United Nations Conference on Consular Relations

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15th meeting of the Plenary

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

66. Mr. BARTOŠ (Yugoslavia) said that he had voted for the joint amendment submitted by the delegations of Ghana, Norway and the Ukrainian Soviet Socialist Republic, the rejection of which he regretted. He had also voted for the French delegation's motion. His delegation regretted the rejection of the Indian motion, which it had supported. In the case of *force majeure*, the rule of reason should be applied and it was superfluous to insert an express provision to that effect in a convention of universal scope.

67. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that he shared the Brazilian representative's views.

68. Mr. SPACIL (Czechoslovakia) said that his delegation had voted for article 30 as a whole. In general, despite the unsatisfactory nature of the second sentence of paragraph 2, the text provided the essential safeguards for the performance of consular functions. Moreover, paragraph 4 made no reference to the immunity of the consul in respect of judicial decisions. Those matters would continue to be governed by customary international law, as was mentioned in the last paragraph of the preamble.

69. Mr. DE CASTRO (Philippines) said that he had voted against article 30 as a whole because his delegation found it difficult to accept the idea that consulates and diplomatic missions should enjoy identical immunities.

70. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he had voted for the joint amendment submitted by the delegations of Ghana, Norway and the Ukrainian Soviet Socialist Republic; he had also supported the French and Indian motions for the deletion of parts of paragraph 2. He regretted that the Conference had decided to maintain the second sentence of paragraph 2, which his delegation regarded as unacceptable.

71. Mr. HONG (Cambodia) said that he had abstained from the vote on the article as a whole because the second sentence of paragraph 2 was not acceptable for the reasons which his delegation had already given (ninth plenary meeting).

72. Mr TÜREL (Turkey) said that he had abstained from the vote on the article because of the unsatisfactory drafting of paragraph 2. His delegation had not, however, wished to cast a negative vote because, taken as a whole, the provision granted consular premises only a qualified and not a total inviolability.

73. Mr. ENDEMANN (South Africa) explained that he had voted against article 30 as a whole because, as now drafted, paragraph 2 went beyond the degree of inviolability that customary international law recognized in respect of consular posts.

The meeting rose at 1.5 p.m.

FIFTEENTH PLENARY MEETING

Thursday, 18 April 1963, at 3.10 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 41

(Personal inviolability of consular officers)

1. The PRESIDENT drew attention to the amendments to article 41 submitted by the delegations of Belgium (A/CONF.25/L.35) and Tunisia (A/CONF.25/L.39).

2. Mr. VRANKEN (Belgium) said that his delegation had proposed replacing the words " grave crime " by the words " grave offence " for four reasons. First, the provision should be as general as possible, so as to accommodate different systems of municipal law. Secondly, there had been no discussion of the point in the Second Committee, although it had been raised in a joint amendment (A/CONF.25/C.2/L.168/Rev.1). Thirdly, the word " offence " was more widely used in consular conventions. Lastly, the report of the International Law Commission on its thirteenth session, and the debate in the Commission, showed that the majority had been in favour of the word " offence " rather than " crime ".

3. Mr. BOUZIRI (Tunisia) said that his delegation had submitted its amendment mainly in order to fill a serious gap in the text adopted by the Second Committee, which did not cover the case of a consul caught *in flagrante delicto*. Paragraph I (*a*) of the Tunisian amendment, which consisted in deleting the word " grave ", was not substantive; it merely removed a subjective element. A crime was always a serious and reprehensible action, and it should not be necessary to judge whether it was " grave " or not.

4. Paragraph I (*b*) of the amendment had been included because it was absolutely inadmissible that a consular officer caught *in flagrante delicto* should not be subject to immediate arrest. Moreover, it was inadvisable, in a codifying convention, to leave cases of *flagrante delicto* to customary international law. The Tunisian amendment provided the safeguard that consular officers could not be held in custody for more than 48 hours except by virtue of a decision by the competent judicial authority. Furthermore, it provided that the offence must be one punishable by imprisonment for a term of at least five years, in order to prevent arbitrary arrest or detention for less serious crimes.

5. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said he would vote in favour of the Belgian and Tunisian amendments. Adoption of article 41, paragraph 1, without the Tunisian amendment would mean that a consular officer who committed a grave

crime and was caught *in flagrante delicto* would not be liable to arrest or detention; that would be absolutely contrary to the basic requirements and principles of law and order. Provisions along the lines of the Tunisian amendment were contained in a number of consular conventions concluded by his country; for instance, in article 8, paragraph 2, of the consular convention between the Federal Republic of Germany and the Soviet Union signed on 25 April 1958. If the Tunisian amendment was not adopted, his delegation would ask for a separate vote on the words " and pursuant to a decision by the competent judicial authority " in paragraph 1.

6. Mr. PAPAS (Greece) said he could not support the Belgian amendment. Its effect would be to make paragraph 1 even vaguer than it was in the drafting committee's text, since the degree of gravity of the action would not be specified, and the immunity of consular officers would consequently be restricted. The Greek delegation had opposed proposals to the same effect in the Second Committee, in the belief that an offence, however grave, was not a crime.

7. He could not support paragraph I (*a*) of the Tunisian amendment, which went to the opposite extreme by extending the immunity unduly. The absence of any reference to the term of imprisonment that could be imposed for the crime was bound to lead to difficulties of interpretation; the Conference should adopt a text specifying that term, thus following the example of the majority of consular conventions. In that connexion, his delegation saw merit in paragraph I (*b*) of the Tunisian amendment; it welcomed the reference to the law of the receiving State as a specific criterion.

8. Mr. MARESCA (Italy) said he would support the Belgian amendment, because the word " offence " was more generally used in the legal terminology of different countries than " crime "; in the case in point, it meant an offence against the penal law of the receiving State. He also supported the Tunisian proposal to introduce liability to arrest or detention in cases of *flagrante delicto*. That proposal had the merit of stating expressly an idea which was undoubtedly in conformity with the spirit of the rule as formulated. It was absolutely necessary, not only for punitive but also for preventive purposes, that it should be possible to arrest a person *in flagrante delicto*, and even consuls could not be immune to that rule.

9. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said he could not support the Belgian proposal to replace the term " grave crime ", which would be interpreted by each State according to its own law, by the imprecise words " grave offence ". Nor could he agree with the Tunisian representative's arguments against the inclusion of the word " grave ", since a crime without that qualification might be one which was not punishable by imprisonment. He could not support the reference to imprisonment for a term of at least five years, since, in view of the wide differences between the penal codes of different countries, it was difficult to specify a lowest common denominator. Finally, the provision that consular officers might not be held in custody for more than forty-eight hours was open to the same criticism. The Byelorussian delegation could not vote for either of the amendments.

10. Mr. EVANS (United Kingdom) said that his delegation could vote for the Belgian and Tunisian amendments. It also strongly supported the proposal of the Federal Republic of Germany for a separate vote on the words " and pursuant to a decision by the competent judicial authority " in paragraph 1. Although that phrase had been adopted by the International Law Commission and by the Second Committee, it had been apparent from the debate in the latter body that a number of delegations had been dissatisfied with it and wished to re-examine it in the plenary meeting. Paragraph 1 as it stood provided an unreasonable degree of immunity from arrest or detention; his delegation agreed that consular officers should not be arrested or detained except for a grave crime, but it was essential to provide that they could be arrested or detained for such a crime without a prior judicial decision.

11. Mr. NASCIMENTO o SILVA (Brazil) observed that the Belgian amendment had once again shown the difficulty of reconciling national laws and terminologies. Whereas the term " grave offence " was satisfactory to English-speaking delegations, the Spanish word " infracción " and the French word " infraction " had a different meaning; the Spanish term, in particular, usually related to relatively unimportant violations of criminal laws. Perhaps the Belgian representative could explain the scope of his amendment in greater detail.

12. His delegation welcomed the Tunisian amendment, for it was important to mention the case of *flagrante delicto*. Moreover, it was wise to specify that the offence concerned should be one punishable by imprisonment for a term of at least five years; the Brazilian delegation had always been in favour of an objective criterion which would eliminate all possible difficulties of interpretation due to differences in national legal systems.

13. Mr. VRANKEN (Belgium) said that the French term " crime grave " went beyond the obvious intentions of the International Law Commission and of the majority of delegations, in that it might carry a penalty of ten or fifteen years, or even life, imprisonment, whereas the penalty for an " infraction grave " might be imprisonment for five years, as specified in the Tunisian amendment. The Belgian delegation had not wished to go so far as to specify the exact period. Nevertheless, he asked that the Tunisian amendment should be put to the vote first; if it were adopted, he would not press for a vote on his own proposal.

14. Mr. BARUNI (Libya) said he would vote for the Tunisian amendment. While his delegation supported the principle of personal inviolability for consular officers in the exercise of their functions, it could not agree that such inviolability should be enjoyed even in cases of *flagrante delicto*.

15. Mr. MOUSSAVI (Iran) said he would vote for the Belgian and Tunisian amendments. If the Tunisian amendment was rejected, he would support the motion of the Federal Republic of Germany for a separate vote on the last phrase of paragraph 1.

16. Mr. de MENTHON (France) said that his delegation had supported the text proposed by the International Law Commission, which preserved the delicate balance between principle and practical experience. It preferred the term " grave crime " to " grave offence ", in any case, however, it would be most unwise to leave a decision on the gravity of a crime or offence to low-level administrative authorities who had no legal knowledge whatsoever. It was obvious that only the competent judicial authorities could prevent regrettable abuses of immunity and protect consular officers against arbitrary decisions. Even in cases of *flagrante delicto*, it would be inadmissible to allow a mere policeman to judge the gravity of the offence. His delegation would therefore vote in favour of paragraph 1 as it stood, and against all the amendments thereto.

17. Mr. BOUZIRI (Tunisia), replying to the Byelorussian representative, said that the word " crime " as used in his amendment did not include offences which were not punishable by imprisonment. He would be prepared to include the word " grave " in paragraph I (*a*) of his amendment, although it added nothing to the meaning of the French text. Finally, in connexion with the French representative's remarks, he asked whether or not the French police should be entitled to arrest a consul who had just murdered a Frenchman in the Place de la Concorde.

18. Mr. HENAO-HENAO (Colombia) observed that the treatment of article 41 in the Second Committee, which had discussed a number of amendments but had reverted to the International Law Commission's text, had been due to the wide differences between the criminal laws and terminologies of various countries. The draft as it stood was an attempt to reconcile these differences, and the Colombian delegation believed that the term " grave crime " satisfied the requirements of the largest number of delegations. He could not support the original Tunisian proposal to delete the word " grave ", which was essential to the correct understanding of the paragraph in Spanish. Finally, his delegation believed that the details included in paragraph I (*b*) of the Tunisian amendment were inappropriate in a general codifying convention. It would therefore vote for article 41 as submitted by the drafting committee.

19. Mr. de ERICE y O'SHEA (Spain) said that he did not think that paragraph I (*a*) of the Tunisian amendment was really applicable to article 41, which related only to imprisonment pending trial, and left it to the competent judicial authority to decide whether the crime was serious; the amendment implied that the exception should also apply to crimes which were not serious. With regard to paragraph I (*b*) of the Tunisian amendment, the exception in cases of *flagrante delicto* seemed to be nullified by the omission of the word " grave " in paragraph I (*a*), since a consular officer could escape arrest or detention for an offence which was not punishable by at least five years' imprisonment. From the practical point of view, moreover, a policeman called upon to deal with the very grave crime mentioned by the Tunisian representative would presumably be obliged to consult his country's penal code to ascertain whether the crime was punishable by the stated term of imprisonment, and that was patently absurd. His delegation was in favour of article 41 as submitted by the drafting committee.

20. Mr. KRISHNA RAO (India) observed that the question of the personal inviolability of consular officers had given rise to difficulties since the seventeenth century : in the theory and practice of consular relations, personal inviolability was subject to exceptions which were differently defined in various consular conventions and differently applied in various States. The acts for which exceptions were allowed were described as grave offences, atrocious crimes, cases of *flagrante delicto*, very serious criminal offences, grave crimes and so forth; there was no single criterion and the Conference was faced with the task of laying down a rule for the progressive development of international law. The International Law Commission had decided on a general provision for paragraph 1, which balanced the article as a whole and took into account the trend towards assimilating diplomatic and consular functions in the matter of protecting nationals of the sending State. It would therefore be inadvisable to adopt unduly rigid criteria.

21. Hitherto, cases of grave crimes committed by consular officers had fortunately been rare, and the article in its present form would raise no difficulties. Responsibility for determining the gravity of the offence might be said to rest with the receiving State, the sending State or the local courts, but the Indian delegation believed that it was for the receiving State to decide whether a grave crime had been committed. It should not be assumed *a priori* that the receiving State would act unreasonably in the matter; it would naturally take the views of the sending State into account. It was therefore clear that an arrest should be made only by decision of the competent judicial authority. His delegation would accordingly oppose a separate vote on the last phrase of paragraph 1.

22. Mr. DADZIE (Ghana) said he could not support the Belgian amendment, for although the term " grave crime " was open to interpretation in accordance with the municipal law of each State, the term " grave offence " was even more ambiguous. Under the law of his country and a number of others, the word " offence " covered violations of civil rights and minor breaches of criminal laws; his delegation did not believe that consular officers should be arrested or detained in the case of an offence which was not a crime.

23. With regard to paragraph I (*b*) of the Tunisian amendment, he could not support the *prima facie* assumption that a consular officer could be arrested or detained in any case of *flagrante delicto*. The proviso that the crime must be punishable by imprisonment for a term of at least five years was unrealistic, since a policeman could not ascertain the term of imprisonment immediately; that must be decided by the examining magistrate. The provision that consular officers might not be held in custody for more than forty-eight hours was also unacceptable. The Ghanaian delegation asked for a separate vote on paragraph I (*b*) of the amendment.

24. Mr. AMLIE (Norway) said that in the Second Committee he had been one of the strongest opponents of any attempt to weaken the personal inviolability of consular officials and had urged the retention of the International Law Commission's draft of paragraph 1. Since then, however, he had heard convincing arguments for the inclusion of a provision to cover cases of *flagrante delicto*. The Tunisian amendment offered a good basis for such a provision and he would support it if the Tunisian representative were willing to accept two changes. In paragraph 1 (*a*) he would prefer the term " grave crime ", used by the International Law Commission. In paragraph 1 (*a*) he suggested that the words " punishable by imprisonment for a term of at least five years " should be replaced by the words " a grave crime ". The severity of the penalty was, he thought, an unsatisfactory and arbitrary criterion.

25. Mr. BOUZIRI (Tunisia) agreed to the changes; he thought they would improve the amendment and make it more generally acceptable. The amended text would read:

" (*a*) In the case of a grave crime and pursuant to a decision by the competent judicial authority; or

" (*b*) In a case of *flagrante delicto*, provided that under the law of the receiving State the offence is a grave crime. In this case . . ."

26. Mr. AMLIE (Norway) regretted that he still could not support the text of sub-paragraph (*b*), because it made the definition of a grave crime dependent on the law of the receiving State.

27. Mr. ALVARADO GARAICOA (Ecuador) said he would vote against the amendments of Belgium and Tunisia and in favour of the International Law Commission's draft. He fully agreed with the views of the Brazilian and Colombian representatives. As he had explained in the Second Committee, " crime " and " offence " had entirely different connotations under his country's law, a crime being far more serious than an offence.

28. Mr. PETRŽELKA (Czechoslovakia) opposed the insertion of the word " grave " before the word " crime " in sub-paragraph (*b*) of the Tunisian amendment on the grounds that it introduced an element that was not recognized in national criminal codes. He doubted whether the criminal codes of any of the States represented at the Conference recognized different categories of crime: the Czechoslovak criminal code recognized only punishable acts.

29. In reply to a comment Mr. BOUZIRI (Tunisia), he pointed out that in sub-paragraph (*a*) the term " grave crime " was used in the general sense of an act damaging to the receiving State's interests, whereas in sub-paragraph (*b*) it was used in the strictly legal sense.

30. At the request of Mr. AMLIE (Norway), the PRESIDENT invited Mr. Žourek to explain why the International Law Commission had decided on the term " grave crime " rather than the criterion of the severity of the penalty.

31. Mr. ŽOUREK (Expert) said that in the 1960 draft the International Law Commission had proposed two alternatives: the definition of a crime by the duration of the penalty imposed, or a general term. In its final text the Commission had adopted the general term " grave crime " because the wide differences in national laws made it impossible to find a satisfactory universal criterion. In some bilateral conventions, the criterion of duration of penalty was different for the two contracting States and the penalties applicable in each of them had to be specified. Since the provision should be acceptable to a large number of countries with differing laws, the International Law Commission had adopted the most general term possible.

32. In reply to a question from Mr. VRANKEN (Belgium), he said that the Commission had used the term " grave crime " rather than " grave offence ", because it was more favourable to the consular official.

33. The PRESIDENT put the Tunisian amendment (A/CONF.25/L.39), as orally revised, to the vote.

At the request of the representative of Libya, a vote was taken by roll-call.

Romania, having been drawn by lot by the President, was called upon to vote first.

In favour: Saudi Arabia, Sierra Leone, South Africa, Syria, Tunisia, Turkey, United Kingdom of Great Britain and Northen Ireland, United States of America, Upper Volta, Republic of Viet-Nam, Algeria, Australia, Belgium, Canada, China, Federation of Malaya, Federal Republic of Germany, Iran, Ireland, Italy, Republic of Korea, Lebanon, Libya, Luxembourg, New Zealand, Philippines, Portugal.

Against: Romania, Spain, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Uruguay, Venezuela, Yugoslavia, Albania, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Chile, Colombia, Cuba, Czechoslavakia, Dominican Republic, Ecuador, Finland, France, Greece, Hungary, India, Indonesia, Japan, Liberia, Mali, Mexico, Mongolia, Panama, Peru, Poland.

Abstaining: San Marino, Sweden, Switzerland, United Arab Republic, Austria, Cambodia, Congo (Brazzaville), Congo (Leopoldville), Costa Rica, Denmark, El Salvador, Ghana, Guinea, Holy See, Israel, Laos, Liechtenstein, Netherlands, Nigeria, Norway, Pakistan.

The Tunisian amendment, as orally revised, was rejected by 34 votes to 27, with 21 abstentions.

The Belgian amendment (A/CONF.25/L.35) was rejected by 39 votes to 26, with 17 abstentions.

34. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted against the Tunisian amendment for the reasons stated by the representatives of Spain and Colombia. He had voted against the Belgian amendment because the terms " grave offence " and " grave crime " were not interchangeable in Venezuelan law.

35. The PRESIDENT drew attention to the motion by the representative of the Federal Republic of Germany for a separate vote on the words " and pursuant to a decision by the competent judicial authority ", at the end of paragraph 1 of article 41.

36. Mr. KRISHNA RAO (India) said that deletion of the words in question would have serious consequences, for the decision to arrest would be left entirely to the police.

37. Mr. USTOR (Hungary) opposed the motion for the reason given by the Indian representative.

38. Mr. BARTOŠ (Yugoslavia) also opposed the motion because deletion of the words in question would place the consular officer entirely in the hands of the police.

39. Mr. CHIN (Republic of Korea) supported the motion. If paragraph 1 remained as drafted a consular officer could not be arrested for a grave crime until a decision had been made by the competent judicial authority.

40. Mr. VRANKEN (Belgium) also supported the motion.

The motion was rejected by 40 votes to 28, with 11 abstentions.

Article 41 was adopted by 63 votes to 6, with 11 abstentions.

41. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that his delegation interpreted the words " competent judicial authority " as including the authority known in his country as the " procurator ". Under the law of many countries, including the Ukrainian SSR, that authority performed, among other functions, those which in other countries with different legal systems were performed by the judicial authorities.

42. Mr. HABIBUR RAHMAN (Pakistan) said that he had abstained from voting on article 41 because the immunity which it accorded to consular officers went beyond what was generally accepted under international law.

43. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation interpreted the term " comptetent judicial authority " in the same manner as the Ukrainian delegation.

44. Mr. CRISTESCU (Romania) said that his delegation interpreted the term " competent judicial authority " in the manner it had explained during the discussion in the Second Committee — i.e., as including the public prosecutor.

45. Mr. ENDEMANN (South Africa) said that his delegation had voted against article 41 as a whole for the same reasons as the representative of Pakistan.

Article 42
(Notification of arrest, detention or prosecution)

46. Mr. SHU (China) introduced his amendment (A/CONF.25/L.32) inserting the words " or other appropriate " between the words " through the diplomatic " and the word " channel ". He pointed out that article 11, paragraph 2, as adopted by the Conference, required the sending State to transmit the consular commission " through the diplomatic or other appropriate channel " to the government of the receiving State. His delegation thought it logical and appropriate to adopt the same wording in article 42.

47. Mr. MARESCA (Italy) said that it was already difficult to see how the consular commission could be communicated other than by the diplomatic channel. But notification of the arrest, detention or prosecution of the head of a consular post was an entirely different matter. It was essential that such a grave act by the authorities of the receiving State should be notified to the sending State in the most formal manner; hence the notification could only be made through the diplomatic channel. The diplomatic channel could be used even if the sending State concerned did not maintain a diplomatic mission at the capital of the receiving State.

48. Mr. KRISHNA RAO (India) pointed out that the communication referred to in article 11, paragraph 2, was in the nature of a routine matter, whereas the notification referred to in article 42 dealt with an extremely serious incident and could therefore only be made through a responsible agency. He drew attention to the vagueness of the expression " or other appropriate channel "; such an expression could be construed as meaning a letter sent through the ordinary post or a mere conversation.

49. Mr. de ERICE y O'SHEA (Spain) agreed with the Italian representative in opposing the amendment. Apart from the reasons already stated by other speakers, it should be remembered that the head of consular post was subordinate to the diplomatic mission of his country and it was therefore appropriate that any communication regarding his arrest, detention or prosecution should be made through that mission.

The amendment submitted by China (A/CONF.25/L.32) was rejected by 30 votes to 18, with 23 abstentions.

Article 42 as a whole was adopted by 72 votes to none, with 1 abstention.

Article 43 (Immunity from jurisdiction)

50. The PRESIDENT invited the Conference to consider article 43 and the amendment thereto (A/CONF.25/L.33) submitted jointly by Belgium, Canada, the Federal Republic of Germany, Ghana, India, Norway, Poland and the Ukrainian Soviet Socialist Republic. The amendment by the Ukrainian SSR (A/CONF.25/L.14) had been withdrawn in favour of the joint amendment.

51. Mr. WASZCZUK (Poland) introduced the joint amendment replacing the words " consular officers " by the words " members of the consular post " in paragraph 1. He pointed out that its adoption would entail a consequential amendment in paragraph 2 (*a*), where the words " consular officer " would have to be replaced by " member of the consular post ".

52. Paragraph 1 of article 43, as adopted by the Second Committeee, could be construed *a contrario* as meaning that members of the consular post other than consular officers were amenable to the jurisdiction of the receiving State in respect of acts performed in the exercise of consular functions. Such a proposition was completely

unacceptable and would alone justify the joint amendment. However, there were seven other reasons for adopting it.

53. First, as pointed out in paragraph 2 of the International Law Commission's commentary on article 43, the exemption from jurisdiction provided in article 43 represented " an immunity which the sending State is recognized as possessing in respect of acts which are those of a sovereign State ". The acts in question were not those of the consular officer or member of the consular post concerned, but the acts of the sending State itself. That argument applied regardless of whether the acts were performed by a consular officer or by a consular employee.

54. Secondly, it was stated in the fifth paragraph of the preamble, which the Conference had already adopted, that the purpose of the consular privileges and immunities was not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States. It should be remembered that such employees as secretaries and accountants performed functions which were essential to the conduct of consular relations; hence they should not be amenable to the jurisdiction of the receiving State in respect of acts performed in the exercise of those functions.

55. Thirdly, immunity from the jurisdiction of the receiving State in respect of official acts performed by members of the consular post was part of customary international law and was embodied in many bilateral consular conventions, such as those concluded by the United Kingdom with France, the United States of America and Mexico.

56. Fourthly, article 53, paragraph 4, as adopted by the First Committee provided that " with respect to acts performed by a member of the consular post in the exercise of his functions, his immunity from jurisdiction shall continue to subsist without limitation of time ". The fact that that provision covered all members of the consular post was a strong argument in favour of the joint amendment.

57. Fifthly, consular functions were not infrequently performed by consular employees, and the provisions of article 43 should therefore cover consular employees as well as consular officers.

58. Sixthly, the sponsors of the amendment believed that immunity from jurisdiction in the exercise of consular functions should be as wide as possible.

59. Lastly, article 37, paragraph 3, of the 1961 Vienna Convention on Diplomatic Relations provided that members of the service staff of a diplomatic mission " who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties ". It would be paradoxical if consular employees did not enjoy a privilege which was thus extended to members of the service staff of a diplomatic mission.

60. Mr. EVANS (United Kingdom) pointed out that article 43 dealt with immunity from jurisdiction in respect of acts performed in the exercise of consular functions. Normally, such functions were performed by consular officers, but he recognized that consular employees also performed them occasionally, and he could therefore agree to the provisions of article 43 being extended to include consular employees. The joint amendment went much further, however, for it would extend immunity from jurisdiction to all members of the consular post, thereby including not only consular employees but also members of the service staff, who were defined in article 1 (*f*), as adopted by the Conference, as persons " employed in the domestic service of a consular post ". It would be wrong to extend immunity from jurisdiction to such persons.

61. The representative of Poland had referred to a number of bilateral consular conventions entered into by the United Kingdom. Those conventions extended immunity from jurisdiction to consular officers and consular employees, but not to members of the service staff. He urged the sponsors of the joint amendment to modify it in such a manner as to exclude members of the service staff.

62. Mr. NASCIMENTO e SILVA (Brazil) was in favour of amending article 43 in the manner indicated by the United Kingdom representative; that had been the object of the Ukrainian amendment (A/CONF.25/L.14) which had unfortunately been withdrawn. Article 43, paragraph 1, as it now stood did not reflect existing international law or contribute to its progressive development. In fact, it was in direct conflict with international law.

63. The International Law Commission had drawn attention to the immunity from jurisdiction which applied to acts of State. If a judicial or other authority in the receiving State were to take proceedings in respect of an act by a consular employee which constituted an act of State, it would be infringing the immunity of States and thereby violating the principle of the sovereignty of States.

64. His delegation had favoured the Ukrainian amendment, but if that amendment was not reintroduced, it would be prepared to support the joint amendment, because cases in which members of the service staff of a consulate performed consular functions were extremely rare.

65. Mr. de MENTHON (France) shared the views expressed by the United Kingdom representative. It would be going too far to extend immunity from jurisdiction to members of the service staff. His delegation would vote against the joint amendment, or if it was altered as suggested by the United Kingdom representative, would abstain from voting on it.

66. Mr. SILVEIRA-BARRIOS (Venezuela) opposed the joint amendment for the reasons given by the United Kingdom representative. In the Second Committee, the Venezuelan delegation had proposed an amendment (A/CONF.25/C.2/L.167) to the International Law Commission's draft of article 43, replacing the words " members of the consulate " by the narrower term " consular officials ". It would therefore oppose the joint amendment, which was tantamount to an attempt to revert to the International Law Commission's text.

67. Mr. de ERICE y O'SHEA (Spain) opposed the joint amendment because it would extend immunity from jurisdiction to persons who were not appointed by the government of the receiving State, which therefore had no control over them. It was not uncommon for the consular section of an embassy to have locally recruited employees who were not appointed by the sending State; if one of them committed an offence, no disciplinary action could be taken against him by the sending State.

68. Mr. SICOTTE (Canada), speaking on behalf of the sponsors of the joint amendment, accepted the suggestion made by the United Kingdom representative. The amendment, as revised, would replace the words " consular officers " in paragraph 1 by the words " consular officers and consular employees ".

69. Mr. MARESCA (Italy) said that consular employees, who were defined in article 1 (*c*), as adopted by the Conference, as persons " employed in the administrative or technical service of a consular post " formed an integral part of the consular post. The acts which they performed in the exercise of their functions were therefore acts of the sending State and should, as such, enjoy immunity from the jurisdiction of another State.

70. Mr. MARAMBIO (Chile) said that in the Second Committee he had supported the Venezuelan amendment, which had confined the provisions of article 43 to consular officials, and thus narrowed the scope of the original text. The joint amendment, even in its revised form, went much further than his delegation was prepared to go. He would therefore have to vote for the text adopted by the Second Committee.

71. Mr. JESTAEDT (Federal Republic of Germany) pointed out that the definition in article 5, as adopted by the Conference, included a wide range of consular functions. In his delegation's opinion, all persons who participated in the activities referred to in sub-paragraph (*c*) of that article should have immunity from jurisdiction. For example, an employee such as the typist who typed a report to the government of the sending State should enjoy immunity in respect of her activities in the consulate. In fact, members of the service staff, such as messengers, occasionally performed acts which should be covered by immunity from jurisdiction.

72. Mr. KEVIN (Australia) supported the joint amendment in its revised form.

The joint amendment (A/CONF.25/L.33), as orally revised, was adopted by 65 votes to 7, with 7 abstentions.

Article 43 as a whole, as amended, was adopted by 70 votes to 1, with 4 abstentions.

Article 44 (Liability to give evidence)

73. Mr. CAMERON (United States of America) moved that the last two sentences of paragraph 1 be voted on separately from the first sentence. The question of the right of the receiving State to oblige the members of the consular post to attend as witnesses in judicial or administrative proceedings had been discussed at great length in the Second Committee. In the course of that discussion several delegations had proposed the deletion of the last sentence of paragraph 1, but the proposal had been rejected by a narrow margin, and many delegations thought that the matter should be carefully reconsidered by the Conference. He intended to vote against the adoption of the last two sentences of paragraph 1.

74. The fact that a consular officer could be called upon to give evidence did not mean that he would be under an obligation to give evidence concerning matters connected with the exercise of his functions or to produce official correspondence or documents. That point was fully covered by the provisions of paragraph 3 of article 44, which afforded every necessary safeguard. In addition, article 32 amply safeguarded the inviolability of consular archives and documents.

75. The interests of justice and fairness required that if a consular officer had knowledge that was of vital importance in court proceedings, he should not withhold it. He might, for example, be the only witness to a traffic accident and thus be the only person able to give evidence on the basic question of responsibility or negligence. A refusal to give evidence in such a case might well result in an injustice. There could even be graver cases, in which an innocent person might be punished because a consular officer who was a vital witness did not give evidence. It was difficult to believe that a consular officer would refuse to give evidence in cases of that kind, but the Conference should not adopt a provision under which there would seem to be no legal obligation for him to give evidence.

76. He drew attention to paragraph 2, which provided that the authority requiring the evidence of a consular officer must avoid interference with the performance of his functions, and that when possible, it could take evidence at his residence or at the consular post, or accept a statement from him in writing. Those provisions fully protected the consular post from any interference in its activities.

77. Some delegations had taken the view that, without the last sentence of paragraph 1, the receiving State would be in a position to decide whether the required evidence related to the exercise of consular functions or not. In fact, paragraph 3 clearly stated that members of a consular post were under no obligation to give evidence concerning matters connected with the exercise of their functions; that provision did not prejudice the question who was to decide whether the evidence required concerned an official matter or not. He could not understand how an obligation to attend as a witness could be established in the first sentence of paragraph 1, only to be rendered meaningless by the subsequent sentences of that paragraph.

78. Mr. DEJANY (Saudi Arabia) moved the adjournment of the meeting.

The motion was carried by 39 votes to 19, with 9 abstentions.

The meeting rose at 6.30 p.m.