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Soviet Socialist Republics had opposed the inclusion of the expression “*in flagrante delicto*” in the article. Yet the expression appeared in a German-Soviet agreement and had not given rise to any difficulty. He failed to see, therefore, why paragraph 2 (b) of the joint amendment should not be acceptable.

37. Mr. BOUZIRI (Tunisia) moved the adjournment of the meeting.

The motion was carried by 26 votes to 25, with 12 abstentions.

The meeting rose at 6.20 p.m.

TWENTY-FOURTH MEETING

Thursday, 21 March 1963, at 10.45 a.m.

Chairman: Mr. KAMEL (United Arab Republic)

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

Article 41 (Personal inviolability of consular officials) (continued)

1. The CHAIRMAN said that the Committee would proceed to vote on article 41, the discussion having been closed at the end of the previous meeting.

2. Mr. HEUMAN (France), on a point of order, asked whether the revised joint proposal submitted by the delegations of Brazil, the Federal Republic of Germany, Italy, Spain and the United Kingdom (L.168/Rev.1) could still be held, after careful study, to be an amendment as defined by rule 41 of the rules of procedure. The joint amendment did not merely add to, delete from or revise “part” of the original proposal; it would replace the whole of the International Law Commission’s draft of article 41, as was recognized by the sponsors in the introduction of their proposal which, they said, should “replace the article”. In the view of his delegation, therefore, it must be considered as a new proposal relating to the same question under rule 42 of the rules of procedure, and he would ask the Chairman to decide accordingly. The International Law Commission’s draft of article 41, together with the amendments (in the true sense) to that draft, would then according to rule 42 have to be considered before the new proposal. His delegation wished the International Law Commission’s draft to be given prior consideration because of the rule, unwisely accepted by the Committee, that the only amendments permissible during the discussion were those sub-amendments to written amendments which were approved by the sponsors of the original amendments. The application of that rule meant that it would be possible for a minority to impose its will on the majority of the Committee by stifling discussion and preventing votes on important matters of principle. If the revised joint proposal were adopted by the Committee no separate consideration could be given, or

vote taken, on the vital phrase omitted from that proposal, “pursuant to a decision by the competent judicial authority” because the sponsors of the joint proposal had refused to accept the suggested sub-amendment. They had also been able to reject in the same way other sub-amendments proposed during the discussion, leaving no right of appeal.

3. If the Chairman should rule that the joint proposal was an amendment as defined in rule 41, the French delegation would appeal against his ruling. If the Committee then voted to accept the ruling, the French delegation would immediately move that the Committee should decide to reverse the rule concerning the submission of amendments which had resulted in the present unfortunate situation.

4. The CHAIRMAN said that in his opinion the joint amendment (L.168/Rev.1) was an amendment in accordance with rule 41. The first four paragraphs of the amendment replaced paragraph 1 of the International Law Commission text; paragraphs 5 and 6 of the amendment revised paragraphs 2 and 3 of the International Law Commission text; while paragraph 7 of the amendment added to the original draft. In his view, consideration of the amendment in that way would avoid a long discussion on procedure. Under rule 22 of the rules of procedure, however, a representative might appeal against the Chairman’s ruling and, in accordance with the statement by the French representative, he would immediately put his ruling to the vote to allow the Committee to decide freely whether or not it accepted the ruling.

5. Mr. LEVI (Yugoslavia) regretted that he could not accept the Chairman’s ruling. Although the United Kingdom representative had said that the sponsors of the joint amendment accepted paragraphs 2 and 3 of the International Law Commission draft, a comparison of the texts showed that in fact changes of substance had been made in those paragraphs and that the joint proposal replaced the whole of article 41.

The ruling of the Chairman, that the joint amendment (L.168/Rev.1) was an amendment as defined in rule 41 of the rules of procedure, was upheld by 28 votes to 25, with 9 abstentions.

6. Mr. HEUMAN (France), speaking on a point of order, moved that the Chairman should put to the vote the proposal of the French delegation that the Committee should reverse the rule it had previously adopted and should decide that oral sub-amendments to written amendments could be accepted during the discussion, even if they were opposed by the sponsors of the original amendments.

7. The CHAIRMAN ruled that the Committee should vote first on article 41 and then on the proposal of the French delegation.

8. He would put the article to the vote, paragraph by paragraph, on the basis of the three paragraphs in the original International Law Commission draft. The Committee would vote first on the text furthest removed in substance from paragraph 1 of that draft, which

was that contained in paragraphs 1 to 4 of the joint amendment (L.168/Rev.1). He would next put to the vote the Yugoslav amendment (L.116) which was the text furthest removed from paragraph 2 of the International Law Commission draft, on the understanding that it would be applied either to the original paragraph 2 or to paragraph 5 of the joint amendment, whichever should be adopted. On paragraph 3 of the International Law Commission text, he would put to the vote the amendments by Hungary (L.115), South Africa (L.148), and paragraph 6 of the joint amendment (L.168/Rev.1), in that order. Finally, the Committee would vote on the new paragraphs proposed by Yugoslavia (L.116) and Hungary (L.143) and on paragraph 7 of the joint amendment (L.168/Rev.1).

9. Mr. MOLITOR (Luxembourg) asked whether the reference in the French text of the revised joint amendment to "consuls" and not to "fonctionnaires consulaires", as in the original draft, represented a point of substance or merely of drafting.

10. The CHAIRMAN replied that the term was under consideration by the drafting committee.

11. Mr. SPYRIDAKIS (Greece) recalled that he had asked at the previous meeting that there should be a separate vote on each paragraph and sub-paragraph of the joint amendment.

Paragraph 1 of the joint amendment (A/CONF.25/C.2/L.168/Rev.1) was adopted by 41 votes to 8, with 19 abstentions.

12. Mr. BLANKINSHIP (United States of America), explaining his vote, said that his delegation had carefully considered the complicated subject of article 41. At the outset of the discussion it had been inclined to support the joint amendment, which had seemed to solve certain of the doubts it had felt in regard to the International Law Commission's text. Having weighed all the arguments put forward during the discussion, however, it had come to believe that it would be preferable, all things considered, not to support the joint amendment. His delegation had been particularly impressed by the views of the French representative on the omission of the phrase "pursuant to a decision by the competent judicial authority" which might give too wide powers to the police. It also was concerned at the use of the expression "*in flagrante delicto*" in sub-paragraph 2 (b) of the joint amendment, which was vague and open to various interpretations. Sub-paragraph 2 (c) of the joint amendment would also grant too much discretion to the local police who might hold the consular officer *incommunicado* or otherwise abuse their powers. The provision in paragraph 4 of the amendment, for detention up to forty-eight hours after arrest, might be inconsistent with some state laws in the United States which required quicker release. Finally, although a valiant attempt had been made in paragraph 7 of the amendment to define what was meant by a grave offence it would appear, in the light of the arguments put forward during the discussion, to be a somewhat fictitious definition. His delegation would therefore attempt in its vote to support those amendments which would improve the In-

ternational Law Commission text but could not accept the text as a whole.

13. Mr. BOUZIRI (Tunisia) said that the International Law Commission's draft of article 41 was unsatisfactory because it conferred almost complete inviolability on the consular official. Although the joint amendment had seemed to represent some progress towards a more acceptable text it would as drafted, allow possibilities, particularly, in sub-paragraphs 2 (a) and (b), for injustice, insult and deprivation of liberty which were quite inadmissible. He regretted that the sponsors of the amendment had not accepted the sub-amendments proposed by his delegation which would have represented a compromise between the amendment and the International Law Commission's text. He would therefore vote against sub-paragraphs 2 (a) and (b) of the joint amendment and against the whole of that amendment if put to the vote as a whole.

14. Mr. PETRENKO (Union of Soviet Socialist Republics) said that his delegation would vote against the joint amendment for the reasons explained earlier in the discussion. The question was very closely related to the different legal systems of each State and it was essential, in the interests of the convention as a whole, that the text adopted should be as generally acceptable as possible.

15. Mr. SRESHTHAPUTRA (Thailand) said that his delegation would vote for the joint amendment, with a reservation as to paragraph 4, which was not only in contradiction with his country's legislation but would also be unworkable for the reasons he had explained at the twenty-third meeting.

16. Mr. KANEMATSU (Japan) said that his government was inclined to share the doubts expressed by some delegations with regard to sub-paragraph 2 (b); it could not support sub-paragraph (c) which was not in conformity with the legal system of Japan; and it inclined to the view that the question of the definition in paragraph 7 should be left to the legal systems of the respective countries. For those reasons his delegation would be unable to support the joint amendment as a whole.

17. Mr. SALLEH bin ABAS (Federation of Malaya) explained that his delegation had thought earlier that it could support the joint amendment but would have to abstain from voting on paragraphs 2 (b) and (c), 3, 4, and 7, not because it disapproved of the principles involved but because it appeared in the light of the discussion that the adoption of those paragraphs would cause considerable difficulties for certain countries in view of their different penal systems. Although the provisions in those paragraphs were in line with the criminal laws and procedure of his country, his delegation would abstain from voting because the decisions of the Committee should represent, not the victory of one view over another, but a common denominator which in the present instance had not yet been found.

18. Mr. AMLIE (Norway) said that his delegation would vote against the joint amendment. It considered

that sub-paragraph 2 (b) was extremely dangerous and would be apt in the long run to undermine completely the dignity and freedom of consular officials; and it was in open conflict with article 40. His delegation considered further that sub-paragraph 2 (c) should not be included in the convention since unknown persons were not consular officials. The drafting and appearance of the whole amendment represented an invitation to abuses in the arrest of consular officials.

19. Mr. HEUMAN (France) drew attention to rule 39 of the rules of procedure on conduct during voting. In his view, the voting was being conducted in an irregular manner. He had requested that before the vote on article 41 began, a vote should be taken on his delegation's proposal concerning the reversal of the rule on the submission of sub-amendments. The Chairman had ruled that the Committee should first vote on article 41. His delegation appealed against that ruling since priority should be given to a point of order, and would request that the Chairman's ruling be immediately put to the vote.

20. The CHAIRMAN put to the vote his ruling that a vote on article 41 should precede a vote on the French proposal.

The Chairman's ruling was upheld by 33 votes to 26, with 6 abstentions.

21. The CHAIRMAN said that in view of the request by the Greek representative for a separate vote on the sub-paragraphs of the joint amendment, he would put paragraph 2 of the amendment to the vote sub-paragraph by sub-paragraph, beginning with the introductory phrase: "A consular officer shall not be liable to arrest in respect of any offence unless".

The introductory phrase of paragraph 2 of the joint amendment (A/CONF.25/C.2/L.168/Rev.1) was adopted by 32 votes to 17, with 16 abstentions.

Paragraph 2, sub-paragraph (a), was adopted by 35 votes to 18, with 16 abstentions.

Paragraph 2, sub-paragraph (b), was rejected by 29 votes to 21, with 16 abstentions.

Paragraph 2, sub-paragraph (c), was rejected by 29 votes to 20, with 18 abstentions.

22. The CHAIRMAN put to the vote paragraph 2 of the joint amendment as a whole, as amended.

Paragraph 2 as a whole, as amended, was adopted by 32 votes to 18, with 17 abstentions.

23. Mr. HEUMAN (France) said that the text of paragraph 2 of the joint amendment as approved by the Committee corresponded to the first part of paragraph 1 of the International Law Commission's draft. The vital second part of that paragraph had, however, been omitted and his delegation had accordingly voted against the adoption of paragraph 2 of the joint amendment. His delegation wished to express its extreme concern that a procedural device had resulted in the exclusion of the vitally important phrase: "pursuant to a decision by the competent judicial authority" from the discussion and had prevented a vote on it.

24. Mr. SRESHTHAPUTRA (Thailand) said that in view of the Committee's rejection of sub-paragraphs (b) and (c) of paragraph 2, his delegation now found it difficult to support the joint amendment.

25. Mr. LEVI (Yugoslavia) said that paragraph 3 of the joint amendment appeared to have lost most of its meaning, particularly in view of the rejection of paragraph 2, sub-paragraph (c).

26. The CHAIRMAN suggested that the Committee should not vote on paragraph 3, as it had become meaningless.

27. Mr. EVANS (United Kingdom) said that the Committee's action on paragraph 2 had given rise to an unexpected and difficult situation in respect of paragraph 3. He asked for a short suspension of the meeting to enable the sponsors of the joint amendment to consider what should be done.

28. Mr. SPACIL (Czechoslovakia), on a point of order, opposed the United Kingdom representative's request because voting was in progress and could not be interrupted. There was nothing in rule 27 of the rules of procedure, on the suspension or adjournment of meetings, to imply that a representative could move the suspension of a meeting during voting. He appealed to the Chairman for a ruling on whether the Committee should vote on the remainder of the joint amendment and refer the text to the drafting committee.

29. Mr. EVANS (United Kingdom) said he was able to clarify the situation. As a result of the decision on paragraph 2, the words "after he has established his identity" were redundant in paragraph 3. If those words were deleted, the paragraph would be meaningful.

30. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said it was against recognized procedure to propose an amendment while a vote was in progress. He moved that the voting should continue.

31. The CHAIRMAN suggested that the Committee should vote on paragraph 3 and leave the drafting committee to examine any inconsistencies in the text.

32. Mr. AMLIE (Norway), speaking on a point of order, said that paragraph 3 was partly meaningless and also dangerous. He moved that the Committee should decide by a two-thirds majority to suspend the rules of procedure so that the United Kingdom representative's request could be granted.

33. Mr. JESTAEDT (Federal Republic of Germany) said that, as a sponsor of the joint amendment (L.168/Rev.1), he agreed with the United Kingdom representative's comments on paragraph 3. He also pointed out that paragraph 3 dealt with detention in custody pending trial, which was a matter distinct from arrest, and could therefore be voted on.

34. Mr. HEUMAN (France) approved of the United Kingdom representative's improvised amendment, although it was in open violation of the rules of procedure and the special rules adopted by the Committee. He would be very ready to support it if he might then propose

as an oral amendment to paragraph 2 the addition of the words " pursuant to a decision by the competent judicial authority ".

35. Mr. BOUZIRI (Tunisia) insisted that the Committee should abide by its rules of procedure and continue with the voting. The vote was an important one and none of the reasons given could justify an interruption. Paragraph 3 was now meaningless and should be allowed to disappear without further delay. The drafting committee could deal with any inconsistencies.

36. The CHAIRMAN invited the Committee to vote on his ruling that paragraph 3 of the joint amendment should be voted on, as his ruling had been challenged.

The Chairman's ruling was upheld by 55 votes to 1, with 6 abstentions.

37. Mr. EVANS (United Kingdom) asked that the paragraph should be voted on in two parts, so that there could be a separate vote on the meaningless part.

38. Mr. HEUMAN (France) opposed a separate vote.

39. The CHAIRMAN said that, under rule 40 of the rules of procedure, two representatives could speak in favour of the motion and two against.

40. Mr. BOUZIRI (Tunisia) opposed the motion. There could be very few precedents in the United Nations for a request for a separate vote by the sponsor of the text to be voted on. In the case in point, it was an indication that the text was incomprehensible.

41. Mr. SHITTA-BEY (Nigeria) supported the motion.

42. Mr. MARESCA (Italy) strongly supported the motion as it would help to clarify the final vote.

43. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) opposed the motion and endorsed the reasons given by the Tunisian representative.

The motion was rejected by 31 votes to 19, with 19 abstentions.

44. The CHAIRMAN invited the Committee to vote on paragraph 3 of the joint amendment (L.168/Rev.1).

The paragraph was rejected by 36 votes to 19, with 14 abstentions.

45. The CHAIRMAN invited the Committee to vote on paragraph 4 of the joint amendment, on the understanding that it would be revised by the drafting committee in view of the deletion of paragraph 3.

Paragraph 4 of the joint amendment was approved by 25 votes to 24, with 17 abstentions.

46. The CHAIRMAN invited the Committee to vote on paragraphs 1, 2 and 4 of the joint amendment to replace paragraph 1 of the International Law Commission's draft.

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

Nicaragua, having been drawn by lot by the Chairman, was called upon to vote first.

In favour: Nigeria, Pakistan, Portugal, Saudi Arabia, South Africa, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, Australia, Austria, Belgium, Brazil, Costa Rica, Federal Republic of Germany, Indonesia, Iran, Ireland, Italy, Republic of Korea, Libya, Liechtenstein, Luxembourg.

Against: Norway, Poland, Romania, Switzerland, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United States of America, Yugoslavia, Argentina, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Cuba, Czechoslovakia, France, Ghana, Guinea, Hungary, Japan, Laos, Liberia, Mexico, Mongolia.

Abstaining: Sierra Leone, Thailand, Turkey, Venezuela, Republic of Viet-Nam, Canada, Ceylon, Chile, China, Colombia, Congo (Leopoldville), Denmark, El Salvador, Federation of Malaya, Finland, Greece, India, Israel, Kuwait, Morocco, Netherlands.

The paragraph were rejected by 24 votes to 22, with 21 abstentions.

47. The CHAIRMAN invited the Committee to vote on paragraph 1 of the International Law Commission's text.

48. Mr. EVANS (United Kingdom) asked for the paragraph to be voted on in two parts: the first three lines as far as the word "crime"; and the remainder of the paragraph.

49. Mr. JESTAEDT (Federal Republic of Germany) supported the motion because the paragraph involved two separate principles. The representative of Ghana had recognized the distinction in the amendment he had proposed earlier in the discussion.

50. Mr. PETRENKO (Union of Soviet Socialist Republics) opposed the motion. The Committee had spent a great deal of time trying to change paragraph 1 of the International Law Commission's draft and had realized in the end that it would have to be re-established in its original form. He saw no need for a separate vote.

51. Mr. SPACIL (Czechoslovakia) also opposed the motion. He agreed with the Soviet Union representative, although he acknowledged the United Kingdom representative's right to ask for a separate vote.

52. Mr. SHITTA-BEY (Nigeria) supported the motion.

The motion was rejected by 33 votes to 21, with 13 abstentions.

53. Mr. VRANKEN (Belgium), speaking on a point of order, pointed out that the amendments by Hungary, the Netherlands and the Soviet Union had not been withdrawn.

54. The CHAIRMAN invited the Committee to vote on the Netherlands amendment to paragraph 1 (A/CONF.25/C.2/L.16).

The amendment was adopted by 37 votes to none, with 21 abstentions.

55. Mr. BOUZIRI (Tunisia) said he had not taken part in the vote because it was not clear whether the amendment applied to the French as well as to the English text.

The Indonesian amendment (A/CONF.25/C.2/L.61) was rejected by 48 votes to 3, with 15 abstentions.

The amendment of the Byelorussian SSR (A/CONF.25/C.2/L.104/Rev.1) was rejected by 32 votes to 13, with 20 abstentions.

56. The CHAIRMAN invited the Committee to vote on paragraph 1 as amended by the Netherlands amendment.

Paragraph 1, as amended, was approved by 49 votes to 6, with 11 abstentions.

The Yugoslav amendment to paragraph 2 (A/CONF.25/C.2/L.116) was rejected by 46 votes to 1, with 18 abstentions.

57. The CHAIRMAN invited the Committee to vote on paragraph 2 of the International Law Commission's draft.

58. Mr. EVANS (United Kingdom) pointed out that it was the same as paragraph 5 of the joint amendment except for the replacement of the word "liable" by the word "subjected".

Paragraph 2 was approved by 61 votes to none, with 6 abstentions.

The South African amendment to paragraph 3 (A/CONF.25/C.2/L.148) was adopted by 47 votes to none, with 18 abstentions.

The Hungarian amendment to paragraph 3 (A/CONF.25/C.2/L.115) was rejected by 33 votes to 14, with 16 abstentions.

Paragraph 3, as amended, was approved by 63 votes to none, with 4 abstentions.

59. The CHAIRMAN invited the Committee to consider the proposals for additional paragraphs to article 41.

The Hungarian amendment (A/CONF.25/C.2/L.143) was rejected by 30 votes to 15, with 20 abstentions.

The Yugoslav amendment (A/CONF.25/C.2/L.116) was rejected by 36 votes to 13, with 18 abstentions.

60. The CHAIRMAN invited the Committee to vote on the new paragraph proposed in paragraph 7 of the joint amendment.

61. Mr. LEVI (Yugoslavia), speaking on a point of order, pointed out that the text already adopted referred to "grave crime" whereas the text now to be voted on referred to "grave offence".

62. The CHAIRMAN said that the final text would be reviewed by the drafting committee.

Paragraph 7 of the joint amendment (A/CONF.25/C.2/L.168/Rev.1) was rejected by 29 votes to 25, with 13 abstentions.

Article 41, as amended, was approved by 53 votes to 7, with 9 abstentions.

63. Mr. EVANS (United Kingdom) explained that he had voted against the article because the text adopted

would mean that if a consular officer were, for example, found in the act of committing murder, he could not be arrested without the previous decision of the competent judicial authority. He was surprised that such a situation should be acceptable to any of the governments represented in the Committee. It would certainly not be acceptable to his own government.

The meeting rose at 1.5 p.m.

TWENTY-FIFTH MEETING

Thursday, 21 March 1963, at 3.15 p.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

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

Article 41 (Personal inviolability of consular officials) (continued)

1. Baron van BOETZELAER (Netherlands) explained that he had abstained from voting on the joint amendment (L.168/Rev.1) as a whole because, as a result of the changes made to its paragraphs 1, 2, 3 and 4, it had become too far removed from the International Law Commission's draft of article 41, paragraph 1 of which provided a satisfactory safeguard for personal inviolability.

2. Mr. BOUZIRI (Tunisia) said that he had abstained from voting on article 41 because its provisions went beyond accepted international practice. The joint amendment did not satisfy him either; his delegation would have been in favour of a compromise solution.

3. Mr. JESTAEDT (Federal Republic of Germany) said he had voted against article 41 for the same reasons as the United Kingdom representative.

4. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that he had voted for article 41 on the understanding that the idea of the competent judicial authority included the procurator's office.

5. Mr. UNAT (Turkey) said that he had abstained from voting on the final text of article 41, since it did not include the provisions of paragraph 7 of the joint amendment, which would have given it a legal structure. The absence of any definition of the term "grave crime" might give rise to contradictory interpretations. He had also abstained from voting on the South African amendment (L.148), because too great haste in undertaking judicial proceedings could be harmful to the administration of justice.

6. Mr. DRAKE (South Africa) said that he had voted against article 41 as a whole for the specific reasons stated by the United Kingdom representative.

7. Mr. NEJJARI (Morocco) considered that article 41, which had been adopted in the absence of a better solution, went too far, whereas the joint amendment had been