

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.1/SR.24

24th meeting of the First Committee

Extract from the
Official Records of the United Nations Conference on Consular Relations, vol. I
(Summary records of plenary meetings and of meetings of
the First and Second Committees)

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.

paragraphs corresponding to the two sets of circumstances envisaged. A further purpose of the amendment was to improve the two paragraphs in question, as the text was not very clear.

5. Mr. HEPPEL (United Kingdom) said that the purpose of his delegation's amendments (L.142) to article 27 was to ensure wider protection of the interests of the sending State in the event of temporary or permanent closure of a consulate, by making the provisions of paragraph 1 applicable in cases where the sending State had no diplomatic mission or other consulate in the same territory as the closed consulate.

6. Miss WILLIAMS (Australia) said that her delegation's amendment (L.152) was intended to ensure that the provisions of paragraph 1 would apply even if the sending State had a diplomatic mission or other consulate in the receiving State.

7. Mr. PAPAS (Greece) supported the Portuguese amendment. It made article 27 more logical and could be combined with the Hungarian amendment which he likewise supported. His delegation was not opposed to the United Kingdom amendment, although it introduced the notion of territory, which would have to be defined.

8. Mr. von HAEFTEN (Federal Republic of Germany) said that as none of the amendments affected the substance of article 27 the Chairman might set up a working group consisting of the sponsors of all the amendments, to prepare a text acceptable to all delegations.

9. Mr. MIRANDA e SILVA (Brazil) supported the Portuguese amendment, which could be of considerable practical value. When a sending State which had no diplomatic mission closed its only consulate in the receiving State, it would naturally entrust the protection of its interests and those of its nationals to a third State. That practice had been successfully followed by Brazil.

10. Mr. TORROBA (Spain) supported the Portuguese amendment, together with the proposal by the Federal Republic of Germany to set up a working group to draw up a single amendment.

11. Mr. KRISHNA RAO (India) likewise supported the proposal by the Federal Republic of Germany, but said that he would prefer the working group to draw up two texts, so that the Committee could choose between them.

12. Mr. CHIN (Republic of Korea) supported the Chinese amendment which greatly improved paragraph 1, and also the United Kingdom amendment, which did not affect the substance of the article. The Portuguese amendment concerning the structure of article 27 could be referred to the drafting committee.

13. Mr. ENDEMANN (South Africa) said he regretted the withdrawal of the United States amendment (L.5) since it contained a provision relating to sub-paragraph (b) which not only clarified the text but brought it into line with sub-paragraph (a).

14. The CHAIRMAN agreed to the proposal made by the representative of the Federal Republic of Ger-

many to set up a working group, and invited the sponsors of the amendments submitted in connexion with article 27, including the representative of the United States, to meet with a view to submitting a single text to the Committee at its next meeting.

*Proposed new article to be inserted
between articles 5 and 6 (Refugees)*

15. Mr. WESTRUP (Sweden) introduced the joint proposal by Argentina, Australia, Belgium, Colombia, Denmark, Iran, Nigeria, Sweden and the United Kingdom (A/CONF.25/C.1/L.124) for the insertion of a new article between articles 5 and 6. He said that few countries had not, at one time or another, sheltered refugees who had fled from their native land in order to escape persecution. The United Nations had concerned itself with the fate of refugees and had set up the Office of the High Commissioner to take steps for their protection. For obvious reasons, refugees had no desire to contact their consulates in the host country and did not want those consulates to intervene in their affairs in any way. For that reason, such refugees should be protected against any attempt at seizure of their person by the consulate of their country of origin. That was the purpose of the joint proposal.

16. Mr. OMOLULU (Nigeria) explained why the sponsors of the joint amendment were particularly anxious that it should be adopted. The provisions of the proposed new article were not in any way contrary to the consular functions enumerated in article 5. The right of asylum was governed by extradition treaties and could not be claimed by criminals under the ordinary law. Once asylum had been granted to a refugee, any intervention on the part of the consulate of his country of origin would constitute an infringement of the sovereignty of the receiving State. The moment had come to insert in a convention on consular relations a provision protecting refugees against interference of that kind.

17. Mr. CASAS-MANRIQUE (Colombia) said that his country had associated itself with the sponsors of the joint proposal since it was essential to avoid any possibility of ambiguity in the future convention.

18. Mr. KEVIN (Australia) said that, as one of the sponsors of the draft resolution, he had five points to make. First, the amendment followed the memorandum addressed to the Conference by the United Nations High Commissioner for Refugees (A/CONF.25/L.6). Second, it provided a logical corollary to the concept of political asylum recognized and accepted by international law. Third, it was in accordance with the Charter of the United Nations and the principles of the United Nations concerning human rights. Fourth, in so far as it aimed at preventing undue interference, it constituted a practical application and was not a mere theoretical assertion. Fifth, it differed from other amendments on access to consuls submitted in the Second Committee in having a much narrower field of application and a more profound meaning.

19. Mr. FUJIYAMA (Japan) supported the principle of the joint proposal, and said that he would vote for it.

20. Mr. von HAEFTEN (Federal Republic of Germany) supported the proposal. He said that Germany, unfortunately, had been through some sad experiences with regard to refugees. Under the Nazi regime a great many Germans had been forced to flee from their country and seek shelter abroad. Generally speaking, they had refused to have anything to do with the German consulates in the host country. After the collapse of the Nazi regime they had returned to west Germany, where there were more than 12 million refugees from the eastern European countries and 200,000 refugees under the terms of reference of the High Commissioner. All those refugees refused to have any contact with their consulates, which showed a suspicious interest in them. Those refugees must be protected and their consulates prevented from concerning themselves with them. That was the aim of the joint proposal, for which the delegation of the Federal Republic of Germany would vote.

21. Mr. SHARP (New Zealand) said that his country received many persons who had fled their homeland from fear of persecution for racial, religious or political reasons, or simply because they were opposed to their country's social system. All that those persons wanted was to be permitted to resettle in the New Zealand community and to live in peace. They had therefore to be protected against any possible action by their consulates.

22. Mr. USTOR (Hungary) regretted that the nine countries had seen fit to submit their proposal which introduced a cold war atmosphere into the conference. The wind of liberty was blowing across the world of the day and soon on earth there would be only sovereign States living in peace. The development and codification of international law were therefore a necessity, but it was a long-term task. The convention under preparation for the regulation of consular relations between States would probably come into force only after a number of years, when the last vestiges of the cold war had disappeared. At a time when the peoples of the world were working for a peaceful future, it might well be asked how certain countries could dare to submit a text which had no place in the convention in preparation, since the question of refugees was completely alien to consular relations. According to a rule of consular law, people who lived in foreign countries needed protection and should be able to get in touch freely with the consular authorities of their country. Statelessness was a deplorable condition which should be eliminated. The proposal submitted to the Committee tended to impose that situation on numerous persons and, under cover of humanitarianism, to jeopardize the rights which every human being should be able to enjoy. The nine countries' proposal was inhuman since it was designed to erect a barrier between States and their nationals and to prevent refugees from returning home with the help of their consulate.

23. The Hungarian representative urgently appealed to the sponsors to withdraw their proposal. If, however, they refused to do so, the Hungarian delegation would ask the Committee to reject the proposal so as to preserve

the integrity of the Conference's intentions and the harmony of its discussions.

24. Mr. PETRŽELKA (Czechoslovakia) entirely agreed with the attitude of the Hungarian representative. The question of refugees could not be dealt with in the convention, the purpose of which was to promote friendly relations between States by presenting an accurate statement of international law concerning consular relations. Moreover, the Second Committee of the Conference had already disposed of the question during its discussions. Bodies such as the Third Committee of the General Assembly and the International Law Commission were already dealing with the question of the right of asylum. Finally, the question of refugees had been settled by the 1951 Convention relating to the status of refugees.

25. The refugee question was peculiar to the present times and would no longer exist in the future. The rules laid down in the future convention should hold good both for the present and for the future. Furthermore, the inclusion of the article would destroy the universal character of the convention since it would prevent a large number of States from accepting the convention, which would thus fail in its aim. The proposal in question was equally unacceptable from the legal and from the political points of view, since it ran counter to the principle of the sovereignty of States, which gave every State the right to ensure diplomatic and consular protection to all its nationals. No State could be deprived of that right.

26. Mr. BARTOŠ (Yugoslavia) recalled that his country had signed the convention relating to the status of refugees and that it was represented at the office of the United Nations High Commissioner for Refugees. Yugoslavia had often played the role of country of first asylum and, on the other hand, a limited number of Yugoslav citizens had emigrated to other countries. The principle of the future convention, according to which the sending State should ensure the protection of its nationals wherever they might be, was a truly humanitarian principle. The joint proposal, under its humanitarian guise, would on the contrary permit certain countries to continue their policy of exploiting refugees.

27. The United Nations itself wished to see a diminution in the number of refugees and to give to most of them the opportunity to return freely to their countries. Yugoslavia had promulgated a general amnesty in favour of Yugoslav refugees, but certain receiving countries had prevented its publication, as if they desired to keep refugees in ignorance of the possibilities of returning to their countries, although the 1951 Convention relating to the status of refugees recognized the right of refugees to place themselves freely at the disposal of their countries' authorities.

28. His delegation was prepared to accept a proposal stipulating that refugees were not obliged to accept the intervention of their countries' consuls; but it vehemently protested against a text which sought only to extend the influence of the country of residence over refugees

or persons requesting asylum, by forbidding them any contact with the representatives of their countries, and thus any possibility of re-acquiring a normal status, in spite of the rule laid down by the United Nations.

29. It was an extremely dangerous question which could not fail to have serious political repercussions. It would be better to leave it to the specialized international organizations and, in particular, to the Office of the High Commissioner for Refugees.

30. He appealed to all representatives to reject the joint proposal which would distort a convention which he himself hoped to see ratified by a very large number of countries. A provision based on that proposal would undoubtedly reduce the number of ratifications.

31. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that the proposal, which concerned the political aspect of the relations between States, had given rise to a regrettable state of tension in the Committee. The text bore upon specialized, complex and delicate questions which would be far better settled by means of bilateral agreements.

32. The question of refugees and displaced persons had been raised many times at various conferences. In every case, it had provoked a cold war atmosphere which was harmful to the spirit of co-operation and aroused hostile sentiments between countries with different economic and political systems.

33. From a purely legal aspect, the amendment aimed at depriving the consulate of the possibility of getting into touch with those nationals of the sending State who were refugees or who had requested right of asylum in the receiving State. The question was therefore linked with that of the right of asylum, which was being dealt with by other organs of the United Nations, in particular the Committee on Human Rights. It certainly had no place within the framework of the convention.

34. The Convention on Diplomatic Relations contained no article of that type. One of the functions of diplomatic representatives was precisely to protect nationals of the sending State in the receiving State, yet no proposal similar to that under discussion by the Committee had been submitted to the 1961 conference. His delegation was categorically opposed to the insertion of the new article.

35. Mr. TSYBA (Ukrainian Soviet Socialist Republic) also found the proposal unnecessary and unacceptable. It was contrary to article 36 and to the convention as a whole, since the essential function of a consulate was to ensure the defence and protection of nationals of the sending State. A person who requested asylum from the receiving State nevertheless needed the assistance of the sending State for he had left a family and property in his country. He might need documents. Why therefore should he be deprived of the help of his consul?

36. Moreover, there was no foundation in law for the proposal: it was contrary to the inalienable and undisputed right of all States to protect their nationals wherever they might be. That right had always existed and article 8 of the resolution adopted by the Institute of International Law, at its 44th session held in England,

which dealt with the right of asylum, accorded to all States the right to protect their nationals.

37. After the First World War, the situation of numerous refugees who had left threatened or occupied areas had been the subject of a number of international agreements. After the Second World War, the problem of refugees and displaced persons had greatly increased. General Assembly resolutions 8 (I) and 62 (I) of 12 February and 15 December 1946 had assigned to the United Nations the fundamental task of ensuring the rapid return of refugees to their homes. Article 13 of the Universal Declaration of Human Rights accorded to everyone the right to leave any country and to return to it. How was a refugee to exercise that right without the help of his country's consul? How could he obtain the necessary passports and visas? The proposed new article, by depriving refugees of the right to contact their consuls, robbed them of any chance of eventually returning to their countries. The insertion of the article would make the convention unacceptable for many countries and would thus remove its universal character.

38. Mr. DAVOUDI (Iran) recalled that, according to resolutions adopted by the General Assembly, the protection of refugees was the province of the Office of the High Commissioner for Refugees. While visiting refugee camps as a member of the Executive Committee of the High Commissioner's Programme, he had been able to verify that certain refugees did not wish to get into contact with the authorities of their country of origin. When such a situation arose, the Office intervened and protected the refugee so that he could decide in perfect freedom. He thought it indispensable to define exactly the functions of consuls of the sending State with regard to refugees, and he accordingly urged delegations to support the joint proposal.

39. Mr. MIRANDA e SILVA (Brazil) thought that all that was necessary to make the text acceptable to all delegations would be to insert the words "against his will" after the words "or otherwise concern himself with".

40. Mr. GUNWARDENE (Ceylon) said that the question had already been raised in 1961, but that the Conference had not thought it advisable to include special provisions for refugees in the Convention on Diplomatic Relations. Moreover, the legal basis of the joint proposal was very questionable. The problem of refugees was a personal tragedy which the article would do nothing to alleviate. Nothing should be done to aggravate an already complicated situation; the proposal might give rise to much friction. He urgently appealed, therefore, to the members of the Commonwealth and to the other delegations who believed in friendship between peoples to ensure that the proposal was withdrawn in the interests of peace and international co-operation.

41. Mr. DADZIE (Ghana) expressed his astonishment at seeing a conference called to codify consular law discussing so complicated a question as that of refugees and the right of asylum. The United Nations Third and Sixth Committees were already dealing with the question of the right of asylum, and the International

Law Commission had also put that question on its agenda. It would not be wise for the Conference to adopt a text which might contradict that of the experts on the International Law Commission. The Committee could not reach a decision without having seriously studied the question. Moreover, delegations were without instructions from their governments on the matter. If the joint proposal were put to the vote, the Ghanaian delegation would vote against it. It associated itself with the representative of Ceylon's appeal to the sponsors of the proposal to withdraw it so as to preserve the atmosphere of goodwill which till then had existed in the Committee.

42. Mr. TSHIMBALANGA (Congo, Leopoldville), speaking on a point of order, said that, as discussion of the joint proposal was likely to be lengthy, he would propose that the Committee should first decide whether it could usefully continue the debate. As he had received no instructions or mandate from his government, he himself could not take part in a vote on the proposal.

43. The CHAIRMAN said that, in accordance with rule 31 of the rules of procedure, he would invite the Committee to decide whether it was or was not competent to consider the proposal submitted to it.

44. Miss ROESAD (Indonesia) supported the Congolese representative's motion. In her opinion, the Committee was not competent to discuss the question.

45. Mr. HEPPEL (United Kingdom), speaking on a point of order, asked whether rule 31 gave the Committee the right to decide on its own competence. In his view, since it was a question of the protection of nationals of the sending State, the Committee's competence could not be called into question.

46. Mr. DADZIE (Ghana), speaking on a point of order, observed that the United Kingdom representative was returning to the substance of the question. His remarks were therefore out of place.

47. The CHAIRMAN invited the Committee to vote on the competence of the Conference to consider the proposal submitted to it, in accordance with rule 31 of the rules of procedure.

The Committee decided by 36 votes to 25, with 8 abstentions, that it was competent to consider the joint proposal.

48. Mr. BINDSCHIEDLER (Switzerland) said that his country had always accepted and protected refugees. The refugee question had existed at other periods; there had always been and there would always be political refugees because no State, no political system, was perfect. That was why the question had to be settled in accordance with law and human rights.

49. He regretted having to oppose the arguments adduced by the Yugoslav representative. He particularly protested against the insinuation that the receiving country might exploit refugees. In Switzerland there were many refugees who were unable to work. They were maintained out of public funds and housed in hospitals and in homes. Moreover, Switzerland had never prevented and never would prevent refugees from returning to their own country, and nobody in Switzer-

land had ever prevented or ever would prevent the publication in the newspapers of reports concerning amnesties in foreign countries.

50. The sponsors of the joint proposal did not wish to exacerbate the cold war, but to codify international law in its current state. The right of asylum, too, was an essential attribute of the sovereignty of States. Nothing new was being introduced; the existing right was merely being confirmed. That was what was understood by codification.

51. It had to be recognized that the joint proposal was not altogether satisfactory as to form. The consulate of the sending State was refused the right even to act on behalf of refugees. Why should he be denied the right, for example, to pay them their pensions or social security benefits? He therefore approved the modification proposed by Brazil. Finally, he thought that the place of the new article was not between articles 5 and 6 but rather in chapter IV, among the general provisions, or at the end of the Convention. Notwithstanding those reservations as to form, he would vote for the joint proposal on humanitarian grounds.

52. Mr. PAPAS (Greece) said that in principle his delegation would support the proposal. Furthermore, it considered that the question should not be given any political significance, because it had no unilateral aspect. There were foreign political refugees in Greece, and Greek political refugees in other countries. His delegation nevertheless thought that a consul should retain the right to show interest in a political refugee who was a national of his country. That could be done through an impartial body such as the Office of the High Commissioner for Refugees. Such a procedure might be followed in the cases referred to by the representative of Switzerland.

53. Mr. BARTOS (Yugoslavia) denied that his remarks had ever been specifically directed at Switzerland, which moreover was not one of the sponsors of the joint proposal. He would, however, venture to point out to the Swiss representative that official labour statistics published in Switzerland showed that the wages of foreign workers were lower than those of Swiss nationals.

The meeting rose at 1 p.m.

TWENTY-FIFTH MEETING

Thursday, 21 March 1963, at 3.15 p.m.

Chairman: Mr. BARNES (Liberia)

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

Proposed new article to be inserted between articles 5 and 6 (Refugees) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of the nine-power proposal for a new article (A/CONF.25/C.1/L.124).