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23rd meeting of the First Committee

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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 amendments¹ 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.

have preferred the text proposed by Austria and Switzerland (L.149) the wording of which was in line with article 19, paragraph 2 as amended by the Committee. The deletion from article 23, paragraph 1, of the reference to "serious grounds for complaint" was very wise, as that expression might be given different interpretations by the receiving State and the sending State. Moreover, article 9, paragraph 1, of the Vienna Convention on Diplomatic Relations provided that "The receiving State may at any time and without having to explain its decision, notify the sending State that the head of the mission or any member of the diplomatic staff of the mission is *persona non grata* . . ." and since consuls were placed under the general supervision of the diplomatic representatives of their countries, there was no reason to give them more favourable treatment than diplomatic agents themselves.

5. Many authorities could be cited to show that international law did not require the receiving State to give any reason for withdrawing the exequatur or for declaring a member of the consular staff unacceptable. In any event, arbitrary action on the part of the receiving State was unlikely, since unjustified withdrawal of the exequatur could be harmful to relations between the two countries concerned and would be in the interests of neither.

6. His delegation supported the United States amendment (L.3/Rev.1), which was in line with the text adopted by the Committee for article 19. On the other hand, the amendment submitted by Congo (Leopoldville) (L.146) went into details which were not essential, and he would not support it.

7. Mr. WU (China) said he had preferred the original amendment submitted by Austria (L.28), which had added a new paragraph to the effect that the receiving State was not obliged to explain its decision, but retained the original text of paragraph 1 unchanged. The fact that the receiving State was not obliged to explain its decision did not mean that it could withdraw the exequatur or declare a consul unacceptable without any reason. His delegation would therefore vote for the retention of paragraph 1 as it stood and for the introduction of a new paragraph 4. It would also support the United States amendment to paragraph 3.

8. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said that article 23 was very important and his delegation was prepared to give the most careful consideration to the various amendments. He supported the proposals by the United States and Hungary, which would improve the text of the article, and would also vote for the undoubted right of the receiving State not to explain its decisions. He could not support the Austrian and Swiss amendment (L.149) nor the amendment by the Congo (Leopoldville) (L. 146).

9. Mr. DONOWAKI (Japan) pointed out that his delegation had proposed the insertion in article 11 of a provision to the effect that the receiving State must give its reason for refusing to grant an exequatur.² In the case of article 23, however, which dealt with the

withdrawal of an exequatur or declaration that a person was unacceptable, his delegation fully agreed with the sponsors of the joint amendment. He had been impressed by the argument that the retention of the reference to "serious grounds for complaint" would give rise to difficulties of interpretation.

10. His delegation supported the amendments to paragraph 3 submitted by the United States and Hungary.

11. Mr. RABASA (Mexico) said that the Committee had the choice between two radically different systems. The first was that embodied in the text of article 23 as drafted by the International Law Commission: under that system, the existence of "serious grounds for complaint" was a *sine qua non* for declaring a person unacceptable. The second system was that proposed in the joint amendment, which placed no restriction whatsoever on the receiving State and made the exercise of its rights in the matter absolutely unconditional.

12. He noted that the discussion had led to an attempt to reconcile those two irreconcilable systems by retaining paragraph 1 as it stood and adding a new paragraph along the lines of the joint amendment. He could understand, although he opposed, the first system; and he was one of the sponsors of the second. But he could not understand the idea of adopting both at once. It was not possible to retain the reference to "serious grounds for complaint" in paragraph 1 and at the same time provide that the receiving State had no obligation to explain its decision.

13. Speaking on behalf of the sponsors of the joint amendment, he stressed that the proposed new paragraph 4 could not be added to a text which contained paragraph 1 as originally drafted. He urged that the two proposals in the joint amendment — the amendment of the first sentence of paragraph 1 and the insertion of the new paragraph 4 — should be voted on together, since they were inseparable.

14. Mr. EL KOHEN (Morocco) supported the insertion of a new paragraph stating that the receiving State was not obliged to explain the reasons for its decision to the sending State. But he was also in favour of retaining the original text of paragraph 1, which would make the provisions of the article better balanced. The right of the receiving State was not an absolute one; it should be confined within reasonable limits in the interests of international relations. The receiving State should have good grounds for its action, but it should not be obliged to explain them to the sending State. It was essential to provide certain safeguards, not only in the interests of the two States concerned, but also in the interests of the individual affected by the decision. A consular official's career should not be jeopardized without good reason.

15. Mr. TSHIMBALANGA (Congo, Leopoldville) expressed his thanks to those delegations which had supported his amendment (L.146). Although he had referred in his introductory remarks to certain instances where mail might be lost, his amendment was intended to cover all cases in which the sending State did not in fact receive the notification that the person concerned was

² See document A/CONF.25/C.1/L.56.

unacceptable. There were many ways in which that could happen; for instance, delay on the part of the head of a consular post in transmitting the notification received from the authorities of the receiving State. In cases of that kind, he thought the receiving State should communicate with the sending State, by such means as a direct telegram or letter, in order to satisfy itself that the notification had in fact been received.

16. The CHAIRMAN pointed out that the Committee had before it only two amendments to paragraphs 1 and 2: the joint oral amendment of Argentina, Chile, Mexico and Spain to paragraph 1 and the amendment of the Congo (Leopoldville) to paragraph 2. He put the joint amendment to the vote on the understanding that the choice between the terms "persona grata" and "acceptable" would be referred to the drafting committee.

The joint amendment to paragraph 1 was adopted by 41 votes to 25, with 2 abstentions.

The amendment to paragraph 2 submitted by the Congo (Leopoldville) (A/CONF.25/C.1/L.146) was rejected by 17 votes to 12, with 39 abstentions.

17. The CHAIRMAN observed that there were two amendments to paragraph 3, proposed by the United States of America and Hungary; he suggested that the latter (A/CONF.25/C.1/L.98) should be referred to the drafting committee.

It was so agreed.

The United States amendment to paragraph 3 (A/CONF.25/C.1/L.3/Rev.1) was adopted by 66 votes to none, with 2 abstentions.

18. The CHAIRMAN put to the vote the joint oral proposal for a new paragraph 4, submitted by Argentina, Chile, Mexico and Spain on the understanding that the Spanish text would be referred to the drafting committee, which would formulate it on the lines of the corresponding provision of the 1961 Vienna Convention on Diplomatic Relations.

The proposed new paragraph 4 was adopted unanimously.

Article 23, as amended, was adopted as a whole by 66 votes to none, with 3 abstentions.

Article 24 (Notification of the appointment, arrival and departure of members of the consulate, members of their families and members of the private staff)

19. The CHAIRMAN announced that the Spanish delegation had withdrawn its amendment (A/CONF.25/C.1/L.132) and drew attention to the amendments to article 24 submitted by the delegations of South Africa (A/CONF.25/C.1/L.138), Indonesia (A/CONF.25/C.1/L.144), and India (A/CONF.25/C.1/L.148).

20. Mr. ENDEMANN (South Africa) said that his delegation's amendment to paragraph 1 (a) was intended to make good a small omission from the Commission's text. The sub-paragraph should be completed by a reference to "any change in designation" while the member of the consulate was at the consular post.

21. His delegation proposed the deletion of the words "entitled to privileges and immunities" from paragraph 1 (d) because, although article 48, paragraph 2, and article 49, paragraph 2, extended certain immunities to consular employees and other staff, article 69, paragraph 2, envisaged the possibility that the receiving State might extend to other members of the consulate, members of their families and members of the private staff who were nationals of the receiving State, privileges and immunities in excess of those provided for in the convention. If the authorities of the receiving State were only notified of the names of persons entitled to privileges and immunities under the convention, and not of the names of persons who might enjoy other privileges and immunities through the generosity of the receiving State, the effect of paragraph 1 (d) would be unduly restricted.

22. Miss ROESAD (Indonesia), introducing her delegation's amendment (L.144), observed that, according to the Commission's definition in article 1, the term "members of the consulate" meant all the consular employees in a consulate. Paragraph 1 (d), however, related to persons resident in the receiving State, and under Indonesian law only consular employees might be such residents. Use of the term "members of the consulate" would imply that consular officials might also be residents of the receiving State, which was contrary to the provisions of article 22.

23. Mr. KRISHNA RAO (India) said that his delegation's amendment (L.148) to paragraph 1 (a) was intended to take account of other changes that might occur in the course of service with the consulate. It had been drawn to his delegation's attention, however, that the phrase "any other changes" might be too broad, and he would therefore insert the words "affecting their status" after the words "any other changes" in his amendment.

24. Mr. PEREZ-CHIRIBOGA (Venezuela) said he would support the South African amendment (L.138) to paragraph 1 (a). He thought, however, that the interpretation of the other sub-paragraphs of paragraph 1 would depend on the final wording of the definition in article 1, paragraph 1 (f). Under the existing definition, those sub-paragraphs provided for notification with regard to members of the consulate enjoying privileges and immunities, but his delegation could not agree that those privileges and immunities should be extended to members of the consulate other than those having consular status. He asked for a separate vote on sub-paragraphs (b), (c) and (d) and said he would vote against them.

25. Mr. ENDEMANN (South Africa) withdrew his amendment to paragraph 1 (a) in favour of the modified text of the Indian amendment.

The Indian amendment (A/CONF.25/C.1/L.418), as orally revised, was adopted by 53 votes to none, with 7 abstentions.

The Indonesian amendment (A/CONF.25/C.1/L.144) was rejected by 15 votes to 11, with 34 abstentions.

The South African amendment (A/CONF.25/C.1/L.138) to paragraph 1 (d) was rejected by 24 votes to 15, with 25 abstentions.

The introductory phrase to paragraph 1 was adopted unanimously.

Paragraph 1, sub-paragraph (a), as amended, was adopted unanimously.

Sub-paragraph (b) was adopted by 63 votes to 1.

Sub-paragraph (c) was adopted by 62 votes to 1, with 1 abstention.

Sub-paragraph (d) was adopted by 60 votes to 2, with 3 abstentions.

Paragraph 2 was adopted unanimously.

Article 24 as a whole, as amended, was adopted by 65 votes to none, with 1 abstention.

Article 25 (Modes of termination of the functions of a member of the consulate)

26. The CHAIRMAN drew attention to the South African proposal (A/CONF.25/C.1/L.139) to delete article 25.

27. Mr. ENDEMANN (South Africa) said that his delegation had proposed the deletion of article 25 because, as drafted by the Commission, it referred in particular to two modes of termination, although a number of other modes were mentioned in the commentary. Of the two modes specifically referred to in the article, however, the first was already provided for in article 24 and the second in article 23. Accordingly, article 25 seemed to serve no useful purpose. Had it contained a comprehensive list of modes of termination it might have been useful, but his delegation considered that such superfluous matter could well be omitted from the convention.

28. Mr. PETRŽELKA (Czechoslovakia) could not agree that article 25 should be deleted, particularly since the same matter was dealt with in article 43 of the Vienna Convention on Diplomatic Relations. He suggested, however, that the words "*inter alia*" might be substituted for the words "in particular".

29. Mr. KRISHNA RAO (India) said he could not accept the South African representative's arguments for the deletion of article 25, since articles 23 and 24 dealt with quite a different subject. The mode of termination of functions was an important point in any convention on consular relations and the most common causes of termination were specified in the article. He thought that the Czechoslovak representative's suggestion was useful and might be referred to the drafting committee.

30. Mr. PRATT (Israel) observed that, while the article itself specified only two modes of termination, the commentary listed five others, two of which, namely, the closure of the consulate and severance of consular relations, were referred to in article 27. It would have been better to include these two modes of termination in article 25, in addition to the two already covered by articles 23 and 24, but his delegation had not felt strongly enough on the point to submit an amendment and was prepared to vote for article 25 as it stood.

31. Mr. MAMELI (Italy) could not agree with the South African representative that the article 25 was superfluous because the cases it dealt with were referred to in other parts of the convention.

32. Mr. ABDELMAGID (United Arab Republic) said he could not support the South African amendment. He agreed with the Indian representative that the Czechoslovak suggestion might be useful.

33. He pointed out that chapter I, section II of the draft, which comprised articles 25, 26 and 27, corresponded to articles 43, 44 and 45 of the Vienna Convention on Diplomatic Relations, and should be placed near the end of the future convention on consular relations, just before the general provisions.

The South African amendment (A/CONF.25/C.1/L.139) was rejected by 53 votes to 1, with 13 abstentions.

Subject to the drafting committee's decision on the Czechoslovak oral amendment, article 25 was adopted by 60 votes to none, with 5 abstentions.

Article 26 (Right to leave the territory of the receiving State and facilitation of departure)

34. The CHAIRMAN drew attention to the amendments to article 26 submitted by the delegations of the United States of America (A/CONF.25/C.1/L.4 and Add.1), Indonesia (A/CONF.25/C.1/L.145) and Czechoslovakia (A/CONF.25/C.1/L.151).

35. Mr. PETRŽELKA (Czechoslovakia) said that his delegation had submitted its amendment in order to fill a gap in the Commission's text by providing that the receiving State should grant persons leaving its territory the necessary time to prepare for their departure and for the transport of their property.

36. Mr. CAMERON (United States of America) said that the purpose of his delegation's first amendment (L.4) proposing a new paragraph was to deal with a problem which had been specifically dealt with in the 1960 draft considered by the Commission at its twelfth session, but which was not included in the present text of the convention. The 1960 draft had specifically provided that the rights granted by the present article were subject to the application of the provisions of the article which had become article 41. The Commission had evidently decided to omit the provision in question as being unnecessary on the basis that each article of the draft should be read in the context of the others. The purpose of the United States amendment was to remove any possibility of interpreting the article to mean that all persons, whether or not they were defendants in litigation, had the right to leave the territory of the receiving State. It should be noted that, under the United States proposal, facilitation of departure would not be denied, but would be held in abeyance until legal proceedings were satisfactorily concluded.

37. The primary purpose of his delegation's amendments in document A/CONF.25/C.1/L.4/Add.1 was to clarify the text and to draw attention to some slight inconsistencies. Paragraph 1 of the amendment had been proposed in order to make it absolutely clear that

the receiving State was not obliged to facilitate departure whenever the persons concerned wished to leave its territory; although section II was entitled "End of consular functions", that title might be omitted from the final text and, in any case, it seemed advisable to state that point clearly. The deletion of the word "their", proposed in paragraph 2 of the amendment, would make it clear that the nationality meant was that of members of the families of persons enjoying privileges and immunities, and the addition of the words "forming part of their household" would bring the wording of the article into line with that of articles 48, 49 and 50. Finally, the insertion of the phrase proposed in paragraph 3 of the amendment would bring the article into conformity with article 50; there was no good reason for laying down different rules in the two articles.

38. Miss ROESAD (Indonesia) said that the purpose of her delegation's amendment was to specify that the persons enjoying privileges and immunities were, in fact, the "members of the consulate, members of their families and members of the private staff in their service" referred to in paragraph 1 of the commentary on article 26.

39. Mr. von HAEFTEN (Federal Republic of Germany) said he would support the Indonesian amendment and parts 1 and 2 of the second United States amendment (L.4/Add.1), though he would be obliged to abstain from voting on part 3 of that text. He would also support the Czechoslovak amendment.

40. Mr. KRISHNA RAO (India) said he would support parts 2 and 3 of the second United States amendment (L.4/Add.1), but was not sure that the amendment in part 1 was strictly necessary. He would vote for the Indonesian amendment and could support the principle of the Czechoslovak amendment, though its wording did not seem quite satisfactory and might perhaps be referred to the drafting committee.

41. Mr. PETRŽELKA (Czechoslovakia) accepted the Indian representative's suggestion.

42. The CHAIRMAN suggested that parts 1 and 2 of the second United States amendment (L.4/Add.1) and the final wording of the Czechoslovak amendment should be referred to the drafting committee.

It was so agreed.

The Indonesian amendment (A/CONF.25/C.1/L.145) was adopted by 33 votes to 6, with 18 abstentions.

Subject to re-wording by the drafting committee, the Czechoslovak amendment (A/CONF.25/C.1/L.151) was adopted by 45 votes to none, with 15 abstentions.

Part 3 of the United States amendment (A/CONF.25/C.1/L.4/Add.1) was adopted by 31 votes to 3, with 29 abstentions.

The United States proposal for a new paragraph (A/CONF.25/C.1/L.4) was rejected by 17 votes to 16, with 29 abstentions.

Article 26, as amended, was adopted by 61 votes to none, with 1 abstention.

43. Mr. KEVIN (Australia) said he had abstained from voting on article 26 because his delegation might wish to revert to it in connexion with other articles.

The meeting rose at 5.15 p.m.

TWENTY-FOURTH MEETING

Thursday, 21 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 27 (Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances)

1. The CHAIRMAN announced that the United States amendment (L.5) to article 27 had been withdrawn.¹

2. Mr. WU (China), introducing his delegation's amendment (L.113) to article 27, said that paragraph 1 of the draft article dealt only with the severance of consular relations. But, if the sending State had a diplomatic mission in the receiving State, it might maintain its diplomatic relations with that State, and in that case, it was to that diplomatic mission, and not to a third State, that the sending State should entrust the protection of its interests and those of its nationals. That was the purpose of the Chinese amendment, which in no way affected the principle of article 27.

3. Mr. USTOR (Hungary), introducing his delegation's amendment (L.99), said that paragraph 2 of article 27 applied only to the temporary or permanent closure of a consulate in cases where the sending State had no diplomatic mission and no other consulate in the receiving State. The provisions of paragraph 1 would apply in such cases. The provisions of sub-paragraph (a), however, would apply in all cases, whether or not the sending State had a diplomatic mission or other consulate in the receiving State. The purpose of the first part of the Hungarian amendment was to rectify that anomaly. The purpose of the second part was to supplement paragraph 3 by a provision which seemed self-evident, but which it might be advisable to include in the text.

4. Mr. MARTINS (Portugal) said that his delegation had submitted only one amendment (L.141) to the International Law Commission's draft, a fact which showed the high regard of his country for the draft. Moreover, the Portuguese amendment to article 27 would not affect the substance, but would merely simplify the text by combining the last two paragraphs into a single paragraph divided, like paragraph 1, into sub-

¹ The following amendments had been submitted: United States of America, A/CONF.25/C.1/L.5; Hungary, A/CONF.25/C.1/L.99; China, A/CONF.25/C.1/L.113; Portugal, A/CONF.25/C.1/L.141; United Kingdom, A/CONF.25/C.1/L.142; Australia, A/CONF.25/C.1/L.152.