United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.1/SR.15

15th meeting of the First Committee

Extract from the
Official Records of the United Nations Conference on Consular Relations, vol. I
(Summary records of plenary meetings and of meetings of
the First and Second Committees)

text. He would also vote for the Swiss amendment and agreed with the Swiss suggestion that a special article on consular agents should be inserted.

70. Mr. WU (China) said he would vote for the Swiss amendment, because in his country a vice-consul was the lowest official in the consular hierarchy who could be appointed as head of post. He would also support the South African amendment.

71. Mr. MARTINS (Portugal) supported the Swiss amendment. In practice, the range of functions exercised by consular agents was so different from those performed by the other three classes listed that it could not be claimed that such agents could act as heads of post.

72. Mr. DEGEFU (Ethiopia) fully supported the Swiss amendment, because his country's consular regulations admitted only the first three classes of the Commission's enumeration of heads of consular posts. He did not object to the idea of inserting provisions on the institution of consular agents somewhere in the convention, provided that the consent of the receiving State was required for their admission.

73. Mr. DADZIE (Ghana) supported the Swiss amendment. There could be no agent without a principal and, since in article 9 the principal was the head of post, an agent could not be a head of post in his own right. The amendment to paragraph 2 removed an ambiguity from the Commission's text, and should be referred to the drafting committee; he could not agree with the representatives of the Federal Republic of Germany and Yugoslavia that any point of substance was involved.

74. Mr. TSHIMBALANGA (Congo, Leopoldville) said he would vote for the Commission's text. In newly independent countries, a consular agent was often a consular attaché or a probationer consul, serving temporarily in a consulate-general or a consulate pending his appointment as vice-consul. Such a consular agent might become a head of post before he became a vice-consul.

75. Mr. N'DIAYE (Mali) said his delegation would also vote for the Commission's text. The official at the head of a consular agency might carry out all consular functions on his own responsibility, and all the provisions applicable to a head of consular post should also apply to him. Moreover, it was stated in paragraph 2 of the commentary that the enumeration of four classes in no way meant that States accepting it were bound in practice to have all four classes. Under the Swiss amendment States would not be obliged to admit consular agents as heads of posts, but certain new States might find it necessary to appoint consular agents in that capacity. He would therefore vote against that amendment.

76. Mr. WESTRUP (Sweden) said he would vote for the Swiss and South African amendments.

77. Mr. EL KOHEN (Morocco) said he would vote for the Swiss amendment; it was not desirable to allow consular agents to be appointed heads of post, since they were usually not career officials, but exercised both public and private functions.

78. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that, although his country did not appoint consular agents, a multilateral convention should include that class of official, because some countries appointed them as heads of post. He would vote in favour of the Commission's text; the South African amendment to paragraph 2 should be referred to the drafting committee.

79. Mr. HEPPEL (United Kingdom) agreed that the Commission's text should be retained. Although his country seldom appointed consular agents, it did employ some, and it was laid down in its consular instructions that the four classes enumerated in article 9 existed and that the officials concerned were in charge of the posts. He also agreed that the South African amendment should be referred to the drafting committee.

80. Mr. DADZIE (Ghana) asked the Swiss representative to explain whether the object of his amendment was that no consular agents should be appointed, or merely that a consular agent could not be a head of post.

81. Mr. REBSAMEN (Switzerland) said that his delegation's amendment was in no way intended to eliminate the institution of consular agents who were heads of posts; its sole purpose was to make it clear that consular agents might not also be heads of posts. The amendment would enable the question of the status of consular agents to be settled to the satisfaction of all countries.

The Swiss amendment (A/CONF.25/C.1/L.93) was rejected by 29 votes to 26 with 10 abstentions.

82. The CHAIRMAN said that the South African amendment (L.81) would be referred to the drafting committee.

Subject to re-wording by the drafting committee in the light of the South African amendment (A/CONF.25/C.1/L.81), article 9 was adopted by 56 votes to 1, with 8 abstentions.

The meeting rose at 1.20 p.m.

FIFTEENTH MEETING

Thursday, 14 March 1963, at 3.10 p.m.

Chairman: Mr. BARNES (Liberia)

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

Article 10 (The consular commission)

1. The CHAIRMAN invited debate on article 10 of the International Law Commission's draft and on the relevant amendments.[1]

[1] The following amendments had been submitted: Brazil, A/CONF.25/C.1/L.64; Brazil, Canada, Ceylon, United Kingdom, United States of America, A/CONF.25/C.1/L.75; Italy, A/CONF.25/C.1/L.83, Venezuela, A/CONF.25/C.1/L.87.

2. Mr. SILVEIRA-BARRIOS (Venezuela) introduced his delegation's amendments (L.87) to article 10. The first of the amendments would delete the words " as a general rule " in paragraph 1. That qualification was inadvisable, for the consular commission or similar instrument should in all cases show the full name of the head of post, his category and class, the consular district, and the seat of the consulate. That rule should admit of no exception. The second of the Venezuelan amendments would delete the words " or other appropriate channel " in paragraph 2. The practice was that the consular commission or similar instrument was communicated through the diplomatic channel to the government of the receiving State, and there was no reason to abandon that practice. Thirdly, his delegation proposed that at the end of paragraph 3 a sentence should be added to the effect that the notice mentioned in that paragraph should contain the same particulars as the commission.

3. Mr. MIRANDA e SILVA (Brazil) said that his delegation's amendment (L.64) was identical with the first of the Venezuelan amendments. He agreed with the representative of Venezuela that the particulars specified in paragraph 1 should in all cases be contained in the consular commission or similar instrument, and that the rule should be adhered to. His delegation could not, however, accept the second of the Venezuelan amendments, because the sending State should be free to communicate the consular commission to the receiving State by channels other than the diplomatic channel. If the notice referred to in paragraph 3 was treated on the same footing as the consular commission, then the third of the Venezuelan amendments was a consequential change and as such acceptable to the Brazilian delegation.

4. Mr. MAMELI (Italy) introduced his delegation's amendments (L.83). The first would delete paragraph 3, which might be considered as disparaging to the head of the consular post. Next, his delegation proposed to add a paragraph to article 10 that was in keeping with the practice followed in many countries, including Italy, of issuing the commission not only to the head of the consular post, but also to all consular officials. The amendment was in keeping with the provisions of paragraph 2 of article 19 (Appointment of the consular staff).

5. The Italian delegation accepted the first and second Venezuelan amendments (L.87), but not the third, which it considered unnecessary. His delegation would support the Brazilian amendment (L.64).

6. Mr. HEPPEL (United Kingdom) said that the sponsors of the joint amendment (L.75) withdrew the amendment relating to paragraph 1. The amendment to paragraph 2 related purely to form, and could be referred to the drafting committee. The United Kingdom delegation could accept the first of the Italian amendments (L.83), and also the first of the Venezuelan amendments (L.87). It was unable to accept the second Venezuelan amendment, for if the sending State did not entertain diplomatic relations with the receiving State, it would have to communicate the consular commission by some means other than the diplomatic channel.

7. Mr. von HAEFTEN (Federal Republic of Germany) said he accepted the Brazilian and Venezuelan amendment deleting the words " as a general rule " in their present context in paragraph 1, but suggested that they should be inserted further on, so that they would apply solely to the consular district. The end of the sentence would then read: ". . . showing the full name of the head of post, his category and class, the seat of the consulate and, as a general rule, the consular district."

8. The second Venezuelan amendment was acceptable to his delegation, for the diplomatic channel was the only one through which the sending State could communicate the consular commission or similar instrument to the receving State. The third of the Venezuelan amendments was likewise acceptable. His delegation could not agree to the deletion of paragraph 3 as proposed by the Italian delegation; on the other hand it approved the additional paragraph proposed in the second Italian amendment.

9. Mr. SHU (China) supported the Brazilian amendment (L.64), which was identical with the first of the Venezuelan amendments (L.87); he also supported the third of the Venezuelan amendments. The notice in question should logically contain the same particulars as the consular commission. On the other hand, his delegation could not accept the second of the Venezuelan amendments. Sometimes the sending State and the receiving State entertained consular relations only. Accordingly, it should be open to the sending State to communicate the consular commission to the receiving State by some means other than the diplomatic channel. Nor could his delegation vote for the first of the Italian amendments (L.83), for paragraph 3 of article 10 reflected the practice followed by a number of States. That paragraph should therefore be retained, with the additional sentence proposed by Venezuela in its third amendment. The second of the joint amendments (L.75) should be referred to the drafting committee.

10. Mr. PALIERAKIS (Greece) supported the Brazilian amendment and the first of the Venezuelan amendments (L.87) with the oral sub-amendment by the Federal Republic of Germany. His delegation could not, however, accept the Venezuelan proposal for omitting in paragraph 2 the words " or other appropriate channel ", for the reasons explained by the representatives of Brazil, the United Kingdom and China. The third of the Venezuelan amendments was acceptable, as was the second Italian amendment (L.83).

11. Mr. TORROBA (Spain) agreed that the second part of the joint amendment (L.75) should be referred to the drafting committee. His delegation accepted the first of the Venezuelan amendments (L.87), because it considered that the particulars specified in paragraph 1 of article 10 should always be contained in the consular commission. The second of the Venezuelan amendments was not acceptable. He approved the addition to paragraph 3 of the sentence proposed in the third Venezuelan amendment. His delegation would accept the additional paragraph proposed by Italy (L.83), but opposed the deletion of paragraph 3.

12. Mr, WARNCOK (Ireland), referring to the Venezuelan amendments, said it was essential that the consular commission should contain all the particulars specified in paragraph 1. He was therefore not opposed to the first of the amendments proposed by Venezuela. He could not accept the second amendment for the reasons given by previous speakers. He failed to see the advantage of the third of Venezuela's amendments, but would oppose the proposal.

13. Mr. DONOWAKI (Japan) said he could not support the proposals to delete the words " as a general rule " in paragraph 1. In some countries, including his own, consular districts were subject to frequent change and the sending State could not be expected to specify the consular district in the consular commission in advance. His delegation opposed the deletion of paragraph 3 as proposed by Italy, but approved the additional paragraph proposed in the second of the Italian delegation's amendments.

14. Mr. TÜREL (Turkey) supported the Brazilian amendment and the first of the Venezuelan amendments. With regard to the Venezuelan amendment, he considered that the words " or other appropriate channel " should stand, for the reasons already given by several delegations. He approved the Italian proposal for deleting paragraph 3, but, if that proposal were not adopted, he would vote for the additional sentence proposed in the third of the Venezuelan amendments.

15. Mr. DJOKOTO (Ghana) said that he would vote for the part of the joint amendment relating to paragraph 2; but he did not see the point of the Venezuelan proposal for deleting from that paragraph the words " or other appropriate channel ", and he would vote against that amendment.

16. Mr. ABDELMAGID (United Arab Republic) said that he did not see the point of deleting the words " as a general rule " from paragraph 1, as proposed by Brazil and Venezuela. Article 10 did not state a mandatory rule; it was declaratory, and the words in question should therefore be retained. For the same reason, there was no need to delete the words " or other appropriate channel " in paragraph 2. On the other hand, he accepted the third of the Venezuelan amendments as well as the joint amendment to paragraph 2. He could accept the second Italian amendment, but he was opposed to the deletion of paragraph 3.

17. Mr. BINDSCHEDLER (Switzerland) said he was opposed to the deletion of paragraph 3 proposed by Italy as it would restrict consular functions. On the other hand, he approved the amendments proposed by Venezuela, which laid down rules of international law.

18. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) expressed support for the second of the Italian amendments as reflecting a practice which was not mentioned in article 10. The new paragraph proposed by Italy was flexible and did not lay down any absolute rule. However, he wished to propose that the Italian amendment should read: " At the request of the receiving State or if it is the practice of the sending State . . ." He was unable to support the first of the Italian amendments and would vote for the retention of paragraph 3. Similarly, he opposed the deletion of the words " as a general rule " in paragraph 1 and the deletion of the words " or other appropriate channel " in paragraph 2. But he would vote for the additional sentence proposed by Venezuela in paragraph 3 of the article, and for the joint amendment to paragraph 2.

19. Mr. N'DIAYE (Mali) said that he would vote for the deletion of the words " as a general rule " in paragraph 1 and for the additional sentence proposed by Venezuela in paragraph 3. But he opposed the deletion of the words " or other appropriate channel " in paragraph 2, for the reasons given by a number of delegations, and he could not support the new paragraph which Italy proposed to add to article 10.

20. Mr. GANA (Tunisia) said that the words " or other appropriate channel " should remain in paragraph 2, for they would enable the sending State — if diplomatic relations were severed but consular relations maintained between the two States — to transmit the consular commission to the government of the receiving State.

The first Venezuelan amendment (A/CONF.25/C.1/L.87) and the Brazilian amendment (A/CONF.25/C.1/L.64) were rejected by 35 votes to 22, with 5 abstentions.[2]

The oral amendment of the Federal Republic of Germany was rejected by 25 votes to 21, with 4 abstentions.

The second Venezuelan amendment (A/CONF.25/C.1/L.87) was rejected by 49 votes to 8, with 4 abstentions.

The first Italian amendment (A/CONF.25/C.1/L.83) was rejected by 49 votes to 5, with 7 abstentions.

The third Venezuelan amendment (A/CONF.25/C.1/L.87) was adopted by 27 votes to 19, with 14 abstentions.

21. The CHAIRMAN put to the vote the sub-amendment submitted orally by the Republic of Viet-Nam to the second Italian amendment.

The sub-amendment was rejected by 20 votes to 3, with 38 abstentions.

The second Italian amendment (A/CONF.25/C.1/L.83) was rejected by 26 votes to 21, with 15 abstentions.

Article 10, as amended, was adopted unanimously.

Article 11 (The exequatur)

22. The CHAIRMAN drew attention to the amendments relating to article 11.[3]

23. Mr. DONAWAKI (Japan) explained that his delegation's text (L.56) for paragraph 1 of article 11 amalgamated and supplemented the two paragraphs in the International Law Commission's draft. The rela-

[2] The Venezuelan and Brazilian amendments were both to the same effect.

[3] The following amendments had been submitted: Austria, A/CONF.25/C.1/L.27; Japan, A/CONF.25/C.1/L.56; Brazil, Canada, Ceylon, United Kingdom, United States of America, A/CONF.25/C.1/L.76; Argentina, A/CONF.25/C.1/L.91, India, A/CONF.25/C.1/L.101.

tionship between the consular commission and the exequatur was not mentioned in the International Law Commission's text, but the practice was to grant the exequatur as soon as possible after the presentation of the consular commission. The Japanese text on that point was based on a large number of bilateral consular conventions.

24. The second part of the amendment, relating to the refusal to grant an exequatur, was connected with article 23, paragraph 3. The receiving State could refuse to accept a consular official before his arrival; but once he had been allowed to arrive and to present his consular commission he should not be refused an exequatur without good reason. That was quite different from a refusal of agrément as envisaged in article 4, paragraph 2, of the Vienna Convention on Diplomatic Relations. The receiving State had the right to refuse the exequatur but it should have good reasons for doing so, and those reasons should be communicated to the sending State.

25. Mr. KRISHNA RAO (India) said that the amendment (L.101) submitted by his delegation was identical with the Argentine amendment (L.91), and hence the two could be treated as a single amendment. In 1927, the League of Nations Committee of Experts for the Progressive Codification of International Law had admitted that a State could refuse to receive a consul without having to communicate to the sending State the reasons for its refusal. The existing draft said nothing on that point; but in his commentary on a previous draft, the special rapporteur had also indicated that the receiving State was not obliged to give the reasons for its refusal.[4] Some older authorities maintained the contrary. But general practice showed that conventions specifying that the reasons for refusal should be given were exceptional. That being so, the rule given in the new paragraph proposed by his delegation reflected the existing international law. The amendment, furthermore, was not inconsistent with paragraphs 8 and 9 of the International Law Commission's commentary on article 11. The purpose of the amendment was to avoid any cause for dispute or friction between the States concerned. The text for paragraph 2 proposed by Japan seemed to conflict with international practice and with the International Law Commission's commentary.

26. Mr. RUDA (Argentina) said that he fully endorsed the Indian representative's statements.

27. Mr. WOLTE (Austria), introducing his delegation's amendment (L.27), said that the expression " consular agents " had a number of meanings. Usually, consular agents were not heads of post, but were under the authority of a consul or of a diplomatic mission. The consular commission of a consular agent was not necessarily signed by the Head of State, as was that of a head of post. Accordingly, a more informal mode of admission than the formal exequatur should be provided in the case of consular agents.

[4] See *Yearbook of the International Law Commission, 1957*, vol. II (United Nations publication, Sales No. 57.V.5, vol. II), p. 89.

28. Mr. TORROBA (Spain), while approving the amendment submitted by India and Argentina, thought that the proposed paragraph should not be inserted at the end of article 11, but after paragraph 3 of article 23, which dealt with the withdrawal of the exequatur and with persons deemed unacceptable.

29. Mr. BARTOŠ (Yugoslavia) said that the amendment proposed by India and Argentina was in conformity with the trend of general practice, but in the International Law Commission three different opinions had been voiced. Some members had taken the view that the receiving State should give the reasons for its refusal. Others had thought that the sending State could request the receiving State for the reasons for its refusal, but the latter was not obliged to furnish them. The majority had held that it was unneccessary to mention the matter and that, furthermore, it would be wrong to give more safeguards to consuls than were given to heads of diplomatic missions under the Vienna Convention of 1961.

30. The Yugoslav delegation was prepared to support the Indian and Argentine proposals. It was also inclined to support the Austrian amendment (L.27); hence it could not accept the Japanese proposal (L.56).

31. Mr. ABDELMAGID (United Arab Republic) said he would gladly support the text of article 11 as amended by India and Argentina. The Japanese amendment (L.56) seemed somewhat illogical. The Austrian amendment (L.27) would simplify the formalities of admission of consular agents, and was consistent with article 9 (Classes of heads of consular post).

32. Mr. EL KOHEN (Morocco) said he was unable to support the Japanese amendment (L.56), which would introduce an element of rigidity into the text of article 11. Moreover, under the paragraph 2 proposed by Japan the receiving States reason for refusing an exequatur should be communicated to the sending State. It was, of course, undesirable that the receiving State should refuse an exequatur; but if it were obliged to give reasons for its refusal, that might create an additional cause of friction between the two States. The formula adopted by the International Law Commission seemed therefore the wisest.

33. Mr. BINDSCHEDLER (Switzerland) said that the Japanese amendment (L.56) and the joint amendment (L.76) differed materially from the International Law Commission's text in that, in addition to the exequatur, they mentioned other forms of authorization. It should be remembered that in article 11, the word exequatur was used in a generic sense, covering all forms of authorization. The amendments were therefore superfluous.

34. On the other hand, the amendment proposed by both India and Argentina seemed excellent and completely consistent with international practice and with the interests of States.

35. Mr. PALIERAKIS (Greece) expressed his support for the Austrian amendment (L.57) and for the amendment proposed by India and Argentina. He also agreed with the Spanish representative's remark concerning the

context in which the proposed new paragraph should be inserted, but thought that that question should be referred to the drafting committee.

36. Mr. HEPPEL (United Kingdom) said that the object of the amendment submitted jointly by Brazil, Canada, Ceylon, the United States and the United Kingdom (L.76) — which had been withdrawn by its sponsors — had been the same as that of the Japanese amendment (L.56). In his opinion, the words "exequatur or other authorization" should appear in the body of the article. The word "exequatur" should not be allowed to lose its precise sense: the exequatur was a formal instrument by which the receiving State granted definitive admission to a head of post and accorded him the right to exercise his functions. The United Kingdom delegation would support paragraph 1 of the Japanese amendment (L.56), which it thought constructive. It was right to stress the connexion between the presentation of the consular commission and the delivery of the exequatur. But it could not accept paragraph 2 as proposed by Japan and preferred the Indian and Argentine proposal, according to which the receiving State might, but was not bound to, communicate to the sending State the reasons for its refusal. Perhaps the two paragraphs of the Japanese delegation's amendment, which seemed somewhat contradictory, could be harmonized. In any case, he proposed that the last sentence of the Japanese amendment should be put to the vote separately. He found it hard to see the point of the Austrian amendment (L.57).

37. Mr. SHU (China) said that the Conference was expected to codify the rules of positive law concerning consular relations. Practice regarding the question whether reasons should be given for the refusal of an exequatur was varied and inconsistent. Hence, the future convention should preferably not contain any express provision on that point, either one way or the other. He approved article 11 as drafted by the International Law Commission.

38. Mr. TSYBA (Ukrainian Soviet Socialist Republic) supported the Argentine and Indian proposal.

39. Mr. DJOKOTO (Ghana) supported the Indian amendment, for it might be embarrassing for a State to have to communicate its reasons for refusing an exequatur. In such cases, silence was golden.

40. Mr. N'DIAYE (Mali) said he could not approve paragraph 1 as proposed by Japan, and still less paragraph 2 because in practical operation it would embarrass the receiving State and could give rise to disputes with the sending State. He much preferred the International Law Commission' s ext, but he would vote in favour of the Argentine andtIndian proposal.

41. Mr. SILVEIRA-BARRIOS (Yugoslavia) approved the Argentine and Indian proposal, which reflected generally accepted principles of international law. On the other hand, he thought the Austrian amendment unnecessary.

42. Mr. von HAEFTEN (Federal Republic of Germany) supported the Argentine and Indian proposal, with a preference for the Indian amendment which explicitly provided for a form of authorization other than the exequatur.

43. Mr. GANA (Tunisia) thought that any provision referring to the refusal of the exequatur should appear not in article 11, but in article 23, which dealt with the withdrawal of the exequatur. In any case, he could not support the Argentine and Indian amendment and he thought that the International Law Commission's text was the best.

44. Mr. PETRŽELKA (Czechoslovakia) supported the Argentine and Indian proposal, but pointed out that comparison with paragraph 1 of the International Law Commission's commentary on article 11 made it clear that the Commission intended the exequatur to constitute definitive admission, whereas other forms of authorization were not necessarily definitive. His delegation would be prepared to support the Austrian amendment on the understanding that the expression "consular agents" included heads of consular posts; in the context, the expression "consular agents" seemed inconsistent with the intention of draft article 11 under which the exequatur would be granted only to heads of post, the consulate being regarded as an indivisible whole.

45. Mr. USTOR (Hungary) said that his delegation's position with regard to the Austrian amendment was the same as that of the Czechoslovak representative.

46. Mr. WESTRUP (Sweden) said that his delegation could scarcely support an amendment which expressly relieved the receiving State of the duty to furnish its reasons for refusing an exequatur. The absence of such an obligation was based on the principle of the sovereignty of States and it was unnecessary to state it expressly in the convention — more particularly since such a provision might possibly be used as an argument in support of the contention that in other cases such an obligation existed. It was better not to include a provision on the point one way or the other.

47. Mr. TSHIMBALANGA (Congo, Leopoldville) said that, while the receiving State was not obliged to communicate to the sending State its reasons for refusing the exequatur, it was always free to do so. The duty to give reasons for a refusal might jeopardize friendly relations between the two States concerned. His delegation would therefore vote in favour of the Argentine amendment.

48. Mr. de ERICE y O'SHEA (Spain) said that his delegation would vote in favour of the Austrian amendment.

49. Mr. de MENTHON (France) said he had no objection to the Argentine and Indian proposal. He was doubtful about the Austrian amendment since, in paragraph 3 of its commentary on article 11, the International Law Commission had catalogued the different forms of exequatur, some of which — such as an endorsement on the consular commission and, more particularly, notification by diplomatic channels — were hardly of a formal nature.

50. Mr. CHIN (Republic of Korea) approved the principle underlying the Argentine and Indian proposal

but doubted the advisability of inserting the clause in question. Though he had no serious objections to the Austrian amendment, he preferred the text as adopted by the International Law Commission.

51. Mr. DONOWAKI (Japan) announced the withdrawal of the second sentence of paragraph 2 of his delegation's amendment (L.56). He suggested that the Indian and Argentine proposals should be regarded as constituting a joint amendment which, if adopted, should be referred to the drafting committee; the latter would then draw up the definitive text and decide whether the new paragraph should be added to article 11 or to article 23.

52. The CHAIRMAN agreed with the Japanese representative's suggestion and put to the vote simultaneously the Argentine and Indian amendments.

The Argentine and Indian amendments (A/CONF.25/C.1/L.91 and L.101) were adopted by 49 votes to 3, with 9 abstentions.

The Austrian amendment (A/CONF.25/C.1/L.27) was rejected by 21 votes to 13, with 26 abstentions.

The Japanese amendment (A/CONF.25/C.1/L.56), as modified, was rejected by 37 votes to 8, with 17 abstentions.

Article 11, as amended, was adopted by 60 votes to 1, with 2 abstentions.

The meeting rose at 5.45 p.m.

SIXTEENTH MEETING

Friday, 15 March 1963, at 10.40 a.m.

Chairman: Mr. BARNES (Liberia)

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

Article 12 (Formalities of appointment and admission)

1. The CHAIRMAN drew attention to the amendments to article 12 submitted by the delegations of Brazil (A/CONF.25/C.1/L.65) and Italy (A/CONF.25/C.1/L.84).

2. Mr. MIRANDA e SILVA (Brazil) said that his delegation had submitted its amendment in the belief that the wording proposed was simpler and more practical than the original draft.

3. Mr. MAMELI (Italy), introducing his delegation's amendment, expressed the view that other consular officials besides heads of post should be subject to the formalities of appointment and admission referred to in the article, because the sovereign rights of States were involved.

4. Miss ROESAD (Indonesia) said she would vote for the Brazilian amendment.

The Brazilian amendment (A/CONF.25/C.1/L.65) was adopted by 17 votes to 15, with 23 abstentions.

5. Mr. de ERICE y O'SHEA (Spain), speaking on a point of order, observed that the Italian amendment was closely connected with the provisions of article 1 (Definitions) and would be affected by the Committee's ultimate decision on that article.

6. Mr. USTOR (Hungary), pointing out that the Italian amendment was contrary to the decision the Committee had taken on article 8, suggested that the Italian delegation might consider withdrawing it.

7. Mr. HEPPEL (United Kingdom) said that he did not consider that the Committee's decision on article 8 was in conflict with the Italian amendment. In any case, it was for the Italian delegation to decide whether it wished to maintain its proposal.

8. Mr. MAMELI (Italy) said his delegation would maintain its amendment, since the question of the sovereign rights of States was involved.

The Italian amendment (A/CONF.25/C.1/L.48) was rejected by 26 votes to 21, with 14 abstentions.

Article 12, as amended, was adopted by 56 votes to none, with 1 abstention.

Article 13 (Provisional admission)

9. The CHAIRMAN drew attention to the amendments to article 13 submitted by the delegations of Belgium (A/CONF.25/C.1/L.11), Spain (A/CONF.25/C.1/L.60), Italy (A/CONF.25/C.1/L.85), Venezuela (A/CONF.25/C.1/L.88) and Nigeria (A/CONF.25/C.1/L.103).

10. Mr. de ERICE y O'SHEA (Spain) said that the first part of his delegation's amendment was intended to make it clear that consular functions could be exercised on a provisional basis after the consular commission or similar instrument had been presented. His delegation was of the opinion that a consul could not exercise his functions before the commission had been presented.

11. Since his delegation's second amendment was practically the same as the Belgian amendment (L.11), he would withdraw it in favour of that text. The purpose of the Venezuelan amendment (L.88) was quite clear, and the Spanish delegation agreed that the period of provisional admission should not be unlimited. Consuls exercising their functions on a provisional basis could labour under two very serious disadvantages. First, if for some reason the exequatur was not subsequently delivered, all the consul's activities might be nullified, thus causing inconvenience to many people. Secondly, delivery of the exequatur might be used as a means of coercion. He would, however, suggest to the Venezuelan representative that the time-limit should be extended to a period not exceeding twelve months.

12. Mr. ANIONWU (Nigeria) said that his delegation had proposed the deletion of the article (L.103), although it had fully considered the reasons given by the Commission for its inclusion. It was certainly the universal practice to allow a consul holding a commission to enter upon his functions before the exequatur was delivered, but the effect of the article would be to