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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

regarded as amendments of form which could be referred to the drafting committee.[1]

It was so decided.

8. The CHAIRMAN said that the amendments submitted by Chile (L.90) and Spain (L.114, part 2) were purely drafting amendments and could be combined in a single text. The Indian amendment (L.147) could be included in the joint amendment submitted by Austria and Switzerland (L.149). The amendments submitted by Mexico (L.134), Spain (L.114 part 3) and Argentina (L.150) were substantially the same and could be combined in a single amendment. The joint amendment by Austria and Switzerland (L.149) replaced the separate amendments submitted by those two delegations (L.28 and L.18).

9. Mr. KIRCHSCHLAEGER (Austria) introduced the joint Austrian and Swiss amendment (L.149) to delete the reference to " serious grounds " in paragraph 1, because that was too vague a criterion. The sponsors had based their text on article 9 of the Vienna Convention on Diplomatic Relations. The second proposal in the joint amendment was to add to article 23 a new paragraph based on the same article of the Vienna Convention which had also guided the delegations of Spain, Mexico, India and Argentina in drawing up their amendments. The addition of the new paragraph proposed by Austria and Switzerland would ensure that, in the two cases provided for in paragraph 1 and paragraph 3, the receiving State would not have to explain its decision.

10. Mr. CAMERON (United States of America) introduced his delegation's amendment (L.3/Rev.1) to paragraph 3 of article 23 to provide for the eventuality in which a person deemed unacceptable was already in the receiving State. In that case also the receiving State should be able to exercise its right under paragraph 3 of article 23.

11. Mr. RABASA (Mexico) introduced a joint amendment agreed upon between his delegation and the Argentine, Chilean and Spanish delegations, in which the first phrase of paragraph 1 would follow the wording of the Austrian and Swiss amendment (L.149), on the understanding that a new paragraph 4 would be added to article 23, stipulating that in the cases mentioned in paragraphs 1 and 3, the receiving State would not be obliged to state the grounds for its refusal or the withdrawal of the exequatur. The Mexican delegation requested, however, that in the Spanish version of the new draft the words " persona no aceptable " be replaced by the words " persona non grata ".

12. His delegation would accept the United States amendment (L.3/Rev.1) to paragraph 3 and, of course, the joint Austrian and Swiss amendment to paragraph 1 the text of which, being identical with that of the four-power amendment, could be combined in that proposal.

13. Mr. BINDSCHEDLER (Switzerland) thanked the delegations of Argentina, Chile, Spain, and Mexico for having adopted the views of the Austrian and Swiss delegations in deleting from paragraph 1 the " serious grounds " criterion, which was far too vague, and might be construed in such a way as to cause differences between the sending and the receiving State. It was inadvisable to incorporate a provision to the effect that the sending State was entitled to request the receiving State withdrawing the exequatur to explain its attitude, for the exercise of that right might impair relations between the States concerned. It was obvious that the receiving State would only exercise its rights under article 23, paragraph 3, in exceptional cases. For the same reason, he supported the International Law Commission's draft of paragraph 3. As explained in paragraph 11 of the commentary, when the receiving State declared a person unacceptable before his arrival in its territory, it was not obliged to communicate the reasons for its decision. In recognition of that principle, Austria and Switzerland had proposed the addition of the new paragraph which formed point 2 of the joint amendment (L.149).

14. With regard to the Mexican representative's comment concerning the Spanish text of paragraph 1, the Swiss delegation wished to point out that the term " persona non grata " had so far been applied only to diplomatic staff, and Switzerland was reluctant to introduce the term into consular law. Nevertheless, if Mexico and the other sponsors of the amendment strongly desired that that expression should be used in the Spanish version, the Swiss delegation would not oppose it. The matter could be settled by the drafting committee.

15. Mr. TORROBA (Spain) said that his delegation, as one of the sponsors of the joint amendment submitted by the delegation of Mexico, would withdraw its amendment to article 23 on the understanding that the Spanish text would be revised by the drafting committee.

16. Mr. TSHIMBALANGA (Congo, Leopoldville) said that his delegation's amendment (L.146) applied not to paragraph 1, as stated in that document, but to paragraph 2 of article 23. It took into consideration the fact that in the newly independent countries postal services were often defective and mail was not always delivered to its destination. Notification by the receiving State might fail to reach the sending State. The receiving State should therefore make certain, before withdrawing the exequatur, that the sending State had actually received the notification. That was an important consideration for the new States.

17. Mr. PETRŽELKA (Czechoslovakia) said that he was in favour of the International Law Commission's draft of paragraph 1. The text of paragraph 1 necessarily differed from article 9 of the Vienna Convention on Diplomatic Relations, because the position of consular officials was not the same as that of the staff of diplomatic missions, and the functions they exercised laid them more open to arbitrary decisions. They should therefore be

[1] The following amendments had been submitted: United States of America, A/CONF.25/C.1/L.3/Rev.1; Switzerland, A/CONF.25/C.1/L.18; Austria, A/CONF.25/C.1/L.28; Chile, A/CONF.25/C.1/L.90; Hungary, A/CONF.25/C.1/L.98; Spain, A/CONF.25/C.1/L.114; Mexico, A/CONF.25/C.1/L.134; Congo (Leopoldville), A/CONF.25/C.1/L.146; India, A/CONF.25/C.1/L.147; Austria and Switzerland, A/CONF.25/C.1/L.149; Argentina, A/CONF.25/C.1/L.150.

protected against possible abuses; hence the restricting clause requiring serious grounds for deeming a person unacceptable. He could not agree to part 1 of the joint Austrian and Swiss amendment (L.149), but had no objection to part 2.

18. Mr. KRISHNA RAO (India) said that his delegation agreed to the second part of the joint Austrian and Swiss amendment (L.149) but could not accept the first part, because paragraph 1 of the International Law Commission's draft was in conformity with the practice followed.

19. Mr. WESTRUP (Sweden) supported the additional paragraph 4 submitted by Austria and Switzerland. The receiving State would be released from the obligation to give grounds for its decision, all discussion referring to such grounds would be avoided, and there would no longer be any need to mention the criterion of serious grounds in paragraph 1. Accordingly, his delegation would also vote for the text of paragraph 1 submitted by Austria and Switzerland. It would likewise vote for the United States amendment (L.3/Rev.1) which it considered most opportune.

20. Mr. von HAEFTEN (Federal Republic of Germany) supported the joint Austrian and Swiss amendment. If the receiving State was not obliged to give grounds for its decision, paragraph 1 could be retained as it stood. He supported the amendments submitted by the Congo (Leopoldville) and the United States.

21. Mr. PEREZ-CHIRIBOGA (Venezuela) said that his delegation would vote for paragraph 1 of the joint oral amendment, with the substitution in the Spanish text requested by the representative of Mexico. It would also vote for paragraph 3 as amended by the United States, and the additional paragraph 4 contained in the Austrian and Swiss amendment, which was similar to the Indian proposal.

22. Mr. ABDELMAGID (United Arab Republic) said that the clauses of paragraph 1 were a safeguard for all parties concerned. The term " serious grounds " still remained to be defined, for the legal experts were not yet agreed on that point. His delegation would therefore support the joint Austrian and Swiss amendment to delete that test. It would support the joint amendment submitted by Mexico, Argentina, Chile and Spain, and likewise the United States amendment which made paragraph 3 clearer and filled a gap in article 23. It would also vote for the amendment submitted by the Congo (Leopoldville), but feared there might be great difficulty in proving that the notification had actually been received.

23. Mr. DJOKOTO (Ghana) supported the joint Austrian and Swiss amendment. The receiving State was always entitled to refuse admission to a consular official without having to explain its decision. Awkward situations were thus avoided. He would support the joint amendment submitted by Mexico, Argentina, Chile and Spain; he would like time to consider the United States amendment and the amendment of the Congo (Leopoldville).

24. Mr. N'DIAYE (Mali) supported the amendment submitted by Congo (Leopoldville) as it was necessary to take account of the possibility that the message had not arrived at its destination. He therefore agreed with the author of the amendment that paragraph 2 should apply only if the sending State had in fact received the notice declaring the person concerned unacceptable. He was also inclined to support the United States amendment which filled a gap in the International Law Commission's text and the Hungarian amendment, which clarified the text of paragraph 3. The arguments presented in favour of the first part of the joint amendment of Switzerland and Austria seemed cogent and he was also inclined to approve the second part of that amendment, which was supported by India, as it expressed the attitude adopted by the Committee during its consideration of article 11.

25. He saw no objection to adopting the expression " persona non grata " in the Spanish text, provided that the expression " personne non acceptable " were retained in the French text.

26. Mr. HUBEE (Netherlands) thought that paragraph 1 of article 23 raised highly important questions of substance. In the first place, there was the question whether the right of the receiving State to declare a consular official unacceptable should be limited to cases where the conduct of the person concerned gave the receiving State serious grounds for complaint, or whether the right could also be exercised for political motives. The Internatonal Law Commission seemed to have decided in favour of the first alternative, in other words in favour of the limitation of the right. The Netherlands delegation accepted that limitation and would defend it because it seemed to provide a necessary safeguard against arbitrary measures. The joint amendment by Switzerland and Austria did not take that limitation into account and his delegation would therefore vote for paragraph 1 of the International Law Commission's text, and against point 1 of the Austrian-Swiss amendment. With regard to the substitution of the expression " persona non grata " for " personne non acceptable " the two terms covered an important difference between diplomatic law and consular law.

27. The second question of substance was whether the sending State could request the receiving State to give the reasons for its decision. The International Law Commission had not decided that point. The proposal of the Austrian and Swiss delegations that the receiving State should not be obliged to give reasons for its decision seemed wise and advisable because such an obligation might give rise to unpleasant discussion between the receiving State and the sending State. Finally, he was also in favour of the United States amendment.

28. Mr. de MENTHON (France) observed that the United States amendment was particularly valuable because the staff of many consulates included persons normally domiciled in the receiving State. He also approved the amendments by Hungary and the Congo (Leopoldville), and part 2 of the joint Austrian-Swiss amendment, supported by India, Chile, which was substantially the same as the amendment of Spain, Argentina,

Chile and Mexico. He was doubtful about supporting part 1 of the Austrian and Swiss amendment, which would not perhaps have the same practical value if it were decided that the receiving State was not obliged to give reasons for its decision.

29. Mr. MIRANDA e SILVA (Brazil) supported the joint amendment submitted by Argentina, Chile, Spain and Mexico. With regard to substituting the term " persona non grata " for the term " no longer acceptable ", he thought that the expression " persona no aceptable " had too strong a meaning in Spanish. He supported the United States amendment.

30. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said that although certain conventions stipulated that the receiving State should state its reasons for withdrawing an exequatur, international practice did not oblige the receiving State to give reasons for withdrawing the agrément from a member of a diplomatic staff. If this principle were accepted in relation to consular staff, it would be necessary, in the text of paragraph 1, to retain the phrase " if the conduct of the head of a consular post or of a member of a consular staff gives serious grounds for complaint ", so as to set certain limits to the receiving State's right. The reasons for retaining the International Law Commission's text, which had already been referred to by the Czechoslovak representative, were given in paragraph 2 of the International Law Commission's commentary on article 23. The Hungarian amendment seemed indispensable.

31. Mr. BARTOŠ (Yugoslavia) thought that care should be exercised in replacing the expression " persona no aceptable " by the expression " persona non grata " in the Spanish text. First of all, the International Law Commission had evidently wished to draw a distinction between members of the diplomatic service and consuls. He did not think that such a distinction need be drawn, but it was important to note that the replacement of one term by another in one of the language versions might well introduce some difference of meaning between the texts, which were all equally authentic. If the amendment were adopted by the drafting committee and if a different expression were retained in the other languages, that point should be made quite clear in the record. With regard to the main question, concerning the deletion of the phrase " if the conduct of the head of the consular post or of a member of the consular staff gave serious grounds for complaint ", the International Law Commission's reasons for including it should be carefully considered. It was a question of a moral rule, with no practical sanction, based on the Commission's desire to warn the official who would have to decide on the withdrawal of the exequatur, so that he would realize the full gravity of such a step. The official should remember that the action he was about to take was permissible only if there were serious grounds for complaint. The rule was therefore related to the theory of the abuse of power in French law. He thought that the reference to " serious grounds " should be retained. He agreed with the sponsors of the joint amendment that the receiving State was not obliged to communicate to the sending State the reasons for its decision to withdraw an exequatur, and he would support any amendment in that sense.

32. Mr. PALIERAKIS (Greece) said that the question of using the words " serious grounds for complaint " was the same as that which had arisen during the discussion of article 20 about the phrase " within reasonable and normal limits ". The question was: Who was going to decide? Discussions and exchanges of views between the two States might lead to friction. International conventions were for developing friendly relations between States and not for multiplying disputes. For that reason he supported the deletion of the phrase. He also thought that the receiving State should not be obliged to give reasons for its decision. He therefore favoured the joint Mexican, Spanish, Argentine and Chilean amendment, and also the Austrian-Swiss amendment.

33. He preferred the expression " no longer acceptable " to " persona non grata ". He also supported theUnited States amendment, which supplemented the International Law Commission's text. He found the Congolese amendment unnecessary as the point could be taken as understood. He favoured the addition proposed by Hungary.

34. Mr. ALVARADO GARAICOA (Ecuador) agreed with the Brazilian representative about the use of the expression " persona non grata " in the Spanish text. He was also inclined to support the United States amendment, which raised a very important point.

35. Mr. HOANG XUAN KHOI (Republic of Viet-Nam) supported the joint Austrian-Swiss amendment (L.149) to paragraph 1, and the proposals by Austria and Switzerland and by India, to add a new paragraph 4 to article 23. The question concerned the very principle of the sovereignty of the receiving State, which should be accorded the right to forbid a person to continue to exercise his functions on its territory, without having to give a reason for its decision. The United States amendment seemed a useful addition to the International Law Commission's text.

36. Mr. CHIN (Republic of Korea) supported part 2 of the joint Austrian and Swiss amendment and the joint oral amendment, which provided that the receiving State was not obliged to give reasons for its decision. If the Committee adopted the opposite principle it would be contradicting not only the Vienna Convention on Diplomatic Relations but its own decisions on article 11 dealing with the exequatur. He regretted his inability to accept part 1 of the Austrian and Swiss amendment because, in view of the difference of status between diplomats and consuls, the sending State should be safeguarded against arbitrary decisions of the receiving State concerning consuls. Accordingly, he preferred the International Law Commission's draft of paragraph 1. For paragraph 3, he was inclined to support the United States amendment.

37. Mr. D'ESTEFANO PISANI (Cuba) said he regretted he could not support the amendment submitted by Mexico, Spain, Argentina and Chile for a different text from that of the International Law Commission.

He approved the principle whereby the receiving State had the right to declare a person unacceptable without giving reasons for its decision. That right, however, should be limited to cases where the conduct of the person concerned gave serious grounds for complaint. The Mexican representative had said that a member of a diplomatic mission could, by the terms of article 9 of the Convention on Diplomatic Relations, be declared persona non grata without the receiving State being obliged to furnish reasons for its decision; but as the Czechoslovakia representative had said, there were differences of status between the two categories of official, particularly with respect to their privileges and immunities.

38. It had been argued that, to promote good relations between States, it would be better to delete any reference to " serious grounds for complaint " from paragraph 1. But good relations primarily required the elimination of abuses. Consuls should be protected against arbitrary decisions by the receiving State. His delegation therefore would oppose any modification of paragraph 1. He approved the use of the expression " persona non grata " in the Spanish text. He also favoured the second part of the Austrian-Swiss amendment, supported by the Indian proposal, and the Hungarian amendment.

39. Mr. OUEDRAOGO (Upper Volta) drew the Committee's attention to the special difficulties of newly independent States in their diplomatic and consular relationships, and in particular to the fact that their means of communication were insufficiently developed. The lack of precision in article 23 might lead to misunderstandings. The question of a possible delay in the mail seemed to him important, and he therefore supported the amendment of the Congo (Leopoldville). It seemed necessary to be sure that the sending State had received the notice.

40. Mr. HEPPEL (United Kingdom), speaking on the question of terminology, recalled that article 9 of the Vienna Convention on Diplomatic Relations had laid down that the head of a mission or any other member of the diplomatic staff could be declared persona non grata, whereas any other member of the staff of the mission could be declared " not acceptable ". The results, in any event, were the same. He thought that the question was one for the drafting committee.

41. The United Kingdom delegation would support the United States amendment. It also approved the joint Austrian and Swiss amendment. In certain bilateral agreements concluded by the United Kingdom, the United States and other countries, it was specified that the sending State could ask the receiving State for the reasons for its withdrawal of an exequatur, but, as a general rule, the receiving State was not obliged to give its reasons; if it did so, it should be of its own accord.

42. Although he sympathized with the amendment to paragraph 2 submitted by the delegation of the Congo (Leopoldville), he would not be able to support it as it might lead to longer delays. It should be noted that the reference to " a reasonable time " already constituted a safeguard.

43. Mr. USTOR (Hungary) said that his delegation was in favour of the text prepared by the International Law Commission, firstly, because it was in accordance with accepted world-wide practice and, secondly, because it followed from the logic of the text, as was shown in paragraph 2 of the commentary.

44. Nevertheless, although he approved of the International Law Commission's draft, he was prepared to support the amendments to the effect that the receiving State should not be obliged to give reasons for its decision, and to accept the insertion of a new paragraph 4. The amendment proposed by Austria and Switzerland and by India seemed to him a happy compromise. He thought the United States amendment most useful.

The meeting rose at 1 p.m.

TWENTY-THIRD MEETING

Wednesday, 20 March 1963, at 3.10 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 23 (Withdrawal of exequatur — Persons deemed unacceptable) (*continued*)

1. The CHAIRMAN announced that the amendments [1] by Switzerland and Austria (L.149, replacing the separate amendments in documents L.18 and L.28), Spain (L.114), Mexico (L.134), Argentina (L.150) and Chile (L.90) had been withdrawn in favour of the following joint proposal to amend paragraph 1 and to insert a new paragraph 4, which had been submitted by Argentina, Chile, Mexico and Spain:

(1) Replace the first sentence of paragraph 1 by the words: " The receiving State may at any time notify the sending State that the head of a consular post or a member of the consular staff is no longer persona grata."

(2) Add a new paragraph 4 reading as follows: " In the cases mentioned in paragraphs 1 and 3 of the present article, the receiving State is not obliged to explain its decision."

2. The Committee also had before it the amendment submitted by Congo (Leopoldville) to paragraph 2 (L.146), the United States amendment to paragraph 3 (L.3/Rev.1), the Hungarian amendment to paragraph 3 (L.98) and the Indian proposal for a new paragraph 4 (L.147).

3. Mr. KRISHNA RAO (India) withdrew his amendment (L.147) in favour of the new joint amendment, the effect of which would be the same.

4. Mr. JAYANAMA (Thailand) said that his delegation supported the joint amendment, though it would

[1] For a list of the amendments, see the summary record of the twenty-second meeting, footnote to para. 7.