that the evidence he was called upon to give might be connected with his official functions. The second sentence of the first paragraph must have been introduced precisely for those considerations. Its omission from the article might bring about delicate situations and complicate policies and good relations, particularly as articles 70 and 71 allowed the conclusion of bilateral agreements to enable the provisions of the convention to be modified. For those reasons, therefore, his delegation could not support the amendments proposing the deletion of the second sentence of paragraph 1. His delegation could, however, support the amendment proposed by the delegation of India (L.159).

37. With regard to paragraph 2, his delegation could support the Nigerian amendment (L.118) provided it was made subject to the provisions of paragraph 1. It could also support the amendment of the United Kingdom (L.135) and that proposed to paragraph 3 by Japan (L.81).

38. Lastly, having mentioned the principle of the non-amenability of consuls to local jurisdiction, he wished, rather belatedly, to draw attention to the lack of harmony between the title of article 43 (Immunity from jurisdiction) and its substance. He would suggest that it should read " Amenability to jurisdiction ", for the article treated of the exception to the rule of amenability.

39. Mr. HENAO-HENAO (Colombia) said that his delegation would vote for paragraph 1 of the International Law Commission's text. It could not support the deletion of the second sentence of that paragraph, which would weaken the principles, already approved by the Committee, of the special protection and respect due to consular officials, their personal inviolability and immunity from jurisdiction. The proposed deletion would prevent the consular official from exercising his consular functions with freedom and dignity. To compel a consular official to attend as a witness, it would be necessary to limit his freedom. His delegation could not accept the view that to decline to attend as a witness would be a failure to co-operate with the authorities of the receiving State. It might, in fact, be to the detriment of one party in judicial proceedings if the consul, with his special status and prestige, gave evidence in favour of the other party. To prevent the attendance of the consular official as a witness would be failure to co-operate. To compel him to do so, however, would hamper him in the exercise of his functions and would endanger his consular dignity. His delegation could not support the Japanese amendment (L.81), which would constitute interference with the exercise of consular functions. It would, however, support the Spanish amendment (L.151).

40. Mr. SOWA (Ghana) shared the views expressed by the representative of Norway in regard to the retention of the International Law Commission's text. It would be dangerous to expose the consular official to the risks which might arise should some of the amendments to paragraph 1 be adopted. In cases where the authorities of the receiving State called a consular official as a material witness in connexion with a serious criminal offence, for example, his life might be in danger, since a criminal gang might waylay and kill him before or after his appearance in court. As a representative of the sending State, he required and should be given protection. His delegation would vote against the proposals to change the text of paragraph 1 since it considered that a consular official should not be compelled to give evidence in court unless he himself was the defendant in the case.

The meeting rose at 1 p.m.

TWENTY-SEVENTH MEETING

Friday, 22 March 1963, at 3.15 p.m.

Chairman: Mr. VRANKEN (Belgium)

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 consideration of article 44 and the amendments thereto.[1]

2. Mr. PETRENKO (Union of Soviet Socialist Republics) said that article 44 was acceptable as drafted. Its terms were analogous to those of the corresponding provisions in existing consular conventions. The second Japanese amendment (L.81) was a constructive proposal which would improve the text by codifying the recognized international practice in consular matters. The Austrian amendment (L.50) was primarily a drafting amendment designed to improve the text of the article, and the Soviet Union delegation regarded it as unobjectionable. He could not, however, accept the United States (L.6), Finnish (L.41), and Japanese (L.81) proposals to delete the second sentence of paragraph 1 of the article. For practical considerations, the proposed deletion was not advisable, for without the sentence in question the paragraph might place consular officials in an impasse. The legal arguments advanced by the United States representative had in no way convinced him, and he was still of the opinion that if the article was amended in the manner proposed the consular officials' relations with the judicial authorities of the receiving State would become more complicated. The same was true of the United Kingdom amendment (L.135), which would likewise not be conducive to better relations between States. The original text of article 44 was better.

3. Mr. KANEMATSU (Japan) said that quite often consuls were not experts on all aspects of the law of the sending State. Only a general acquaintance with the law was expected of them, and it would be going

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