

# **United Nations Conference on Consular Relations**

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4 March – 22 April 1963

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**A/CONF.25/C.1/SR.2**

**2<sup>nd</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)*

## SUMMARY RECORDS OF THE FIRST COMMITTEE

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### FIRST MEETING

Tuesday, 5 March 1963, at 4 p.m.

Acting Chairman: Mr. VEROSTA (Austria)  
President of the Conference

#### Election of Chairman

1. The ACTING CHAIRMAN called for nominations for the office of chairman of the First Committee.

2. Mr. CHAVEZ (El Salvador) nominated Mr. Barnes, head of the delegation of Liberia, whose distinguished diplomatic and legal career made him eminently qualified for the office of chairman.

3. Miss ROESAD (Indonesia) seconded the nomination.

4. The ACTING CHAIRMAN said that, in the circumstances, a secret ballot could be dispensed with, as provided in rule 43 of the rules of procedure.

*Mr. Barnes (Liberia) was elected Chairman of the First Committee by acclamation.*

The meeting rose at 4.10 p.m.

### SECOND MEETING

Wednesday, 6 March 1963, at 11 a.m.

Chairman: Mr. BARNES (Liberia)

#### Election of officers

1. The CHAIRMAN thanked the Committee for the honour it had conferred upon him and his country in electing him Chairman. He realized the difficulty of his task, and he counted for its successful accomplishment on the spirit of co-operation, understanding and tolerance of all the members of the Committee.

2. The Committee's first task was to elect its officers — namely, the first and second vice-chairmen and the rapporteur.

#### Election of the First Vice-Chairman

3. The CHAIRMAN invited the members of the Committee to nominate candidates for the office of first vice-chairman.

4. Mr. LEE (Canada) nominated Mr. Silveira-Barrios (Venezuela).

5. Mr. MIRANDA e SILVA (Brazil) seconded the nomination.

*Mr. Silveira-Barrios (Venezuela) was elected First Vice-Chairman by acclamation.*

#### Election of the Second Vice-Chairman

6. The CHAIRMAN called for nominations for the office of second vice-chairman.

7. Mr. KIRCHSCHLAEGER (Austria) nominated Mr. Osiecki (Poland).

8. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) seconded the nomination.

*Mr. Osiecki (Poland) was elected Second Vice-Chairman by acclamation.*

#### Election of the Rapporteur

9. The CHAIRMAN called for nominations for the office of rapporteur.

10. Mr. KEVIN (Australia) nominated Mr. Westrup (Sweden).

11. Mr. RUEGGER (Switzerland) seconded the nomination.

*Mr. Westrup (Sweden) was elected Rapporteur by acclamation.*

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

12. The CHAIRMAN recalled that, according to the methods of work and procedures suggested by the Secretary-General and approved by the plenary conference at its second meeting, the First Committee should examine the preamble, articles 2 to 27 and 68 to 71 of the draft prepared by the International Law Commission, the Final Act of the Conference and any protocols which the Conference might consider necessary. The Committee would doubtless wish to postpone the examination of the preamble till later and proceed at once to examine the International Law Commission's draft articles, beginning with article 2 since, at the Secretary-General's suggestion, which the Conference had approved, article 1 was to be sent to the drafting committee, which would report to the plenary conference direct.

*It was so decided.*

#### Article 2 (Establishment of consular relations)

13. The CHAIRMAN pointed out that draft article 2 had been the subject of eight amendments submitted by Czechoslovakia (A/CONF.25/C.1/L.1), Bulgaria (A/CONF.25/C.1/L.2), the United Arab Republic (A/CONF.25/C.1/L.9), Hungary (A/CONF.25/C.1/L.13), Brazil, Italy and the United Kingdom (A/CONF.25/C.1/L.19), Spain (A/CONF.25/C.1/L.22), the Republic

of Viet-Nam (A/CONF.25/C.1/L.30) and India (A/CONF.25/C.1/L.36). The amendment by the Republic of Viet-Nam was identical with the joint amendment.

14. Mr. PETRŽELKA (Czechoslovakia) welcomed the spirit of co-operation already shown at the Conference, which augured well for the outcome of its deliberations. The success of the Conference would doubtless contribute to the maintenance of friendly relations between States. The Conference had before it a draft prepared by the International Law Commission, which could serve as a basis for its work. With regard to article 2 of the draft, Czechoslovakia had submitted an amendment (L.1) which, in his opinion, suitably completed the existing text of the article. The right of all States to establish consular relations with foreign States should be written into the future convention, as this right was indefeasible.

15. Mr. HAEFTEN (Federal Republic of Germany) said that the Czechoslovak amendment merely repeated a similar proposal concerning the right of legation which the Czechoslovak delegation had submitted to the Conference on diplomatic relations and immunities and which that Conference had rejected. In any case, the Czechoslovak amendment was liable to create confusion by suggesting that the right of a State to establish consular relations with another State was an absolute right, whereas it could only be exercised with the consent of the second State. The delegation of the Federal Republic of Germany was therefore opposed to the Czechoslovak amendment.

16. Mr. USTOR (Hungary) supported the Czechoslovak amendment, which the Hungarian delegation regarded as important. The fact that the conference on diplomatic relations and immunities had not adopted a similar provision did not constitute a valid precedent for the conference on consular relations.

17. Mr. WU (China) thought that the text of the Czechoslovak amendment contradicted that of article 2, paragraph 1, which stated that the establishment of consular relations between States took place by mutual consent; the exercise of an absolute right by a State was therefore excluded. Hence the Chinese delegation could not accept the Czech amendment.

18. Mr. PALIERAKIS (Greece) associated himself with the remarks of the delegation of the Federal Republic of Germany.

19. Mr. PETRŽELKA (Czechoslovakia) observed that the fact referred to by the representative of the Federal Republic of Germany was not an argument. No comparison could be made between two conventions that were entirely different. As a matter of substance it should be stressed that the right of a State to establish consular relations with other States was a fundamental right deriving from the prerogatives of its sovereignty.

20. Mr. MARTINS (Portugal) thought it was clear that a State could not establish consular relations with another State without that State's consent. In those circumstances, one could not speak of a State's right to establish consular relations and still less could such a

right be embodied in a convention. The Portuguese delegation therefore rejected the Czechoslovak amendment.

21. Mr. KHLESTOV (Union of Soviet Socialist Republics) observed that a State's right to establish consular relations with other States was an inalienable right which should be laid down in the convention. As opposed to what had been argued, the Czechoslovak amendment did not contradict article 2, paragraph 1, as there was no incompatibility between the exercise of a right and mutual consent.

22. Mr. FUJIYAMA (Japan) associated himself with the remarks of the representative of the Federal Republic of Germany on the Czechoslovak amendment, which he could not accept.

23. Mr. D'ESTEFANO PISANI (Cuba) said that paragraph 1 constituted a rule of procedure, whereas the statement contained in the Czechoslovak amendment was a rule of substance which it would be advisable to incorporate in the convention.

24. Mr. SILVEIRA-BARRIOS (Venezuela) said that he shared the opinion of the Portuguese representative. No State was obliged to receive consular officials on its territory, and there could therefore be no question of the exercise of a right. The Venezuelan delegation opposed the Czechoslovak amendment.

25. Mr. DE CASTRO (Philippines) said that his delegation was not opposed to the Czechoslovak amendment, but the existing text of article 2, paragraph 1, seemed to conform to established usage, and there was no need to complete it by an additional paragraph.

26. Mr. TSYBA (Ukrainian Soviet Socialist Republic) unreservedly supported the Czechoslovak amendment, which was based on a fundamental principle of international law, which was moreover laid down in the United Nations Charter and was a necessary condition for the peaceful coexistence of States: the right of every State to establish international relations with other States. Although every State possessed that right, it also had the right to refuse to establish relations with other States. The apprehensions concerning the Czechoslovak amendment expressed by the Portuguese and Venezuelan representatives were therefore groundless.

27. Mr. HEPPEL (United Kingdom) noted that the purpose of the Czechoslovak amendment was to lay down the fundamental right of States to establish consular relations; but that right was implicit in the whole of article 2, and the Czechoslovak amendment seemed to be superfluous. In addition, it might give rise to mistaken interpretations. Accordingly, if the Czechoslovak amendment were put to the vote, the United Kingdom delegation would vote against it.

28. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) agreed with the members of the Committee who opposed the Czechoslovak amendment. The right of legation had been the subject of numerous debates at the 1961 conference, and the grounds on which that conference had rejected the notion as applied to diploma-

tic relations held good also for consular relations. It should be added that the exercise of consular functions was fraught with more extensive consequences for the internal order of the receiving State than the exercise of diplomatic functions. For those reasons, the delegation of Viet-Nam opposed the Czechoslovak amendment.

29. Mr. CAMARA (Guinea) said that the right of every State to establish consular relations was a natural right which should be affirmed, and indeed reaffirmed; that was what the Czechoslovak amendment proposed. The text of article 2 dealt with the modes of applying that right. There was therefore no incompatibility between the proposed amendment and the text of the article. Before effect could be given to that natural right the mutual consent of the two States concerned was necessary, as stated in article 2, paragraph 1.

30. Mr. TÜREL (Turkey) endorsed the remarks of the representatives of the Federal Republic of Germany and Portugal. The Turkish delegation could not accept the Czechoslovak amendment.

31. Mr. BOUZIRI (Tunisia) believed that every State had the right to establish consular relations and solemnly to affirm that right. The establishment of consular relations could only strengthen friendly relations between nations; but every State also had the right to refuse to establish consular relations. Such a refusal was undesirable, but unfortunately was sometimes necessary. Positive and customary law accepted those two contradictory postulates.

32. Although he understood the purpose of the amendment, he found it hard to see what would be the practical significance of including it as it stood in the text of article 2. It might be better to incorporate in the preamble some more or less flexible formula which would also take account of the right of all States to refuse to establish consular relations.

33. Mr. SEID (Chad) said that every State had the right to establish consular relations, but it was also free to accept or refuse the establishment of such relations. Mutual consent was a highly respected principle of international law. His delegation would therefore vote against the proposed amendment.

34. Mr. DI MOTTOLA (Costa Rica), opposing the amendment, said that every State was at liberty to enter or not to enter into consular relations with another State. In his view, nothing should induce a State to forge that essential right, which was an important attribute of its sovereignty.

35. Mr. SHARP (New Zealand) said that the principle set forth in the amendment was not sound. A State had the right to establish consular relations with another State only when the second State acknowledged a corresponding obligation to receive consular representation. Until such an obligation was acknowledged, no right could exist. It was true that every State had an inherent capacity to enter into negotiations with a view to establishing consular relations, but that was a very different thing from a right. The amendment was not only unnecessary, but inappropriate.

36. Mr. ANIONWU (Nigeria) thought there was no need to insert the amendment submitted by Czechoslovakia in the text of article 2. If each State had the right to establish consular relations, other States likewise had the right to refuse to establish them: one right would offset the other. The amendment, if adopted, might create confusion in the minds of those concerned. Furthermore, it was not clear how far that right would extend, or how many consulates would be opened as a result. On all those counts, the Nigerian delegation would vote against the amendment.

37. Mr. GHEORGHIEV (Bulgaria) said that the amendment embodied an essential principle of international law. That should be clearly indicated in the text. There was no question of forcing a State to accept anything whatsoever. The Bulgarian delegation would therefore support the amendment, which it considered to be extremely useful.

38. Mr. MAMELI (Italy) said that he supported the arguments of the representative of the Federal Republic of Germany. Every country certainly had the right to establish consular relations, but that right was not absolute; it was subordinated to the consent of the other State concerned. It was therefore a choice, not a right. The proposed amendment might give rise to confusion and he was therefore against its adoption.

39. Mr. KRISHNA RAO (India) congratulated the members of the International Law Commission and the special rapporteur, Mr. Žourek, on their intensive and patient work in formulating the draft, which showed a remarkable degree of objectivity. He said that, while his delegation fully approved paragraph 1 of article 2, which set forth a principle of international law that was universally acknowledged, it was opposed to the Czechoslovak amendment.

40. So far as paragraph 2 was concerned, there had been two trends of thought in the International Law Commission: one in favour of inserting it, and the other against. The Indian delegation thought it would be advisable to embody in the convention the principle on which paragraph 2 was based. There were three reasons for doing so. Firstly, that principle was gaining ever wider acceptance in present-day international practice. That was nothing new, indeed, since as long ago as the eighteenth century there had already existed a tendency to combine diplomatic and consular functions. Even in those days it was not uncommon for States to appoint their diplomatic officers simultaneously as consular representatives. For example, Mr. Gérard, the first minister plenipotentiary sent by France to the United States in 1778, had been given a commission appointing him as consul-general at Boston and other ports belonging to the United States. The Havana Convention of 1928 on Consular Agents appeared to embody the idea underlying that growing practice; article 13 of that convention provided that "A person duly accredited for the purpose may combine diplomatic representation and the consular function, provided the State before which he is accredited consents to it." Above all, there was no instance of a diplomatic mission being completely dis-

sociated from consular functions or debarred from exercising them. Secondly, it had to be borne in mind that article 3, paragraph 2, of the Vienna Convention on Diplomatic Relations stipulated that "Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission." It would therefore be quite in order for the convention to state that the establishment of diplomatic relations implied consent to the establishment of consular relations. Lastly, if paragraph 2 were deleted, the scope of the convention would be considerably reduced, for it would then apply only to the activities of consulates, and not to those of consular sections of diplomatic missions.

41. The Indian delegation thought that the words "unless otherwise stated" gave clarity to paragraph 2. To improve it still further, however, his delegation proposed the addition at the end of the paragraph of the words: "In conformity with the local laws and customs of the receiving State" (A/CONF.25/C.1/L.36).

42. He had no objection to paragraph 3, for nowadays it was an acknowledged principle of international law that the severance of diplomatic relations did not *ipso facto* involve the severance of consular relations, except in the event of a declaration of war.

43. Mr. REZKALLAH (Algeria) said that from the legal standpoint the Czechoslovak amendment in no way ran counter to the wording of article 2. Nevertheless, in seeking to establish a right, it ran the risk of provoking a counter-right, due to the terms in which it was couched. The principle of mutual consent would appear to afford an essential safeguard against that risk. He would therefore stand by article 2 as it appeared in the draft, and regretted that he could not accept the amendment.

44. Mr. BARUNI (Libya) said that his delegation would accept the draft of article 2, paragraph 1, as proposed by the International Law Commission. The right of the receiving State must be safeguarded. The need for mutual consent was an acknowledged principle of international law. He could only accept the minor amendment submitted by the United Arab Republic (L.9), which clarified the draft without altering its meaning.

45. Mr. LEE (Canada) said he was likewise unable to accept the amendment. Like the New Zealand delegation, he felt that the proposal was incompatible with paragraph 1 of article 2. All rights involved certain duties. It would therefore be the duty of the receiving State to accept the establishment of consular relations; that would be against the universally acknowledged principle according to which consular relations were based on the mutual consent of the two States concerned. The receiving State was at liberty to refuse. The Canadian delegation would therefore vote against the amendment.

46. Mr. N'DIAYE (Mali) likewise stressed the fact that the establishment of consular relations between two countries must be the result of mutual agreement. The Czechoslovak amendment might give rise to a certain confusion and render inoperative the principle of prior

consent on the part of the receiving State. His delegation was therefore unable to accept the amendment.

47. Mr. RAHMAN (Federation of Malaya) said that the amendment was inappropriate. The right of the receiving State to refuse to establish consular relations was ignored. If the amendment were restricted to saying that each State had the right to establish or to refuse to establish consular relations it might perhaps be acceptable. As it was, the delegation of Malaya did not think the amendment opportune, and would vote against it.

48. Mr. SRESHTHAPUTRA (Thailand) said that he would vote against the amendment which, in his view, would strike a blow at a fundamental right of sovereign states.

49. Mr. ABDELMAGID (United Arab Republic) thought that the addition proposed by the Czechoslovak delegation had aroused misgivings which were perhaps groundless. Nevertheless, he could not agree to it.

50. The amendment he himself had submitted (L.9) was in keeping with the idea defined in paragraph 1 of the International Law Commission's commentary.

51. Mr. MAHOUATA (Congo, Brazzaville) said that he supported the clear and concise arguments adduced against the Czechoslovak amendment, which he was obliged to reject.

52. Mr. KALENZAGA (Upper Volta) said that he quite understood that the sponsor of the amendment had wished to affirm the right of all countries to establish consular relations. That right, however, went without saying; but the consent of the other party was necessary for its effective operation. He agreed with what had been said by the representative of Tunisia, and regretted that he could not accept the Czechoslovak amendment.

53. Miss ROESAD (Indonesia) said that, while she was in sympathy with the idea underlying the amendment, she could not accept it as drafted. On the other hand, she was ready to support the amendment submitted by the United Arab Republic, which would make for greater clarity in the wording.

54. Mr. PETRŽELKA (Czechoslovakia) said that he wished to define the scope of his delegation's amendment. There was no question of forcing a State to accept the dictates of any other State, but rather of setting forth a fundamental right recognized under international law as belonging to all States. In view of the feeling which seemed to prevail in the Committee, he would not insist on his amendment being put to the vote; but a provision to the same effect might be incorporated in the preamble.

55. The PRESIDENT asked the Committee to take a decision on the amendment submitted by the United Arab Republic (L.9), which seemed to him to be purely a question of drafting.

56. Mr. BOUZIRI (Tunisia) said that he was not sure that it was merely a matter of form. He was in favour of retaining the wording which appeared in the convention on diplomatic relations.

57. The PRESIDENT suggested that the amendment submitted by the United Arab Republic should be referred to the drafting committee.

*It was so decided.*

The meeting rose at 1 p.m.

### THIRD MEETING

Wednesday, 6 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 2 (Establishment of consular relations) (continued)

1. The CHAIRMAN reminded the Committee that, at the previous meeting, the representative of Czechoslovakia had said that he would not press for a vote on his amendment (A/CONF.25/C.1/L.1) and that it had been agreed to refer the United Arab Republic amendment (A/CONF.25/C.1/L.9) to the drafting committee.

2. If there was no objection, he would therefore assume that the Committee agreed to approve paragraph 1 of article 2, subject to the drafting committee's consideration of the United Arab Republic amendment.

*It was so agreed.*

3. The CHAIRMAN invited the Committee to consider paragraph 2. He drew attention to the amendments submitted by Bulgaria (L.2), Hungary (L.13), Brazil, Italy and the United Kingdom (L.19), Viet-Nam (L.30) and India (L.36).

4. Mr. de ERICE y O'SHEA (Spain) proposed that the Spanish title of section I (*Establecimiento y conducta . . .*) should be amended to read: "*Establecimiento y ejercicio . . .*"

5. The CHAIRMAN said that that point would be referred to the drafting committee.

6. Mr. EL-SABAH EL-SALEM (Kuwait) expressed his country's satisfaction at participating for the first time in a conference of plenipotentiaries.

7. Referring to the amendments to paragraph 2, he suggested that the Committee should consider first the amendments furthest removed from the International Law Commission's text — namely, those in which it was proposed to delete the paragraph altogether (L.19 and L.30).<sup>1</sup>

8. With regard to the substance of the paragraph, he reserved his delegation's position.

9. The CHAIRMAN said that, in accordance with rule 41 of the rules of procedure, the proposal to delete paragraph 2 would be voted on first. During the discus-

sion, however, delegations could speak on all the amendments to paragraph 2.

10. Mr. BARUNI (Libya) expressed the view that paragraphs 2 and 3 should be brought into line. If the Committee retained paragraph 2, paragraph 3 should be amended to provide that the severance of diplomatic relations involved the severance of consular relations. That was the only solution consistent with the provision in paragraph 2 that the establishment of diplomatic relations implied consent to the establishment of consular relations.

11. Mr. SILVEIRA-BARRIOS (Venezuela) opposed the proposal to delete paragraph 2; that paragraph embodied a generally accepted international practice. Diplomatic relations and consular relations were separate matters, governed by different rules. The establishment and the severance of diplomatic relations were governed by the 1961 Vienna Convention; consular relations would be governed by the convention to be adopted by the present conference. As far as consular relations were concerned, paragraph 2 constituted a complement of the rule embodied in paragraph 1.

12. Mr. TSYBA (Ukrainian Soviet Socialist Republic) also opposed the proposal to delete paragraph 2. The provision contained in that paragraph embodied a world-wide practice. Consular functions were often performed by diplomatic missions, and the 1961 Vienna Convention on Diplomatic Relations expressly stated, in article 3, paragraph 2, that "Nothing in the present convention shall be construed as preventing the performance of consular functions by a diplomatic mission." His delegation accordingly considered it essential to retain paragraph 2.

13. Mr. DUARTE DA ROCHA (Brazil) said that the spirit and the letter not only of article 2, paragraph 1, but also of article 4 were somewhat distorted by the provision contained in paragraph 2 of article 2.

14. Article 2, paragraph 1, and article 4 stated the fundamental principle of international law that the establishment of consular relations, and the establishment of a consulate, were subject to the express consent of the States concerned. Paragraph 2 of article 2 introduced a new element, which was at variance with that fundamental principle; it introduced the concept of tacit agreement for the establishment of consular relations. That was a departure from the fundamental principle, which had no practical advantage whatsoever.

15. It was not uncommon, at the time when two States established diplomatic relations, for one of them not to wish to enter into consular relations with the other. Paragraph 2 would make it necessary to state such disinclination expressly — a situation which would be quite intolerable in practice.

16. Another important consideration was that paragraph 2 could be construed to mean that when the future convention on consular relations came into effect, all States parties to it must accept the proposition that they were *ipso facto* in consular relations with all States with which they maintained diplomatic relations.

<sup>1</sup> All references in this and subsequent records of the First Committee to "L" documents are references to documents in the series A/CONF.25/C.1/L. . .