# United Nations Conference on Consular Relations

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**16th meeting of the First Committee**

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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.

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## SIXTEENTH MEETING

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

*Chairman:* Mr. BARNES (Liberia)

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**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

provide for two authorizations; even if a consul held a commission, he could not enter upon his functions until he had been formally authorized to do so, and then, after that authorization had been given, final admission was required in the form of an exequatur.

13. As the Spanish representative had pointed out, the sending State might unexpectedly be told, after a consul had been exercising his functions for a considerable time, that his appointment was not approved. Consequently, the article was not calculated to promote friendly relations among States. His delegation was, of course, in favour of allowing consuls to exercise their functions on a provisional basis, but did not believe that the two stages required by article 13 provided the best means of doing so.

14. Mr. MAMELI (Italy) said that the purpose of his delegation's amendment (L.85) was to stress once again the sovereign and discretionary rights of the receiving State. Nevertheless, since that notion had not been accepted by the Committee in connexion with article 12, he would withdraw the amendment, while reserving the right to introduce it at some more appropriate place in the convention.

15. Mr. VRANKEN (Belgium) said that his delegation had submitted its amendment (L.11) in order to make it clear that a consul had certain obligations as well as rights in connexion with provisional admission.

16. Mr. BARTOŠ (Yugoslavia) said he would vote for the Spanish and Belgian amendments, because they both improved the text within the framework of the system proposed by the Commission. He would vote against the Nigerian amendment, which was contrary to universal practice.

17. Some technical and political difficulties might arise in connexion with the delivery of the exequatur. Thus, for example, if the Queen of England was absent from the country, consuls entering upon their functions at that time were provisionally admitted by the Foreign Office, pending Her Majesty's signature of the exequatur. That was a technical problem, but strained relations between the sending State and the receiving State might also make it necessary for consuls to exercise their functions on a provisional basis. For example, the Yugoslav Consul-General in New York, who had served in that city for seven years, had had no proper exequatur for the first five years, though he had been admitted by the United States authorities on a provisional basis. Similarly, the Yugoslav Consul-General at Zurich had remained without an exequatur for two years. Hence he could not support the Venezuelan proposal to limit the period of provisional admission. He added that there could be no question of the invalidity of whatever acts were performed by a consul during the period of the provisional exercise of his functions; those acts were certainly not void. On the other hand, it could be argued that acts performed by the consul after the withdrawal of the exequatur or after the withdrawal of provisional admission were void.

18. Article 13 reflected a universal practice in international relations, and his delegation would therefore support the Commission's text as amended by the Spanish and Belgian delegations.

19. Mr. von HAEFTEN (Federal Republic of Germany) supported the Belgian amendment.

20. Mr. KRISHNA RAO (India) said he could not support the Nigerian amendment, since article 13 represented progressive development of international law. He would vote for the Belgian amendment, which clarified the text; but he believed that the idea of the Spanish amendment was already covered by previous articles, in particular article 10. He did not consider it advisable to prescribe a time limit for provisional admission, as proposed by the Venezuelan delegation; that point could be settled by bilateral agreement.

21. Mr. DADZIE (Ghana) agreed with the Indian representative that the point of the Spanish amendment was covered elsewhere in the draft. It was self-evident that the head of a consular post would be admitted on a provisional basis by the receiving State when the consular commission or other instrument was presented. The time-limit proposed in the Venezuelan amendment was not in the spirit of progressive development of international law. His delegation considered that the deletion of the whole article, as proposed by Nigeria, would introduce confusion. The receiving State must signify its approval of provisional admission in some specific way; the purpose of the article was to avoid unnecessary delay in cases where it took some time to obtain the exequatur.

22. His delegation would support the Belgian amendment.

23. Mr. TSHIMBALANGA (Congo, Leopoldville) considered the wording of the Belgian amendment preferable to the Commission's text because it made the provisions of the convention applicable to the head of a consular post during the period of provisional admission.

24. Mr. MUÑOZ MORATORIO (Uruguay) said his delegation would vote for the Belgian amendment, because it gave States wider freedom with regard to the procedure for provisional admission. On the other hand, he would vote against the Spanish amendment, because, if the consular commission had to be presented before the temporary admission was granted, the services rendered by the consulate might be seriously interrupted if, as sometimes happened for purely administrative reasons, the dispatch of the consular commission were delayed; that would be a very real hindrance. Nor could he support the Venezuelan proposal: the automatic withdrawal of the provisional admission of the head of the post to the exercise of his functions as a result of failure on the part of the receiving State to issue the exequatur within six months might be tantamount to non-recognition.

25. Mr. PALIERAKIS (Greece) said he would vote for the Belgian and Spanish amendments. The Spanish amendment clarified the obvious fact that a consul could not exercise his functions before presenting a commission.

26. Mr. SILVEIRA-BARRIOS (Venezuela) said that the purpose of his delegation's proposal to limit provisional admission to six months was to meet two situations which arose in Venezuela. In the first place, his country recognized consuls without actually receiving the commission, on the basis of information received through diplomatic channels that a commission would ultimately be presented. Secondly, provisional recognition was also granted when the commission was received, pending preparation of the exequatur. Experience had shown, however, that a number of diplomatic missions failed to issue consular commissions for their officials, who exercised their functions for years in an irregular manner. He could agree to extend the proposed time-limit in accordance with the Spanish representative's suggestion, but maintained that the principle of a time-limit should be introduced.

27. Mr. ANIONWU (Nigeria) reiterated his delegation's recognition of provisional admission as a current international practice. His doubts concerning the wisdom of including article 13 had been prompted by the difficulties that formulation of the principle might create. In view of the explanations given by the Yugoslav representative, however, the Nigerian delegation would withdraw its amendment.

28. Mr. DONOWAKI (Japan) said he would support the Spanish amendment because the fact that the consular commission should be presented before the exequatur was delivered should be clearly stated in the convention. He would abstain from voting on the Venezuelan amendment, however, because it was difficult to specify the period within which the exequatur should be delivered.

29. Mr. DADZIE (Ghana) observed that the situation referred to by the Venezuelan representative was quite different from that envisaged in article 13, in which the consular commission had already been presented, and the exequatur was being awaited; for in the latter case, the onus of completing the procedure was on the receiving State, whereas the Venezuelan representative had referred to the provisional establishment of a consulate on the basis of a promise by the sending State that a consular commission would be presented. It seemed reasonable to impose a time-limit for the presentation of the commission, but not for the issue of the exequatur.

30. Mr. ENDEMANN (South Africa) observed that a number of practical issues were involved. The Ghanaian representative had rightly pointed out that the situation dealt with in article 13 was one in which the sending State had already presented the consular commission. The practice of provisional recognition before presentation of the commission was fairly general; in modern times, consuls were often transferred from one post to another by air, and their ministries of foreign affairs were often obliged to send the commission after them. An impossible situation would be created if consuls thus transferred could not exercise their functions or be recognized on a provisional basis until the commission arrived. When the receiving State admitted a consul without a commission, the onus was on the sending State not to delay the commission too long. A time-limit of six months after provisional recognition for the delivery of a commission would certainly simplify that particular situation.

31. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said that, while he sympathized with the amendments by the Spanish and Venezuelan delegations, he could not support either of them, since he did not think that in the case in point the sovereignty of the receiving State was impaired. His delegation would vote for the Belgian amendment because it improved the wording of the Commission's draft.

32. Mr. BARTOŠ (Yugoslavia) said that the Ghanaian representative's remarks had led him to change his mind about the advisability of adopting the Spanish amendment. There were obvious technical and practical reasons for allowing consular officials to exercise their functions pending the arrival of the consular commission.

33. Mr. de MENTHON (France) supported the Belgian amendment. He regretted, however, that he could not support either the Spanish or the Venezuelan amendment. It was his experience that commissions were often issued with very great delay; it would be unfortunate if a consul were not to be admitted on a provisional basis to the exercise of his functions until he had presented his consular commission.

34. Mr. PALIERAKIS (Greece) supported the Spanish amendment. Until the consular commission had been presented, the receiving State was not in a position to know the full name of the head of post, his category and class, the consular district and the seat of the consulate. Those particulars were essential for provisional admission, and according to article 10, paragraph 1, they were to be given in the consular commission.

35. Mr. PRATT (Israel) supported the Belgian and Spanish amendments, which improved the draft by clarifying the effect of the provisions of article 13. With regard to the Venezuelan amendment, he thought it would not be altogether appropriate in article 13; it seemed more relevant to the provisions of article 10.

36. Mr. RABASA (Mexico) supported the Belgian amendment. It would be preferable to state that the provisions of the Convention applied to the head of the consular post admitted on a provisional basis; what was more accurate than saying that he was admitted " to the benefit of the present articles ". The words introduced by the Spanish amendment were not necessary in article 13. It was already laid down in article 10, paragraph 2, that the sending State must communicate the consular commission to the receiving State. He could not support the Venezuelan amendment either. The receiving State could suspend provisional admission at any time, for example, by refusing to grant an exequatur.

37. Mr. MARTINS (Portugal) advocated retaining article 13 as drafted by the International Law Commission, subject only to the Belgian amendment, which

improved the text. He was not in favour of imposing a time-limit to the provisional exercise of consular functions. If such a rule had existed in the past, he, for one, would never have been able to exercise his functions; he had never been in a position to present his consular commission within the proposed time-limit.

38. The CHAIRMAN put to the vote the first Spanish amendment (A/CONF.25/C.1/L.60), the second having been withdrawn.

*The first Spanish amendment was rejected by 40 votes to 17, with 8 abstentions.*

39. The CHAIRMAN put to the vote the Venezuelan amendment (A/CONF.25/C.1/L.88) as revised by the Spanish sub-amendment replacing the words " six months " by the words " twelve months ".

*The amendment was rejected by 46 votes to 6, with 16 abstentions.*

*The Belgian amendment (A/CONF.25/C.1/L.11) was adopted by 61 votes to 1, with 2 abstentions.*

*Article 13, as amended, was adopted unanimously.*

*Article 14* (Obligation to notify the authorities of the consular district)

40. The CHAIRMAN invited the Committee to consider article 14 and the amendments thereto.[1]

41. Mr. ABDELMAGID (United Arab Republic) proposed, as a matter of drafting, that the words " the present articles " at the end of article 14 should replaced by the words " the present convention ".

42. The CHAIRMAN said that, if there was no objection, that proposal would be referred to the drafting committee.

*It was so agreed.*

43. Mr. MAMELI (Italy) withdrew his amendment (L.86), but reserved his delegation's right to reintroduce it in connexion with another article.

44. Mr. KRISHNA RAO (India) introduced his amendment (L.107), the main effect of which was to delete the provision that the receiving State must notify the competent authorities of the consular district of the admission of a head of consular post. The right of the consul to exercise his functions was not dependent on any notification to the local authorities.

45. The text, as drafted by the International Law Commission, seemed to imply that in the event of some delay in the notification in question, the consul, as soon as he obtained his exequatur, would himself advise the local authorities and exhibit the exequatur. The notification by the central authorities of the receiving State to the competent authorities of the consular district was a matter of internal administration for the receiving State, and there was no need to refer to it in a multilateral convention.

[1] The following amendments had been submitted: Italy, A/CONF.25/C.1/L.86; Hungary and the Ukrainian Soviet Socialist Republic, A/CONF.25/C.1/L.94; India, A/CONF.25/C.1/L.107; South Africa, A/CONF.25/C.1/L.122.

46. His delegation supported the amendment jointly submitted by Hungary and the Ukrainian SSR.

47. Mr. USTOR (Hungary), introducing the joint amendment (L.94), said that it had been the clear intention of the International Law Commission that the provisions of article 14 should apply both to provisional admission (article 13) and to definitive admission (article 11). He thought it desirable, however, to make that point clear to all readers of the future convention, some of whom would not be experts at interpreting international agreements.

48. Mr. ENDEMANN (South Africa) said that the main object of his delegation's amendment (L.122) was to replace the word " immediately " by the words " as soon as possible ". In many countries, the method of notifying the competent local authorities was through the official gazette, which might be published only once a week or even once a fortnight, so that in order to make the notification " immediately ", as provided in the draft article, the government of the receiving State would have to send individual letters to numerous local authorities. His delegation considered that the proposed change was reasonable.

49. Mr. WU (China) supported the Indian amendment. Notification of the local authorities was a purely domestic matter; any failure in such notification was a matter for the receiving State and not for the sending State.

50. Mr. ABDELMAGID (United Arab Republic) said that he was opposed to the Indian amendment, which would replace the requirement of immediate notification by a more general and weaker formula requiring " necessary measures " to be " taken without undue delay ". Nor could his delegation support the South African amendment, which would also weaken the text. He would be prepared to accept the joint amendment (L.94), however, which merely introduced a clarification.

51. Mr. DADZIE (Ghana) considered the Indian amendment very wise; the question of notifying the local authorities was a matter with which neither the sending State nor its consulate were concerned. The text of article 14 as it stood could have the effect of holding up the work of a consulate until the local authorities had been informed of the admission of the consul to the exercise of his functions.

52. Mr. TSYBA (Ukrainian SSR) said that the joint amendment submitted by his delegation and that of Hungary was intended to introduce into the text of article 14 a clarification given by the International Law Commission in paragraph 1 of its commentary on the article. His delegation regretted that it was unable to support the Indian amendment.

53. Mr. von HAEFTEN (Federal Republic of Germany) supported the Indian text, which he considered to be better drafted than that of the International Law Commission. However, his delegation would like to see the words " as soon as possible " (proposed by South Africa) instead of " without undue delay "; that would make the provision rather stronger, without going as far as far the original expression " immediately ".

54. Mr. BARTOŠ (Yugoslavia) opposed both the South African and the Indian amendments. It was essential to require an immediate notification by the receiving State to the competent authorities of the consular district; otherwise the local authorities might deny all knowledge of the consul having been admitted to the exercise of his functions. If he turned to the central authorities, he might then be told that they were unaware of the reasons for the ignorance of the local authorities. The provisions of article 14 did not impose any great burden on the receiving State. All that the central authorities were required to do was to send out a circular to the competent local authorities or insert a notice in the official gazette.

55. For those reasons, his delegation favoured the original text with the joint amendment (L.94), which was in the spirit of the Commission's draft.

56. Mr. KRISHNA RAO (India) said that in order to meet the objections which had been made to his proposal, he would delete the word " undue "; it would then provide that the necessary measures were to be taken " without delay ".

57. Mr. EL KOHEN (Morocco) disagreed with the Indian representative's interpretation of article 14. That article, as drafted by the International Law Commission, merely provided that it was the duty of the receiving State to notify its local authorities; there was no suggestion that the legal status of the consul was in any way dependent upon such notification. His delegation preferred the original text of the article.

58. Mr. BREWER (Liberia) supported the joint amendment. The provisions of article 14 applied both to provisional admission (article 13) and to definitive admission (article 11).

59. Mr. PRATT (Israel) supported the joint amendment which filled a gap in the text. His delegation also favoured the Indian amendment, because it was more comprehensive than the original text; the reference to " necessary measures " would include measures going beyond mere notification of the local authorities. However, in order to meet the wishes of those delegations which considered that a reference to notification was necessary, he suggested that the following words " such as notification to the competent authorities of the consular district " might be added after the words " necessary measures ":

60. Mr. KRISHNA RAO (India) accepted that suggestion.

61. Mr. BARTOŠ (Yugoslavia) did not think that the proposed addition improved the Indian amendment; it made notification merely an example of a necessary measure, whereas it was in fact the most important of the measures to be taken by the receiving State.

62. Mr. DADZIE (Ghana) agreed that the proposed addition did not improve the text of the Indian amendment.

63. Mr. KRISHNA RAO (India) suggested that, in view of the difficulties created for some delegations by his acceptance of the sub-amendment suggested by Israel, it should be voted on separately.

64. Mr. PRATT (Israel) said that he had not made a formal proposal but merely a suggestion, which he would not press.

65. The CHAIRMAN said that, in the circumstances, he would put to the vote the Indian amendment as originally submitted, except for the deletion of the word " undue ".

*The Indian amendment (A/CONF.25/C.1/L.107) was rejected by 26 votes to 17, with 22 abstentions.*

*The joint amendment (A/CONF.25/C.1/L.94) was adopted by 44 votes to 2, with 17 abstentions.*

*The South African amendment (A/CONF.25/C.1/L.122) was rejected by 33 votes to 15, with 17 abstentions.*

*Article 14, as a whole, as amended, was adopted by 63 votes to none, with 2 abstentions.*

The meeting rose at 1.5 p.m.

## SEVENTEENTH MEETING

*Friday, 15 March 1963, at 3.10 p.m.*

*Chairman:* Mr. SILVEIRA-BARRIOS (Venezuela)

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

*Article 15* (Temporary exercise of the functions of head of a consular post)

1. The CHAIRMAN invited the Committee to consider article 15, together with the amendment relating to it.[1]

2. Mr. USTOR (Hungary) said that the joint amendment (L.95) submitted by Hungary and the Ukrainian SSR should be considered as a drafting amendment which might be referred to the drafting committee.

3. Mr. VRANKEN (Belgium) introduced his delegation's amendment (L.12) modifying all four paragraphs of article 15. Its purpose was to provide against any difficulties the smaller countries might experience in ensuring the temporary exercise of the functions of head of a consular post. The new text of paragraph 1 would reproduce the first sentence of the International Law Commission's paragraph 1, but the deletion of the last two sentences would enable the head of post himself to choose an acting head of post.

4. The aim of the new paragraph 2 was to put the acting head of post on the same footing as the titular head of post and make his appointment conditional, if necessary, on the consent of the receiving State.

[1] The following amendments had been submitted: Belgium, A/CONF.25/C.1/L.12; Hungary and the Ukrainian Soviet Socialist Republic, A/CONF.25/C.1/L.95; Canada, A/CONF.25/C.1/L.108; Italy, A/CONF.25/C.1/L.115; South Africa, A/CONF.25/C.1/L.123.