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20th meeting of the First Committee

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TWENTIETH MEETING

Tuesday, 19 March 1963, at 10.35 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 19 (Appointment of the consular staff) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of article 19 and the amendments there to.¹

2. Mr. PALIERAKIS (Greece) said that he was in favour of the amendment submitted by the Federal Republic of Germany, which made it possible for the receiving State to exercise its right under paragraph 3 of article 23. On the other hand, if paragraph 2 of article 19 were retained, it would be advisable to adopt the Italian amendment, which took into consideration the requirements of the law of the receiving State.

3. Mr. CHIN (Republic of Korea) supported the amendment of the Federal Republic of Germany. For the receiving State to be able to exercise its rights under paragraph 3 of article 23, it would have to be notified in sufficient time of the name, category and capacity of all consular officials other than the head of post. His delegation was in favour of deleting paragraph 2 of article 19, as proposed by the Swiss, Japanese and joint Hungarian and Polish amendments. The provision contained therein was an optional and supplementary measure which was not required by international law, as indeed had been recognized by the International Law Commission in paragraph 7 of its commentary on the article.

4. Mr. de MENTHON (France) said that he too would vote for the amendment submitted by the Federal Republic of Germany, which filled a gap in the International Law Commission's draft. His delegation was also in favour of retaining paragraph 2 and of adding to article 19 the additional paragraph proposed in the Italian amendment.

5. Mr. KOCMAN (Czechoslovakia) said that paragraph 1 of article 19 stated a rule of international law already recognized in article 7 of the Vienna Convention on Diplomatic Relations. Paragraph 2 made provision for an exception to that rule, which could be stipulated in a bilateral convention. His delegation was therefore in favour of deleting that paragraph. The Italian amendment seemed to be contrary to consular tradition, and his delegation would vote against it.

6. The amendment submitted by the Federal Republic of Germany would be more appropriate in connexion with article 24. If the sponsors were willing for it to be discussed when that article came up for consideration, the Czechoslovak delegation would support it.

7. Mr. CRISTESCU (Romania) considered that the provisions of paragraph 2 were not in accordance with the general practice of all States and were of interest to a relatively small number of countries. Moreover, the matter could be settled through bilateral agreements. For those reasons, his delegation would vote against the amendments to delete paragraph 2 and, therefore, against the Italian amendment.

8. Mr. TÜREL (Turkey) said that he did not consider it advisable to include in a multilateral convention a provision such as paragraph 2 of article 19, since it was an optional measure not required by international law. The amendment submitted by the Federal Republic of Germany, on the other hand, was highly opportune, because it would facilitate the application of the provisions of paragraph 3 of article 23.

9. Mr. SHARP (New Zealand) said that he regarded article 19 as a compromise between the system of granting an exequatur to all consular officials and that of restricting it to the head of post. The Italian amendment was in keeping with practice in New Zealand; his delegation would therefore support it, provided it allowed for the methods set out in the amendment of the Federal Republic of Germany, for which he would likewise vote.

10. Miss ROESAD (Indonesia) considered that the sending State should be free to appoint the members of its consular staff. The Indonesian delegation would therefore vote in favour of paragraph 1 of article 19. The receiving State should likewise be notified in sufficient time of the names of consular officials appointed to a post so as to be able, if it wished, to exercise its rights under article 23, paragraph 3. Her delegation was therefore in favour of the amendment submitted by the Federal Republic of Germany. Paragraph 2 was justified for the reasons stated in paragraph 7 of the International Law Commission's commentary, and there was no reason to delete it.

11. Mr. N'DIAYE (Mali) supported the amendment of the Federal Republic of Germany, which constituted a safeguard for the security of States. That applied more particularly to young States which, in view of the circumstances in which they had gained independence, were obliged to exercise strict control over consular staff. The Italian amendment would be necessary if paragraph 2 were retained, because it rightly gave the receiving State the option of requiring an exequatur for a consular official. His delegation considered that the rejection of that amendment would logically imply the deletion of paragraph 2, the substance of which should be dealt with in bilateral conventions.

12. Mr. ENDEMANN (South Africa) said that the practice of restricting the exequatur to the head of the post was not so widespread as some speakers had claimed; paragraph 2 was therefore justified. The Italian amendment likewise filled a gap. His delegation, however, would prefer it to be drafted to read: "Likewise, the receiving State may, if such is required by its law, grant to a consular official who is appointed to a consulate in accordance with paragraph 1 of this article and who is

¹ For a list of the amendments to article 19, see the summary record of the nineteenth meeting (footnote to para. 74).

not the head of post the exequatur." He would vote for the amendment by the Federal Republic of Germany.

13. Mr. MARTINS (Portugal) said that, although he sympathized with the purpose of the Italian amendment, he would vote against it. Its adoption would impose a fresh formality in connexion with the admission of members of the consular staff. He would likewise vote against the joint amendment and the other amendments deleting paragraph 2. He recognized, however, that the text of that paragraph should be amended.

14. Mr. USTOR (Hungary) said that he was not quite clear as to the meaning of the amendment submitted by the Federal Republic of Germany. It gave the receiving State the possibility of exercising its legitimate right under paragraph 3 of article 23; but how was the exercise of that right to be guaranteed? Presumably by notification on the part of the sending State; but then the obligation imposed on the sending State should not be stipulated in article 19, since the notification of the appointment of members of the consulate was dealt with in article 24. The amendment should therefore apply to article 24. Moreover, the amendment provided solely for the notification of the names of consular officials other than the head of post, whereas it was just as necessary that the receiving State should be informed of the name, category and capacity of the head of post. The amendment submitted by the Federal Republic of Germany did in fact state that notification should be made by the sending State "in sufficient time", but that was too vague an expression. Perhaps the delegation of the Federal Republic of Germany could revise the wording of its amendment with regard to that point.

15. Mr. OMOLULU (Nigeria) said that he was in favour of paragraphs 1 and 2 of the draft. He would also support the Italian amendment, as orally revised by South Africa, but he would propose a slight drafting change in the South African sub-amendment and place the words "the exequatur" immediately after the word "grant". He considered that the amendment of the Federal Republic of Germany would be more appropriate in connexion with article 19; he would support that amendment, which would facilitate the procedure for the admission of consular officials, particularly in the case of the young States which did not have adequate administrative machinery at their disposal.

16. Mr. HEPPEL (United Kingdom) noted with satisfaction that the amendment of the Federal Republic of Germany had met with unanimous approval, at least in substance. The proper place for that amendment was article 19, not article 24 as suggested by the representative of Hungary; article 24 dealt with administrative matters that concerned the Ministry for Foreign Affairs of the receiving State.

17. The United Kingdom delegation was not in favour of the amendments for the deletion of paragraph 2 which, as the International Law Commission had pointed out in its commentary, was not mandatory. But it supported the Italian amendment which placed the sending and receiving States on the same footing so far as the exequatur was concerned. In one form or another the

exequatur was very important to a consular official, as it greatly facilitated the exercise of his functions.

18. Mr. TILAKARATNA (Ceylon) supported the amendment of the Federal Republic of Germany, which was the corollary to article 19 and was of particular value for young States, as the Nigerian representative had rightly pointed out.

19. Mr. ROSSI LONGHI (Italy) accepted the South African oral sub-amendment to the Italian amendment.

20. Mr. von HAEFTEN (Federal Republic of Germany), replying to the remarks of the Czechoslovak and Hungarian representatives, observed that article 24 was unsatisfactory in that it failed to provide that adequate notice should be given by the sending State of the appointment of members of consulates. Furthermore, the provisions of article 24 applied to all members of a consulate, whereas it was not necessary for the sending State to give notification in advance of the appointment of certain categories of consular employees. If paragraph 2 were deleted, however, and if the Italian amendment were rejected, the German delegation would agree to leave the question where its amendment should be placed to be settled by the drafting committee.

21. Mr. ALVARADO GARAICOA (Ecuador) supported the amendment by the Federal Republic of Germany and said that since consular officials came into direct and close contact with nationals of the sending State, as well as with the population of the receiving State, it was important that the exequatur should be granted, with full knowledge of the circumstances, not only to the head of a post, but to all consular officials.

22. Mr. USTOR (Hungary) said that while consular officials should be treated differently from other consular employees, article 19 dealt with the appointment of the consular staff, an expression which covered both categories. Perhaps it would be best to insert these various provisions in one or more separate paragraphs, or perhaps in article 24. It was a matter of drafting on which it should be possible to reach agreement. If that condition were met, the Hungarian delegation could accept the amendment by the Federal Republic of Germany.

23. The CHAIRMAN said that since the Spanish amendment (L.131) to paragraph 1 of article 19 had been withdrawn, he regarded paragraph 1 of article 19 as having been approved by the Committee.

24. He thought it best to put to the vote immediately the proposal of the Federal Republic of Germany (L.130) to insert a new paragraph after paragraph 1. The drafting committee could later decide at which point it should be inserted.

The amendment by the Federal Republic of Germany (A/CONF.25/C.1/L.130) was adopted by 53 votes to 11, with 7 abstentions.

25. The CHAIRMAN put to the vote the Swiss (A/CONF.25/C.1/L.17), Japanese (A/CONF.25/C.1/L.58) and Hungarian and Polish (A/CONF.25/C.1/L.96) amendments calling for the deletion of paragraph 2.

The amendments were rejected by 33 votes to 26, with 11 abstentions.

26. The CHAIRMAN put the Italian amendment (A/CONF.25/C.1/L.119), as amended by the South African sub-amendment, to the vote.

The amendment was adopted by 40 votes to 17, with 13 abstentions.

Article 19, as amended, was adopted by 56 votes to 11, with 3 abstentions.

27. Mr. BARTOŠ (Yugoslavia) explained that his delegation had voted against article 19, as amended, because it thought that the idea underlying the International Law Commission's text had been changed and that the balance of the draft as a whole had thus been altered.

28. Mr. RABASA (Mexico) said that his delegation had voted for paragraphs 1 and 2 of article 19 as drafted by the International Law Commission, and for the Italian amendment, as it thought that the granting of the exequatur was quite as important for consular officials as the agrément for members of the diplomatic staff. It had voted against the German amendment (L.130) since, although it approved the first part specifying the particulars to be furnished for all consular officials, it did not agree with the second part concerning the right of the receiving State not to accept consular officials.

29. Mr. WU (China) said that his delegation had voted for the Italian amendment because it referred to the law of the receiving State, which did not always require that an exequatur be granted to consular officials other than heads of posts.

Article 20 (Size of the staff)

30. The CHAIRMAN invites the Committee to consider article 20 and the amendments relating to it.²

31. Mr. KRISHNA RAO (India) announced that the delegations of Argentina, Nigeria and India had agreed to replace their separate proposals by a joint amendment according to which it was for the receiving State to keep the size of the staffs of consulates of sending States within reasonable and normal limits. The Argentine representative would explain the reasons which had prompted the amendment.

32. Mr. RUDA (Argentina) said that the Argentine, Nigerian and Indian delegations had presented different texts (L.92, L.104 and L.111) which were, however, based on the same idea: to establish the right of the receiving State to determine, in the absence of an explicit agreement, the reasonable and normal limits within which the size of consulate staffs should be kept.

33. At its thirteenth session, the International Law Commission had already considered a similar text which had had the support of a number of eminent jurists, but the text had not been maintained. He did not see why the standards laid down for the consular service should differ from those adopted for the diplomatic service. In

paragraph 3 of its commentary, the International Law Commission had recognized the right of the receiving State to limit the size of consular staffs. In doing so, it had, of course, to apply objective criteria — i.e., the consulate's needs. The principle laid down in the commentary did not seem to have found expression in the draft text of article 20. The right recognized in the text was illusory; to make it effective, it was necessary to specify who should decide whether the size of a staff was reasonable and normal as judged by the criteria mentioned in the commentary; accordingly, it was proposed in the joint amendment to replace the words "reasonable and normal limits" by the words "limits considered by it to be reasonable and normal".

34. Mr. OMOLULU (Nigeria) entirely agreed with the Argentine representative's statement. As the representative of a young State, he thought that there were three good reasons for the principle that it was the receiving State who should fix the size of consular staffs. The first was security: new States could not accept excessively large consulates as there had been too many abuses in the past. Secondly, there was the practical question of accommodation, schools, etc., as well as the financial question. Lastly, the enjoyment in a small country of diplomatic privileges and immunities by too many persons could exert an undesirable influence on the minds of the local inhabitants.

35. Mr. TÜREL (Turkey) said that his amendment (L.135) aimed at clarifying the text of article 20 whose purpose was to keep the size of consulate staffs within reasonable and normal limits, having regard to the proper performance of consular functions.

36. Mr. TSHIMBALANGA (Congo, Leopoldville) introduced an oral amendment to delete article 20. The question was purely internal and should normally be settled by bilateral agreement, in an atmosphere of mutual understanding. Failing agreement, the receiving State had not the right to limit the size of staffs. His government, therefore, was opposed in principle to the article. If, however, the Committee decided to include it in the Convention, he was prepared to support the Nigeria, Indian and Argentine proposals, and the Turkish amendment; he suggested that the delegations concerned should agree on a joint text.

37. Mr. KEVIN (Australia) said that consulates should not be placed in a more favourable situation than diplomatic missions.

38. Mr. PALIERAKIS (Greece) said that his delegation approved the joint amendment as the International Law Commission's text failed to answer the important question of who was to decide what was reasonable and normal. To admit that the sending State had the right to impose its will on the receiving State would be to jeopardize the sovereignty of the receiving State. He was also in favour of the Turkish amendment.

39. Mr. KHLESTOV (Union of Soviet Socialist Republics) pointed out that article 20 had been approved by the International Law Commission after the Vienna Conference on Diplomatic Relations, but that its text

² The following amendments had been submitted: Argentina, A/CONF.25/C.1/L.92; Nigeria, A/CONF.25/C.1/L.104; India, A/CONF.25/C.1/L.111; Turkey, A/CONF.25/C.1/L.135.

differed from that of the corresponding article in the 1961 Convention. To decide whether that was a mistake or a deliberate choice, it was necessary to examine article 20 carefully. Failing an agreement between the sending State and the receiving State, the latter could demand that the size of a consulate staff should be kept within reasonable and normal limits. The question was: Who was to decide the precise meaning of the words "reasonable and normal"?

40. To give to the sending State the right of fixing the size of consulate staffs would be one extreme solution. The other extreme solution would be to leave the right to decide to the receiving State. Those were doubtless the considerations which had led the International Law Commission to draw up the text as it stood. His delegation had examined with interest the proposed amendments, in particular those of India and of the Congo (Leopoldville); but it thought that the difficulties had been exaggerated. A middle way should be found, which might well be that suggested by the International Law Commission.

41. His delegation would be able to support the Congolese amendment and the first part of the Turkish amendment; but the second part of that amendment seemed inadvisable, since the needs of the consulate had also to be taken into consideration. The USSR delegation did not wish to ignore any relevant factor and was ready to consider all the arguments which might be brought forward in the Committee.

42. Mr. N'DIAYE (Mali) thought that the young and still very vulnerable States in particular should give careful consideration to article 20, as they had to protect themselves from an undesirable growth of consular staffs, whose superfluous members could engage in activities very different from those they were supposed to perform. In his opinion, therefore, it was essential that the article be retained. He was, however, in favour of the joint amendment.

43. Mr. HEPPEL (United Kingdom) said that there were three ways in which the matter could be solved. In the bilateral agreements concluded by the United Kingdom it was left to the sending State to fix the size of each consulate staff. According to the International Law Commission, the receiving State had a word to say in the matter and any disputes could be settled in the light of objective criteria of what was reasonable and normal; the International Law Commission had deliberately refrained from saying how the receiving State should decide what was reasonable and normal. The third solution was to leave the decision to the receiving State. He well understood what had been intended by the International Law Commission, but the discussion had shown that a certain number of States might think that their interests should be better protected. As a sending State which maintained a fairly large number of consular posts, the United Kingdom did not wish to impose its opinion on the Committee, and would therefore abstain on that point.

44. Mr. DADZIE (Ghana) said that although article 20 was perfectly acceptable to Ghana, it seemed to leave in doubt the important question of who was to decide

what was reasonable and normal. It seemed to be for the receiving State to judge; but the sending State could not always concur in the receiving State's decision. Rather than leave the matter in doubt, the Ghanaian representative thought it best to support the joint proposal by India, Argentina and Nigeria. He could not support the existing text of the Turkish amendment.

45. Mr. ABDELMAGID (United Arab Republic) observed that article 20 took account of three factors. The most important was the principle of agreement between the two States; the second was a subjective criterion — the idea of what was reasonable and normal; the third was an objective criterion — the needs of the consulate. Existing practice gave priority to the first principle. Agreement solved all difficulties, but if there were no agreement, a decision had to be based on the criteria referred to. The delegation of the United Arab Republic was inclined to support the amendment of the three countries, which seemed to provide an apt solution. The Turkish amendment (L.135) would also be acceptable if it were supplemented by the insertion, after the words "for the performance of the consular functions", of the words "within the limits of the consular district".

46. Mr. RABASA (Mexico) supported the joint amendment. When a dispute arose between two States, there were three possible methods of settling it: by bilateral agreement, which should have priority; by a unilateral solution, in which one of the parties imposed its will; and by the reference of the dispute to a third party. Good sense suggested that, failing agreement between the two parties concerned, it should be for the receiving State to decide what was just and reasonable, and to say what persons it was prepared to accept.

47. As his delegation had found the Argentine representative's argument very convincing, it would vote for the joint amendment in its final form.

48. Mr. DEGEFU (Ethiopia) said that, despite careful study, he had been unable to perceive exactly what the International Law Commission's text intended; he therefore supported the arguments of the Argentine and Indian representatives. He understood the reasons which had prompted the Nigerian amendment (L.104), but doubted if it was advisable to add a new paragraph. He thought that it would overburden the text of the joint amendment if the Turkish amendment (L.135) were amalgamated with it; moreover, a situation unfavourable to the States which had recently gained their independence might thereby be created.

49. Mr. ROSSI LONGHI (Italy) said that his delegation supported the amendments.

50. Mr. USTOR (Hungary) said that the International Law Commission's divergence from the position it had adopted at the time of the Vienna Convention on Diplomatic Relations seemed to have been deliberate. He hoped that, before the matter was put to the vote, there would be an opportunity of hearing the special rapporteur's explanation.

The meeting rose at 1 p.m.