United Nations Conference on Consular Relations

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42. Mr. NESHO (Albania) made a statement to the same effect.

43. Mr. BARUNI (Libya) said that he had voted against the adoption of article 68 because it did not take the interests of the receiving State sufficiently into account.

Article 69 (Nationals or permanent residents of the receiving State)

44. The PRESIDENT drew attention to the amendments to article 69 submitted by Australia (A/CONF.25/L.43) and Greece (A/CONF.25/L.51).

45. Mr. KEVIN (Australia) said that he had submitted his amendment to insert the word " facilities " before the words " privileges and immunities " in paragraphs 1 and 2 in order to bring the text into line with the other provisions of the convention.

46. Mr. PAPAS (Greece) said that article 69 contained no provision concerning consular posts headed by nationals of the receiving State and his amendment was intended to fill that gap. The receiving State could not allow an honorary consul who was a national of that State to communicate with the sending State by consular courier. The privileges granted to consular officers differed according to whether they were honorary or career officers. The adoption of article 69 as drafted might encourage certain States not to allow consular posts to be headed by their own nationals.

47. Mr. KEVIN (Australia) approved the Greek amendment (L.51) but proposed the addition of the words " or permanent residents of the receiving State ".

48. Mr. PAPAS (Greece) agreed to incorporate in his amendment the words suggested by the Australian representative.

49. Mr. BARNES (Liberia) reminded the Conference that it had adopted article 57 under which article 35 would apply to a consular post headed by an honorary consular officer. If the Conference were to change article 69 as suggested by the Greek representative it would then have to take up article 57 once again.

50. Mr. DONATO (Lebanon) supported the Greek amendment (L.51).

51. Mr. RUEGGER (Switzerland) said that, while he agreed with the principle underlying the Greek amendment, he thought that it could be re-drafted so as to take article 57 into account.

52. Mrs. VILLGRATTNER (Austria) regretted that she was unable to support the Greek amendment: it was impossible to prevent a consular post headed by an honorary consul from using consular couriers for the purpose of communicating with the sending State.

53. Mr. AMLIE (Norway) said that even when they were nationals of the receiving State honorary consuls were still consular officers. In order to perform their functions as defined in article 5 they should be able to communicate with the sending State by means of consular couriers. He considered that the Greek amendment seriously undermined the institution of honorary consuls.

54. Mr. ENDEMANN (South Africa) pointed out that honorary consuls who were not nationals or permanent residents of the receiving State were entitled to benefit by article 35.

55. Mr. EVANS (United Kingdom) said that he would vote against the Greek amendment. It was essential that the head of a consular post, whether a career consul or an honorary consul, should be able to communicate freely with the sending State.

The meeting rose at 12.55 p.m.

TWENTIETH PLENARY MEETING

Saturday, 20 April 1963, at 3.15 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 69 (Nationals or permanent residents of the receiving State) (*concluded*)

1. The PRESIDENT invited the Conference to continue its consideration of article 69 and the amendments thereto by Australia (A/CONF.25/L.43) and Greece (A/CONF.25/L.51).

2. Mr. PAPAS (Greece) withdrew his delegation's amendment because the majority of the Conference did not seem to be in favour of it.

3. Mr. AMLIE (Norway) said he was grateful to the Greek representative for withdrawing his amendment.

4. Mr. ENGLANDER (Honduras) said he was glad that the Greek amendment had been withdrawn. That text expressed a wrong attitude to the institution of honorary consuls, since it reflected a certain mistrust of such persons. In actual fact, honorary consuls were usually respectable, well-to-do persons who would not be likely to risk their reputations for the sake of smuggling articles in a consular bag.

5. Mr. MARESCA (Italy) said that paragraph 2 of article 69 raised an important legal question. Under article 43 as adopted by the Conference, consular employees, who exercised technical and administrative functions and thus formed a part of the consulate, were immune from jurisdiction in the exercise of their functions, even if they were nationals of the receiving State. Paragraph 2 of article 69, however, derogated seriously from that principle in that it accorded those privileges and immunities only in so far as they were granted to consular employees by the receiving State. The Italian delegation considered it inadmissible to refuse immunities which were absolutely essential for the exercise of certain consular functions and therefore would be unable to vote for the article.

6. Mr. KEVIN (Australia) said that the intention of the Greek amendment appeared to have been not so much to control the consular bag as the person conveying it. It would be very difficult to concede to a courier who was a permanent resident of Australia, even if he were a national of the sending State, a privileged position over and above Australian citizens.

The Australian amendment (A/CONF.25/L.43) was adopted by 61 votes to none, with 7 abstentions.

Article 69, as amended, was adopted by 62 votes to none, with 7 abstentions.

7. Mr. AMLIE (Norway) said that his delegation had abstained from the vote on article 69 because it objected to the phrase " or permanently resident in ". In actual fact, there were no honorary consuls other than permanent residents in or nationals of the receiving State; chapter III therefore related to a non-existent category of officials.

8. Mr. VRANKEN (Belgium) said he had abstained from voting on article 69 for the same reasons as the Norwegian representative.

9. Mr. ENDEMANN (South Africa) said he had abstained from voting on the Australian amendment because it was not clear what was meant by the word " facilities ". His delegation could not agree that those facilities should not be accorded in the exercise of consular functions. He regretted that the Greek amendment had been withdrawn, but had voted for the article as a whole in the belief that it served a useful purpose.

10. Mr. KRISHNA RAO (India) said he had voted in favour of the article for the opposite reason from that given by the Norwegian representative.

11. Mr. NESHO (Albania) said he had abstained from voting on article 69 because it was unacceptable to his delegation.

Article 64 (Exemption from personal services and contributions) (*concluded*)

12. Mr. KEVIN (Australia) said that the text of the article differed from that adopted by the Second Committee in that the words " who are neither nationals nor permanent residents of the receiving State " had been omitted. The drafting committee had apparently regarded that phrase as unnecessary in the light of the provisions of article 69 as adopted by the Second Committee.

13. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that it was for the Conference to decide on that question. The drafting committee's decision had been taken on the basis of the texts adopted by the Second Committee.

14. Mr. EVANS (United Kingdom) thought that the drafting committee had been mistaken in deleting the phrase, since article 64 was concerned solely with the question of the extent to which honorary consular officers were exempt from the personal services and contributions in respect of which career consular officials enjoyed immunity. Article 69, paragraph 1, had the effect of denying to consular officers who were nationals or permanent residents of the receiving State the privileges and immunities set out in chapter II, with the exception of immunity from jurisdiction and personal inviolability in the exercise of consular functions. Article 64, however, did not relate to those two exceptions, and it was therefore necessary to specify in the article itself that it related to honorary consular officers who were neither nationals nor permanent residents of the receiving State.

15. Mr. GIBSON BARBOZA (Brazil), Chairman of the Second Committee, said that the phrase in question had presumably been omitted on the assumption that it was unnecessary in view of the provisions of article 69. It was for the Conference to decide whether the phrase should be reintroduced.

16. Mr. KONSTANTINOV (Bulgaria), Rapporteur of the Second Committee, confirmed Mr. Gibson Barboza's remarks.

17. Mr. DADZIE (Ghana) agreed with the Australian representative. Article 64 in fact related to honorary consuls who were neither nationals nor permanent residents of the receiving State, and the drafting committee's deletion had therefore been incorrect.

18. Mr. KRISHNA RAO (India), chairman of the drafting committee, pointed out that there was no reason to vote again on the inclusion of the phrase in question, which the Second Committee had adopted by an overwhelming majority. The Committee's intention had been perfectly clear and the drafting committee's decision to delete the phrase had merely been consequential upon the text of article 69 as adopted at the time.

Article 64 was adopted, with the phrase in question, by 72 votes to none, with 4 abstentions.

19. Mr. EVANS (United Kingdom) observed that exactly the same point arose in connexion with article 50 (Estate of a member of the consular post or of a member of his family). Nationals and residents of the receiving State should be excluded from that provision, in the light of the present wording of article 69. He thought it would be in accordance with the intentions of the Conference to restore that phrase.

20. Mr. SRESHTHAPUTRA (Thailand) said that the same consequential amendment should be made to article 48, paragraph 2.

21. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that, now that article 69 had been amended, consequential amendments would have to be introduced into some other articles. He suggested that that task should be entrusted to the drafting committee.

22. Mr. CAMERON (United States of America) observed that, under article 69, consular officers who were nationals of or permanent residents in the receiving State enjoyed only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, unless additional pri-

vileges and immunities were granted by the receiving State. By article 69, such persons were excluded from the benefits of article 50. The matter should be referred back to the drafting committee, were it had been discussed previously, for further consideration in the light of the problem which had been raised.

23. Mr. KONSTANTINOV (Bulgaria), Rapporteur of the Second Committee, pointed out that a number of amendments relating to the point under discussion had been submitted to many of the articles in chapter III, but had been either rejected or withdrawn on the understanding that the drafting committee would decide on the matter when the definitive wording of article 69 had been settled.

24. The PRESIDENT suggested that the changes consequential upon the amendment of article 69 should be referred to the drafting committee.

It was so agreed.[1]

25. Mr. TÜREL (Turkey) said that his delegation had agreed to the President's suggestion on the understanding that, if the drafting committee decided not to include the phrase in certain articles, article 69 should not be deemed to confer additional benefits upon nationals and permanent residents of the receiving State.

Article 70 (Non-discrimination)

26. Mr. HARASZTI (Hungary) suggested that paragraph 2 (*a*) should be deleted and the original text of the International Law Commission incorporated into the convention with the drafting changes approved by the First Committee. The Hungarian delegation believed that the provision was theoretically and practically erroneous. In the first place, if a State should apply the convention restrictively, that State would be violating the convention. As Mr. Ago had said at the 608th meeting of the International Law Commission, the use of the term " restrictively " seemed to imply that it was possible, by way of retaliation, lawfully to reduce the obligations set forth in the convention. Secondly, the paragraph provided no security for the victim of discrimination. If the convention were violated, the other party could resort to a series of measures admissible under general international law, and retaliate within certain limits and proportions. The Hungarian delegation saw no justification for the provision in the fact that the Convention on Diplomatic Relations contained a similar clause: Mr. Padilla Nervo had stated at the same meeting of the International Law Commission that in his opinion sub-paragraph (*a*) of article 47 was quite the most regrettable provision in the whole of the 1961 Vienna Convention. That error should not be perpetuated; his delegation asked for a separate vote on paragraph 2 (*a*) of article 70.

[1] In order to take into account the observations made on the subject of the phrase " who are neither nationals nor permanent residents of the receiving State ", the drafting committee subsequently decided to reintroduce in part, in article 1, with some drafting changes, the text of paragraphs 2 and 3 of article 1 of the International Law Commission's text (see the summary record of the twenty-second plenary meeting).

27. Mr. KRISHNA RAO (India) agreed that the provision might lead to abuse and counter-abuse, but thought that that would be unavoidable. The solution proposed by the International Law Commission would be ideal if all the parties implemented the convention, but if the instrument was misapplied by a unilateral decision, that breach could only be countered in the same manner. He did not think that the abuse would be perpetuated, but only that the other party would be allowed to take the same action as the violator.

28. Mr. WASZCZUK (Poland) thought that the adoption of paragraph 2 (*a*) by the First Committee had been unjustified for a number of reasons. In the first place, the provision cast doubt on the efficacy of the convention, and was a kind of invitation for the non-application of certain articles. Secondly, although a similar provision appeared in article 47, paragraph 2 (*a*), of the Convention on Diplomatic Relations, it was obviously impossible to follow that instrument in all respects in the convention on consular relations. Thirdly, the deletion of paragraph 2 (*a*) would only mean that in exceptional cases States would not be entitled to employ retortion. He therefore supported the Hungarian motion for a separate vote.

29. Mr. CAMERON (United States of America), opposing the motion for a separate vote on paragraph 2 (*a*), said that his delegation strongly favoured the retention of the whole of article 70. He recalled that, during the 1961 Conference, at the 37th meeting of the Committee of the Whole, there had been a similar discussion with regard to an identical provision contained in the corresponding article of the Convention on Diplomatic Relations.

30. An examination of the articles of the convention on consular relations would show that some of its provisions were mandatory and should therefore be applied to the letter; other provisions were discretionary and left some room for flexibility. It was for that reason that his delegation supported the retention of paragraph 2 (*a*), on the ground that a State could apply the discretionary provisions of the convention either restrictively or liberally, without in any way violating the terms of the convention. Where a State applied certain provisions restrictively, retaliation in kind by another State affected would not be an act of discrimination. It was therefore logical to retain the provisions of paragraph 2 (*a*).

31. Mr. CHIN (Republic of Korea) agreed that the provisions of paragraph 2 (*a*) were unsatisfactory from the academic point of view. From a realistic point of view, however, he saw no other way of maintaining the principle of reciprocity between States. Accordingly, he strongly opposed the motion for a separate vote on that clause.

32. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said he could not agree to the retention of paragraph 2 (*a*). In practice, its provisions would lead to the restrictive application of the whole convention by certain States. The provisions of paragraph 2 (*a*)

were at variance with a fundamental principle of international law: *pacta sunt servanda*. If a breach of one of the provisions of the convention were to be committed, it would be a mistake to retaliate in kind. There existed many means of peaceful settlement of disputes, even serious disputes, under the Charter and other instruments. A State which felt that it had been the victim of discriminatory measures should resort to these means of peaceful settlement. It would be a mistake to answer a lawless act by an equally lawless act. For these reasons, his delegation favoured a separate vote on paragraph 2 (*a*).

The motion for a separate vote on paragraph 2 (a) *was defeated by 54 votes to 12, with 10 abstentions.*

Article 70 was adopted by 63 votes to none, with 11 abstentions.

33. Mr. PETRŽELKA (Czechoslovakia) said that his delegation had abstained from voting on article 70 because it was not satisfied with the approach adopted in that article. The article seemed to recognize the *a priori* possibility that the convention would not be implemented. Yet surely the obligations derived from a convention which was signed and ratified, or accepted, by a State had to be fulfilled by that State. The provisions of paragraph 2 (*a*) were at variance with one of the most important principles of international law: *pacta sunt servanda*.

34. Mr. WU (China), explaining his vote, said that his delegation had voted in favour of article 70 on the understanding that the words " as between States " in paragraph 1 should be construed as referring to States parties to the convention on consular relations and no other.

35. He recalled that a proposal had been made in the First Committee (26th meeting) for deleting the words " parties to this convention " which appeared at the end of paragraph 1 as drafted by the International Law Commission and that no action had been taken on that proposal, the matter having been referred to the drafting committee. In that committee, certain delegations (including his own) had expressed doubts as to whether the proposal in question touched on substance. However, the general sense of the drafting committee had been that the words " parties to this convention " were unnecessary and that the word " States " in the context could only be construed as referring to the States parties to the convention on consular relations.

36. Mr. WESTRUP (Sweden), explaining his vote against the motion for a separate vote, said that his delegation would have been prepared to agree to the omission of paragraph 2 (*a*) if the convention had contained adequate objective provisions for the settlement of disputes regarding its interpretation. In the absence of such provisions, the possibility of measures of retaliation as an *ultima ratio* should be retained. It was for those reasons that his delegation had voted against the motion and in support of the retention of paragraph 2 (*a*).

37. Mr. PAPAS (Greece) said that many of the provisions of the convention were subject to the observance of the laws and regulations of the receiving State or to that State's consent. If, as a result of that qualification, some of those provisions were to be applied restrictively by a receiving State, that State could not claim that its consuls were being discriminated against if the sending State affected retaliation in kind. That retaliation would merely redress the balance and avoid inequality; it was a matter of reciprocity and not of discrimination. It had been for those reasons that his delegation had voted against the motion for a separate vote and in favour of article 70 as a whole.

38. Mr. DADZIE (Ghana) said that his delegation had abstained from the vote on article 70 because the provisions of paragraph 2 (*a*) were illogical and out of place in the article. His delegation was not impressed by the fact that the provision thus criticized corresponded to article 47, paragraph 2 (*a*), of the Vienna Convention on Diplomatic Relations; it was the duty of the Conference to use whatever provisions were satisfactory in the 1961 Convention, but it should obviously not copy that convention blindly.

39. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that article 70, paragraph 1, as drafted by the International Law Commission, ended with the words " shall not discriminate as between States parties to this convention ". A proposal by the delegation of the United Arab Republic to delete the words " parties to this convention " as unnecessary had been referred to the drafting committee. The drafting committee had taken the view that the words " the application of the provisions of the present convention " in paragraph 1 made it perfectly clear that the reference was to States parties to the convention and to no other.

40. Speaking as representative of India, he said that the Czechoslovak representative had spoken of the principle *pacta sunt servanda*; but there was another principle of international law which was also relevant, the principle that States should not abuse their rights in their reciprocal relations.

Article 71 (Relationship between the present convention and other international agreements)

Article 71 was adopted unanimously.

41. Mr. CRISTESCU (Romania) stated with reference to article 71 that it was the understanding of his delegation that the provisions of the convention on consular relations which would be adopted by the Conference would not affect conventions or other international agreements in force, in the relations between States parties to those conventions or agreements.

42. He added that it went without saying that article 71 could not be interpreted as meaning that the convention on consular relations would not in any way affect the consular conventions or agreements entered into towards the end of the nineteenth century, to which Romania had been a party and which had become obsolete and thereby lost all legal validity.

Article 36 (Communication and contact with nationals of the sending State) *(resumed from the 13th plenary meeting and concluded)*

43. The PRESIDENT recalled that the Conference had not adopted article 36 in the drafting committee's text. Two proposals for a new article 36 had been submitted, one by Czechoslovakia and the Ukrainian Soviet Socialist Republic (A/CONF.25/L.40) and the other by a group of seventeen delegations (A/CONF.25/L.41).[2] The first question for the Conference to decide was whether it wished to reconsider its earlier decision regarding article 36.

44. Mr. KRISHNA RAO (India) moved, under rule 33 of the rules of procedure, the reconsideration of proposals for inclusion as article 36 of the convention on consular relations.

45. The Conference had rejected a number of proposals regarding article 36 and it was now faced with the problem that none of the important matters dealt with in that article was covered in the draft convention. If the convention to be adopted by the Conference were to be silent on the subject of communication and contact with nationals of the sending State, it would be an admission of dismal failure.

46. As drafted by the International Law Commission, article 36 had dealt with the right of nationals of the sending State to communicate with and to have access to their consulate, with the rights of consular officers in that regard and with the important consular rights relating to persons who were in prison, custody or detention. It was therefore essential that the Conference should consider the drafting of an article 36, taking into consideration the proposals before it.

47. Mr. PETRŽELKA (Czechoslovakia) supported the Indian motion for reconsideration.

The motion was carried by 71 votes to none, with 6 abstentions.

48. Mr. AVILOV (Union of Soviet Socialist Republics) explained that his delegation had abstained from voting on the motion for reconsideration. Article 36 had been clearly rejected by the Conference because, for a number of reasons, some of its provisions were not acceptable to a considerable number of States. His delegation believed that it would be unwise to endeavour to make an effort at that late stage of the Conference, when it was pressed for time, to find a satisfactory solution likely to meet with the approval of the Conference. He understood the concern of certain delegations to include in the convention on consular relations provisions covering the matters dealt with in article 36, but unfortunately he saw no practical possibility of a satisfactory result being achieved in that respect, in view of the pressure of time and of the differences of opinion. A hasty decision would be worse than no decision at all. It was preferable not to adopt any such provision as article 36; instead, the Conference might either adopt an optional protocol on its subject matter, as had been done for acquisition of nationality, or else leave the matter to be settled by bilateral agreements between States in accordance with the existing practice.

49. International practice had evolved satisfactory solutions for the situations which article 36 purported to cover. His delegation therefore felt that the matter could be left as it stood.

50. Mr. DEJANY (Saudi Arabia) said that his delegation regretted that it had been unable to vote for the motion for reconsideration because the proposals which had been introduced for reconsideration were the same as those which had been rejected in committee and in the plenary and were against the interests of his country. If there had been a compromise proposal to accommodate the various points of view expressed at the Conference his delegation would have gladly given its support. Unfortunately, however, no compromise solution had appeared. There appeared to be little or no prospect that reconsideration of the matter would have any better result than the earlier discussion which had led to the rejection of draft article 36.

51. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) introduced the proposal of Czechoslovakia and the Ukrainian SSR for the reconsideration of article 36. The discussion in the Second Committee and the plenary had shown that the rules of international law on the subject matter of article 36 were not yet sufficiently for codification and for progressive development. However, in view of the Conference's decision to reconsider article 36, his delegation and that of Czechoslovakia proposed that the new discussion should take place on the basis of the text drafted by the International Law Commission. That text was the fruit of many years of work by a body of leading jurists representing the world's different legal systems and took into account the peculiarities of the various national laws. It was therefore appropriate that, once again, it should form the basis for the Conference's discussion.

52. The International Law Commission's text contained adequate and detailed provisions to ensure communication and contact between the consul and his nationals in the receiving State; in addition, it guaranteed the right of consular officers to contact their nationals in pursuance of their functions and gave them the necessary facilities in that respect.

53. A great advantage of the International Law Commission's text by comparison with other texts which had been submitted both in the Second Committee and in plenary meeting, was that its provisions on implementation wisely combined the rules set forth in paragraph 1 with a reference to the observance of the laws and regulations of the receiving State. Very properly, paragraph 2 did not contemplate the provisions of paragraph 1 on the one hand and the laws and regulations of the receiving State on the other as being in opposition to each other, but envisaged rather that they should be combined in their application. It was undesirable to speak of the primacy either of the law of the receiving State or of international law, especially

[2] This proposal was sponsored by Algeria, Ceylon, Congo (Brazzaville), Congo (Leopoldville), Guinea, India, Indonesia, Iran, Lebanon, Liberia, Mali, Nigeria, Pakistan, Republic of Korea, Sierra Leone, Tunisia and Upper Volta.

the provisions of article 36. In that respect, the text sponsored by his delegation and that of Czechoslovakia offered a happy solution by taking into account national peculiarities and different forms of government. The two sponsors of the amendment did not close the door to compromise, provided that it was without prejudice to the principles involved.

54. Mr. BOUZIRI (Tunisia), introducing the seventeen-power proposal, said that it reproduced in substance the text which had been approved by the Second Committee and which had been almost adopted by the Conference. However, some changes had been introduced in order to meet certain criticisms which had been made of the article as approved in the Second Committee.

55. In the first place, the former sub-paragraph (*c*) of paragraph 1 had been dropped because the obligation to communicate lists of arrested persons had appeared to many delegations to impose an unduly heavy burden upon the authorities of the receiving State. In addition, it had been thought by some that the provisions of that sub-paragraph were unnecessary in view of the provisions of sub-paragraph (*b*) which specified that the competent authorities of the receiving State had to inform a consulate without delay of the arrest of one of its nationals.

56. As far as sub-paragraph (*b*) was concerned, the sponsors had introduced the initial proviso " unless he expressly opposes it ", thereby relieving the receiving State of the automatic duty to inform the consul of the arrest of the person concerned. The reason for that proviso was the need to take into consideration the prisoner's own freedom of choice. It had been argued that in some cases a prisoner might not wish the consul to know that he had been in prison. The sponsors had hesitated at first; they had, however, ultimately agreed to take that point into account, but with appropriate safeguards. It was for that reason that the proviso was so drafted that the duty to notify would exist unless the person concerned explicitly stated that he did not wish the consul to be advised.

57. A second change had been made in sub-paragraph (*b*) as adopted by the Second Committee: the sponsors of the joint proposal had deleted the passage which would have required the receiving State to indicate the reasons for the arrest of the national of the sending State. In the opinion of many delegations the application of that provision might have involved interference in the internal affairs of the receiving State. In addition, many delegations had felt that such a provision might interfere with the investigation of the case because the reasons indicated at the earliest stage for the arrest might well not prove to be the reasons for the continued detention and, possibly, for the conviction of the person concerned.

58. He urged delegations to support the proposal, which adequately safeguarded individual freedom and the exercise of consular functions.

59. Mr. de MENTHON (France) agreed with the Indian representative that it would be a lamentable failure on the part of the Conference not to adopt a provision on the subject matter of article 36. It would be inconceivable for the Conference to adopt a convention on consular relations which did not contain an article on the essential matter of the protection of the nationals of the sending State and in particular the protection of those who needed it most because they were in prison, custody or detention. His delegation regretted that some of the provisions adopted by the Second Committee should have been dropped from the joint proposal, particularly since one of those provisions originated in an amendment submitted by the French delegation. However, he was prepared to support at that stage the seventeen-power proposal provided it was amended as proposed in the joint amendment (A/CONF. 25/L.49).

60. Mr. KAMEL (United Arab Republic), introducing the joint amendment (A/CONF.25/L.49) on behalf of its sponsors,[3] welcomed the Conference's decision to reconsider article 36 and the prospect of an appropriate provision being adopted in the convention. In the Second Committee, his delegation had been one of the twenty-seven delegations which had abstained when the Second Committee had adopted an amended text of article 36. The reason for that abstention had been that the provisions of paragraph 1 (*b*) as then drafted were very weak. It had been the hope of his delegation that the Conference in plenary would reconsider the matter, and its expectations had been fulfilled.

61. The Conference was faced with a new situation: as yet, it had not adopted an article on communication and contact between the consulate and nationals of the sending State. To fill that gap, there were two proposals before the Conference. That submitted by Czechoslovakia and the Ukrainian SSR would reintroduce the text of the International Law Commission which had been amended after lengthy discussion in the Second Committee. Most delegations had not changed their points of view on the issues involved, and his own delegation could not possibly accept a return to the International Law Commission's text.

62. The seventeen-power proposal did not contain the original sub-paragraph (*c*) of paragraph 1 which had been the object of considerable criticism. However, it maintained sub-paragraph (*b*), which was not acceptable to many delegations and, for that reason, the sponsors of the joint amendment proposed that the opening words of that sub-paragraph " unless he expressly opposes it " should be replaced by " if he so requests ". The purpose of the amendment was to lessen the burden on the authorities of receiving States, especially those which had large numbers of resident aliens or which received many tourists and visitors. The language proposed in the joint amendment would ensure that the authorities of the receiving State would not be blamed if, owing to pressure of work or to other circumstances, there was a failure to report the arrest of a national of the

[3] Canada, Ceylon, Congo (Brazzaville), Congo (Leopoldville), Ecuador, Federation of Malaya, Guinea, India, Indonesia, Japan, Liberia, Mali, Pakistan, Philippines, Republic of Korea, Sierra Leone, Syria, Thailand, United Arab Republic, Venezuela.

sending State. Also, by stating that the consul should be notified if the national of the sending State so requested, the amendment would avoid misunderstanding between the consulate and the authorities of the receiving State. It would thus serve one of the purposes of the convention on consular relations, which was to ensure that understanding and harmony should prevail in the relations between the receiving State and the sending State.

63. Mr. TILAKARATNA (Ceylon), replying to a question by Mr. EL KOHEN (Morocco), explained that his delegation, one of the sponsors of the seventeen-power proposal, had joined in sponsoring the joint amendment in a spirit of compromise. Like other sponsors of the seventeen-power proposal who had done the same, it had reconsidered the matter with the object of arriving at a satisfactory compromise solution.

64. Mr. TSHIMBALANGA (Congo, Leopoldville) and Mr. BARNES (Liberia) said that their position was similar to that of the representative of Ceylon.

65. Mr. SILVEIRA-BARRIOS (Venezuela) said that he agreed with the arguments put forward by the representative of the United Arab Republic. His delegation, like many others, attached great importance to the subject matter of article 36. He appealed to the sponsors of the seventeen-power proposal and to the other delegations to accept the joint amendment which offered the prospect of a satisfactory compromise solution. Approval of the amendment would ensure the adoption of an article 36 worthy of the Conference.

66. Mr. SICOTTE (Canada), speaking as one of the sponsors of the joint amendment (A/CONF.25/L.49), congratulated the delegation which had made it possible to put it forward as a compromise solution that he hoped would meet with the approval of the Conference.

67. He pointed out that, in the view of the sponsors of the joint amendment, sub-paragraph (*b*) of paragraph 1 of the seventeen-power proposal would impose an unduly onerous obligation on the police and other authorities of the receiving State by requiring those authorities to inform the consulate of every arrest of a national of the sending State unless that national expressly objected to that notification.

68. Mr. TILAKARATNA (Ceylon) explained that at the 13th plenary meeting his delegation had voted against the adoption of the remainder of article 36 because, after the deletions made to that article, the text had become too vague. As a country which was mainly a receiving State in the matter of consular relations, Ceylon would have been content if the convention had lacked a clause dealing with the subject of article 36, which would place certain onerous responsibilities upon its authorities. However, acting in the interests of the Conference as a whole, his delegation had joined in sponsoring the joint amendment (A/CONF.25/L.49), the adoption of which would ensure the incorporation into the convention on consular relations of an article on communication and contact with nationals of the sending State, which should prove acceptable to all.

69. Mr. BARTOŠ (Yugoslavia) stressed the importance of the subject matter of article 36, dealing with one of the traditional duties of a consul, which was to protect nationals of a sending State who were in difficulties in a foreign country. In view of the importance which his delegation attached to the matter, it had been naturally very concerned at the failure of the Conference to adopt an article 36. Accordingly, it welcomed the two proposals (A/CONF.25/L.40 and L.41) to fill the gap.

70. He would refrain from entering into the details of what was an extremely complex and difficult subject and would confine his remarks to stating his preference for the proposal of Czechoslovakia and the Ukrainian SSR. That proposal would introduce into the convention on consular relations the text originally adopted by the International Law Commission, a text which his government had instructed him to support. Nevertheless, if the Conference, contrary to the wishes of his delegation, were to reject the proposal of Czechoslovakia and the Ukrainian SSR, his delegation would vote in favour of the seventeen-power proposal because it preferred a less satisfactory text to the total absence of a provision on the subject. That proposal should, however, be amended as proposed by the United Kingdom, for in that way the proposed provisions would become more effective.

71. Mr. EVANS (United Kingdom) observed that the proposal of Czechoslovakia and the Ukrainian SSR reproduced the International Law Commission's text which the Second Committee had found unsatisfactory in a number of respects. That text contained several expressions which weakened to an unacceptable degree the basic rights and obligations which article 36 sought to safeguard. He referred, in particular, to the use of the expression " in appropriate cases " in paragraph 1 (*a*) and the word " undue " before " delay " in paragraph 1 (*b*), both of which the Second Committee had very rightly deleted. In addition, the proposed text reproduced paragraph 2 in the very unsatisfactory form in which it had been decisively rejected by the Conference itself in plenary meeting.

72. In order to ensure the effective implementation of the obligations relating to the protection of nationals, his delegation preferred that those obligations should be stated in the unequivocal terms adopted by the Second Committee. Accordingly, he found the seventeen-power proposal generally acceptable; its terms were largely similar to those adopted by the Second Committee.

73. However, the text of that proposal differed from the one adopted by the Second Committee in one important respect: the inclusion in paragraph 1 (*b*) of the proviso " unless he expressly opposes it ". As it had said in the discussions in the Second Committee, his delegation preferred the statement of an unequivocal obligation and did not favour a qualification of any kind. Nevertheless, it had carefully considered both the proviso embodied in paragraph 1 (*b*) of the seventeen-power proposal and the alternative one in the joint amendment (A/CONF.25/L.49). The language of the latter was unacceptable as it stood, because it could give rise to abuses and misunderstanding. It could well make the provisions of article 36 ineffective because

the person arrested might not be aware of his rights. There could also be misunderstandings owing to language and other difficulties. For those reasons, his delegation considered that if the obligation set forth in paragraph 1 (*b*) were to be qualified in the manner proposed by the sponsors of the joint amendment it was essential to introduce a provision to the effect that the authorities of the receiving State should inform the person concerned without delay of his rights under sub-paragraph (*b*). That was the purpose of his delegation's amendment (A/CONF.25/L.50).

74. If the Conference preferred the proviso proposed in the joint amendment " if he so requests ", his delegation would thus be prepared to accept it on the condition that the United Kingdom amendment was also accepted. Since his delegation would be prepared to vote for the seventeen-power proposal and for the joint amendment if its own amendment were accepted, he urged the sponsors of both texts to agree that the United Kingdom amendment should be voted upon first.

75. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said his delegation attached the greatest importance to article 36; without it, the convention would be unsatisfactory and incomplete. He would have preferred the text approved by the Second Committee, but it had been rejected by the plenary meeting. In the circumstances, the joint proposal offered a reasonable compromise and he would vote in favour of it and also of the amendments thereto.

76. Mr. DE CASTRO (Philippines) said that there were three possibilities before the Conference: to place an unequivocal obligation of the receiving State to notify the consular post of the receiving State of the arrest, imprisonment or detention of a national of the sending State; to provide that the receiving State should notify the consulate only if requested by the person concerned; or to make it incumbent on the receiving State to notify the consular post unless the national concerned expressly opposed it. He strongly supported the joint amendment (A/CONF.25/L.49). If it were not adopted, however, he would propose a separate vote on the first sentence of paragraph 1 (*b*) of the two proposals (A/CONF.25/L.40 and L.41). The sentence had the same meaning in both cases and he would like it to be deleted. The remaining text would represent a reasonable compromise between the differing points of view and would reinforce the rights and principles set forth in paragraph 1 (*a*).

77. Mr. GIBSON BARBOZA (Brazil) shared the views of the representative of India. It would be inconceivable to draft a convention which did not include a provision of the kind contemplated in article 36. He had doubts whether any of the proposals before the meeting represented a real effort at compromise, for the concessions made did not go far enough. Nevertheless, he would vote in favour of any of them that were put to the vote rather than see the convention without the article at all.

78. Mr. LAHAM (Syria) said he could not conceive of a convention which provided the first international codification of the law concerning consular relations and which did not make provision for free communication between consular officials and nationals of the sending State, on the lines proposed by the International Law Commission in article 36. It was unfortunate that the divergence of opinion had led to the deletion of the article — a situation which he was sure no delegation had intended. He had sponsored the joint amendment (A/CONF.25/L.49) in an effort to help the Conference to write a convention that would be acceptable to all States. He supported the representative of Venezuela in urging the adoption of the amendment.

79. Mr. ATABAKI (Iran) said he had joined the sponsors of the seventeen-power proposal for the reasons so lucidly explained by the representatives of India and Tunisia. He could accept the joint amendment.

80. Mr. REZKALLAH (Algeria), speaking as one of the sponsors of the seventeen-power proposal, supported the joint amendment and the United Kingdom amendment for the reasons given by the representatives of India, Czechoslovakia and the United Kingdom. He was not in favour of the proposal of Czechoslovakia and the Ukrainian SSR, though he would support it if the other proposal was not adopted.

81. Mr. CRISTESCU (Romania) said he could not agree to the inclusion in the convention of any provision that would affect criminal procedure and put aliens in a better position than nationals. The seventeen-power proposal would restore some provisions that the Conference had rejected earlier: in particular, it would restore the whole of paragraph 2 as approved by the Second Committee, which had prevented many representatives from voting in favour of article 36 in the plenary. The convention was concerned with consular privileges and immunities and not with national laws. No receiving State could admit interference in its internal judicial affairs and article 36 was unnecessary: articles 5 and 27 A provided all that was necessary to enable the consul to carry out his duty to protect his fellow nationals in the receiving State. He would vote against the seventeen-power proposal.

82. Mr. MARAMBIO (Chile) said that article 36 as drafted by the International Law Commission embodied all the basic ideas that such a provision should contain, namely: the right of communication between the consular officer and the nationals of his country; the guarantee that the consular officer would be notified without delay if one of his nationals was deprived of his freedom in the receiving State; and the right of a consul to visit a national under detention in that State. The text approved by the Second Committee, which retained the basic structure of the International Law Commission's draft, had been rejected in plenary, after long discussion and after suffering severe mutilation. But, as he and many other representatives agreed, a convention of the kind being drafted, which codified universal rules for consular relations, should contain an article setting out the basic ideas contained in article 36 as drafted by the International Law Commission; and for that reason several proposals had been submitted to the Conference.

83. He did not find the texts fully satisfactory; but as it was essential to fill the serious gap which at the moment existed in the draft convention, he was ready to support any proposal for including in the convention a text which was as close as possible to the International Law Commission's draft and which would specify the three basic rights he had mentioned. He hoped the Conference would make a real effort to restore article 36 in a satisfactory form; its absence would be a permanent reflection on the Conference.

84. Mr. BOUZIRI (Tunisia) agreed with the representative of Chile. He regretted that he could not accept the joint amendment as it was not a compromise: it reproduced a phrase which had been rejected by the Second Committee and by the plenary meeting. Article 36 was important but it should be acceptable to the greatest possible number of States, particularly on the point in question. The joint amendment (A/CONF.25/L.49) removed one of the fundamental obligations of the receiving State; it would deny to the consul the means of performing one of his most important functions under article 5 and frustrate the national's right to protection from his consulate, for the decision to notify the consul of a national's detention in the receiving State would be left entirely to the discretion of that State's authorities. The United Kingdom amendment would in no way improve the situation. He did not agree with the argument that a positive obligation would place an excessive burden on the receiving State, for in practice there were very few cases where a national would not want his consul to be notified of his detention. He would vote against the joint amendment and, if it should be adopted, he would vote against the whole article. It would be better to shelve the question than to deal with it in an unsatisfactory way.

85. Mr. TSHIMBALANGA (Congo, Leopoldville) supported the representative of Ceylon. The Conference should adopt some provision on the subject, for it was too important to be passed over in silence. None of the proposals was entirely satisfactory, but he would join the majority in order to reach a compromise. He would support the United Kingdom amendment.

86. Mr. MARESCA (Italy) said it was essential that the convention should contain a provision on so important a matter as communication and contact between the consulate and nationals of the sending State. Although it would not entirely dispel the doubts expressed during discussion, the seventeen-power proposal was acceptable. He did not support the joint amendment and if it were adopted he would vote for the United Kingdom amendment.

87. Mr. KALENZAGA (Upper Volta) said that, although he had supported the text approved by the Second Committee, he had now sponsored the seventeen-power proposal. In a spirit of compromise, he would also vote for the joint amendment provided that the United Kingdom text was also adopted.

88. Mr. JAYANAMA (Thailand) said that he had fully explained his delegation's position in the debate in the Second Committee. Article 36 was one of the most important in the convention, and he had become a sponsor of the joint amendment in a spirit of compromise; he particularly supported the arguments of the representatives of the United Arab Republic, the Philippines and Canada. He opposed the proposal submitted by Czechoslovakia and the Ukrainian SSR, and he also opposed the United Kingdom amendment.

89. Mr. AVILOV (Union of Soviet Socialist Republics) said that none of the texts before the Conference were satisfactory to all representatives. The seventeen-power proposal reproduced a text which the Conference had previously rejected; his delegation would like an article 36 to be included in the convention but could not accept that proposal as it would infringe the sovereign rights of the receiving State. In his opinion, the best text was that prepared by the International Law Commission, but he realized that some of its provisions were not acceptable to other delegations. The Conference should try to find a solution acceptable to all delegations; otherwise the convention would not receive a sufficient number of ratifications. It would be better to have no provision than an unsatisfactory one.

90. Mr. PAPAS (Greece) expressed general support for the seventeen-power proposal but reserved his position on the first sentence of paragraph 1 (*b*). The receiving State's obligation should be unqualified, to avoid the risk of authorities failing in their duty on some pretext. He requested a separate vote on the sentence in question.

91. Mr. AMLIE (Norway) said that paragraph 1 of the proposal by Czechoslovakia and the Ukrainian SSR, which reproduced the International Law Commission's text, was satisfactory, but paragraph 2 contained no provision for the enforcement of the provisions of paragraph 1. In that respect, the seventeen-power proposal was better, though it was not entirely satisfactory; he was not, for example, satisfied that the duty to report the detention of a national of the sending State in the receiving State should be made subject to that person's wishes. Since, however, it seemed that an article imposing an absolute obligation on the receiving State would not obtain the necessary two-thirds majority in the Conference, he would have to accept the qualification. He would only support the seventeen-power proposal, however, if it was amended in the manner proposed by the United Kingdom, which should be voted on first.

92. Mr. MAHOUATA (Congo, Brazzaville) said that article 36 was of the greatest importance, as it concerned one of the most vital consular functions. He had been greatly disturbed at the deletion of the article, which had left a serious gap in the convention. He had therefore sponsored the seventeen-power proposal and hoped it would help the Conference to find a satisfactory way out of the difficulty.

93. Mr. CAMARA (Guinea) said he had voted in favour of article 36 as approved by the Second Committee and he regretted its rejection in the plenary. In a spirit of compromise he had become a sponsor of the

seventeen-power proposal. He supported the United Kingdom amendment, which would strengthen the text.

94. Mr. N'DIAYE (Mali), also speaking as a sponsor of the seventeen-power proposal, said it was essential that the convention should contain an article dealing with one of the principal consular functions.

95. Mr. PETRŽELKA (Czechoslovakia) said that his delegation and that of the Ukrainian SSR were willing to seek a compromise solution with the sponsors of the seventeen-power proposal. In the short time available, it was difficult to consider all the suggestions made during the discussion, but he would agree to delete the first sentence of paragraph 1 (*b*) of the Czechoslovak and Ukrainian proposal (A/CONF.25/L.40). The International Law Commission's text, on which that proposal was based, was well balanced, and was itself the result of compromise; to depart from it too far would lead to the risk of conflict with national laws. He was therefore unable to support any of the other amendments. He urged that the dignity of the Conference should not be impaired by hasty voting on an important matter.

96. Mrs. VILLGRATTNER (Austria) said that the provisions of article 36 were an essential part of the convention, and she would vote for the seventeen-power proposal and for the amendments thereto. In whatever form it was adopted, article 36 would not hinder the application of the well-established principles of international law set out in the preamble to the convention: it would be subordinate to the free will of the individual.

97. Mr. KRISHNA RAO (India) said the seventeen-power proposal as amended by the United Kingdom would constitute the best text in the circumstances. It was essential to restore article 36.

98. The PRESIDENT said he would put the proposal by Czechoslovakia and the Ukrainian SSR to the vote first, as it had been submitted first.

99. Mr. RUEGGER (Switzerland) said that, although he had not taken part in the discussion during the current meeting, he attached the greatest importance to article 36 and to its inclusion in the convention. He urged that the seventeen-power proposal should be voted on first, so that if it were rejected the Conference would still have the International Law Commission's text, proposed by Czechoslovakia and Ukraine, to fall back on. If the seventeen-power proposal did not obtain the necessary two-thirds majority, the Conference should not give the impression that it regarded as unacceptable a text which the eminent jurists of the International Law Commission had considered for so long.

100. Mr. PETRŽELKA (Czechoslovakia) pointed out that the first sentence in paragraph 1 (*b*) of the proposal sponsored by his delegation and that of the Ukrainian SSR had been withdrawn. He considered that his amendment should be put to the vote first.

101. Mr. EL KOHEN (Morocco) said that the discussion had shown that there were points of agreement between the various proposals and that the differences were small. He suggested that voting should be postponed to the following meeting so that the sponsors could meet and work out a compromise.

102. Mr. RUEGGER (Switzerland) Mr. PETRŽELKA (Czechoslovakia) and Mr. BOUZIRI (Tunisia) supported the suggestion.

103. Mr. CAMERON (United States of America) said that the Conference had voted on the article once before and since then had had prolonged discussions on its subject matter. It had a long discussion at the current meeting and every delegation had had full opportunity to speak. He urged that the vote should take place forthwith. If the result was unsatisfactory, the sponsors could meet the following day as suggested by the representative of Switzerland, and he would be very glad to be present. But it would be unreasonable to postpone the vote at that juncture.

104. Mr. KAMEL (United Arab Republic) and Mr. TSHIMBALANGA (Congo, Leopoldville) agreed with the United States representative.

105. Mr. RUEGGER (Switzerland), in reply to a question from the PRESIDENT, said that if the meeting was going to vote, he would maintain his request that the proposal by Czechoslovakia and the Ukrainian SSR should be voted on last, for the reasons he had already given.

106. Mr. PETRŽELKA (Czechoslovakia) agreed that the Czechoslovak and Ukrainian proposal should be put to the vote after the other proposals before the Conference.

107. Mr. EVANS (United Kingdom) asked that his delegation's amendment should be voted on before the joint amendment.

108. The PRESIDENT invited the Conference to vote on the United Kingdom amendment.

At the request of the representative of the United Arab Republic, a vote was taken by roll-call.

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

In favour: Liechtenstein, Luxembourg, Mali, Mexico, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Poland, Portugal, Romania, Sierra Leone, Sweden, Switzerland, Syria, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Albania, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Leopoldville), Costa Rica, Denmark, Dominican Republic, El Salvador, Federation of Malaya, Finland, France, Federal Republic of Germany, Ghana, Greece, Guinea, Holy See, Hungary, India, Iran, Ireland, Italy, Republic of Korea, Lebanon, Liberia.

Against: Mongolia, Thailand.

Abstaining: Morocco, Philippines, San Marino, Saudi Arabia, South Africa, Spain, Tunisia, Cuba, Czechoslovakia, Ethiopia, Indonesia, Japan, Libya.

The United Kingdom amendment (A/CONF.25/L.50) was adopted by 65 votes to 2, with 13 abstentions.

109. The PRESIDENT invited the Conference to vote on the joint amendment (A/CONF.25/L.49).

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

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

In favour: Liberia, Liechtenstein, Luxembourg, Mali, Mexico, Morocco, Netherlands, New Zealand, Pakistan, Panama, Peru, Philippines, San Marino, Sierra Leone, South Africa, Sweden, Switzerland, Syria, Thailand, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Upper Volta, Uruguay, Venezuela, Republic of Viet-Nam, Argentina, Australia, Austria, Brazil, Cambodia, Canada, Ceylon, Chile, China, Colombia, Congo (Brazzaville), Congo (Leopoldville), Costa Rica, Denmark, Dominican Republic, El Salvador, Ethiopia, Federation of Malaya, France, Federal Republic of Germany, Ghana, Guinea, Holy See, India, Indonesia, Iran, Ireland, Japan, Republic of Korea.

Against: Lebanon, Mongolia, Norway, Poland, Portugal, Romania, Spain, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Albania, Algeria, Bulgaria, Byelorussian Soviet Socialist Republic, Cuba, Czechoslovakia, Finland, Hungary, Italy.

Abstaining: Libya, Saudi Arabia, Turkey, Belgium, Greece.

The joint amendment (A/CONF.25/L.49) was adopted by 55 votes to 20, with 5 abstentions.

110. Mr. PETRŽELKA (Czechoslovakia) moved that a separate vote be taken on the last sentence of paragraph 1 (*c*) of the seventeen-power proposal.

111. Mr. CAMERON (United States of America) opposed the Czechoslovak motion.

112. Mr. USTOR (Hungary) supported the motion.

The Czechoslovak motion was defeated by 58 votes to 12, with 9 abstentions.

The seventeen-power proposal (A/CONF.25/L.41), as amended, was adopted by 64 votes to 13, with 3 abstentions.

113. Mr. DEJANY (Saudi Arabia) said he had abstained from voting on all the proposals. His delegation accepted the principle in article 36 as adopted, but reserved its position with regard to paragraph 1 (*b*). His country would conform to that provision, but in the time which was practicable in the particular circumstances.

114. Mr. AVILOV (Union of Soviet Socialist Republics) said he had voted against the seventeen-power proposal, since article 36 in that form was absolutely unacceptable to his delegation for reasons which he had explained in the course of the discussion.

115. Mr. PETRŽELKA (Czechoslovakia) said he had voted against the revised text of article 36 because it did not provide a sound basis for the development of customary international law. He had abstained from voting on the United Kingdom amendment — although it proposed a perfectly reasonable provision — because the priority given to the vote on that amendment was contrary to rule 41 of the rules of procedure.

116. Mr. CRISTESCU (Romania), Mr. NESHO (Albania), Mr. KONSTANTINOV (Bulgaria), Mr. AVAKOV (Byelorussian Soviet Socialist Republic) and Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that they had voted against the article as revised because it was totally unacceptable to their delegations.

The meeting rose at 7.45 p.m.

TWENTY-FIRST PLENARY MEETING

Monday, 22 April 1963, at 10.45 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 72 (Settlement of disputes)

Proposal for an Optional Protocol concerning the Compulsory Settlement of Disputes

1. The PRESIDENT invited the Conference to consider article 72 (Settlement of disputes). No amendments had been proposed to that article but the Conference had before it a joint proposal (A/CONF.25/L.46) put forward by twenty delegations for an optional protocol concerning the compulsory settlement of disputes, as an alternative to the inclusion of article 72.

2. Mr. KRISHNA RAO (India), introducing the joint proposal on behalf of its sponsors, said that in the First Committee a sort of public opinion poll had been conducted by means of a roll-call vote on article 72.[1] The result of that vote had been described by some as a victory of the ideals of justice. The vote in question had placed in an awkward and embarrassing position many countries which had accepted the jurisdiction of the International Court of Justice under Article 36, paragraph 2, of the Court's statute.

3. The impression had been created that the Court was a perfect instrument for the purpose of deciding all legal disputes and that any criticism of the Court should not be tolerated. He could fully understand the attitude of some European countries which genuinely placed their faith in the Court. However, he could not accept

[1] For the discussion of this question in the First Committee, see the summary records of the twenty-ninth, thirtieth, and thirty-first meetings of that committee.