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was more flexible and took greater account of the possibilities of application. The Second Committee's draft implied the revision of certain laws or regulations, which it would be difficult to carry out in practice. Consequently, he would vote for the Soviet Union amendment.

31. Mr. DEJANY (Saudi Arabia) said that he supported the United States motion for a separate vote on paragraph 1, sub-paragraph (c). He considered that sub-paragraphs (b) and (c) of paragraph 1, apart from the fact that they laid too heavy a burden on the receiving State, would be absolutely impracticable in certain circumstances in his country. Hence, he supported the joint amendment and hoped that sub-paragraph (c) would be deleted. Should sub-paragraphs (b) and (c) be adopted, he would abstain from voting on the article as a whole. He supported the Soviet Union's proposal concerning paragraph 2.

32. Mr. SPYRIDAKIS (Greece) said that, as had been stated in the Second Committee, where article 36, paragraph 1 (b) had been adopted by a large majority, the purpose of the obligation imposed on the authorities of the receiving State to state the reasons for which a foreign national was being deprived of his liberty was to establish an additional safeguard for the rights of the individual and to reinforce the ideal of humanism. There was no doubt that in most countries the local authorities cooperated with the consulates but it happened sometimes that the police for various reasons of a purely domestic character arrested innocent foreigners and kept them in prison for a considerable time without making any effort to inform their consulates of the reason for their arrest. The inclusion of the guarantee in article 36 for the protection of aliens in the territory of the receiving State who were either permanent residents or temporary visitors there was intended precisely to avoid in future abuses and violations of international law by the authorities of the receiving State.

33. The Greek delegation well understood the position of those countries which would face administrative difficulties in complying with those obligations by reason of the fact that a great number of aliens lived in their territory, but it could not understand why those countries, although they accepted the principle of notifying the consulates and all the other important stipulations of article 36, should find it difficult to say a few words about the reason for the arrest at the time of notifying the consulate when an arrest took place. In opposing the joint amendment his delegation did not have in mind petty offences but much more serious cases where the duty to give the reason for the arrest would provide a very useful and necessary safeguard. If that obligation was laid down in the article, the Conference could be proud of having further strengthened human rights through the convention. In the Second Committee, as had been stated by the representative of Yugoslavia, amendments similar to the joint amendment had been rejected and the phrase in paragraph 1 (b) which had been submitted by Greece had been adopted by a large majority of 39 votes in favour, 13 against and 16 abstentions.

34. If the six Powers who sponsored the amendment deleting the phrase in question could not themselves

comply with such an obligation, they would be free to make a reservation either at the time of signing or at the time of ratifying the convention, but it was not right or fair that they should try to eliminate a noble principle merely because of the practical difficulties.

35. Greece, which firmly believed in the ideal of humanism and which was fully conscious of the importance of the convention for the promotion of international law and peaceful relations among nations, could not but oppose the joint amendment which would weaken a very important stipulation in article 36.

36. If the joint amendment should be approved, his delegation would reserve the right to reintroduce a proposal for the inclusion of the phrase "and shall state the reason why he is being deprived of his liberty" in article 36, paragraph 1.

37. Mr. KEVIN (Australia) drew attention to a contradiction in principle between sub-paragraphs (c) and (d) of paragraph 1 in the Second Committee's draft. The first of those sub-paragraphs did not mention the consent of the individual concerned, whereas the second did. For the reasons stated by previous speakers, the Australian delegation would vote for the joint amendment.

38. Mr. PETRŽELKA (Czechoslovakia) thought it would be difficult to find a wording for article 36 which would meet with the full approval of all States. The International Law Commission had tried to find an acceptable compromise and had prepared a draft to which the Czechoslovak delegation was prepared to agree. On the other hand, it could not accept the wording of article 36 adopted by the Second Committee, and it was also opposed to the joint amendment, the adoption of which would have the effect of depriving the sending State of one of its fundamental rights, that of protecting its nationals.

39. The Czechoslovak delegation would support any proposal for the re-establishment of the International Law Commission's text and it would therefore vote for the Soviet Union amendment.

40. The PRESIDENT put to the vote the joint amendment submitted by the Federation of Malaya, Japan, Philippines, Thailand, the United Arab Republic and Venezuela (A/CONF.25/L.30).

The joint amendment was rejected by 39 votes to 31, with 7 abstentions.

The meeting rose at 1.5 p.m.

TWELFTH PLENARY MEETING

Wednesday, 17 April 1963, at 3.25 p.m.

President: Mr. VEROSTA (Austria)

Third Report of the general committee (A/CONF.25/11)

1. The PRESIDENT drew the attention of the Conference to the third report of the general committee (A/CONF.25/11), which contained proposals for expediting the work of the Conference. He drew attention to

paragraph 3 (c) in which it was suggested that, under rule 23 of the rules of procedure, a time-limit of five minutes should be set for statements by representatives on each article.

The report was adopted unanimously.

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) (continued)

2. The PRESIDENT invited the Conference to continue its consideration of article 36 of the draft convention.

3. Mr. KHLESTOV (Union of Soviet Socialist Republics) introduced his delegation's amendment (A/CONF.25/L.34) restoring the International Law Commission's draft of paragraph 2. He pointed out that the matters dealt with in article 36 were connected with the criminal law and procedure of the receiving State, which were outside the scope of the codification of consular law. In drafting the convention the Conference should constantly bear in mind the emphasis placed by the United Nations Charter on the sovereign equality of States. The International Law Commission had recognized that national jurisdiction should not be interfered with, and in drafting paragraph 2, which provided that the rights referred to in paragraph 1 should be exercised in conformity with the laws and regulations of the receiving State, had established a satisfactory balance between the consul's right to protect his nationals and the requirements of municipal law in the receiving State. Any change in that balance might have the effect of giving consular officials the right to interfere in the internal affairs of the receiving State.

4. The amendment to paragraph 2 approved by the Second Committee might force States to alter their criminal laws and regulations and allow consuls to interfere with normal legal procedure in order to protect alien offenders; such a provision in an international convention could have serious consequences for the receiving State where an alien committed a crime. In fact, it attempted to bring back an unsatisfactory situation from the past, when the consuls of colonial powers interfered with the internal affairs of States by hampering the administration of justice in regard to aliens. Aliens should observe the law of the State in which they were living and should be subject to its penalties if they infringed it. Paragraph 2 as approved by the Second Committee could make it difficult for States to exercise their sovereign right to prosecute aliens who broke the law. The provisions it contained were entirely unacceptable and might prevent States from signing the convention. An international convention should respect sovereign rights, and he appealed to representatives to support his amendment restoring the International Law Commission's draft.

5. Mr. MARESCA (Italy) considered that paragraph 2 as approved by the Second Committee was one of the most important provisions in the draft convention. It was designed to help the receiving State to provide the greatest possible freedom for the exercise of consular functions, and he hoped that it would be retained.

6. Mr. EVANS (United Kingdom) said that the consul's task of protecting and helping nationals of the sending State had become one of his most important functions. Article 36 was therefore of the greatest importance and it was essential that it should lay down clear and unequivocal rights and obligations. Paragraph 1 was satisfactory but it was important that nothing in paragraph 2 should lessen its effectiveness. The Soviet amendment was not acceptable, because it meant that the laws and regulations of the receiving State would govern the rights specified in paragraph 1 provided that they did not render those rights completely inoperative — for "to nullify" meant to "render completely inoperative". But rights could be seriously impaired without becoming completely inoperative. He therefore greatly preferred the positive approach of paragraph 2 as approved by the Second Committee.

7. Consular officials should, of course, comply with the laws and regulations of the receiving State in such matters as the times for visiting prisoners, but it was most important that the substance of the rights and obligations specified in paragraph 1 should be preserved, which they would not be if the Soviet Union amendment were adopted. He would vote against the Soviet Union amendment and against the motion for a separate vote on the last part of paragraph 2.

8. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) supported the USSR amendment because the wording approved by the Second Committee was less forceful than the International Law Commission's draft and introduced a possibility that the rights granted in article 36 might not be given full effect. He did not agree with the United Kingdom representative that the Soviet amendment would make the rights inoperative. The Conference was drafting a consular convention, not an international penal code, and it had no right to attempt to dictate the penal codes of sovereign States. It was not enough to say, as the United Kingdom representative had said, that consular officials should comply with the laws of the receiving State: they must be compelled to do so, for otherwise there would be a return to former conditions under which they had enjoyed excessive privileges.

9. Mr. AMLIE (Norway) said he would vote against the Soviet Union amendment. It was of the greatest importance to retain the text approved by the Second Committee.

The amendment by the Union of Soviet Socialist Republics (A/CONF.25/L.34) was rejected by 33 votes to 32, with 16 abstentions.

10. The PRESIDENT reminded the Conference that it had before it a motion by the representatives of Saudi Arabia and the United States for a separate vote on paragraph 1 (c) and a motion by the representative of Romania for a number of separate votes.

11. Mr. CRISTESCU (Romania) maintained his delegation's motion, despite the rejection of the USSR amendment. He requested separate votes on paragraph 1 and each of its sub-paragraphs and on the second part of paragraph 2.

12. Mr. EVANS (United Kingdom) opposed the motion for a separate vote on each sub-paragraph of paragraph 1 because most of the provisions contained in the sub-paragraphs were essential and many of them were related. He would, however, support a separate vote on sub-paragraph (c).

13. Mr. KRISHNA RAO (India) supported the motion for separate votes on sub-paragraph (b), on the words "and shall state the reason why he is being deprived of his liberty" contained in that sub-paragraph, and on sub-paragraph (c).

14. Mr. KEVIN (Australia) was in favour of a separate vote on each sub-paragraph of paragraph 1.

15. Mr. KHLESTOV (Union of Soviet Socialist Republics) supported the motion for separate votes on each sub-paragraph of paragraph 1 and on paragraphs 1 and 2. It would be illogical to vote separately on certain sub-paragraphs only.

16. Mr. MARESCA (Italy) opposed the motion for separate votes because article 1 was indivisible; paragraph 2 was a necessary complement of paragraph 1.

17. The PRESIDENT invited the Conference to decide by a vote whether paragraphs 1 and 2 should be voted on separately.

18. Mr. KHLESTOV (Union of Soviet Socialist Republics), speaking on a point of order, said that it would be more logical to start by voting on paragraph 1 and its sub-paragraphs.

19. Mr. DEJANY (Saudi Arabia) asked whether rejection of the proposal for separate votes on paragraphs 1 and 2 would prevent a separate vote on paragraph 1 (c). There had been no opposition to the motion for such a vote and he suggested that it be dealt with apart from the other motions.

20. The PRESIDENT said that he was starting with the Romanian motion because it was the most drastic. If adopted, it would cover the motion for a separate vote on paragraph 1 (c); if not, he would put that motion to the vote.

21. Mr. CAMERON (United States of America) said that that procedure would be logical but for the fact that no one had objected to the motion for a separate vote on paragraph 1 (c).

22. Mr. de MENTHON (France) opposed the motion for a separate vote on paragraph 1 (c).

23. The PRESIDENT invited the Committee to vote on the motion for separate votes on the sub-paragraphs of paragraph 1, taking each sub-paragraph in turn.

The motion for a separate vote on paragraph 1 (a) was defeated by 42 votes to 28, with 10 abstentions.

24. Mr. PETRŽELKA (Czechoslovakia), speaking on a point of order, said that the Romanian motion was that paragraph 1 should be voted on sub-paragraph by sub-paragraph.

25. The PRESIDENT said that the Romanian representative had raised no objection to his procedure. He was willing, however, to take a vote first on the motion for separate votes on each sub-paragraph.

26. After a procedural discussion on whether rejection of that motion would rule out the motions for separate votes on particular sub-paragraphs or phrases, the PRESIDENT ruled that it would not.

27. Mr. GIBSON BARBOZA (Brazil) agreed with the President's ruling. There were four proposals before the Conference: to vote on article 36 paragraph by paragraph and sub-paragraph by sub-paragraph; to take a separate vote on paragraph 1 (c); to take a separate vote on the words "and shall state the reason why he is being deprived of his liberty" in paragraph 1 (b); and to take a separate vote on the last sentence of paragraph 1 (d). Those proposals were not mutually exclusive.

28. Mr. CAMERON (United States of America) agreed with the representative of Brazil.

29. Mr. BOUZIRI (Tunisia) did not agree with the President. He appealed to the representative of Romania to withdraw or modify his motion so that the voting could be continued as it had been begun.

30. Mr. SPYRIDAKIS (Greece) supported the representative of Tunisia.

31. Mr. CRISTESCU (Romania), in response to an appeal from the PRESIDENT, said he would press for a single vote on whether the sub-paragraphs of paragraph 1 should be voted on separately.

The motion for a separate vote on paragraph 1 (b) was carried by 42 votes to 36, with 5 abstentions.

The motion for a separate vote on paragraph 1 (c) was carried by 47 votes to 25, with 10 abstentions.

The motion for a separate vote on paragraph 1 (d) was defeated by 42 votes to 30, with 10 abstentions.

The motion for a separate vote on paragraph 2 was defeated by 47 votes to 27, with 9 abstentions.

32. Mr. CRISTESCU (Romania) moved that a separate vote be taken on the words "and shall state the reason why he is being deprived of his liberty" in sub-paragraph (b) of paragraph 1, as already requested by the Indian representative. Those words were out of place and unnecessary; he had stated the reasons for deleting them at the previous meeting.

33. Mr. SPYRIDAKIS (Greece), speaking on a point of order, objected that the separate vote requested by the Romanian representative was at variance with the decision taken by the Conference at the previous meeting to reject the joint amendment to the first sentence of paragraph 1 (b) (A/CONF.25/L.30). The main purpose of that amendment had been, precisely, to delete the

words in question, and since the Conference had already decided that point, the motion to vote on it again was out of order.

34. Mr. MARESCA (Italy) agreed with the Greek representative. Since the Romanian motion would reverse the decision to reject the joint amendment, under rule 33 of the rules of procedure a majority of two-thirds would be required to carry it.

35. The PRESIDENT ruled that the decision taken at the previous meeting on the joint amendment did not preclude voting on the Romanian motion.

36. Mr. BOUZIRI (Tunisia) agreed with the President's ruling. Rule 33 did not apply because the matter decided at the previous meeting was not identical with the subject of the Romanian motion. The joint amendment called for two changes in the first sentence of sub-paragraph (b), whereas the Romanian motion could result in only one change. Hence, it was perfectly in order to put the Romanian motion to the vote.

37. The PRESIDENT put to the vote the Romanian motion for a separate vote on the words "and shall state the reason why he is being deprived of his liberty" in paragraph 1 (b).

The motion was defeated by 42 votes to 24, with 15 abstentions.

38. The PRESIDENT invited the meeting to vote on paragraph 1 (b).

The result of the vote was 45 in favour and 29 against, with 6 abstentions.

Paragraph 1 (b) was not adopted, having failed to obtain the required two-thirds majority.

39. The PRESIDENT invited the meeting to vote on paragraph 1 (c).

Paragraph 1 (c) was rejected by 39 votes to 35, with 10 abstentions.

40. In reply to a question by Mr. USTOR (Hungary), the PRESIDENT said he understood that the Romanian representative did not wish to press for a separate vote on the last sentence of sub-paragraph (d) of paragraph 1.

41. Mr. KHLESTOV (Union of Soviet Socialist Republics), speaking on a point of order, formally requested that the motion for a separate vote on the last sentence of sub-paragraph (d) should be put to the Conference. The decision that a separate vote should not be taken on sub-paragraph (d) as a whole did not preclude a separate vote on the last sentence.

42. Mr. CAMERON (United States of America) opposed the motion for a separate vote on the last sentence of sub-paragraph (d).

43. Mr. EVANS (United Kingdom), speaking on a point of order, moved that the meeting be suspended under rule 27 of the rules of procedure. A new situation had arisen as a result of the rejection of sub-paragraphs (b) and (c). His delegation seriously doubted whether the remainder of article 36 was worth retaining at all. A

suspension of the meeting would enable delegations to consult on both substance and procedure and thereby help the Conference to deal with the new situation which had arisen.

The motion for suspension was carried by 32 votes to 29, with 12 abstentions.

The meeting was suspended at 5.15 p.m. and resumed at 6.15 p.m.

44. Mr. PUREVJAL (Mongolia) said he would support the motion for division of paragraph 1 (d).

The motion was defeated by 15 votes to 13, with 10 abstentions.

45. Mr. CRISTESCU (Romania) moved that a separate vote be taken on the last part of paragraph 2, reading: "subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended."

46. Mr. BOUZIRI (Tunisia) and Mr. EVANS (United Kingdom) opposed the motion. If the proviso in paragraph 2 were omitted, the rights enumerated in paragraph 1 would be subject to the laws and regulations of the receiving State without any qualification whatsoever, and would thus be completely nullified.

47. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) supported the Romanian motion. The words in question entailed a serious danger of pressure by international rules on national legislation and, moreover, vitiated the provision of the first part of the paragraph.

48. Mr. AVILOV (Union of Soviet Socialist Republics) also supported the Romanian motion.

The Romanian motion was defeated by 53 votes to 13, with 14 abstentions.

49. Miss LAGERS (Netherlands), speaking on a point of order, said her delegation found it difficult to believe that the Conference could adopt a consular convention which did not contain a provision obliging the authorities of the receiving State to inform the consular post concerned of the imprisonment of a national of the sending State. The whole question should be reconsidered.

50. Mr. KEVIN (Australia) and Mr. PETRŽELKA (Czechoslovakia) asked whether the matter raised by the Netherlands representative was in fact a point of order. Under rule 39 of the rules of procedure, after the beginning of voting had been announced, no representative could interrupt the voting except on a point of order in connexion with the actual conduct of the voting.

51. The PRESIDENT ruled the Netherlands representative out of order.

52. Mr. EVANS (United Kingdom), speaking on a point of order, said that if the Netherlands representative had been allowed to complete her statement, it would have been clear that she had wished to make a point of order in connexion with the conduct of the voting. In view of certain deletions from paragraph 1, some

delegations considered it desirable to reconsider the paragraph before a final vote was taken on article 36.

The President's ruling was upheld by 48 votes to 18, with 12 abstentions.

53. The PRESIDENT invited the Conference to vote on article 36, as amended.

54. Mr. AVILOV (Union of Soviet Socialist Republics), explaining his delegation's vote, in accordance with rule 39 of the rules of procedure, said that, since the USSR amendment to article 36 had been rejected, he would vote against the text as it stood.

55. Mr. BOUZIRI (Tunisia) said that, as a result of the deletion of paragraphs 1 (b) and 1 (c), article 36 was now totally devoid of substance. The Tunisian delegation would vote against the article in the belief that its complete omission would be preferable to the inclusion of such a distorted text. The Conference should reflect on that serious situation; it might decide either to reconsider the article, or to omit it altogether and allow the whole question of communication and contact with nationals of the sending State to be governed by customary international law, in accordance with the sixth paragraph of the preamble.

56. Mr. KEVIN (Australia) moved the adjournment of the meeting.

The motion for adjournment was carried by 50 votes to 11, with 6 abstentions.

The meeting rose at 6.55 p.m.

THIRTEENTH PLENARY MEETING

Wednesday, 17 April 1963, at 8.40 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 36 (Communication and contact with nationals of the sending State) (continued)

1 The PRESIDENT recalled that at its preceding meeting the Conference had decided to delete sub-paragraphs (b) and (c) of article 36, paragraph 1. Before putting the remainder of the article to the vote, representatives could take the opportunity of explaining their vote on the article as a whole.

2. Mr. RUEGGER (Switzerland) regretted that the substance of article 36 had been appreciably reduced; even in its curtailed form, however, it contained some part of the International Law Commission's ideas and was of value. He would vote for the article, but pointed out that account must be taken in every case of the

customary rules of international law, mentioned in the preamble to the convention, a text that would help to clarify the meaning of article 36. It must also be clearly understood that the application of those provisions depended on the freely expressed wishes of the persons concerned.

3. Mr. KRISHNA RAO (India) said that what was left of article 36 had little meaning and he would therefore be obliged to vote against the article.

4. Mr. KEVIN (Australia) asked whether it would be possible to put the remainder of article 36 to the vote. If it were adopted, then in order to meet the desires of some delegations, sub-paragraph (b) might be reintroduced into the convention in the form of a new article, some such phrase as "provided the national in question does not oppose such action" being added after the word "liberty".

5. Mrs. VILLGRATTNER (Austria) said that, although her delegation was not satisfied with the amended text of article 36, she believed that the article stated rights that must be recognized. She would vote for article 36, as amended, and in so doing agreed with the remarks made by the Swiss representative on the enduring validity of the rules of customary international law.

6. Mr. DADZIE (Ghana) regretted that the draft so carefully prepared by the International Law Commission had been heavily truncated. His delegation did not believe that what remained of article 36 was worth lingering over, and would vote against it. It reserved its position on the Australian suggestion, which should be considered at a later stage.

7. Mr. NESHO (Albania) said that article 36 was not acceptable to his delegation, which preferred the International Law Commission's draft.

8. Mr. EVANS (United Kingdom) regretted the deletion of sub-paragraphs (b) and (c). Nevertheless, the remainder of the article had a certain value and he would vote for it. Sub-paragraph (b) was of great importance, and his delegation would consider sympathetically the Australian proposal for its inclusion in the convention in another form.

9. Mr. CAMERON (United States of America) said that his delegation would vote for article 36, as amended, and was in favour of the insertion in the convention of a new article based on sub-paragraph (b), which the Conference had decided to delete.

10. Mr. LEE (Canada) said that he would vote for the remaining provisions of article 36, which seemed to him to serve a useful purpose, since the complete elimination of the article concerning communication with nationals of the sending State would deprive other articles of the convention of all meaning.

11. Mr. SHARP (New Zealand) said that in his opinion there was a tendency to exaggerate the importance of sub-paragraphs (b) and (c), whereas the most important sub-paragraph was sub-paragraph (a), which had been adopted. He would vote for article 36.