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THIRTY-EIGHTH MEETING

Monday, 1 April 1963, at 10.5 a.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

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

Article 56 (Special provisions applicable to career consular officials who carry on a gainful occupation) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 56.[1]

2. Mr. KANEMATSU (Japan) presented the amendment in document A/CONF.25/C.2/L.211/Rev.1, which combined the French amendment (L.211) and paragraph 4 of his earlier proposal (L.89/Rev.1).

3. Mrs. VILLGRATTNER (Austria) presented her delegation's amendment (L.51) to re-draft article 56 so as to lay down the principle that career officials and their families should not engage in private gainful occupation in the receiving State. It was not the practice in most of the countries represented at the Conference for career officials to engage in such occupations and there was a similar provision in the Convention on Diplomatic Relations. She would accept any sub-amendments on the definition of the persons and activities concerned that would not affect the principle. Stipulations concerning the exclusion from privileges of persons engaged in private gainful occupation appeared in a number of other articles and the Committee or the drafting committee should ensure that the definitions were uniform. Under articles 46 and 46 A consular employees engaged in private gainful occupation and their families, and service staff and their families, were not exempted from obligations in respect of registration of aliens and residence permits; but in the case of work permits the exclusion from exemption applied to members of consulates and their families as well. Under article 47, exemption from social security applied solely to members of the consulate and their families not engaged in private gainful occupation and no further stipulation was necessary. Article 48 (Exemption from taxation) contained no specific limitation concerning private gainful occupation but it was implied under paragraph 1 (*d*). No stipulation was necessary in articles 49 and 50, which dealt with other matters. Article 51 (exemption from personal services and contributions) stated that exemptions did not apply to members of the families of consular employees if the latter carried on a private gainful occupation, so that there was no need for a reference to consular employees themselves. Thus the exemptions and exceptions in respect of members of the consulate were all set out in the relevant articles and in article 56 it was only necessary to state the principle.

4. Mr. TSHIMBALANGA (Congo, Leopoldville) said it had often been pointed out during the Conference that the newly independent and the smaller countries had neither the financial means nor the qualified staff to meet all their commitments. That applied to their consulates and he would draw attention to some of the advantages of honorary consuls.

5. In order to carry out the consular functions set out in sub-paragraphs (*a*), (*b*) and (*c*) of article 5, it was necessary to have a well-developed system of consulates covering every region containing a large group of nationals of the sending State. But in some cases the interests to be protected did not warrant the setting up of a full-scale consulate. The cost of maintaining a consulate with a career consul was very high and a large number would be too heavy a burden on the economies of some countries, particularly countries with economic and balance-of-payment difficulties. For such countries a system of consular posts operated by honorary consuls was an essential condition of economic expansion. Moreover, it was sometimes more satisfactory to appoint a person on the spot than to send a qualified person from the sending State. A consul chosen in the receiving State was usually much more familiar with the local situation and could provide better service than the commercial section of an embassy or consulate staffed by nationals of the sending State who were not so well acquainted with the receiving State, its people and customs. Moreover, an embassy was situated in the capital and its area of competence was too wide to allow for effective business relations. Honorary consuls had been criticized; but the criticism was unjustified, for the few individuals who were unsuitable and had failed in their task should not bring discredit on the whole system.

6. His country was facing a severe crisis, following its independence, and needed honorary consuls. He would support any amendments which would extend and make more precise the provisions in the convention governing honorary consuls. He hoped that the Committee would keep in mind during the discussion the advantages of the system of honorary consulates which he had endeavoured to outline.

7. Mr. HEUMAN (France) said that the reference in paragraph 1 of the joint amendment by Japan and France to " consular employees entrusted with administrative or technical tasks " was an improvement on the original French amendment (L.211) which had used the more general term " members of the consulate, other than the service staff ". The new term did not imply the exclusion of the service staff from the provisions of the paragraph; they had not been mentioned because the privileges which they would lose by carrying on a private gainful occupation were so few. If anyone disagreed with him on that point he would be willing to amend the text. The inclusion of the reference to the employees of honorary consular officials at the end of paragraph 1 would make a similar addition necessary to article 57 since the two articles were closely linked, and he would submit an amendment to that effect.[2] With regard to paragraph 2, which had been taken from the original Japanese amendment (L.89/Rev.1), he had

[1] For the list of amendments to article 56, see the summary record of the thirty-seventh meeting, footnote to para. 45.

[2] See document A/CONF.25/C.2/L.218.

nothing to add to his comments at the previous meeting. Paragraphs 1 and 2 together filled the gap in article 56 and paragraph 2 made good the absence of any mention of the family.

8. As the joint amendment now embodied the essence of the South African amendment (L.188) he invited the South African representative to withdraw his amendment and become a third sponsor of the joint amendment. The Austrian amendment embodied an excellent principle. It would not, however, prevent clandestine private gainful occupation. It would be better to accept the fact that a consular official might occasionally engage in a private gainful occupation and deal with the situation when it arose by reducing his privileges to those accorded to honorary consuls under chapter III. He would vote for the Indian amendment (L.179) which provided that the sending State should notify the receiving State in the event of the appointment of a career consular official permitted to engage in private gainful occupation.

9. He had been impressed by the evidence cited by the representative of Austria to show that the employee carrying on a private gainful occupation and his family were already excluded from privileges, but that was a matter of drafting. The Committee had from the outset had the alternative of stating the exclusions in each article or stating the principle in a general article — which was the purpose of the joint amendment. If the second form were adopted the individual cases would have to be deleted from the articles. If it were rejected the Convention would have to be reviewed to see that stipulations were inserted in all the articles where they were required, but there was a risk that some would be overlooked. The safer method was a general provision in article 56 on the lines proposed in the joint amendment.

10. Mr. PAPAS (Greece) agreed with the views of the Austrian representative but suggested that the object of her amendment could be achieved more easily by deleting the word " career ".

11. Mr. LEVI (Yugoslavia) observed that a definition of members of the consulate staff was given in article 1, and paragraph (*b*) of the joint amendment seemed therefore to be a repetition of paragraph (*a*). The situation was a little confusing because article 1 had not yet been approved. He agreed with the general intention of the Austrian amendment but wondered if it was feasible since under article 46 A it was implicitly accepted that members of the consulate might carry on gainful private occupation. He would nevertheless support the Austrian amendment if it were put to the vote. If it were rejected he would support the Indian amendment. He would also support the South African amendment if it could be incorporated in the Indian amendment.

12. Mr. MARESCA (Italy) said that in codifying consular law the Conference had consistently recognized two separate categories: career consuls and honorary consuls. But the article which the Committee was trying to introduce could only cause confusion. To state that a career consul could carry on an activity alien to his profession and be reduced to honorary status was nothing more than an invitation to engage in such activity. He supported the Austrian amendment which was legally and ethically correct; it dealt with the substance of the matter and he considered that it should be voted on before any of the others. On the other hand, it was perhaps going too far to prohibit such activities where members of families were concerned. He would therefore suggest that the amendment should provide that members of a career consul's family who engaged in a gainful occupation would cease to enjoy the privileges granted under the convention.

13. Mr. SALLEH bin ABAS (Federation of Malaya) said that in view of the introductory comments to chapter III (Facilities, privileges and immunities of honorary consular officials), the persons who were the subject of article 56 were nothing more than honorary consuls themselves within the International Law Commission's definition. On the question of career consular officials being permitted to carry on private gainful occupations, he agreed with the views of the representatives of Austria and Italy.

14. With regard to the joint amendment, he agreed to the inclusion of consular employees in the text: otherwise they would not lose privileges through carrying on private gainful occupation, whereas their superior officers would. He was not fully satisfied with the wording " consular employees entrusted with administrative or technical tasks " because it would mean that the service staff of such employees would not lose their privileges and immunities when carrying on private gainful occupations. He was puzzled by the reference to " honorary consular officials and their employees " at the end of paragraph 1 of the joint amendment, for chapter III made no mention of the employees of honorary consuls. A review of articles recently approved showed that in articles 41, 43, 44, 46, 46 A, 47, 48, 49, 50 and 51 the privileges in question in most cases concerned members of the consulate which by definition included consular employees; yet article 56 excluded consular employees. He would therefore support the joint amendment by France and Japan subject to a satisfactory explanation of the words " entrusted with administrative or technical tasks ". He also supported the South African amendment (L.188) which filled a gap in paragraph 2 of the joint amendment. He approved the principle underlying the Austrian amendment, but thought that it would have the effect of allowing the receiving State to influence the policy of the sending State. There was no reason why the receiving State should object to something permitted by the sending State. He would therefore abstain from voting on the proposal.

15. Mr. SILVEIRA-BARRIOS (Venezuela) said that after hearing the comments of the Italian representative he wished to withdraw his proposal made at the previous meeting for a separate vote on the Austrian amendment. The Austrian amendment conformed to article 42 of the Convention on Diplomatic Relations and he would support it.

16. Mr. JESTAEDT (Federal Republic of Germany) supported the Austrian amendment and the joint amendment. He agreed that article 42 of the Diplomatic Convention prohibited private gainful occupation but

article 31 tacitly recognized it by stating that a diplomatic agent should not have certain immunities in connexion with activities outside his official functions. Those two principles were recognized. He wondered, however, whether it would not be possible for the joint amendment to be incorporated in article 1, paragraph 2, where there was already a reference to article 56. He strongly supported the Indian amendment.

17. Mr. DONADO (Lebanon) supported the Austrian amendment. Should it be rejected by the Committee, however, his delegation would favour the joint amendment.

18. Mr. ALVARADO GARAICOA (Ecuador) supported the Austrian amendment with the sub-amendment proposed by the representative of Italy.

19. Mr. PEREZ HERNANDEZ (Spain) endorsed the views expressed by the representatives of Venezuela and Ecuador. His delegation would support the Austrian amendment provided that it was made clear that members of the family of a career consular official should not be prevented from carrying on a private gainful occupation, but that when they did so, their privileges and immunities would be restricted.

20. Mr. RUSSEL (United Kingdom) said that the appointment of career consular officials who were permitted to carry on a private gainful occupation was, in fact, extremely rare; it was not the practice of his government to make such appointments. His delegation had therefore felt some scepticism with regard to article 56 but would not oppose it if the majority of the Committee decided in favour of its retention; in that case his delegation would vote for the amendment sponsored jointly by delegations of France and Japan.

21. Under article 69 nationals of the receiving State, whether career or honorary consular officials, would not be entitled to most of the privileges and immunities accorded to other members of the consulate. Amendments had been submitted to article 69 to the effect that permanent residents should also be excluded from the enjoyment of most privileges and immunities under the convention. His delegation was inclined to think that persons engaged in private gainful occupation should form a third category for disqualification. If a provision to that effect was included in article 69, however, it would not necessarily mean that article 56 should be deleted.

22. Mr. VRANKEN (Belgium) said that an amendment had been submitted to article 1 on the definition of career consuls and honorary consuls; if adopted, it would have an effect on the drafting of article 56. The aim of that amendment was the same as that of the Austrian amendment, since its effect would be to provide that all those consular officials who were not career consuls were honorary consuls, who would not benefit from the privileges and immunities in chapter II but come under chapter III. His delegation would therefore vote in favour of the Austrian amendment.

23. Mr. MARAMBIO (Chile) supported the Austrian amendment with the Italian sub-amendment. He would, however, propose that the first line of the Austrian amendment should read " Career consular officials and members of their families . . ." in accordance with the proposed title of the article.

24. Mr. BLANKINSHIP (United States of America) said that the taking of employment by members of consulates and diplomatic missions, and by members of their families, caused some difficulty in his country in cases where such persons were well qualified, for example, and obtained employment in an area where nationals of the country were unemployed. United States Government officials had been seeking means to deal with the matter. The Austrian amendment, however, referred to " consular officials and members of their families ". The possible loop-hole would seem to exist in regard to consular employees, who were less well paid, and members of their families rather than in regard to consular officials. The Austrian amendment, although it might be useful, appeared therefore to have certain limitations and some combination of it with the joint amendment might be preferable.

25. Mr. AMLIE (Norway) said that the question of what was meant by the expression " commercial activity " used in article 31, paragraph 1 (*c*), of the Vienna Convention on Diplomatic Relations had remained unanswered at the 1961 Conference. The term " private gainful occupation ", used in the text under discussion, seemed equally nebulous. While a case in which the official ran a shop or business was clear enough, there might be borderline cases where, for example, a consular official bought stock on which he made a profit, or received interest on capital assets owned by him in the receiving State. It would be useful for the Committee to hear Mr. Žourek's views on the matter.

26. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, explained that article 56 had been included by the International Law Commission because a study of consular regulations had shown, and the comments of governments had confirmed, that some States permitted their career consular officials to carry on a private gainful occupation. It had also noted that States were not prepared to give to that category of consular official the same treatment as to other career consular officials who were employed full-time in the exercise of their functions. The inclusion of article 56 therefore obviated the clumsy drafting required if a reference to " private gainful occupation " had had to be included in almost every article. It was also necessary to define the status of career consular officials who carried on a private gainful occupation in order to ensure that their position was not inferior to that of honorary consuls, to whom they were generally assimilated by municipal law. It was recognized, however, that the practice referred to in article 56 was exceptional. In reply to the representative of Norway, the International Law Commission had referred to a private gainful " occupation " which implied that work was involved as explained in paragraph 3 of the International Law Commission's commentary on article 56. It was true that there would be some difficulty in regard to borderline cases, for example, where income was derived

from investments, but in his view the question was one of tax exemption rather than of the application of the present article which regulated the legal status of the consular officials concerned in regard to the facilities, privileges and immunities to which they were entitled.

27. Mr. MARESCA (Italy) asked whether it would not be possible for a receiving State simply to consider as an honorary consul a career consular official who was found to be carrying on a private gainful occupation.

28. Mr. ŽOUREK (Expert) replied that it was because no uniform practice had developed on that point that the International Law Commission had considered it necessary to include an article to clarify the situation. It would be difficult to recognize the right of the receiving State to decide the category — career consular official or honorary consular official — into which a particular official should fall. He agreed that from the practical point of view the position of the officials referred to in article 56 was similar in many respects to that of honorary consuls who in the majority of cases exercised a private gainful occupation. Article 56, while leaving the sending State free to appoint the career consular official and to permit him to carry on a private gainful occupation, still safeguarded the interests of the receiving State by establishing that the category of officials concerned should in fact be treated in the same way as honorary consular officials.

29. Mr. VAZ PINTO (Portugal) asked whether it would not be desirable both from the legal and practical point of view to include in the convention a better definition of career consuls and honorary consuls, since the municipal law of the different countries gave varying criteria which gave rise to difficulties.

30. Mr. ŽOUREK (Expert) replied that it would indeed be desirable to have definitions of the two categories of the officials which were interrelated. The question was whether it was possible to establish such definitions. The International Law Commission had attempted to define them in the 1960 draft but had abandoned the attempt in view of the widely varying practice of States.

31. Mr. GANA (Tunisia) asked whether the privileges and immunities generally accorded to honorary consuls were granted by reason of their capacity or by reason of the functions which they exercised.

32. Mr. ŽOUREK (Expert) said that consular immunities were based both on the official capacity of the consular official and on the official functions which he was called upon to exercise.

33. Mr. SHARP (New Zealand) said that his delegation had a slight preference for the Indian amendment (L.179), as opposed to the Austrian amendment, provided that the first alternative text of paragraph 1 was adopted. His delegation would also favour the addition in that text of the word " only " before the words " with the consent of the receiving State ". The Austrian amendment was rather too rigid. Although difficulties might arise in some countries where there was unemployment, there might be some circumstances when it would be to the advantage of the receiving State that at least the members of the families of consular officials should be able to seek employment, for example, in cases where a highly qualified member was able to fill an important vacancy.

34. Mr. NALL (Israel) expressed his delegation's appreciation of the explanations given by Mr. Žourek in which it found considerable support for the point of view expounded in the Austrian amendment, which his delegation would support with one or two reservations. He would remind the Committee that the League of Nations committee of experts for the progressive codification of international law had suggested the abolition of the institution of honorary consuls on the ground, among others, that they might use their position for their own benefit, for example by obtaining information while offering their consular services to persons who might apply to them. That argument could *a fortiori* be applied to career consuls. It would indeed be anomalous to permit career consuls to engage in private occupation for gain in the receiving State, and whenever such a case had arisen it had been a distinct exception to the rule that a consular officer should engage only in consular occupations. For those reasons it was clear to his delegation that the solution suggested by Austria was the only possible one, and should be included in an international multilateral convention. Two points, however, embarrassed his delegation slightly. Firstly, it was not clear why the prohibition should apply only to consular officials; in that respect his delegation drew no distinction whatever between members of the consulate, including the service staff, and the consular officials themselves, and the exclusion should apply to all. Secondly, as the representative of New Zealand had pointed out, very often both the receiving State and the sending State benefited by the employment of members of families of consuls in the receiving State. The reasons were obvious and needed no explanation. The receiving State frequently afforded a very wide field for experiment or employment of knowledge where payment could also be obtained. The exclusion of members of families of consular officials was not, therefore, entirely justified. Subject to those two changes, if they were commendable to the Austrian delegation, his delegation would support the Austrian amendment.

35. Mr. HEUMAN (France), replying to criticisms that there were no provisions in the joint amendment for service staff, said that reference to them had been omitted since they had practically no privileges in the draft articles. He was, however, prepared to meet the objections by revising paragraph 1 of the joint amendment to make it applicable to all consular employees.

36. In reply to the comments made in connexion with the reference, in paragraph 1 of the joint amendment, to the consular employees of honorary consular officials, he would be prepared, not to delete the reference, but to accept a separate vote on the words " and their employees " at the end of the paragraph.

37. The representative of the Federal Republic of

Germany had suggested that the question should be dealt with in article 1, paragraph 2. In the absence of a written proposal to that effect, however, it would be preferable to avoid the transfer of such a complex technical matter to another committee which would not be thoroughly acquainted with the question.

38. Mr. KANEMATSU (Japan) said, in reply to the representative of Yugoslavia, that sub-paragraph (*b*) of paragraph 2 of the joint amendment dealt with those members of the family of a member of a consulate who were themselves engaged in private occupation for gain whereas sub-paragraph (*a*) referred to all members of the family to whom paragraph 1 applied whether or not engaged in private occupation for gain.

39. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that, in view of the fact that the word "private" was used in articles, such as article 48, already adopted by the Committee, and in the light of the discussion, his delegation would withdraw its amendment (L.106) on the understanding that it would be referred to the drafting committee for consideration.

40. Mr. DRAKE (South Africa) said that, having had an opportunity to examine the joint amendment, his delegation was prepared to support it instead of its own, more limited, amendment (L.188). Since the joint amendment would presumably be voted on before the South African amendment, however, his delegation would not formally withdraw and wished its amendment to be voted on should the joint amendment be rejected.

41. Mr. KHOSLA (India) said that the object of the Indian amendment (L.179) was to ensure that the consent of the receiving State was obtained. The receiving State should in any case be notified if career consuls were entitled to carry on a private gainful occupation, since that practice was not general among States. He would like the alternative text of the Indian amendment to be put to the vote first but if the joint amendment was approved before the Indian amendment was voted on, it would then be necessary to modify the latter.

42. Mrs. VILLGRATTNER (Austria) said she was grateful to the various representatives who had commented on the Austrian amendment (L.51). As she had said earlier, she was willing to incorporate any constructive suggestions in the text of her amendment. In particular, she accepted the Chilean proposal to add the word " career " at the beginning of the amendment, which was fully in accordance with the intention of the amendment. She could not accept the suggestion of the Greek delegation that the word " career " should be deleted from the title.

43. If the words " and members of their families forming part of their households " were struck out of the Austrian amendment, it would be necessary to include a new second paragraph stipulating the status of members of the families of consular officials engaged in private gainful occupations. She asked that that phrase should be voted on first, and if it were rejected she would be glad to adopt the suggestion of the Italian representative regarding a new second paragraph, to read: " Members of the family of a career consular official forming part of his household, who are practising, for personal profit, any professional or commercial activity in the receiving State, shall not enjoy the exemptions as provided in chapter II of this convention."

44. With regard to the question of the Israel representative why only consular officials were mentioned in the amendment, and not members of a consulate as such, it was not her delegation's intention to make a rigid prohibition for all members of a consulate. The status of consular employees who did not fall under the definition of career consular officials was already provided for in a number of previous articles. The practice of private gainful occupations was incompatible in particular with the status of career consular officials who might be tempted to use their special knowledge of conditions in the receiving State for the profit of their private occupation.

45. Mr. HEUMAN (France) asked whether the purpose of the Austrian amendment was to forbid consular officials from engaging in private gainful occupations or only to disqualify them from enjoying the facilities provided in chapter II if they did so.

46. Mrs. VILLGRATTNER (Austria) said that her amendment was intended to prohibit, not merely to disqualify.

47. The CHAIRMAN invited the Committee to decide whether the Austrian text should be regarded as an amendment or simply as a proposal. If it were an amendment it would have to be voted on first; but if it were a proposal it would be voted on after the vote on the International Law Commission's text.

It was decided by 36 votes to 10, with 35 abstentions, that the Austrian text constituted an amendment.

48. Mr. VAZ PINTO (Portugal), on a point of order, recalled that a number of countries, notably Belgium, had submitted amendments to the definitions in article 1; if those amendments and the Austrian amendment were adopted, there might be some discrepancy or duplication between the resulting text of article 1 and article 56. He suggested that the necessary readjustments should be left to the drafting committee.

49. The CHAIRMAN invited the Committee to vote on the retention of the words " and members of their families forming part of their households ", in the Austrian amendment.

The Committee decided by 38 votes to 1, with 30 abstentions, not to retain those words.

The original text of the Austrian amendment (A/CONF. 25/C.2/L.51), as amended, was adopted by 44 votes to 2, with 25 abstentions.

50. Mr. EVANS (United Kingdom) asked whether, if the second paragraph of the Austrian amendment were approved, that would mean that the joint amendment (L.211/Rev.1) would not be put to the vote.

51. Mr. HEUMAN (France) said that if paragraph 2 of the Austrian amendment were adopted, it would render unnecessary only point 2 (*b*) of the French-Japanese amendment. The Austrian amendment did not cover the case dealt with in sub-paragraph 2 (*a*) of the joint amendment, nor would it eliminate the need for paragraph 1 of the joint amendment, the purpose of which was to provide for sanctions against consular officials who engaged in private gainful occupations despite the prohibition. Moreover, the Austrian amendment said nothing about consular employees. He therefore thought that there was no incompatibility between the Austrian amendment and the joint amendment; and that any adjustments to eliminate duplication could be left to the drafting committee.

52. Mrs. VILLGRATTNER (Austria) pointed out that the first paragraph of the Austrian amendment as approved stated " Career consular officials shall not practise . . ." There could not therefore be a reference in a subsequent paragraph to the status of career consular officials who did practise professional or commercial activities. Moreover, the joint amendment would water down the Austrian text. In drafting that text, she had considered whether it was necessary to refer to sanctions, but she thought that sanctions were already implicitly provided for. If a member of a consular staff contravened the article, the proper way to meet the case would be for the receiving State to communicate with the sending State so that it could take the necessary steps; if that failed, the consular official in question could be declared unacceptable. That was a sanction even stricter than that in the French proposal, which suggested merely that the consular official should be disqualified from enjoying the consular privileges and immunities allowed under chapter II. The case of consular employees was already dealt with in articles 46 to 51. Only members of the families of consular officials had not been covered, and they would be dealt with in the second paragraph of her amendment.

53. There was a difference in wording between the second paragraph of the joint amendment and that of the Austrian amendment, since according to the joint amendment the privileges and immunities under chapter II were not to be accorded to members of the family of a consular official practising a private gainful occupation, whereas the Austrian amendment merely said that they should not enjoy the exemptions provided for in chapter II. The Austrian delegation held that those persons should continue to enjoy such advantages as facilities for departure in the event of a rupture of consular relations, even if they were engaged in private gainful occupations.

54. The CHAIRMAN said that the French representative had conceded that paragraph 2 (*b*) of the joint amendment was covered by the second paragraph of the Austrian amendment; but the phrase " members of the family of the member of a consulate " in that sub-paragraph of the joint amendment was much wider than the phrase " members of the family of a career consular official " in the Austrian amendment. He would suggest therefore that the Committee should first vote on sub-paragraph (*b*) of the joint amendment.

55. Mr. HEUMAN (France) accepted the Chairman's proposal with regard to sub-paragraph (*b*), but the question of the first paragraph remained. If nothing was said about consular employees, an unfortunate situation might arise. Proper provision should be made for their case should they engage in a gainful occupation by transferring the matter to chapter II. As a compromise he suggested that sub-paragraph 2 (*b*) of the joint amendment should be voted on before the Austrian amendment; paragraph 1 of the joint amendment should be voted on in a modified form in which it would read: " The provisions applicable to members of a consulate who carry on a private gainful occupation in the receiving State shall, so far as facilities, privileges and immunities are concerned, be the same as those applicable to honorary consular officials and their employees."

56. The CHAIRMAN invited the Committee to decide whether it should vote on the joint amendment as a whole or on sub-paragraph (*b*) of that amendment only.

It was decided by 25 votes to 19, with 27 abstentions, to vote on the joint amendment as a whole.

57. Mr. LEVI (Yugoslavia) pointed out that the text of paragraph 1 of the joint amendment was inconsistent: in the first line it referred to " members of a consulate ", whereas the last line referred to " honorary consular officials and their employees ".

58. Mr. KANEMATSU (Japan) proposed that the text of paragraph 1 should read: " The provisions applicable to consular employees who carry on a private gainful occupation in the receiving State shall, so far as facilities, privileges and inmunities are concerned, be the same as those applicable to consular employees who are employed at a consulate headed by an honorary consular official."

59. The CHAIRMAN invited the Committee to vote on the joint amendment by France and Japan as a whole, as revised by the Japanese representative.

The joint amendment (A/CONF.25/C.2/L.211/Rev.1) was rejected by 26 votes to 17, with 28 abstentions.

The second paragraph of the Austrian amendment (A/CONF.25/C.2/L.51), as submitted orally by the Austrian representative, was adopted by 61 votes to none, with 8 abstentions.

Article 56 as a whole, as amended, was adopted by 65 votes to none, with 5 abstentions.

60. Mr. HEUMAN (France) said that he had abstained in the vote on article 56 because the question of consular employees had not been dealt with.

61. Mr. VRANKEN (Belgium) said that he approved the motives of the French-Japanese amendment, but had found the text unsatisfactory and had therefore voted against it.

The meeting rose at 1.20 p.m.