

# **United Nations Conference on Consular Relations**

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**18<sup>th</sup> 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)*

62. The CHAIRMAN said that he would put to the vote, paragraph by paragraph, the amendments to article 15 of the International Law Commission's draft. The verbal amendment of the United Arab Republic, which did not raise a question of substance, would be sent to the drafting committee direct.

*The Belgian amendment to paragraph 1 (A/CONF.25/C.1/L.12) was adopted by 44 votes to 5, with 13 abstentions.*

63. The CHAIRMAN said that, as a result of the adoption of the Belgian amendment, it would not be necessary to put to the vote the amendments to paragraph 1 by Hungary and the Ukrainian Soviet Socialist Republic (L.95), Canada (L.108) and Italy (L.115).

64. After a lengthy discussion on the wording of the Belgian amendment to paragraph 2, in which Mr. USTOR (Hungary), Mr. WESTRUP (Sweden), Mr. PALIERAKIS (Greece), Mr. de MENTHON (France), Mr. VRANKEN (Belgium), Mr. SOLHEIM (Norway), Miss ROESAD (Indonesia), Mr. KEVIN (Australia), Mr. BARTOŠ (Yugoslavia), Mr. MAMELI (Italy), Mr. ENDEMANN (South Africa), Mr. HEPPEL (United Kingdom), Mr. CHIN (Republic of Korea), Mr. DAS GUPTA (India) and Mr. RUDA (Argentina) took part, Mr. de ERICE y O'SHEA (Spain) observed that the first part of the Belgian amendment to paragraph 2, in the amended form accepted by its author, was identical with the International Law Commission's text, so that the first part of the amendment had ceased to exist. There remained the South African amendment (L.123); it would be best to vote first on that amendment and subsequently on the second part of the Belgian amendment to paragraph 2.

65. Mr. DAS GUPTA (India) agreed with the Spanish representative.

66. The CHAIRMAN put the South African amendment to the vote.

*The South African amendment to paragraph 2 (A/CONF.25/C.1/L.123) was rejected by 36 votes to 8, with 11 abstentions.*

67. The CHAIRMAN read out the revised text of the second part of the Belgian amendment to paragraph 2 as communicated to him by the Belgian representative: "The receiving State may make the admission as acting head of post of a person who is neither a diplomatic nor a consular official of the sending State in the receiving State upon its consent."

68. The text he had read out was very different from the original version of the amendment (L.12) and a new discussion should therefore be regarded as having begun. To avoid any confusion or misunderstanding, he asked the Belgian representative to submit his new text as a formal amendment; other delegations who desired to do so should submit sub-amendments to the new text under the same conditions, so that the Committee could discuss them at its next meeting.

The meeting rose at 6.25 p.m.

## EIGHTEENTH MEETING

Monday, 18 March 1963, at 10.50 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 15 (Temporary exercise of the functions of head of a consular post) (continued)*

1. The CHAIRMAN recalled that the Committee had adopted the Belgian amendment (L.12) to paragraph 1, but had not voted on the other amendments to this paragraph. The Committee had rejected the South African amendment (L.123) to paragraph 2. As the Italian amendment (L.115) had been withdrawn, there remained only the Belgian amendment to paragraph 2. A number of delegations had then submitted oral sub-amendments to the Belgian amendment, which altered its text to the extent of completely changing its sense. Thus it had not been possible to vote on the amendment. To avoid a repetition of that situation, he would request delegations to refrain, as far as possible, from submitting oral amendments and sub-amendments which substantially modified the original text and to adhere strictly to rule 30 of the rules of procedure; that rule did not exclude the discussion of amendments which had not been communicated to the secretariat, but left the decision to the Chairman.

2. The Belgian amendment to paragraph 2 read: "The name of the acting head of post shall be notified, either by the head of post or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by it. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic nor a consular official of the sending State in the receiving State conditional on its consent."

*The amendment was adopted by 40 votes to 9, with 14 abstentions.*

3. The CHAIRMAN said that the United Arab Republic had presented a verbal amendment to paragraph 3 which had been sent to the drafting committee. With regard to paragraph 3, therefore, the Committee had before it only the amendment which appeared in document A/CONF.25/C.1/L.12 submitted and then withdrawn by Belgium and reintroduced by the Netherlands.

*The amendment was adopted by 25 votes to 24, with 12 abstentions.*

4. The CHAIRMAN put to the vote the Belgian amendment to paragraph 4 of article 15.

*The amendment was rejected by 32 votes to 26, with 8 abstentions.*

5. Mr. TSHIMBALANGA (Congo, Leopoldville) said that his delegation had proposed a sub-amendment

<sup>1</sup> For the list of the amendments to article 15, see the summary record of the seventeenth meeting, footnote to para. 1.

to the Belgian amendment to paragraph 4, to read "... if the receiving State does not object thereto". Since the Belgian amendment had been rejected, there could be no objection to a vote on his sub-amendment since it had become an amendment to paragraph 4.

6. Mr. HEPPEL (United Kingdom) observed that paragraph 4 had not been exhaustively discussed. The Committee should decide whether a restrictive clause should be introduced into that paragraph. He supported the text proposed by the delegation of Congo (Leopoldville).

7. The CHAIRMAN put to the vote the oral amendment to paragraph 4 submitted by Congo (Leopoldville).

*The amendment was adopted by 29 votes to 10, with 23 abstentions.*

*Article 15, as amended, was adopted by 53 votes to 2, with 9 abstentions.*

8. Mr. BARTOŠ (Yugoslavia) explained that he had voted against article 15 because paragraph 3 as modified by the Belgian amendment was contrary to the principle that privileges and immunities were attached to the function and not to the person exercising it.

#### *Article 16 (Precedence)*

9. The CHAIRMAN invited discussion on article 16 and the amendments thereto by Italy (A/CONF.25/C.1/L.116), South Africa (A/CONF.25/C.1/L.127) and the Congo (Leopoldville) (A/CONF.25/C.1/L.133).

10. Mr. MAMELI (Italy) submitted his delegation's amendment, which introduced a necessary clarification into paragraph 3 since the consular commission was more often communicated than presented. It was in fact a formal amendment which could be sent to the drafting committee. The amendment to paragraph 4 had been prompted by the same considerations.

11. Mr. ENDEMANN (South Africa) observed that in paragraph 3 there was no need to make a distinction between the exequatur and provisional admission. The important thing was the date on which the head of a consular post was admitted to the exercise of his functions. The purpose of the South African amendment was to emphasize that point. The South African amendment to paragraph 4 was based on the same idea as the Italian amendment. If the Committee approved, the two texts could be sent to the drafting committee.

12. The South African amendment to paragraph 5 extended to career acting heads of posts the same provisions with regard to precedence as to career heads of posts. That would ensure that career heads of post always had precedence over honorary consuls. His delegation's amendment to paragraph 6 was based on the same idea.

13. Mr. TSHIMBALANGA (Congo, Leopoldville) introduced his delegation's amendment adding a new paragraph to article 16, which was a slightly modified version of article 16, paragraph 3, of the Vienna Convention on Diplomatic Relations.

14. Mr. TSYBA (Ukrainian Soviet Socialist Republic)

said that he did not understand the reason for the Italian amendment to paragraph 3. It was the practice to present the consular commission, not to send it. The effective date was that of presentation and not that of communication. The Ukrainian delegation would therefore vote against both the Italian amendments.

15. Paragraph 4 of article 16 was in accordance with established protocol according to which the order of precedence among acting heads of posts was governed by the class of the titular heads of post whom they replaced. The Ukrainian delegation would therefore vote for the International Law Commission's text.

16. Mr. MARTINS (Portugal) said that the question dealt with in article 16 was perhaps the least important but was certainly the most delicate. In general, the Portuguese delegation found the text of the article as drafted by the International Law Commission satisfactory, but it might be improved by the amendment of the Congo (Leopoldville), and by the Italian amendment to paragraph 4. He could not support the South African amendment to paragraph 4. According to that amendment, temporary heads of post replacing titular heads of post would rank before honorary consuls who were heads of post. Paragraph 4 of the draft might be considerably improved by deletion of the words: "in the class to which the heads of post whom they replace belong". His delegation would vote in favour of the South African amendments to paragraphs 5 and 6.

17. Mr. HEPPEL (United Kingdom) agreed that the text of paragraph 4 as prepared by the International Law Commission was not satisfactory and was contrary to normal protocol. In his opinion the commentary on the article did not provide an adequate justification. *Chargés d'affaires* did not necessarily have precedence over envoys extraordinary and ministers plenipotentiary. The best course might be to follow the precedent of the 1961 Convention and to omit the question of the precedence of acting heads of post.

18. He agreed with the Portuguese representative that acting heads of consular posts ranked after all other heads of consular posts. With regard to precedence amongst acting heads of posts themselves, it would be best to follow current usage by which precedence was governed by the date of their admission to the exercise of their functions, as had been proposed in the Italian and South African amendments. His delegation saw no need to lay down a rule of precedence so far as acting heads of post were concerned and it would be prepared to support any proposal for the deletion of the paragraph. With regard to the amendment submitted by Congo (Leopoldville), he would need to know first of all whether the Holy See had in fact consular representatives. His impression was that it had only diplomatic representatives.

19. Mr. ENDEMANN (South Africa) said that he did not believe that the International Law Commission had really intended to give precedence to a vice-consul who was acting head of post of a consulate-general over a career consul who was a permanent head of post, but paragraph 4 certainly lent itself to that interpretation, and should therefore be amended. That was why

his delegation had submitted an amendment specifying that temporary heads of post should rank after all permanent heads of post belonging to the same class as themselves.

20. He thought there were certain objections to the solution in the International Law Commission's draft of the question of the precedence of acting heads of post amongst themselves. For instance, when a consul-general left his post, that post would remain vacant till a new head of post was appointed. As the post was vacant, the acting head of post would have no definite rank. The South African amendment would remove all difficulties of that sort.

21. Mr. USTOR (Hungary) hoped that the representative of Congo (Leopoldville) would clarify the purpose of his amendment. He also wished to learn what was the attitude of the Holy See to that amendment.

22. The CHAIRMAN said that the amendment submitted by the representative of Congo (Leopoldville) raised a number of questions concerning the possible appointment of consuls by the Holy See.

23. Mr. TORROBA (Spain) said that, although he was inclined to support the Congolese amendment, he wished to know the practical bearing of the proposal and whether the Holy See in fact possessed consular representatives. He agreed with the opinions of the Portuguese, United Kingdom and South African representatives on paragraph 4. It would be preferable to include paragraph 5 in chapter III (articles 57-67) dealing with honorary consular officials or even to delete it altogether.

24. The CHAIRMAN drew the Committee's attention to paragraph 4 of the International Law Commission's commentary, which gave the reason why paragraph 5 which had formerly been included in the section on honorary consuls had been transferred to article 16.

25. Mr. TSHIMBALANGA (Congo, Leopoldville) said that the Holy See had no consular representatives for the time being, but the possibility as regards the future was not excluded, and that was why he had submitted his amendment. He did not, however, press for its adoption by the Committee.

26. Mgr. PRIGIONE (Holy See) said that it was not impossible that the Holy See might appoint consular representatives in the future; nevertheless, he would ask the representative of Congo (Leopoldville) not to press his amendment.

27. Mr. TSHIMBALANGA (Congo, Leopoldville) withdrew his amendment (L.133).

28. Mr. FUJIYAMA (Japan) said that he fully shared the United Kingdom representative's opinion concerning article 16, and paragraph 4 in particular, and he wished to know if the United Kingdom delegation intended to submit a formal amendment to delete the paragraph. The Japanese delegation would be all the more inclined to support such a proposal since usage

varied from country to country and it was difficult to lay down a rule on the question. His delegation also supported the South African amendment.

29. The CHAIRMAN asked the United Kingdom representative if his proposal should be regarded as a formal amendment to article 16.

30. Mr. HEPPEL (United Kingdom) said that he would like to hear the statements of the other delegations before taking a decision on the point. Some delegations would perhaps prefer to retain a text concerning the precedence of acting heads of post, but would be ready to support any proposal for the deletion of the article.

31. Mr. WU (China) said that he would gladly support the first Italian amendment. He thought that precedence should be governed by the date of the communication and not by the date of presentation of the consular commission.

32. The Chinese delegation agreed with the United Kingdom representative's opinion on paragraph 4. It was established practice that an acting consul-general could not rank before a titular head of post, any more than a chargé d'affaires could rank before a minister plenipotentiary. His delegation would therefore be inclined to support an amendment for the deletion of the paragraph.

33. Mr. KRISHNA RAO (India) said that he too found the existing text of paragraph 4 unsatisfactory. He agreed with the United Kingdom representative that the reasons given in paragraph 3 of the commentary were hardly convincing, and he pointed out that the Convention on Diplomatic Relations contained no corresponding provision.

34. Mr. DADZIE (Ghana) thought that the International Law Commission's text was acceptable, except in so far as paragraphs 4 and 5 were concerned. The wording of paragraph 4 was not clear, for it seemed to imply that junior officials could rank before their seniors. The Ghanaian delegation therefore supported the South African amendment, which seemed satisfactory, though its wording might be improved. He regretted his inability to support the Italian amendment (L.116) which added little to the original text. There was no need to retain paragraph 6 as drafted by the International Law Commission; the matter was too self-evident to need restatement. He would propose its deletion.

35. Mr. PALIERAKIS (Greece) said he was prepared to support the first Italian amendment and the second part of the South African amendment. Otherwise, he preferred the International Law Commission's text.

36. Mr. MAMELI (Italy) entirely agreed with the opinion expressed by the United Kingdom representative concerning paragraph 4.

37. Mr. SILVEIRA-BARRIOS (Venezuela) agreed with the views expressed by the Portuguese, Spanish and the United Kingdom representatives. He would support the deletion of paragraph 4.

38. The CHAIRMAN pointed out that, as there were no amendments to paragraphs 1 and 2 of article 16, he considered those paragraphs to have been adopted as drafted.

39. He put the Italian (L.116) and South African (L.127) amendments to paragraph 3 to the vote.

*The Italian amendment was adopted by 30 votes to 29, with 5 abstentions.*

*The South African amendment was rejected by 35 votes to 19, with 11 abstentions.*

40. Mr. HEPPEL (United Kingdom) said that he was prepared to accept the South African amendment to paragraph 4, but he would prefer it if in the first sentence the words "in the class in which they themselves belong" were deleted.

41. Mr. ENDEMANN (South Africa) accepted the United Kingdom representative's suggestion.

42. The CHAIRMAN put to the vote the South African amendment (L.127) to paragraph 4 with the verbal sub-amendment of the United Kingdom.

*The amendment, as amended, was approved by 42 votes to 16, with 8 abstentions.*

43. The CHAIRMAN said that, as a result of that decision, there was no need to vote on the Italian amendment (L.116). He put the South African amendments (L.127) to paragraphs 5 and 6 to the vote.

*The South African amendment to paragraph 5 was rejected by 24 votes to 22, with 18 abstentions.*

*The South African amendment to paragraph 6 was rejected by 24 votes to 18, with 22 abstentions.*

44. The CHAIRMAN invited the Committee to vote on the oral proposal by the representative of Ghana for the deletion of paragraph 6.

*The Ghanaian proposal was rejected by 23 votes to 7, with 33 abstentions.*

*Article 16 as a whole, as amended, was adopted by 63 votes to none, with 1 abstention.*

45. Mr. BREWER (Liberia) said that he had abstained because he did not see why a consul replacing a consul-general should not rank before a consul who was head of post.

*Article 17 (Performance of diplomatic acts  
by the head of a consular post)*

46. The CHAIRMAN said that the amendments to article 17 submitted by the Canadian and Indian delegations were identical and could be regarded as a joint proposal.<sup>2</sup>

47. Mr. KEVIN (Australia) submitted an oral amendment for the insertion in paragraph 1, after the words "the head", of the words "or acting head". He re-

quested that his proposal should be considered together with the other amendments.

48. Mr. FUJIYAMA (Japan) introduced his delegation's amendment and said that it was sometimes indispensable that a consular official other than the head of a post should perform diplomatic acts. That was the purpose of the first part of his amendment. He thought the word "consulate" was more appropriate, since article 3 used it in stating that consular functions were exercised by consulates. The second point of his amendment was purely formal and he would not insist on it.

49. Mr. von HAEFTEN (Federal Republic of Germany) explained why his delegation had submitted a proposal to delete paragraph 1 of article 17. The paragraph confused diplomatic and consular functions, whereas there was a very sharp distinction between diplomatic functions, which were political in character, and consular functions, which consisted primarily in protecting the interests of nationals of the sending State and in promoting trade. Formerly, it was true, certain consuls had been entrusted with diplomatic missions, but the practice had fallen into disuse. If a State had no diplomatic representative, it could, with the consent of the receiving State, appoint a consul as *chargé d'affaires*.

50. The CHAIRMAN pointed out that the representatives of the Federal Republic of Germany (L.78) and of Venezuela (L.89) both proposed to delete paragraph 1 of article 17; he regarded the two proposals as a joint amendment.

51. Mr. KEVIN (Australia) said that his delegation's oral amendment was merely secondary; it was designed to fill a gap in the text.

52. Mr. SICOTTE (Canada) said that his delegation and the Indian delegation wished to submit the following revised text of paragraph 1 in place of their original amendments (L.109 and L.110): "In a State where the sending State has no diplomatic mission or where the sending State is not represented by a diplomatic mission of a third State, a consular official may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular official shall not confer upon him any right to diplomatic privileges and immunities."

53. Mr. MAMELI (Italy), explaining his delegation's amendment to paragraph 2, said that the issue was one of changing an already existing relationship between the sending State and the receiving State. His delegation therefore thought it preferable to state the two necessary formalities clearly: notification by the sending State, and consent by the receiving State.

54. Mr. ENDEMANN (South Africa) explained that the purpose of his amendment was to clarify the text and to avoid any misinterpretations.

55. Mr. HEPPEL (United Kingdom) said that his delegation's amendment, which referred solely to paragraph 2, was intended to ensure that consular officials who also represented their States in international organi-

<sup>2</sup> The following amendments had been submitted: Japan, A/CONF.25/C.1/L.57; Federal Republic of Germany, A/CONF.25/C.1/L.78; Venezuela, A/CONF.25/C.1/L.89; Canada, A/CONF.25/C.1/L.109; India, A/CONF.25/C.1/L.110; Italy, A/CONF.25/C.1/L.117; United Kingdom, A/CONF.25/C.1/L.125; South Africa, A/CONF.25/C.1/L.128.

zations should, when performing their consular functions, enjoy only the privileges and immunities of consular officials.

56. Mr. WESTRUP (Sweden) said that he would vote for the amendment of the Federal Republic of Germany for the deletion of paragraph 1 of article 17. The Swedish delegation had already expressed its government's concern at the Committee's tendency to assimilate diplomatic and consular functions and responsibilities. Like the delegation of the Federal Republic of Germany, the Swedish delegation thought that there were differences of substance which should be maintained. The fusion of the two services in the internal administration of a State should not entail the fusion of their functions. His delegation would also support the joint amendment by Canada and India.

The meeting rose at 1.10 p.m.

### NINETEENTH MEETING

Monday, 18 March 1963, at 3.15 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 17 (Performance of diplomatic acts by the head of a consular post) (continued)

1. The CHAIRMAN invited the Committee to continue its discussion of article 17.<sup>1</sup> He recalled that the amendments submitted by Canada (L.109) and India (L.110) had been replaced by a joint amendment and that there was an oral amendment by Australia introducing the words "or acting head" after the word "head" in paragraph 1.

2. Mr. EL-SABAH EL-SALEM (Kuwait) supported the United Kingdom amendment (L.125) but suggested the insertion of the words "international or" before the words "intergovernmental organization". Perhaps that suggestion could be referred to the drafting committee; its purpose was to repair an omission by the International Law Commission, which appeared to have considered that the term "intergovernmental organization" covered all international organizations of States.

3. Mr. KESSLER (Poland) opposed the proposals to delete article 17 in whole or in part. The provisions of that article were in keeping with customary international law and reflected the widespread practice of entrusting consuls with the performance of acts which normally formed part of the duties of diplomatic missions. That practice had been recognized in many bilateral conventions, as well as in the important multilateral convention regarding consular agents, signed at Havana on 20 February 1928. The provisions of article 17 would

<sup>1</sup> For list of amendments to article 17, see eighteenth meeting, otnote to para. 47.

be particularly useful where consular relations constituted the only channel for intercourse between two States; they would be of great practical value to the smaller nations, which were unable to bear the heavy burden of maintaining a diplomatic mission in each capital city.

4. His delegation would support the joint amendment by Canada and India, if the word "consulate" could be substituted for "consular officials"; that proposal was in line with its support of the Japanese amendment (L.57). It whole-heartedly supported the United Kingdom amendment (L.125) which clarified and usefully supplemented the text.

5. Mr. KRISHNA RAO (India) said that the provisions of article 17 corresponded to an existing practice and filled a genuine need. He was thinking, in particular, of the case in which consular relations existed between two countries, but there was delay in establishing diplomatic relations.

6. From the point of view of legal theory, there appeared to be no valid objection to a consular official being authorized to perform diplomatic acts with the consent of the receiving State. The practice might not be universal, but there had not been any indication of a contrary practice. When the text of article 17 had been submitted to governments, there had been no real opposition to it; some governments had suggested its deletion, as being unnecessary; but they had not opposed the principle embodied in it.

7. The purpose of the Indian amendment, now combined with that of Canada, was to specify that a consul could perform diplomatic acts where the sending State was not diplomatically represented. Diplomatic representation could take two forms: the sending State could have its own diplomatic mission, or it could be represented by the diplomatic mission of a third State. In either of those two cases there was no need to empower a consular official to perform diplomatic acts. The amendment also incorporated in the text of the article the important statement contained in paragraph 6 of the commentary — namely, that the performance of diplomatic acts by a consular official did not confer upon him any right to diplomatic privileges and immunities.

8. Mr. SILVEIRA-BARRIOS (Venezuela), introducing his amendment (L.89) deleting article 17, said that Venezuela considered the exercise of diplomatic functions incompatible with that of consular functions. It therefore regarded the provisions of article 17 as contrary to international law. The same considerations applied to a consul's acting as representative of the sending State to an intergovernmental organization; that function would confer diplomatic privileges, to which a consul had no right.

9. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) supported the Japanese amendment (L.57) and the joint amendment proposed by Canada and India, which improved the text of paragraph 1. He had no objection to the Italian amendment (L.117), but thought that the idea of notifying the receiving State was covered by the requirement of that State's consent in paragraph 1.