

United Nations Conference on Consular Relations

Vienna, Austria
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10th meeting of the Plenary

Extract from the
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(Summary records of plenary meetings and of meetings of
the First and Second Committees)

35. The PRESIDENT suggested that that reservation should be mentioned in the summary record.

36. Mr. HABIBUR RAHMAN (Pakistan) said that in that case he would vote for article 32 on condition that the words "wherever they may be" implied an appropriate place such as the consular premises, the means of transport of the consulate or the consular bag, but that they had no wider meaning.

37. Mr. BILGE (Turkey) agreed with the representative of Pakistan, whose comments he considered entirely justified, and asked that his statement be recorded.

Article 32 was adopted by 72 votes to none, with 2 abstentions.

38. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) explained that he had voted for article 32 as drafted and could not endorse the interpretation given to the words "wherever they may be" by the representatives of Pakistan and Turkey.

39. Mr. DE CASTRO (Philippines) and Mr. SALLEH bin ABAS (Federation of Malaya) said that they had voted for article 32 with the same reservations as the representative of Pakistan.

40. Mr. ENDEMANN (South Africa) and Mr. MOUSSAVI (Iran) said that they had abstained from voting on article 32 because of the lack of precision in that article, to which the representative of Pakistan had drawn attention.

The meeting rose at 1.15 p.m.

TENTH PLENARY MEETING

Tuesday, 16 April 1963, at 3.30 p.m.

President: Mr. VEROSTA (Austria)

Consideration of the question of consular relations in accordance with resolution 1685 (XVI) adopted by the General Assembly on 18 December 1961 (*continued*)

[Agenda item 10]

DRAFT CONVENTION

Article 34 (Freedom of movement)

1. The PRESIDENT invited the Conference to continue its discussion of the draft convention (A/CONF.25/L.11) and noted that article 33 (renumbered 27 A) had already been adopted by the Conference. No amendments had been submitted to article 34.

Article 34 was adopted unanimously.

Article 35 (Freedom of communication)

2. The PRESIDENT drew attention to the amendments to paragraph 5 submitted by the Philippines (A/CONF.25/L.29) and Denmark (A/CONF.25/L.31).

3. Mr. SCHRØDER (Denmark), introducing his delegation's amendment, pointed out that the original text of the article drafted by the International Law Commission had not contained any restrictive condition concerning consular couriers who were nationals of the receiving State or permanent residents thereof. The restriction had been introduced by the Second Committee. His delegation recognized the right of the receiving State to determine the extent to which its nationals could serve a foreign State; it also recognized the receiving State's concern to ensure that a foreigner permanently resident in its territory was not more favourably treated than a national. But his delegation could not accept the provisions of paragraph 5. The restriction which had been introduced was of little practical importance in the case of regular consular couriers, who were generally nationals of the sending State and resided in their own country. But it also applied, by virtue of paragraph 6, to consular couriers *ad hoc* and, for those couriers, the consequences of the restriction would be very serious. In particular, an honorary consul of the sending State who happened to be a permanent resident of the receiving State would not be able to carry mail to and from his own consular post without the consent of the receiving State.

4. There was another practical reason for introducing a saving clause regarding permanent residents in the receiving State who were also nationals of the sending State: on concluding a visit to their home country, such persons were often asked by the Ministry for Foreign Affairs to carry a consular bag to their place of residence in the receiving State. In such cases there was hardly time to obtain the consent of the receiving State and certainly no time for the receiving State to give the necessary orders to its responsible authorities before the arrival of the consular courier *ad hoc*, who usually travelled by air.

5. It was for those practical reasons that his delegation had introduced its amendment exempting nationals of the sending State from the condition imposed on permanent residents of the receiving State by the second sentence of paragraph 5.

6. Mr. DE CASTRO (Philippines) said he would not press his proposal (A/CONF.25/L.29) to delete the last sentence of paragraph 5; he asked, instead, that a separate vote should be taken on that sentence.

7. His delegation had no objection to the personal inviolability of the consular courier within the receiving State, because it involved no danger of abuse. But where the consular bag was carried across state frontiers, he thought the granting of personal inviolability to the courier was fraught with danger; it opened the door to abuses which might impair friendly relations between States.

8. A distinction should be made between the consular bag itself and the person who carried it. The deletion of the last sentence of paragraph 5 would not affect the safeguards provided in paragraph 3 for the bag itself. Moreover, paragraph 3 also provided safeguards against abuse of the bag, which must not contain anything other than official correspondence, and could be opened if there was reasonable cause to suspect that it did. With

regard to the courier himself, neither the provisions of article 35 nor any other provision of the draft convention prevented him from carrying on his person any object the importation of which was prohibited or restricted in the State he was about to enter. Paragraph 5 gave him absolute personal inviolability: he could not be searched, detained or arrested. The courier in fact enjoyed greater immunity than the consular bag which justified his status; for whereas the authorities could request that the bag be opened under the provisions of paragraph 3, the courier could not be obliged to show what he had in his pockets.

9. As defined in the last sentence of paragraph 5, the courier's inviolability was more complete than that of the consul, his principal. Under article 41, a consul enjoyed only a limited degree of inviolability: he could be arrested for the commission of a grave crime such as smuggling. A consular courier, on the other hand, could never be arrested. The deletion of the last sentence of paragraph 5 would in no way impair the freedom of communication of consuls. The third sentence explicitly stated that, in the performance of his functions, the consular courier "shall be protected by the receiving State": that was a fully sufficient safeguard.

10. Lastly, he drew attention to the provisions of paragraph 7. The captain of a ship or aircraft entrusted with a consular bag was not regarded as a consular courier: if inviolability was not considered indispensable for such a captain, there was no reason why it should be indispensable for consular couriers.

11. Mr. KEVIN (Australia) said that his delegation could not support the Danish amendment because it would confer inviolability upon persons who were permanent residents of a receiving State. The fact that many consular couriers were couriers *ad hoc* made the amendment doubly undesirable. Consular officials could be used as consular couriers and article 69 would provide them with all the protection they needed. The provisions of article 35 would also apply to consulates headed by honorary consuls, which made the amendment even less advisable.

12. Mr. RUEGGER (Switzerland) said that he was strongly in favour of deleting the last sentence of paragraph 5, for the excellent reasons given by the representative of the Philippines.

13. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) supported the Danish amendment, which would introduce only a slight change in paragraph 5, and one that was not at variance with the basic principle involved. He had not been convinced by the arguments of the representative of the Philippines and still thought it essential to retain the last sentence of paragraph 5. The inviolability of consular couriers, like all consular privileges and immunities, derived from their functions rather than their persons. His delegation would therefore oppose the motion for a separate vote on the last sentence of paragraph 5.

14. Mr. PETRŽELKA (Czechoslovakia) was also in favour of retaining the last sentence of paragraph 5, which was necessary for the safe and satisfactory func-

tioning of consular communications. It should be read in conjunction with the previous sentence, which stated that, in the performance of his functions, the consular courier must be protected by the receiving State. The provisions in question applied to the courier as an instrument of communications: the main concern was the protection of the consular bag itself. His delegation would oppose the motion for a separate vote on the last sentence of paragraph 5.

15. Mr. MOUSSAVI (Iran) supported the deletion of the last sentence of paragraph 5, for the cogent reasons given by the representative of the Philippines.

16. Mr. JESTAEDT (Federal Republic of Germany) supported the Danish amendment, which would fill a gap in the article. On the other hand, he could not support the deletion of the last sentence of paragraph 5, which would undermine the whole institution of consular communications. His delegation regarded the personal inviolability of consular couriers as a fundamental principle of consular law.

17. Mr. de MENTHON (France) supported the Danish amendment, which confirmed an already existing practice. It was quite common for the head of a consular post far from any diplomatic mission of the sending State to entrust the consular bag to a citizen of that State. He regretted that, for the reasons already given by several speakers, he could not support the Philippines proposal to delete the last sentence of paragraph 5.

18. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation would support the Danish amendment.

19. The Philippines amendment raised an important question of principle; that of freedom of communication between consulates and diplomatic missions. Paragraph 1 of article 35 stated the principle of freedom of communication on the part of the consular post for all official purposes. The acceptance of that principle implied that consular officials must be provided with all the necessary guarantees; they must have the means to ensure freedom of communication for the consular post. He had not been convinced by the arguments of the Philippines representative. The inviolability of consular couriers derived, like that of consuls themselves, from the functions they performed. It was essential, on both legal and practical grounds, to retain the last sentence of paragraph 5 which, by providing the consular courier with the necessary safeguards, would facilitate friendly relations between States.

20. Mr. WU (China) considered that the last sentence of paragraph 5 should be deleted, for the reasons given by the Philippines representative. The penultimate sentence of that paragraph provided a sufficient safeguard for the consular courier by specifying that he must be protected in the performance of his functions by the receiving State. In other articles of the draft convention, the Conference had shown less generosity to the head of post than was now proposed for a mere consular courier.

21. Mr. AMLIE (Norway) strongly opposed the deletion of the last sentence of paragraph 5, which would

undermine the whole institution of consular couriers. With regard to the Danish amendment, he said that the provisions of the second sentence of paragraph 5 might be acceptable for professional consular couriers. But those provisions would also apply to *ad hoc* couriers, who were very often nationals of the sending State residing in the receiving State. Unless the Danish amendment was adopted, sending States would be deprived of the services of a great many of the consular couriers they had hitherto. The provisions of paragraph 5, as they stood, would have the absurd effect of debarring an honorary consul who was a permanent resident of the receiving State from carrying the consular bag to and from his own consulate.

22. Mr. ANGHEL (Romania) opposed the proposal to delete the last sentence of paragraph 5. It was not possible to draw a distinction between the inviolability of the consular courier himself and that of the consular bag, since it was the courier who carried the bag. If it were possible to arrest the consular courier, would the consular bag accompany him to prison? In that case the consular bag could be stopped. The consular courier was frequently a consular employee who would not otherwise enjoy personal inviolability, and the freedom of communication by means of the bag would be impaired. The provisions of the last sentence would give the courier that inviolability, which was necessary to enable him to perform his functions satisfactorily.

23. Mr. DEGEFU (Ethiopia) supported the Philippine motion for a separate vote on the last sentence of paragraph 5. His delegation would vote against the retention of that sentence, because it was necessary to provide safeguards against possible abuses.

24. Mr. BOUZIRI (Tunisia) also favoured the deletion of the last sentence of paragraph 5, for the reasons given by the representative of the Philippines.

25. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that his delegation could not accept the text of paragraph 3 as adopted by the Second Committee and was opposed to the inclusion of the last two sentences of that paragraph. It preferred the text proposed by the International Law Commission and wished to draw attention to paragraph 1 of the commentary on article 35, which stated that the article predicated a freedom essential for the discharge of consular functions and, together with the inviolability of consular premises and that of the consulate's official archives, documents and correspondence, it formed the foundation of all consular law. Furthermore, paragraph 3 as submitted to the Conference was contrary to a number of articles already adopted, namely, article 27 A (Facilities for the work of the consular post), article 30 (Inviolability of the consular premises) and article 32 (Inviolability of the consular archives and documents). In connexion with the latter article, in particular, it seemed anomalous to provide that documents were inviolable when they were on the consular premises, but that they could be inspected on the slightest suspicion while they were in transit.

26. The argument that weapons or narcotics might

be carried in the consular bag was tantamount to placing the government of the sending State under suspicion in advance. Article 27, paragraph 3, of the Convention on Diplomatic Relations provided that the diplomatic bag should not be opened or detained; yet unauthorized articles might conceivably be carried in that bag also. There were practically no cases in consular practice of unauthorized articles being carried in the consular bag; narcotics and weapons were, of course, sometimes smuggled by private persons, but an *a priori* presumption that the sending State would be guilty of such smuggling was contrary to the principles of international law and peaceful co-existence on which relations among States must be based.

27. In the Second Committee, Mr. Žourek had stated that the consular bag could take the form of a bag, box, or package of any kind, but that the basic definition of such a bag was that it contained official correspondence, documents or articles for official use. Mr. Žourek had also drawn attention to the opinion of the International Law Commission that the consular bag should enjoy the same inviolability as the diplomatic bag, irrespective of whether it was carried by a courier or conveyed by any other means. Accordingly, the difference between a diplomatic bag and a consular bag lay only in its origin, and not in its nature. Furthermore, the principle of the absolute inviolability of the consular bag was confirmed by article 18 of the Havana Convention on Consular Relations, article 16 of the Harvard draft, a number of international agreements and national laws and the works of many eminent publicists.

28. The expression "serious reason" gave the authorities of the receiving State very wide latitude and would seriously limit the freedom of communication of the sending State. The authorities of the receiving State would have the right to examine all the documents in the consular bag, in order to ascertain whether they were of an official nature; moreover, the receiving State would be absolutely free to decide when it should open the bag, while the sending State could have no guarantee of inviolability. That situation would be very dangerous if relations between the two States were already strained. The Norwegian representative in the Second Committee had rightly pointed out that, since one of the consular functions was to ascertain conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, considerable friction might arise if the documents of the consular post were investigated by the authorities of that State. Furthermore, the last sentence of paragraph 3 was liable to give rise to suspicion and misunderstanding, since the sending State might prefer to return the bag to its place of origin even if it did not contain any unauthorized articles.

29. The adoption of paragraph 3 as drafted would imply that diplomatic agents were not suspected of abusing their privileges, but that consular officers were suspected of doing so. He wished to remind the representative of the Federal Republic of Germany, who had argued in the Second Committee against the principle of absolute inviolability of the consular bag, that his country had concluded a consular convention with the

Soviet Union in 1958¹ which provided in article 14, paragraph 1, that the archives and official correspondence of consulates, including telegraphic communication, were inviolable and immune from search. It should also be borne in mind that the majority of the International Law Commission had voted against a proposal to limit the inviolability of the consular bag and that similar proposals concerning the diplomatic bag had been rejected by an overwhelming majority at the Conference on Diplomatic Relations.

30. Paragraph 3 was thus unlikely to promote the principle of peaceful co-existence in relations between States but, on the contrary, would hinder the normal operation of consulates by restricting the freedom of communication of the sending State. He therefore proposed that the last two sentences should be deleted; if that proposal were rejected, he moved that separate votes be taken on the first sentence and on the last two sentences.

31. Mr. BOUZIRI (Tunisia) said he could not support the Byelorussian motion for division of paragraph 3 for a number of very serious reasons. The representative of the Byelorussian SSR had largely based his arguments on the precedent of the 1961 Convention; the Tunisian delegation believed, however, that if the Convention on Diplomatic Relations in its entirety were to be taken as a model, the Consular Conference would have been unnecessary. Assimilation of the two conventions must be approached with great caution. The difference between the diplomatic bag and the consular bag should be stressed; the diplomatic bag was sent and received by diplomatic missions, whereas the consular bag proceeded to and from consulates, of which there were large numbers throughout the world. The question of the inviolability of the diplomatic bag had been debated at length during the 1961 Conference and the principle of that inviolability had finally been accepted; but the case of the consular bag was quite different.

32. There was no question of automatically placing consular officers under suspicion, as the Byelorussian representative had suggested, but in view of the large number of consulates, the dangers, which also existed in the case of the diplomatic bag, should not be multiplied. Furthermore, the text of paragraph 3 did not imply that consular bags would automatically be opened. The inviolability of the consular archives was recognized and it was laid down that the bag could be opened only if there were serious reasons for doing so. Moreover, it could only be opened in the presence of an authorized representative of the sending State, and not secretly and arbitrarily by the authorities of the receiving State. The presence of a representative of the sending State would serve as a guarantee that the documents contained in the bag would not be read and that it would be opened only to enable the authorities to ascertain that the contents were as specified in paragraph 4.

33. His delegation also could not agree that paragraph 3 placed the sending State under suspicion, for any abuse of the consular bag would be perpetrated by an individual, and not by the sending State itself.

Freedom of communication would not be violated, since the authorities of the sending State were entitled to refuse the request that the bag be opened. The receiving State would not take its responsibilities under the paragraph lightly; besides, it was in the interests of the sending State to discover any abuse of the consular bag by the transport of unauthorized articles.

34. Finally, his delegation could not agree that paragraph 3 in any way derogated from the principle of peaceful co-existence. That principle would be vitiated by the existence of any doubts as to the legitimacy of the contents of the consular bag and in any case it should be founded on reality and mutual confidence. He therefore formally opposed the motion for division submitted by the Byelorussian delegation and, if that motion were carried, would vote against the deletion of the last two sentences of paragraph 3.

35. Mr. KONSTANTINOV (Bulgaria) fully supported the Byelorussian representative's motion. The principle of inviolability of the consular bag would be infringed by the adoption of paragraph 3 as it stood; moreover, that paragraph was contrary to article 32 as adopted by the Conference and to other paragraphs of article 35. It would be anomalous to refer to freedom of communication in the title, to state in paragraph 1 that the receiving State should permit and protect such freedom on the part of the consular post for all official purposes, to provide in paragraph 2 that the official correspondence of the consular post should be inviolable, and then to provide for such a serious exception in paragraph 3. Moreover, the last two sentences of that paragraph completely nullified the first sentence.

36. It had been said that the unauthorized articles mainly concerned were arms and narcotics; but the bag to be opened in case of suspicion was not that of a potential smuggler, it was an official bag of the consulate of the sending State. It had also been argued that the possibility of opening the bag would act as a deterrent to consular officers, but it should be borne in mind that the convention already contained strict guarantees against abuse of inviolability. In practice such a possibility provided no additional guarantees, but would be a constant source of dispute and an obstacle to peaceful co-existence. He therefore supported the Byelorussian motion for division and, if it were carried, would vote for the deletion of the two sentences in question.

37. Mr. EVANS (United Kingdom) opposed the motion by the representative of the Byelorussian SSR and fully agreed with the Tunisian representative that the precedent of the 1961 Convention should not be followed in article 35, in view of the difference in status between consulates and diplomatic missions.

38. In considering the provisions of paragraph 3, the Second Committee had made an important distinction between official correspondence and the consular bag itself. Paragraph 2 related specifically to the official correspondence carried in the consular bag and provided for its inviolability; nothing in paragraph 3 derogated from that inviolability, since the opening of the consular bag by the authorities of the receiving State gave them

¹ United Nations, *Treaty Series*, vol. 338, p. 74.

no right whatsoever to violate official correspondence by opening it or reading it. The first sentence of paragraph 3 conferred a special privilege on the sending State, but the interest of the receiving State in ensuring that the privilege would not be abused must also be taken into account. Regrettably, abuses did in fact occur and consular bags sometimes contained unauthorized articles. The procedure set out in paragraph 3 was designed to protect the interests of both the sending State and the receiving State, by enabling the latter to request that the bag be opened for serious reasons and allowing the former to retain the right to return the bag unopened to its place of origin. His delegation believed that the inclusion of that paragraph would help to discourage abuse and to eliminate causes of friction between the two States concerned.

39. The United Kingdom delegation could not support the proposal by the representative of the Philippines since, if the last sentence of paragraph 5 were deleted, the only protection accorded to a consular courier would be that provided by the penultimate sentence; it was essential for a courier to have complete personal inviolability in order that the consular bag might not be placed in jeopardy.

40. Mr. TSHIMBALANGA (Congo, Leopoldville) opposed the Byelorussian motion. The last two sentences of paragraph 3 provided a valuable guarantee for newly independent States, which needed protection by all appropriate means against the introduction of unauthorized articles in the consular bag. His delegation would support the Danish amendment, which clarified the text of paragraph 5.

41. Mr. MOUSSAVI (Iran) opposed the Byelorussian motion for the reasons given by the Tunisian representative.

42. Mr. MARAMBIO (Chile) said he would vote against the Byelorussian motion. If the last two sentences of paragraph 3 were deleted, the difference between the diplomatic bag and the consular bag would not be properly brought out, and the Chilean delegation was opposed to the assimilation of diplomatic and consular functions. The diplomatic bag contained the official correspondence of the political representative of the sending State, whereas the consular bag contained quite different matter. Paragraph 3 adequately protected the official correspondence of the consulate; it would not infringe freedom of communication, but would help to prevent abuse. In his delegation's opinion, the wording of the paragraph equitably safeguarded the rights of both the sending State and the receiving State.

43. Mr. OCHIRBAL (Mongolia) agreed with the representative of the Byelorussian SSR that the consular courier and the consular bag should enjoy the same inviolability as their diplomatic counterparts. If that inviolability were violated, it would be difficult for consulates to function normally; moreover, it was absurd to imply that a consular bag could contain only what the authorities of the receiving State considered to be admissible. The principle that the consular bag should not be opened or detained was recognized in many

bilateral conventions, and the Mongolian delegation could not understand the objections to granting it absolute inviolability. It was generally acknowledged that even the private correspondence of consular officers was not subject to opening or detention, and that principle must apply *a fortiori* to official correspondence. He therefore supported the Byelorussian motion. He would vote against the Philippine motion for a separate vote on the last sentence of paragraph 5.

The Danish amendment (A.CONF.25/L.31) to paragraph 5 was adopted by 46 votes to 18, with 10 abstentions.

The motion by the representative of the Philippines for a separate vote on the last sentence of paragraph 5 was rejected by 34 votes to 25, with 16 abstentions.

The motion by the representative of the Byelorussian Soviet Socialist Republic for a separate vote on the second and third sentences of paragraph 3 was rejected by 49 votes to 13, with 11 abstentions.

Paragraph 5, as amended, was adopted by 52 votes to 10, with 13 abstentions.

Article 35, as a whole, as amended, was adopted by 57 votes to none, with 22 abstentions.

44. The PRESIDENT said that the wording of paragraph 5 as a result of the adoption of the Danish amendment would be referred to the drafting committee.²

45. Mr. DE CASTRO (Philippines) said he had abstained from voting on article 35 because of the last sentence of paragraph 5, which he had proposed should be deleted. His government's interpretation of that sentence would be that the courier did not enjoy personal inviolability when he committed unlawful acts or acts not essential to the performance of his specific and limited function of safely conveying the consular bag to its destination. That interpretation was based on article 55, paragraph 1 of which enjoined all persons enjoying privileges and immunities to respect the laws and regulations of the receiving State. It was also based on the principle that anyone committing unlawful acts forfeited the privileges and immunities granted by the Convention.

46. Mr. PAPAS (Greece) said that his delegation had reserved its position when the Second Committee had approved article 35 (and the related article 57) because it considered that the degree of inviolability provided for means of communication, and particularly for the consular courier and bag, was too great and would encourage abuses. His delegation had abstained from voting on article 35 as a whole and maintained its reservation on the provisions concerning the consular courier.

47. Mr. KRISHNA RAO (India) suggested that the drafting committee should review the second sentence of paragraph 5 when the Danish amendment was incorporated.

48. Mr. EVANS (United Kingdom) endorsed the suggestion and pointed out that the word "citizen" was used in the amendment, whereas the word "national" appeared elsewhere in the convention.

² For the changes made by the drafting committee, see the summary record of the twenty-second plenary meeting, para. 32.

49. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) reserved his delegation's position on article 35 as a whole because, as he had already explained, he did not agree with the second part of paragraph 3.

50. Mr. MORGAN (Liberia) said he had voted in favour of the motion by the representative of the Philippines, but against article 35 as a whole because he believed that the consular courier should enjoy complete inviolability only when carrying the consular bag.

51. Mr. KEVIN (Australia) reserved his delegation's position on paragraph 5 as amended. It was open to a number of objections, particularly in regard to honorary consuls.

52. Mr. PETRŽELKA (Czechoslovakia) said he had voted for the Danish amendment, for paragraph 5 as amended, and for the Byelorussian motion for division. He had abstained from voting on article 35 as a whole because he believed that there should be no differentiation between diplomatic and consular freedom of communications. The restrictive provisions of paragraph 3 concerning the consular bag were not consistent with the equality implied in paragraph 1.

53. Mr. LEE (Canada) said he had abstained from voting on paragraph 5 for the same reasons as the Australian representative.

54. Mr. RUEGGER (Switzerland) said he had voted for the motion by the representative of the Philippines, but had abstained from voting on paragraph 5. He had voted in favour of article 35 as a whole, but he supported those representatives who thought that paragraph 5 should not be interpreted as having too wide a scope. In particular, he agreed with the representatives of the Philippines and Tunisia that consular couriers should not have the same privileges and immunities as diplomatic couriers. In general, the Conference had gone far towards placing the two services on an equal footing, despite the fundamental differences between them. The consular courier should have no inviolability other than that conferred on him for the performance of his official functions. The guiding principle was the purpose of the consular post and the mission entrusted to it; the facilities given should be interpreted restrictively, in accordance with the rule that it was only the purpose for which consular functions were performed that required to be protected.

55. Mr. SHARP (New Zealand) said he had abstained from voting on article 35 as a whole and had voted against paragraph 5 because he was opposed to the Danish amendment. He could not accept the idea that an alien permanent resident should be treated more favourably than a national. He shared the views of the Australian and Canadian representatives.

56. Mr. ENDEMANN (South Africa) said he had supported the Philippine motion because a consular courier's personal inviolability should not extend to periods when he was not acting as such and allow him to contravene the laws of the receiving State with impunity. The adoption of the Danish amendment had

worsened matters by extending personal inviolability to a permanent resident of the receiving State. His government would find it difficult to accept paragraph 5, and he had therefore abstained from voting on article 35 as a whole.

57. Mr. JAYANAMA (Thailand) said that, although he had opposed the Danish amendment, he had voted for the article as a whole; he had also voted for the Philippine motion. His reasons were those stated by the representatives of Australia and the Philippines.

58. Mr. HABIBUR RAHMAN (Pakistan) said he had voted against the Danish amendment and in favour of the Philippine motion. He endorsed the comments of the representatives of Australia, Canada and New Zealand.

59. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted against paragraph 5, because its last sentence conflicted with the laws of his country.

60. Mr. USTOR (Hungary) considered that the Conference had done well to safeguard the personal inviolability of the consular courier which, as stated in paragraph 5 of the International Law Commission's commentary, was "the logical corollary of the rule providing for the inviolability of the consulate's official correspondence, archives and documents". The second and third sentences of paragraph 3, however, impaired that inviolability and he had therefore abstained from voting on article 35 as a whole.

Article 37 (Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents)

61. The PRESIDENT suggested that article 36 be discussed at the following meeting. He invited the meeting to consider article 37, to which no amendments had been submitted.

62. Mr. BLANKINSHIP (United States of America) considered the requirement of a death certificate in paragraph (a) a needless burden on the receiving State. Many countries, like his own, had thousands, even millions, of permanent or long-term foreign residents and the administrative problems and expense involved would make it almost impossible to implement the provisions of the article, especially as many immigrants, coming from regions where national frontiers had been changed by two world wars, no longer knew their own nationality. In his opinion the Conference had not examined the question fully enough; it concerned very complicated technical and specialized matters connected with vital statistics, which the International Law Commission had wisely decided were not the concern of an international convention. The Second Committee had agreed by a very narrow majority to amend the International Law Commission's draft of sub-paragraph (a) by adding the words "and, as soon as possible, to transmit to it a certificate of death". He moved that a separate vote be taken on those words and hoped that they would be rejected.

63. Mr. LEE (Canada) supported the views of the United States representative and his motion for a separate vote. He had opposed the amendment of the Second Committee because he thought the addition of the words in question would impose an impossible duty on the receiving State.

64. Mr. SALLEH bin ABAS (Federation of Malaya) said that he too had opposed the amendment because it would impose too heavy a burden on the receiving State. If it was difficult for the more developed countries like Canada and the United States of America to implement such a provision, it would be even more difficult for the less-developed countries like his own. He supported the motion for a separate vote on sub-paragraph (a).

65. Mr. JAYANAMA (Thailand) said he would have preferred article 36 to be discussed before article 37 as the two were related and he wished to speak on the amendment to article 36 of which his delegation was one of the sponsors. With regard to article 37, he supported the United States motion for a separate vote and the reasons given for it. For the same reasons he also requested a separate vote on sub-paragraph (b).

66. Mr. SILVEIRA-BARRIOS (Venezuela) supported the motion for a separate vote on sub-paragraph (a), and endorsed the comments made by the representatives of Canada, Thailand and the United States of America. He had opposed the International Law Commission's draft of sub-paragraph (a) in the Second Committee; the amendment adopted there had only increased the burden on the receiving State.

67. Mrs. VILLGRATTNER (Austria) said that the addition to sub-paragraph (a) had been based on an amendment submitted by her delegation. The reason for the amendment, as she had explained in the Second Committee, was that where information was available on the nationality of a deceased person, the furnishing of a death certificate to the consulate would be helpful to the sending State for administrative purposes, to the relatives in completing formalities, and to the consulate in protecting any property of the deceased in the receiving State. The difficulties mentioned by certain representatives should be met by the opening sentence of the article, which made the obligation conditional on the information being available.

68. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) appreciated the difficulties referred to by the United States representative but could not support his motion for division of the text. A death certificate was often of great importance to the relatives of a deceased person, particularly if they were living in another country. He would therefore prefer the provision to be retained.

69. Mr. KRISHNA RAO (India) agreed with the representatives of Thailand and the Federation of Malaya. The words in question implied an inflexible duty which his country was not equipped to fulfil; it would be better to delete them.

69. Mr. BARTOŠ (Yugoslavia) said he could not support the United States motion for division of the text. A well-organized State should know its inhabitants and

should show equal concern for nationals and aliens. He saw no reason why the receiving State should not provide a death certificate, particularly as the obligation was mitigated by the opening words of the article.

71. Mr. JAYANAMA (Thailand) moved the adjournment of the debate and proposed that article 36 should be considered first at the following meeting.

72. Mr. BLANKINSHIP (United States of America), exercising his right of reply, said that the wide support for his motion was evidence of the difficulty that would be caused by the words in question, even to the best organized States. His own country had the added difficulties of a federal State. The real objection, however, was that it was unwise to impose an obligation which many States could not fully implement; he urged that the provision be deleted from sub-paragraph (a).

73. The CHAIRMAN invited the Conference to vote on the motion for adjournment of the debate.

The motion was carried by 38 votes to 2, with 25 abstentions.

The meeting rose at 6.25 p.m.

ELEVENTH PLENARY MEETING

Wednesday, 17 April 1963, at 11.5 a.m.

President: Mr. VEROSTA (Austria)

Consideration of the question of consular relations in accordance with resolution 1685 (XVI) adopted by the General Assembly on 18 December 1961 (*continued*)

[Agenda item 10]

DRAFT CONVENTION

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

1. The PRESIDENT stated that two amendments to article 36 were before the Conference: one submitted jointly by the Federation of Malaya, Japan, the Philippines, Thailand, the United Arab Republic and Venezuela (A/CONF.25/L.30) and the other by the Union of Soviet Socialist Republics (A/CONF.25/L.34).

2. Mr. TORROBA (Spain) pointed out that there was a mistake in the Spanish text of article 36. In the opening sentence of sub-paragraph (b) of paragraph 1 the words "Estado que envia" should read "Estado receptor".

3. Mr. JAYANAMA (Thailand), introducing the joint amendment in the name of all the sponsor countries, which had found difficulty in accepting some of the provisions of article 36, said that his country had often stressed the necessity of establishing uniform rules governing consular relations in order to facilitate the performance of consular functions. His delegation considered that consular privileges and immunities should not be the same as diplomatic privileges and immunities, although it recognized that consuls should be allowed some privileges to enable them to carry out their duties