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TWENTY-FIRST MEETING

Tuesday, 19 March 1963, at 3.5 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 20 (Size of the staff) *(continued)*

1. The CHAIRMAN recalled that the Argentine, Indian and Nigerian delegations had agreed on a single amendment to replace their separate proposals (L.92, L.111 and L.104). In addition, there was a proposal by Turkey (L.135) and an oral amendment by the Congo (Leopoldville).

2. Mr. TILAKARATNA (Ceylon) said that his delegation disagreed as a matter of principle with the suggestion made by the Hungarian representative at the preceding meeting that the opinion of the expert should be requested on article 20. The article had no legal content; it dealt with a political issue. Moroever, the summary records of the Commission's debates showed that the voting on the article had been as close as 8 in favour and 6 against and 4 abstentions, so that it might be embarrassing for the expert to have to give an opinion on the subject.

3. The question dealt with in the article was of great importance to some countries and reflected the friendly relations which should exist between the sending State and the receiving State. It would be sad to see the debate degenerate into a conflict between large and small countries. In practice, and as provided in the Commission's article, it should be for the receiving State to require that the size of the staff be kept within reasonable and normal limits, since that State had at least as much responsibility as the sending State in deciding upon needs in the light of circumstances and conditions in the consular district. Moreover, the interests of the sending State were safeguarded by the reference in the article to the needs of the particular consulate.

4. His delegation deplored the tendency to compare all aspects of the draft articles with corresponding provisions of the Vienna Convention on Diplomatic Relations. Two years had elapsed since the Vienna Conference, and a number of changes had taken place in the conduct of international relations. It therefore seemed unnecessary to impose the same restrictions in the consular convention as had been adopted in the earlier instrument. Delegations were attending the Conference with a view to preparing a vitally important multilateral instrument, which should be implemented in a spirit of friendship; that aim would not be furthered by an acrimonious debate on article 20.

5. Mr. SILVEIRA-BARRIOS (Venezuela) said that his delegation endorsed the legal arguments advanced by the Argentine and Mexican representatives at the preceding meeting and would therefore support the joint amendment.

6. Mr. EL KOHEN (Morocco) said that, in his degation's opinion, the size of the consular staff was a matter of great concern to the receiving State, because of its sovereign right to limit certain activities in its own territory. As the representative of Mali had pointed out, the receiving State was more vulnerable to abuses through the increase of the size of the staff than the sending State. The safeguard provided in the joint amendment was therefore a wise one and, moreover, it corresponded to the recognized practice. He also supported the Turkish proposal to delete the words " and to the needs of the particular consulate ", which were superfluous.

7. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation wished to clarify its position on article 20. It had originally supported the draft article, in the belief that the Commission had duly taken into account the corresponding provision of the Vienna Convention and the existing practice in consular matters, and had tried to balance the interests of the sending State and the receiving State. The debate in the Committee had shown, however, that the joint amendment would serve the interests of a number of countries, particularly those which had recently become independent. The USSR delegation would therefore not oppose the joint amendment.

8. Mr. KRISHNA RAO (India) said that the idea of conferring overriding powers on the receiving State in the matter of the size of the staff was based on the very structure of the draft. Article 2 (Establishment of consular relations) implied that the sending State established consular relations with the receiving State in accordance with the sovereign rights of the receiving State; as a logical consequence of that principle, the receiving State had the right to refuse to admit consular officials to its territory. Article 20 was based on the premise that, if the size of the staff was abnormally large, there might be reason to believe that members of the consulate were engaged in other than consular activities.

9. The reasonable or normal size of the staff should be determined by agreement with the sending State; but, failing such agreement, it was a matter for the receiving State alone to decide. In the absence of a provision to that effect, the matter could hardly be settled by resorting to a possible disputes clause referring it to the International Court of Justice, since the issue was political rather than legal and must be decided on the spot. Thus, from the practical point of view also, it was better for the receiving State to settle the matter, a solution which would help to promote peaceful and friendly consular relations.

10. It had to be borne in mind that diplomatic functions were less specific and tangible than consular functions; in the case of the latter the size of the staff depended on such definite facts as the number of nationals of the sending State in the consular district, the volume of trade between the two countries and so forth.

11. His delegation therefore commended the joint amendment to the Committee. He was grateful to the representative of the Congo (Leopoldville) for his sup-

port of the joint amendment, but that representative's proposal to delete the whole article placed him in a somewhat contradictory position.

12. Mr. TSHIMBALANGA (Congo, Leopoldville) withdrew his proposal to delete article 20. The debate had shown his delegation that the joint amendment would afford considerable advantages to small countries.

13. Mr. BARTOŠ (Yugoslavia) said that the International Law Commission had found itself in a difficult position with regard to article 20 and had decided on a compromise text which clarified the fact that, on the one hand, the sending State had the sovereign right to state the number of personnel it needed to perform consular functions, while on the other hand the receiving State had sovereign rights in its own territory to protect itself against any abuse. It was difficult to decide which State should be so protected; while the receiving State should have all the necessary means of protection at its disposal, it was possible to conceive of acts on the part of the receiving State which might hamper the activities of consuls. The Commission had therefore left it to the Conference to decide on the final solution.

14. Moreover, the Commission had felt unable to take the responsibility of laying down an objective criterion in the absence of compulsory jurisdiction in the matter, since that question was dealt with by the Vienna Convention on Diplomatic Relations in an optional protocol. In the absence of precedent or suitable jurisdiction, the compromise solution had seemed reasonable. Recourse to the International Court of Justice was too costly and in any case would take far too long; as the Indian representative had said, the question must be settled on the spot. He therefore believed that the solution proposed in the joint amendment was the best that could be reached in the circumstances, though the most satisfactory method would be that of *ad hoc* arbitration with the approval of both States.

15. To sum up, the sovereignty of the sending State and of the receiving State was involved; in principle, neither should be favoured at the expense of the other, but a solution which in practice promoted the protection of small States against large States seemed to meet the requirements of international social justice.

16. Mr. TÜREL (Turkey) said he would vote for the joint amendment. In view of the wish expressed by some delegations to retain the words " and to the needs of the particular consulate ", he would agree to withdraw the second part of his delegation's amendment (L.135). He could also accept the proposal of the representative of the United Arab Republic to insert the words " within the limits of the consular district " after the words " for the performance of the consular functions ".

17. Mr. WESTRUP (Sweden) said that at the Vienna Conference of 1961 the Swedish delegation had opposed the principle of making the receiving State competent to decide what was a reasonable and normal size for a diplomatic mission in its territory. His delegation had not changed its opinion, but it did not think that the two conventions should differ on that point. It therefore would not oppose any amendment intended to bring the provisions into line with the Vienna Convention and would merely abstain from voting on them, in the interests of friendly relations among States.

The amendment submitted jointly by the delegations of Argentina, India and Nigeria was adopted by 48 votes to 1, with 16 abstentions, subject to re-wording by the drafting committee.

The Turkish amendment (A/CONF.25/C.1/L.135), as orally amended by the representative of the United Arab Republic, was rejected by 15 votes to 8, with 40 abstentions.

Article 20, as amended, was adopted by 57 votes to none, with 10 abstentions.

Article 21 (Order of precedence as between the officials of a consulate)

18. The CHAIRMAN drew attention to the amendments submitted to article 21.[1]

19. Mr. MIRANDA e SILVA (Brazil) said that his delegation had submitted its amendment for two reasons: first, to specify that the order of precedence was to be established by the head of post and, secondly, to simplify the wording of the article. There were undoubted advantages in stating that the order of precedence as between the officials of a consulate was established by the head of post.

20. Mr. OMOLULU (Nigeria) said that, since his delegation's amendment depended on the ultimate definition of the term " consular official " and since the Committee had not yet discussed article 1 (Definitions), he would withdraw it.

21. Mr. JELENIK (Hungary) said that his delegation could, in principle, accept article 21, which corresponded to article 17 of the Vienna Convention on Diplomatic Relations. It had submitted its amendment in order to clarify the clause and to make it correspond more closely to existing practice. Although it might be implicit in article 21 that changes in the order of precedence must be notified to the authorities of the receiving State, it was advisable to state that fact explicitly.

22. Mr. MAMELI (Italy) said that his delegation had introduced its amendment because there seemed to be no reason to make an exception to the rule that a consular official should not enter into contract with the Ministry for Foreign Affairs of the receiving State. Even where the sending State had no diplomatic mission, the same procedure should be used as for the establishment of consular relations.

23. Mr. ENDEMANN (South Africa) said that his delegation had submitted its proposal to delete article 21 for two main reasons. First, the Commission's draft might cause a great deal of confusion in practice. In most consular districts, the order of precedence of officials was decided by the dean of the consular corps, but article 21 could, by implication, mean that the Ministry

[1] The following amendments had been submitted: Brazil, A/CONF.25/C.1/L.66; Hungary, A/CONF.25/C.1/L.97; Nigeria, A/CONF.25/C.1/L.105; Italy, A/CONF.25/C.1/L.120; South Africa (A/CONF.25/C.1/L.129).

for Foreign Affairs of the receiving State could take over the duty of determining precedence for consular officials throughout the country, which would impose a great burden on that ministry. Secondly, the implication that the head of post should establish the precedence of his staff would raise practical difficulties. For example, in one and the same consular district, post A might have two or three officials with the rank of consul on its staff while post B might have only one official in that class; the senior official in that class at post A might leave and the new official who replaced him might, by a decision of the head of post, rank first in his class. The relationship between that new official and the only official of the same class at post B would then be most confused. In the practice of many countries, seniority in the consular corps was reckoned from the date when the official assumed his duties in his class, and anyone appointed at a later date was automatically junior. For those two reasons, the South African delegation had proposed that the article be deleted.

24. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) observed that the Brazilian amendment referred to the establishment of the order of precedence. That was a matter within the exclusive competence of the sending State; it was not relevant to article 21, which dealt only with notification of the order of precedence to the authorities of the receiving State. His delegation could not vote for that amendment or for the Italian amendment, the effect of which would be to leave no definitive indication as to who was to notify the authorities of the receiving State. Nor could his delegation support the South African proposal to delete the article, since it had considerable practical value and a similar provision had rightly been included in the Vienna Convention on Diplomatic Relations. The Hungarian amendment, on the other hand, improved the Commission's text, and his delegation would vote in favour of it.

25. Mr. BARTOŠ (Yugoslavia) said he could not support the South African proposal to delete article 21; it was better to have a precise rule laying down that the authorities of the receiving State must follow the order of precedence established in accordance with the critiria of the sending State than to leave the question to subjective decisions which might give rise to disputes. He would vote against the Brazilian amendment, however, because it was not always the head of post who established the order of precedence within the consulate: some countries left that function to a relatively junior official specially empowered to deal with such administrative matters, and that practice should not be interfered with.

26. On the other hand, the act of notifying the authorities of the receiving State of the order of precedence was an international act involving another State; that was why the Commission had provided that the head of post should be responsible for such notification. He could not vote for the Italian amendment, because it was important to specify the person competent to notify the Ministry for Foreign Affairs of the receiving State or the authority designated by the said ministry. The Commission had included the last phrase of the article in order to provide for the case of federal States and other States which preferred to leave contacts with consular officials to regional authorities. There again, it would not be proper in a multilateral convention to specify the authority on which the government of the receiving State could confer competence to receive the notification.

27. He would vote for the Hungarian amendment, which clarified the Commission's text.

28. Mr. MARTINS (Portugal) said he would vote for the Brazilian amendment because it simplified the text of article 21. Once the order of precedence had been established, it was self-evident that the head of post would communicate it to the authorities of the receiving State.

29. Mr. WU (China) supported the South African amendment. The question of precedence as between the officials of a consulate was unimportant and had little practical interest except in such minor matters as the issue of invitations and the publication of lists of the consulars corps. The ministries of foreign affairs of receiving States should not be burdened with such trivia. If the majority of the Committee thought that the provision should be retained, his delegation would vote for the Italian amendment, because the head of a consular post was not in a position to communicate directly with the Ministry for Foreign Affairs of the receiving State.

30. Mr. de MENTHON (France) said he would vote for the Italian amendment. The head of a consular post normally had no direct contact with the Ministry for Foreign Affairs. If the consulate concerned was situated in the capital city, it would be for the diplomatic mission to notify the ministry of the order of precedence of consular officials; but in the case of consulates in other districts, the notification should be made to the local authorities. The Commission's text therefore seemed too rigid to meet all the cases that might arise in practice.

31. Mr. PALIERAKIS (Greece) said he would support the Hungarian amendment, since it seemed advisable to notify the authorities of the receiving State of changes in the order of precedence. He could not support the Brazilian and Italian amendments, however, for the reasons given by the Yugoslav representative.

32. Mr. DADZIE (Ghana) said that he could not agree with the South African representative's view that the effect of the Commission's text might be to place the onus of establishing the order of precedence on the Ministry for Foreign Affairs of the receiving State. Article 21 merely provided that the head of post would notify the ministry or another authority designated by it. The establishment of the order of precedence was within the exclusive competence of the sending State, and he could not support the South African proposal. Nor could he vote for the Italian amendment, because, even if the head of post might not actually sign the notification, another responsible official would do so on his behalf. He would vote against the Brazilian amendment, because the essential purpose of article 21 was to provide for notification of the order of precedence to the receiving State. He would vote in favour of the

Hungarian amendment, which conformed with the existing practice in the matter.

33. Mr. BREWER (Liberia) said he could support the Brazilian amendment if it were treated as an addition to the Commission's text. The text of the article might then read as follows: " The order of precedence as between the officials of a consulate shall be established by the head of post and shall be notified by him to the Ministry for Foreign Affairs of the receiving State or to the authority designated by the said ministry."

34. He did not think that the Hungarian amendment would serve any useful purpose, since it was implicit in the Commission's text that changes in the order of precedence would be notified to the competent authorities.

35. Mr. HEPPEL (United Kingdom) said he would prefer article 21 to be deleted, since the question of precedence within the consulate would be best regulated with reference to the date on which each official in a given class entered upon the exercise of his functions. He agreed with the Chinese representative that the Ministry of Foreign Affairs should not be concerned with such matters. Indeed, it was doubtful what such ministries would do with the streams of notifications they would receive and whether they would be willing to answer questions concerning the precedence of the consular corps in various parts of the country. Where there were several consular officials of the same rank, such minor questions as might arise could easily be settled locally. He would therefore support the South African amendment, but if the article was retained, he would vote for the amendments which removed the implication that heads of post should communicate directly with the Ministry for Foreign Affairs.

36. Mr. ABDELMAGID (United Arab Republic) said he would vote against the South African amendment; his delegation deplored the prevailing tendency to delete articles from the Commission's draft. He would also vote against the Italian amendment, because the person notifying the authorities of the receiving State must be specified, and against the Brazilian amendment, because it was irrelevant to the purpose of article 21. On the other hand, he would support the Hungarian amendment, which clearly showed that the order of precedence was not immutable.

37. Mr. N'DIAYE (Mali) said that he had not been convinced by the arguments for deleting the article and would vote against the South African amendment. He could not support the Italian amendment either, since it was essential to indicate the person who would notify the authorities of the receiving State. Adoption of the Brazilian amendment would sanction interference with the municipal law of the sending State, and he could not vote for it. He would support the Hungarian amendment, which filled a gap in the Commission's text.

38. Mr. MIRANDA e SILVA (Brazil) accepted the Liberian representative's oral sub-amendment, which satisfactorily combined the two ideas of establishment and notification of the order of precedence.

The South African amendment (A/CONF.25/C.1/L.129) was rejected by 48 votes to 5, with 10 abstentions.

The Brazilian amendment (A/CONF.25/C.1/L.66), as orally amended by Liberia, was rejected by 33 votes to 8, with 24 abstentions.

The Hungarian amendment (A/CONF.25/C.1/L.97) was adopted by 45 votes to 3, with 18 abstentions.

The Italian amendment (A/CONF.25/C.1/L.120) was rejected by 27 votes to 15, with 23 abstentions.

Article 21, as amended, was adopted by 61 votes to 1, with 3 abstentions.

39. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted for the Brazilian proposal as amended by Liberia because it was more systematic than the International Law Commission's text.

Article 22 (Appointment of nationals of the receiving State)

40. The CHAIRMAN invited debate on article 22 and drew attention to the amendments submitted.[2]

41. Mr. DONOWAKI (Japan), introducing his delegation's amendment deleting article 22, said that he wished to emphasize the fact that the provisions of paragraph 1 did not correspond to existing practice. Honorary consuls and consular agents were usually not nationals of the sending State.

42. Paragraphs 2 and 3 of the article were superfluous, because the receiving State had the right to refuse admission to any consular official, regardless of his nationality. Moreover, the amendment (L.130) to article 19 adopted at the previous meeting provided for prior notification of the names of all consular officials to the receiving State, so that the position of that State was safeguarded in every respect.

43. Mr. MIRANDA e SILVA (Brazil), introducing his delegation's amendment adding the word " express " in paragraph 2, said it was the practice of Brazil to require the express consent of the authorities of the receiving State for the appointment of a consular official from among persons having the nationality of that State; that also applied to honorary consuls.

44. Mr. WU (China) explained that his delegation favoured the deletion of article 22, as proposed by the Japanese delegation, because it considered that the practice of appointing nationals of the receiving State as consuls was out of date. Any provision to the effect that nationals of the receiving State could be appointed to act as foreign consuls would create difficulties. It was embarrassing for a person to act in his own country in the interests of a foreign State and of its nationals; moreover, the exercise of consular functions might confer certain privileges upon a national of the receiving State — a situation which was altogether anomalous.

45. If article 22 was retained, however, his delegation's amendment specifying that the " prior " consent of the receiving State was required would lessen the evil effects of the provision under discussion.

[2] The following amendments had been submitted: Japan, A/CONF.25/C.1/L.59; Brazil, A/CONF.25/C.1/L.67; China, A/CONF.25/C.1/L.112; South Africa, A/CONF.25/C.1/L.137.

46. Mr. ENDEMANN (South Africa), observed that article 22, paragraph 1, followed the terms of article 8, paragraph 1, of the Vienna Convention on Diplomatic Relations. He did not think it advisable to reproduce that provision in a convention on consular relations. Many countries, particularly small countries, could not afford to send career consuls to all the places where they needed to establish consulates; they therefore appointed as honorary consuls persons who were either nationals of, or residents in, the receiving State.

47. Nationality was not as important a factor for the exercise of consular functions as it was for the exercise of diplomatic functions, and his delegation therefore proposed that paragraph 1 should be deleted. He noted, moreover, that paragraph 2, by referring to the possibility of appointing nationals of the receiving State, appeared to contradict paragraph 1.

48. The object of his delegation's amendment to paragraph 3 was to extend its provisions to persons permanently resident in the territory of the receiving State, irrespective of their nationality. Permanent residents in a country often had large vested interests there and might even take some part in politics; it was proper that the receiving State should be consulted and have an opportunity of deciding that a resident was not suitable for appointment as a consular official.

49. Mr. EL-SABAH EL-SALEM (Kuwait) supported the proposal to delete paragraph 1 for reasons quite contrary to those which had been put forward by the representative of China. Kuwait had adopted a new law on its foreign service, which provided that nationals of a third State could be appointed not only as honorary consuls of Kuwait, but also as career consuls. Kuwait was a small country which faced certain practical difficulties. It was surrounded by a number of friendly countries, many of whose citizens had taken up residence in Kuwait. Some of those persons had become naturalized but others had retained their original citizenship; no distinction was made between them and they were all given the same treatment as the nationals of the country. There was no reason why persons who were thus accepted as reliable and trustworthy should not be eligible for appointment as consular officials of Kuwait.

50. Another reason for deleting paragraph 1 was that its terms contradicted the provisions of paragraphs 2 and 3, which permitted the appointment of persons other than nationals of the sending State as its consular officials. Moreover, paragraph 1 did not appear in the article originally adopted by the International Law Commission at its twelfth session and reproduced in paragraph 1 of the commentary. He did not agree with the statement in paragraph 2 of the commentary that the original text " implied that consular officials should, as a rule, have the nationality of the sending State ". There was no such implication in the original text, which also left open the question of the appointment of nationals of a third State.

51. He could not agree that the system embodied in the law of Kuwait was in any way outmoded. On the contrary, it was consistent with the modern trend away from excessive emphasis on nationality and an unjustified distrust of foreigners. The system adopted by his country had not given rise to any complications in its relations with a great many friendly countries, and the reliability of the consular officials of Kuwait had never been in doubt.

52. If article 22 was retained by the Committee, he proposed that the words " in principle " in paragraph 1 should be replaced by the word " normally ". If the article was adopted in its present form it would be very difficult for his country to ratify the future convention on consular relations.

53. Mr. HELWEG (Denmark) supported the proposal to delete paragraph 1. The principle stated there was perhaps true of career consuls but certainly not of honorary consuls. Denmark had fifty consuls in France, all of them honorary and all of them French nationals. It was quite common for a State which could not afford the expense of sending a career official to a distant country to appoint an honorary consul who was a national of the receiving State. In the circumstances, it was undesirable to lay down any specific rule regarding the nationality of consular officials.

54. Mr. HELANIEMI (Finland) said that in most cases his delegation had been prepared to accept the draft articles drawn up by the International Law Commission; it had voted against many amendments without giving any explanation. In the case of article 22, however, his delegation would have to oppose the Commission's text. The article was intended to lay down a rule similar to that in article 8 of the Vienna Convention on Diplomatic Relations; but there was no valid analogy between the case of diplomatic agents and that of consular officials. Unlike diplomatic agents, the majority of consuls, who were in fact honorary consuls, were chosen from among nationals of the receiving State. For those reasons, he supported the proposal to delete article 22.

55. Mr. D'ESTEFANO PISANI (Cuba) opposed the deletion of article 22. His delegation considered the provisions of that article important and could support only the Brazilian amendment, which improved the text of paragraph 2 by specifying that the consent referred to should be " express ".

56. The South African amendment (L.137) introduced an unnecessary reference to permanent residents into an article which already required the consent of the receiving State to the appointment of one of its own nationals or of a national of a third State as a consular official. Article 22 would not prevent the appointment of persons other than nationals of the sending State as consular officials; it merely provided that the consent of the receiving State was required for such an appointment.

57. His delegation deplored the tendency to propose the deletion of certain articles of the draft on the basis of a totally unfounded distinction between " important " and " unimportant " articles. That tendency was particularly dangerous because it could upset the structure of the whole draft. It might also result in certain matters of great importance, which should be regulated by the future convention, being left to the discretion of States.

58. Mr. SOLHEIM (Norway) said that article 8, paragraph 1, of the Vienna Convention on Diplomatic Relations stated a well-established rule — namely, that " members of the diplomatic staff of the mission should in principle be of the nationality of the sending State ". His delegation had voted in favour of that rule in 1961. It would, however, strongly oppose the attempt to embody that rule in consular law in the form set out in article 22, paragraph 1.

59. The International Law Commission had erred in drawing a direct comparison between diplomatic agents and consular officials. A diplomatic agent had a general representative character: he represented the government of the sending State in its relations with the government of the receiving State. A consular official, on the other hand, was not a link between governments; he exercised certain limited functions and did not enjoy the immunities and privileges of a diplomatic agent.

60. The provisions of paragraph 1 might have been acceptable to a great many delegations if they had applied exclusively to career consular officials. As drafted, however, they applied also to honorary consuls and were at variance with tradition and current practice; they took no account of the needs of small nations.

61. Even at a very early stage in history, it had been the practice to appoint as consular officials not only persons who were nationals of the sending State, but also nationals of the receiving State. By stipulating that consular agents should in principle be nationals of the sending State the International Law Commission seemed to be stating that an old and widespread practice was wrong in principle. The article as drafted would place the smaller countries in an extremely difficult position. If no qualified national of the sending State was available in a country, where there was a need for consular services, the sending State would be faced with the choice between establishing a career consular post at great expense, or leaving its interests unprotected.

62. His delegation accordingly supported the proposals to delete paragraphs 1 and 3. It had no objection to paragraph 2, but considered its provisions unnecessary; the receiving State was not under any obligation to accept the nomination of its nationals as consular officials of a foreign State in its territory: it could always refuse to grant admission under the provisions of other articles of the convention.

63. He was opposed to the South African amendment extending the provisions of paragraph 3 to persons permanently resident in the territory of the receiving State irrespective of their nationality. The sending State would be placed in an extremely difficult position if, being unable to appoint a national of the receiving State as a result of the application of paragraph 2, it were faced with difficulties when falling back on the only possible alternative — namely, a foreign permanent resident in that State.

64. Mr. WESTRUP (Sweden), supporting the proposal to delete paragraph 1, deplored the tendency to adopt restrictive provisions as a matter of principle. He urged that consideration should be given to the position of a number of countries like his own, with widespread maritime and commercial interests which exceeded their administrative resources. It was necessary for such countries to maintain a large number of consulates, particularly at seaports, and it was impossible for them to send career consular officers to all the places concerned. Nor was it generally possible to find locally a qualified citizen of the sending State; hence they generally called upon a shipping agent or merchant, more often than not a national of the receiving State, to act as consul. It would be extremely unfortunate if article 22 were to begin with a statement implying that such a choice was abnormal or even reprehensible. For the same reasons as the delegation of Norway, his delegation favoured the deletion of paragraph 3 as well as paragraph 1.

65. Mr. SILVEIRA-BARRIOS (Venezuela) considered that article 22 should be retained. He supported the Brazilian amendment inserting the word " express " before the word " consent " in paragraph 2. If that amendment was not adopted, his delegation would support the Chinese amendment inserting the word " prior " before the word " consent ".

66. Mr. von HAEFTEN (Federal Republic of Germany) said that the provisions of paragraph 1 should obviously apply to career consular officials only; honorary consuls were generally nationals of the receiving State. He suggested that the word " career " might be inserted before the words " consular officials " at the beginning of the paragraph.

67. Mr. PALIERAKIS (Greece) supported that suggestion. He also supported the amendment submitted by China.

68. Miss ROESAD (Indonesia) was in favour of retaining paragraph 1 as it stood. Critics of that paragraph had exaggerated its effects; the provisions of paragraph 1 did not stand alone, but should be read in conjunction with those of paragraphs 2 and 3, which allowed nationals of the receiving State and of third States to be appointed as consular officials subject to the consent of the receiving State. She could not support the proposals to delete article 22 or any part of it, but was in favour of the Brazilian amendment.

69. Mr. BARTOŠ (Yugoslavia) pointed out that there had been great changes in the conduct of consular relations. The tendency was to appoint fewer honorary consuls and more career consuls, and to appoint nationals of the receiving State less frequently. That was in line with the changes that were taking place in contemporary society; consuls no longer represented only the interests of certain maritime and banking firms as they had in the liberal economy of the nineteenth century. Even in capitalist countries, there had been a marked change in that respect, and economic relations had become the concern of the community of nations.

70. In the circumstances, it was proper to state that a consul should, in principle, be a citizen of the country which appointed him. Article 22 did not prevent the appointment of nationals of the receiving State as honorary consuls: it merely made the consent of the

receiving State necessary. There could be no doubt that that consent was necessary, because the receiving State was entitled to expect loyalty from its citizens; indeed, there were countries — although Yugoslavia was not one of them — where a citizen who accepted public office from a foreign country without the consent of his own country forfeited his nationality. That showed the importance which many countries attached to the duty of loyalty.

71. Certain delegations had misunderstood the provisions of article 22; those provisions were not aimed at abolishing honorary consuls or at preventing citizens of the receiving State from being appointed as consuls; they merely restated the need for the consent of the receiving State to the appointment of one of its own nationals as a foreign consul. In that connexion, it was not accurate to say that the receiving State's position was safeguarded by the need for the consul to obtain an exequatur. Only the head of a consular post needed to obtain an exequatur, and a national of the receiving State could be appointed as honorary consul in a consular district which already had a head of post.

72. Referring to the commentary on article 22, he stressed the fact that the International Law Commission, in departing from the wording it had adopted for the article at its twelfth session, had not departed in any way from the substance of the provision. It had merely deleted the qualification " express " before the word " consent " and had added the words " which may be withdrawn at any time ". The central idea had remained the same.

73. He supported the Brazilian amendment restoring the word " express ".

74. Mr. HUBEE (Netherlands) said that his delegation's attitude towards the various amendments was determined by its firm view that small States should be permitted to appoint foreign nationals to conduct their consular affairs in places to which they were unable to send career consular officials. His delegation would support all amendments aimed at eliminating restrictions based on nationality, including the Japanese proposal to delete article 22 altogether and the South African proposal to delete paragraph 1. On the other hand, it would vote against all amendments aimed at qualifying the consent of the receiving State so as to make the relevant provision more stringent.

75. He hoped that other delegations would understand the position of the smaller States and appreciate that the provisions of article 23, which enabled the receiving State to declare a consular official unacceptable at any time, provided a sufficient safeguard for that State.

76. If the Japanese proposal was not adopted, his delegation would propose that the concluding words of paragraph 2, "... except with the consent of that State which may be withdrawn at any time ", be replaced by the words " unless that State after prior notification does not object thereto ". That text would be more flexible than the International Law Commission's draft.

77. Mr. N'DIAYE (Mali) was in favour of retaining article 22, the various paragraphs of which stated self-evident facts. Paragraph 1 laid down the basic rule that the officials of a country should have its own nationality. That rule was laid down " in principle " and exceptions were provided for in the other paragraphs. In paragraphs 2 and 3, provision was made for the consent of the receiving State to the appointment of one of its nationals or a national of a third State as a consular official of the sending State. He saw no difficulty in those provisions, which merely restated the general rule that the consent of the receiving State was necessary for the admission of a consular official.

78. His delegation was therefore in favour of retaining the text of article 22 with only two changes: the Brazilian amendment introducing the word " express " before the word " consent " in paragraph 2, and the South African amendment introducing the words " as in paragraph 2 " in paragraph 3. The latter proposal, which was only a drafting amendment, could be referred to the drafting committee.

79. Mr. HEPPEL (United Kingdom) said that he had been impressed by the arguments put forward by the representatives of Kuwait, Norway and Sweden. The provisions of paragraph 1 did not embody a generally accepted principle and some sending States would find them embarrassing. It was not at all uncommon for a consular official not to be a national of the sending State and he therefore supported the proposals to delete paragraph 1.

80. The provisions of paragraphs 2 and 3 were in no way contrary to the views held by his delegation. It was the United Kingdom practice to require all consular officials to be admitted by the receiving State. Since, in his delegation's view, all consular officials were required to obtain an exequatur or other form of admission, he would not oppose the provisions of paragraphs 2 and 3 as they stood; he was not inclined to support the South African proposal to introduce a special provision concerning permanent residents.

81. His delegation was somewhat concerned at the proposals to qualify the word " consent " by introducing the terms " express " and " prior ". It would be undesirable to vote on the inclusion of those words, because, in his view, the term " consent " implied prior express consent unless the context required otherwise. His delegation would therefore oppose the inclusion of the words proposed.

82. Miss WILLIAMS (Australia) said that she saw great advantages in retaining the provisions of paragraph 1 as they stood. In view of the increasing tendency to bring the office of the diplomatist and the consul closer, there was no reason to depart from the rule, adopted as article 8, paragraph 1, of the Vienna Convention on Diplomatic Relations. Moreover, in view of the watering down of the customary practice of requiring an exequatur for all consular officials, it was all the more necessary to provide special safeguards for the receiving State in regard to their nationality. The deletion of paragraph 1 would not serve the interests of the majority of States, whether large or small. The convention on consular relations should establish general rules

of consular practice and not be primarily concerned with the special question of honorary consuls or the particular problems of particular countries.

83. Mr. ENDEMANN (South Africa) pointed out that paragraph 2 did not rule out the possibility of appointing a national of the receiving State, which was a well established practice. He had heard of only one country which forbade its nationals to act as foreign consuls. The consent referred to in paragraph 2 was therefore not consent to the principle of the appointment of a national of the receiving State, but consent to the admission of the individual concerned. The same applied to paragraph 3; there was no great danger that the sending State would not find a suitable candidate who would prove acceptable to the receiving State.

84. Mr. RABASA (Mexico) whole-heartedly supported the text of article 22 as it stood. It was the normal rule for the officials of a country to be nationals of that country; hence it was natural and normal for article 22 to begin with a statement to the effect that if was preferable for consular officials to have the nationality of the sending State.

85. Mr. DAVOUDI (Iran) said that his delegation generally supported the articles drafted by the International Law Commission, and rarely took the floor. Professor Matine-Daftary, the eminent Iranian jurist, had often addressed the Commission, and Iran had actively participated in the preparation of the draft. In the case of article 22 his delegation supported the Brazilian amendment, but was opposed to all the other amendments proposed.

The Japanese amendment (A/CONF.25/C.1/L.59) was rejected by 52 votes to 11, with 4 abstentions.

The South African amendment to paragraph 1 (A/CONF.25/C.1/L.137) was rejected by 45 votes to 13, with 9 abstentions.

The oral amendment by Kuwait replacing the words " in principle " by the word " normally " in paragraph 1 was rejected by 36 votes to 9, with 20 abstentions.

The Netherlands oral amendment to paragraph 2 was rejected by 47 votes to 10, with 9 abstentions.

The Brazilian amendment to paragraph 2 (A/CONF.25/C.1/L.67) was adopted by 35 votes to 13, with 17 abstentions.

The Chinese amendment to paragraph 2 (A/CONF.25/C.1/L.112) was rejected by 26 votes to 5, with 23 abstentions.

The South African amendment to paragraph 3 (A/CONF.25/C.1/L.137) was rejected by 40 votes to 4, with 21 abstentions.

Article 22 as amended was adopted as a whole by 57 votes to 6, with 3 abstentions.

The meeting rose at 6.45 p.m.

TWENTY-SECOND MEETING

Wednesday, 20 March 1963, at 10.40 a.m.

Chairman: Mr. BARNES (Liberia)

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

Article 22 (Appointment of nationals of the receiving State) *(continued)*

1. The CHAIRMAN said that he understood that certain representatives wished to explain their votes on article 22.

2. Mr. ABDELMAGID (United Arab Republic) said that he had supported the International Law Commission's draft as modified by the Brazilian amendment (L.67) because that amendment struck a good balance between the three paragraphs of the article, and there was no contradiction between paragraphs 1 and 2.

3. Mr. CAMERON (United States of America) said he had voted against the Brazilian and Chinese amendments, not because he was opposed to obtaining prior consent, but because if that condition were stipulated in article 22 there would arise an implication that when the word " consent " was used alone elsewhere in the Convention it did not mean prior or express consent.

4. Mr. EL-SABAH EL-SALEM (Kuwait) said he had voted against article 22 although he had supported some amendments to that article. He was chiefly opposed to the adoption of too strict a formula which would bring article 22 into conflict with article 18.

5. Mr. WU (China) said that the purpose of his delegation's amendment to article 22, paragraph 2, had been to stipulate that the consent of the receiving State must always be obtained previously. The amendment had been rejected on the ground that consent always meant prior consent and that the addition of the word " prior " was unnecessary. On that understanding, his delegation was satisfied with the result of the vote.

6. Mr. CRISTESCU (Romania) said he had voted for the International Law Commission's draft as amended by Brazil, because the article was thus in keeping with the evolution of consular practice. He had listened to the representatives of States employing honorary consuls, and was opposed to their views. Romania neither employed nor admitted honorary consuls.

Article 23 (Withdrawal of exequatur — Persons deemed unacceptable)

7. The CHAIRMAN invited the Committee to consider article 23. He suggested that the amendments submitted by Hungary and Spain (parts 1 and 2) should be