

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

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

25th 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)

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).

2. Mr. KNEPPELHOUT (Netherlands) expressed the hope that the Committee would be able to continue its deliberations in the harmonious atmosphere which had prevailed hitherto. It was quite unnecessary to enter into political controversy on an article embodying a fundamental principle which was in the interests of all persons seeking asylum. As a country which had given shelter to refugees for centuries, the Netherlands considered it necessary to include the article.

3. Mr. KESSLER (Poland) agreed with the representatives who had held that the proposed new article was out of place in a consular convention. It should be borne in mind that the task of the Conference was to codify international law on consular relations, and paragraph 29 of the report of the International Law Commission covering the work of its thirteenth session (A/CONF.25/6) stated that the Commission had agreed to base its draft articles not only on customary international law, but also on the material furnished by international conventions, especially consular conventions. It could not be maintained that the principle stated in the proposed article was recognized either in customary international law or in any consular convention. The settlement of the refugee problem was outside the scope of a convention on consular relations; moreover, since the International Law Commission had included the right of political asylum in its long-term programme for the codification of international law, it would be improper to anticipate its decisions, as the proposed article did, to some extent.

4. While he did not wish to insinuate that the sponsors of the new article were motivated by ill will, he was not convinced by their arguments and did not believe that they were all prompted by lofty humanitarian ideals. He could not share the rather sombre view of the Swiss representative that the refugee problem should be perpetuated in the convention because refugees had existed since ancient times and would always continue to exist. His delegation believed that the modern era differed from the past by reason of the possibilities that had been created for universal and peaceful co-existence; it firmly believed in a future for mankind which would be free from war and its disastrous consequences, including the refugee problem. Members of the Committee should realize that the introduction of a purely political matter, having no bearing on consular relations, could easily breed ill will. The successful conclusion of the Conference depended on continued co-operation and business-like discussion.

5. Mr. CRISTESCU (Romania) expressed his delegation's deep conviction that the proposed new article was absolutely contrary to all the purposes of the Conference. In the first place, it conflicted with the sovereign right of all States to protect their nationals abroad; secondly, it was anti-humanitarian, since its effect would be to prevent consular officials from acting on behalf of nationals of the sending State; thirdly, it would hinder the day-to-day performance of consular functions; fourthly, its introduction had poisoned the atmosphere of the Conference by introducing an element of the cold war which had no place in the convention and was not

calculated to further the codification and progressive development of international law; and finally, its inclusion in the convention would undoubtedly detract from the universality of that instrument. His delegation would therefore vote against the proposed article.

6. Mr. D'ESTEFANO PISANI (Cuba) thought that the underlying motives of the joint proposal were highly dubious. A number of international organizations were already concerned with the protection of refugees. Furthermore, the receiving State could not fail to recognize consular officials as protectors of the nationals of the sending State. As the Hungarian representative had pointed out, a multilateral consular convention could not include a transitory provision contrary to all legal philosophy and to the work of the International Law Commission; the inclusion of such a provision would vitiate the whole text of the convention.

7. From the practical point of view, the refugee problem could not be solved by a provision which would deprive nationals of the sending State of the protection of that State and would sever contact between them and their consulates. It would be both absurd and inhumane to deny the sending State an opportunity to assist its nationals when they were particularly dependent on its support. The Yugoslav representative had rightly pointed out that the article would be against the interests of refugees, since its adoption would help certain countries to benefit by cheap foreign labour.

8. A number of attempts had been made to introduce provisions which could only hinder the improvement of relations between States. The proposed new article was an extreme example; it was contrary to international law, and would be an obstacle to the promotion of friendly consular relations and humanitarian ideals. The intensive and constructive work already done proved that it was possible to discuss the Commission's text in a spirit of co-operation and understanding; that spirit should continue to prevail in the Committee.

9. Mr. PUREVJAL (Mongolia) agreed with previous speakers that the proposed new article was out of place in a multilateral consular convention. The extraneous question of refugees had been introduced for political reasons which were incompatible with the aims of the Conference. Moreover, the purpose of the proposal was to prevent the repatriation of refugees, although the principle of such repatriation was recognized by international law. His delegation strongly opposed the proposal and associated itself with the appeals made to the Committee at the previous meeting by the representatives of Hungary, Ceylon and Ghana.

10. Mr. MUÑOZ MORATORIO (Uruguay) said that he would support the proposed new article because it was the policy of Uruguay to offer to all refugees in its territory every facility and full guarantees for the protection of the inherent rights of the human person and the protection of the physical and moral integrity of the individual. Nevertheless, he had some doubts concerning the wording of the article. He had voted against the motion of the representative of the Congo (Leopoldville) because he held that it would not be superfluous,

in a convention which laid down the rule that consuls had the right to look after their compatriots, to add an article specifying in which cases they had not that right, in other words, in the case of political refugees.

11. It had been said that the wording of the article would prevent nationals of the sending State from appealing to their consuls for assistance; but all such persons could not be regarded as refugees, and in any event a refugee was always free to abandon his refugee status. Furthermore, no provision of the convention could be interpreted as giving a consul the right to act on behalf of a person who did not wish him to do so. He understood the purpose of the Brazilian oral amendment, which was to show that a consul would not act on behalf of a refugee who did not wish him to do so, but that provision might give rise to further difficulties, since it might be concluded, *contrario sensu*, that a consul could act on behalf of a person who did not wish him to do so if that person was not a national of the sending State.

12. As a country in which many foreigners were resident, Uruguay could not admit the right of a foreign consul to violate the principle stated in the proposed new article, and he would vote for the text as it stood.

13. Mr. WU (China) observed that, since the Committee had adopted the provision in article 5 (e) that consular officials had the function of helping and assisting nationals of the sending State, the question of situations in which such nationals did not wish to be assisted by a consular official naturally arose. The proposed new article offered a timely and appropriate answer to that question and should be inserted after article 5; article 5 (e) might be held to refer to material assistance, whereas the new article related to political freedom.

14. It might be unnecessary to reaffirm the status of political refugees in the convention, but the proposed new article would prevent consuls from interfering with the system of political asylum. His delegation would not, however, oppose a compromise satisfactory to all parties. Perhaps some qualifying phrase such as "except those who refuse such assistance and help" might be added at the end of article 5 (e). If the Committee failed to reach a compromise, however, and the new article was put to the vote, the Chinese delegation would vote in favour of it.

15. Mr. GHEORGHIEV (Bulgaria) pointed out that the task of the Conference was clearly laid down in General Assembly resolution 1685 (XVI) and that the International Law Commission had not referred to such political questions as the right of asylum and the refugee problem in its draft because they were irrelevant to a convention on consular relations. Furthermore, the Second Committee at the Conference had recently rejected a proposal to refer to the right of asylum in one of the draft articles. The effect of adopting the proposed article would be to deprive the unhappy victims of aggressive wars of the right to enter into contact with the representatives of their own countries, and thus to ensure that they could be used as cheap labour in the receiving countries. The proposal was therefore anti-humanitarian

and was hardly likely to promote friendly relations among States. Such an article could only distort the convention, since it conflicted with a number of the articles already adopted, and its adoption would prevent many countries from signing the convention. The Bulgarian delegation would vote against the proposal, which it could only regard as an attempt to disrupt the harmony which had hitherto prevailed at the Conference.

16. Mr. KIRCHSCHLAEGGER (Austria) said he would support the proposal, which he did not regard as a political attack against any government, or as a move detrimental to friendly relations among States, or as an attempt to infringe the sovereignty or other rights of the sending State. Article 24, paragraph 8, of the Consular Convention concluded between Austria and the United Kingdom on 24 June 1960 stipulated that nothing in the provisions of that article should be construed so as to oblige either party to recognize the right of a consular officer to perform any function on behalf of, or otherwise concern himself with, a national of the sending State who had become a political refugee for reasons of race, nationality, political opinion or religion. The inclusion of that provision, which was very similar to the proposed new article, in a bilateral consular convention, showed that the proposal had no unfriendly aspect, but merely stated certain limitations of consular functions where the receiving State had to exercise the humanitarian duty of protecting the refugee — though only, of course, to the extent that the refugee wished to be protected. His delegation could accordingly support the Brazilian oral amendment.

17. Mr. PAPAS (Greece) said he was in favour of the principle stated in the proposal and pointed out that it had no unilateral political character. Greece, for example, had given asylum to political refugees, while Greek political refugees had been given asylum by other countries. On the other hand, it should be borne in mind that the High Commissioner for Refugees was the competent authority in the matter, and could act as an intermediary between refugees and the consuls of the sending State. The International Committee of the Red Cross could act as an intermediary in countries which were not parties to the 1951 convention on refugees. He agreed with the Swiss representative that the proper place for the new article was not in the body of the convention, but among the general provisions.

18. Mr. KRISHNA RAO (India) said that his remarks on the proposed new article would be based solely on the legal points involved. The article had originated from a memorandum from the United Nations High Commissioner for Refugees (A/CONF.25/L.6); but article 2 of the statute of the Office of the High Commissioner provided that his work should be entirely non-political, humanitarian and social in character and should relate, as a rule, to groups and categories of refugees. Hence, no political argument should be used in that context. The High Commissioner, however, had not asked the Conference to take any action, but had only drawn attention to certain provisions of his statute. He therefore agreed with the representative of Ceylon that it was unnecessary to include the proposed new article,

particularly since the Vienna Convention on Diplomatic Relations contained no such provision and since the International Law Commission had not deemed it necessary to include one in its draft.

19. The High Commissioner had referred to articles 5 (a) and 36 of the draft, but the Indian delegation could not see how those provisions affected the High Commissioner's Office. Article 36 could not be construed as conferring on a consul any right to take action if the national concerned did not wish such action to be taken on his behalf. It should also be borne in mind that the activities in question would take place in the territory of the receiving State, whose authorities would be in a position to curb any abuses.

20. The proposed article itself was most unsatisfactory, both in drafting and in substance, and might lead to many difficulties of interpretation. To take only one example, the definition of the word "refugee" had been the subject of controversy for four or five years before it had been adopted in article 1 of the 1951 convention relating to the status of refugees, and some States still did not agree with that definition.

21. India was fully alive to the refugee problem, but could not agree that the relationship between refugees and consuls was one which should be defined in a convention on consular relations. Any problems which arose in that connexion should be settled on a bilateral basis or by the internal policy of each country. Much progress had been made in international relations since early consular conventions, under which consular officials of the sending State had certain rights over the nationals of that State. He appealed to the sponsors of the proposal to withdraw their draft. If they could not do so, he would vote against it.

22. Mr. HEPPEL (United Kingdom) observed that his government had drawn attention to the need for such an article in its comments on the draft articles; it could not therefore be argued that the matter had been raised unexpectedly. His delegation attached great importance to the article because of its conviction that it was improper for a consul to concern himself with nationals of the sending State who were refugees or were seeking asylum for any reason. The fact that his country's bilateral consular conventions with a number of other countries contained similar provisions clearly showed that the proposal was not political, but a matter of day-to-day administration between friendly States. The Indian representative had put the matter in its correct perspective when he had referred to article 2 of the High Commissioner's statute.

23. From the practical point of view, one of the most important purposes of the convention was to ensure that the consul of the sending State had access to any national of that State who was in trouble; article 36 contained precise provisions to that end. A consul should not be allowed to concern himself with a refugee as if he were an ordinary national of the sending State. It was equally important both to avoid any vagueness in the obligations of the receiving State under article 36 and to make it clear that those obligations were not the same in the case of refugees. Of course, the Committee should

strive for harmony in its deliberations, but those who strongly opposed the new article were trying to exert pressure on its sponsors in order to give consular officials rights over refugees which they did not in fact possess. In those circumstances, he could not agree with the representative of Ceylon that it was the sponsors of the article who were introducing friction into the debate.

24. Some representatives had argued that, since such a provision had not been included in the Vienna Convention on Diplomatic Relations, it had no place in the convention under discussion. The United Kingdom delegation believed, however, that a multilateral convention on consular relations must both lay down rules for the protection of nationals of the sending State and also clearly state all possible exceptions to that rule. The representative of Czechoslovakia had drawn attention to a decision of the Second Committee of the Conference on the question of asylum, but that decision had related only to asylum on consular premises, which was an entirely different matter. He fully agreed with the representative of Czechoslovakia that decisions to be taken elsewhere on the refugee problem should not be prejudiced; but the effect of the proposed article would be simply to ensure that the consular convention, in its reference to dealings between consuls and nationals of the sending State, did not prejudice the position of refugees.

25. The Hungarian representative had said that the proposal related to matters foreign to the subject of the Conference. It was true that it was not the function of a consular official to concern himself with a national of the sending State who was a refugee or seeking asylum, but it was essential to make that perfectly clear in the convention, in order to avoid any possibility of misunderstanding. The Czechoslovak representative had objected to including an allegedly transitory provision in a convention which would lay down consular law for a long time to come: it should be borne in mind, however, that the refugee problem was as old as mankind. For thousands of years, a stranger seeking protection had been deemed to be entitled to special regard and consideration. The question of sovereignty had been raised by a number of speakers. The point at issue was indeed one of sovereignty and his delegation appealed to all countries, small and large, new and old, to be masters in their own house where the situation of refugees was concerned, and not to renounce that aspect of their sovereignty. An alien who did not wish to communicate with a consul of his country and who placed himself under the protection of the receiving State should not have to be the object of attention by a consul unless he so desired.

26. The wording of the proposed article could no doubt be improved, in order to make clear that no restriction was being placed on the right of a refugee to approach his own consulate or embassy. Article 36 stated the right of all nationals of the sending State, whether or not they were refugees, themselves to communicate with their consuls.

27. However, some delegations evidently considered that the wording of the proposed article unduly re-

stricted that right. His delegation had been impressed by the Uruguayan representative's criticism of the Brazilian oral amendment and would try to draft some more acceptable wording.¹

28. Mr. BANGOURA (Guinea) said that, although at first sight his delegation had not seen much harm in the proposed new article, the statements of a number of speakers, particularly that of the Yugoslav representative, had convinced it that such a provision was undesirable. From a purely practical point of view, if the right of asylum was placed under the jurisdiction of the receiving State, there would be no provision for facilitating the return of refugees who subsequently changed their minds. If the appeal of the representatives of Ghana and Ceylon met with no response, he would vote against the joint proposal.

29. Mr. AVILOV (Union of Soviet Socialist Republics) said that the question of refugees was absolutely irrelevant to the subject under discussion and was dealt with by other organs of the United Nations, including the Third Committee of the General Assembly and the International Law Commission. Moreover, since even those specialized bodies had found it difficult to reach any solution of the problem, there was no reason to think it could be solved in one article of the convention on consular relations. The consular conventions which his country had concluded on a bilateral basis contained no references to refugees, and the correctness of that policy was borne out by the omission of any such provision from the Commission's draft and from the Vienna Convention on Diplomatic Relations.

30. The difficult situation of refugees in their new countries of residence was well known, and the Soviet Union possessed a considerable amount of data on steps taken to prevent their repatriation, in contravention of General Assembly resolution 8 (I). It was therefore surprising, to say the least, that the proposed article was being introduced on allegedly humanitarian grounds; as the Ceylonese representative had pointed out, the nations of Asia and Africa had bitter experience of such so-called humanitarianism. Contrary to the United Kingdom representative's assertion, the opponents of the proposal did not wish to introduce any vague provisions in the convention: they wanted to protect the interests of the nationals of the sending State, and not speculate on human misery. The Soviet Union was only too well aware of the situation of thousands of refugees and displaced persons whose families had been divided and who had been prevented from returning to their countries. Fortunately, however, large numbers had managed to return and were now enjoying normal living conditions in their own country.

31. Under the guise of concern for human rights, the sponsors of the proposal were trying to prevent refugees from making contact with the consul of the sending State. Moreover, there was no guarantee that persons who allegedly did not wish to communicate with their consuls were not victims of provocation. In

his country's experience, many refugees had agreed to repatriation after they had seen their consuls; and since they met the consul in the presence of the authorities of the receiving State, there could be no danger to them. If a national of the sending State declared his unwillingness to be repatriated before the consul, no objection could be made; the difficulty arose when the person concerned was prevented from seeing the consul.

32. He deplored the disruption of the friendly atmosphere that had hitherto prevailed at the Conference and hoped that the joint proposal would be withdrawn. If the sponsors pressed their proposal he would vote against it.

33. Mr. RABASA (Mexico) observed that the joint proposal constituted a new article unfamiliar to the governments which had sent delegations to the Conference to discuss the draft prepared by the International Law Commission. In future, he would have to abstain from voting on any proposal for a new article, regardless of its merits. He had no instructions from his government, and was not in a position to obtain any, concerning a provision outside the scope of the draft articles referred to the Conference by the General Assembly.

34. Notwithstanding the absence of any instructions from his government, however, he was prepared to support the joint proposal, because of the traditional policy of Mexico in the matter of political asylum. At the Sixth International American Conference held at Havana in 1928, Mexico had been one of the sponsors of a convention on diplomatic asylum. That convention had endorsed the Latin American system of granting asylum to political refugees on the premises of diplomatic missions; the institution of diplomatic asylum had been confirmed by a second convention on the subject signed at the Seventh International American Conference at Montevideo in 1933. At the 1954 International American Conference held at Caracas, two conventions had been signed: one on political asylum in the territory of the contracting States and the other on diplomatic asylum. Mexico had been one of the prime movers of those conventions, which reflected the latest developments in the matter of asylum in Latin America, and the Mexican Senate had approved their ratification. Moreover, in its legislation on the immigration and residence of aliens, Mexico had included provisions for the protection of persons who had sought asylum for political reasons.

35. He therefore believed that he was faithfully interpreting the policy of his government by supporting the proposal, which did not appear to be inspired by any ulterior motive, but intended only to strengthen the institution of political asylum. He was obliged to point out, however, that his full powers were *ad referendum* and for the purposes of voting in the plenary meeting; he therefore reserved the right to act in accordance with any instructions he might receive from his government.

36. Miss ROESAD (Indonesia) said that, at the previous meeting, her delegation had voted in favour of the proposition that the Conference was not competent

¹ A revised text was subsequently circulated in document A/CONF.25/C.1/L.124/Rev.1.

to deal with the question under discussion. She would therefore refrain from going into the substance of the matter; her delegation was not opposed to the right of asylum as such, but believed that it would serve no useful purpose to include a reference to it in a convention on consular relations.

37. Mr. ABDELMAGID (United Arab Republic) also thought that the proposed new article would be out of place in a convention on consular relations. His delegation was fully conversant with the refugee problem; the United Arab Republic gave every facility to the United Nations High Commissioner for Refugees, who had a representative at Cairo. However, he was certain that if the text under discussion had been submitted to the International Law Commission, its members, regardless of nationality and political background, would have come to the conclusion that it should not be included in the draft articles on consular relations. He therefore endorsed the appeal made by the representative of Ceylon to the sponsors not to press their proposal, which had given rise to such a long discussion, largely of a political character.

38. Mr. von HAEFTEN (Federal Republic of Germany) pointed out that the proposed provision would not impose any obligation on States, which would remain free to grant asylum or not, as they chose. Nor would it prevent a refugee from returning to his country of origin or establishing contact with his consul if he decided to do so of his own free will; the United Kingdom representative had offered to make that point clear in the text. The purpose of the proposed new article was simply to prevent pressure being exerted on refugees.

39. Mr. TORROBA (Spain) thought that the proposed provision was not absolutely indispensable. But he had no objection to its inclusion, particularly if the text were improved as suggested.

40. Mr. de MENTHON (France) stressed the fact that his country had shown constant concern with the refugee problem. France had given asylum throughout its history to a large number of refugees from many different countries and of many political tendencies. It co-operated whole-heartedly with the work of the United Nations High Commissioner for Refugees and was a signatory of the 1951 Convention relating to the status of refugees. An office for the protection of refugees and stateless persons had been set up in France and the United Nations High Commissioner for Refugees was represented at Paris.

41. His delegation believed that it was necessary to include an article along the lines proposed in the convention on consular relations. It was essential that there should be no conflict between the provisions of that convention and the instruments relating to refugees. In view of the provisions of article 5 of the draft on safeguarding the interests of nationals of the sending State, it was essential to recognize the freedom of choice of the persons concerned; that applied, in particular, to persons who did not wish to enter into contact with the consular representatives of their country of origin.

42. The purpose of the proposed new article was to lay down necessary limits for the exercise of consular functions. He felt certain that it had been put forward without any ulterior political motive, and that it would serve a genuine need in the future because, unfortunately, there would always be refugees.

43. Mgr. CASAROLI (Holy See) stressed that, in its attitude towards the proposal before the Committee, his delegation was not prompted by any considerations relating to contemporary and, it was to be hoped, transitory conditions, but by legal considerations and by a general concern for the grave, long-standing and unfortunately enduring problem under discussion.

44. He would not enter into the details of the proposal, and would consider only its central idea. He had noted with satisfaction, however, that a clause was to be added — which his delegation considered essential — to make it clear that the proposed provision did not prevent the persons concerned from contacting the consular officials of their country of origin if and when they desired.

45. There was a logical argument in favour of the proposal. International law fortunately recognized that a person could legitimately seek asylum outside the country which, while remaining his native land, had ceased to offer him peace and safety, not because he had committed a crime, but because of factors independent of his will, such as race or nationality, or even because of some lawful act. International law also recognized the right of a State to offer hospitality to those seeking asylum for legitimate reasons. Accordingly, so long as it was possible for a person in certain cases freely to remove himself from the authority of his own State, it would seem logical to recognize his right to be exempt from the authority of the consular officials of that State in the country where he had taken refuge.

46. The logical argument in favour of the proposal was strengthened by humanitarian considerations, even though an occasional abuse might be possible and even though, unfortunately, humanitarian concern might sometimes also cover intentions and attitudes of a different character. His delegation hoped that, through the goodwill of all, a genuine, just and humane solution would soon be found for the distressing problem of refugees, in the interests of the persons concerned and of the peace of the world.

47. He noted that the proposal was, he believed intentionally, couched in negative terms; it merely provided that nothing in the convention obliged the receiving State to recognize a consular official of the sending State as entitled to act in the circumstances specified. That language did not prejudice the positive aspect of the question, the substance of which was left to the bodies competent to study the right of asylum and related questions.

48. It was in that spirit and in view of those considerations that his delegation would support the proposal, with the change proposed by the United Kingdom representative.

49. Mr. DJOUDI (Algeria) expressed appreciation of the services rendered to Algerian refugees by the

United Nations High Commissioner. His country had become a party to the 1951 Convention relating to the Status of Refugees.

50. He considered, however, that the fact that a person was a refugee did not divest him of his allegiance to his country of origin. The proposed new article would provide the receiving State with an indirect means of rendering consular protection inoperative. He agreed with those representatives who took the view that the article would be out of place in a convention on consular relations; moreover, it had become apparent that if it was included many countries would not accede to the convention. In the interests of the universality of that instrument, he therefore urged the sponsors of the proposal to withdraw it.

51. Mr. DI MOTTOLA (Costa Rica) said that he would support the proposal, which was in line with the traditional policy of his country. It was consistent with the principles of international law relating to the granting of asylum, and would serve a useful purpose by specifying the limits within which certain consular functions could be exercised.

52. Mr. BARTOŠ (Yugoslavia) pointed out that, in his memorandum (A/CONF.25/L.6), the High Commissioner for Refugees had not requested the inclusion of any provision on the lines of the joint proposal. The purpose of that memorandum had been merely to draw attention to the competence of the High Commissioner to grant protection to refugees by virtue of certain international instruments.

53. The United Kingdom representative had spoken of a clause which, he had said, was currently used in connexion with the subject under discussion and which, according to that representative, reflected day-to-day international practice. In fact, however, so far as he (Mr. Bartoš) was aware, the clause in question was used only by the United Kingdom and appeared only in that country's consular conventions with Sweden, Denmark and Austria. A practice which involved only four countries could hardly be described as international or general. Besides, the practice in question was of a purely nominal character, for there were few refugees from Austria, Denmark or Sweden in the United Kingdom and probably no United Kingdom refugees in those countries. The practice could not form the basis of a codification of international law, nor could it constitute a starting-point for the purpose of the progressive development of international law, inasmuch as it was a condition that a practice, in order to become the basis of a codification or development of international law, must have been accepted by the different legal systems, a condition which was not fulfilled in the particular case.

54. Even with the improvement suggested by the United Kingdom representative, the new article was unacceptable to his delegation. It contained no provision to ensure that the persons concerned had been given an opportunity of exercising their right to contact their consul. If such an article were introduced into the convention, many States would be unable to accede to it.

55. Mr. WESTRUP (Sweden) expressed surprise that

the proposal co-sponsored by his delegation should have led to such bitter argument. Sweden was in no way concerned in the "cold war" and he noted from the moderate remarks made by the Polish and other representatives that no suspicion was being cast on the intentions of his delegation. He wished to assure the opponents of the proposal that it had not been put forward in the spirit suggested by certain representatives; it had been made in order to meet the future needs, since the refugee problem could not be expected to disappear.

56. Mr. N'DIAYE (Mali) said that, as he understood it, the joint proposal had had its origin in the discussions on article 36 in the Second Committee of the Conference.² It had been pointed out during that discussion that, since the receiving State was required to notify the consul of the arrest of one of his nationals, it would have to inform the consul of the country of origin of any refugee arrested for illegally crossing the frontier. That problem had in fact been dealt with by introducing into article 36 a provision to the effect that, where an arrested person did not wish the receiving State to notify his consul, it was not required to do so. In the circumstances, he saw no reason for introducing the proposed new article.

57. The problem of refugees was a matter for the United Nations High Commissioner. He understood the humanitarian motives of the sponsors of the joint proposal but considered that its subject matter was outside the scope of the Conference. If the proposal were put to the vote, his delegation would be obliged to abstain. He endorsed the appeal made to the sponsors to find a compromise solution, so as to enable the Committee to continue its work in the constructive and friendly atmosphere which had hitherto prevailed.

58. Mr. NESHO (Albania) opposed the joint proposal, which would introduce an extraneous element into the future convention on consular relations.

59. Mr. MAMELI (Italy) supported the joint proposal, which had been improved by the addition of a new sentence. Italy had given asylum to a large number of refugees and was a signatory to the 1951 Convention relating to the Status of Refugees. His delegation was interested in the humanitarian problem of refugees and considered that the proposed new article would be most appropriate in a convention on consular relations.

60. Mr. PETRŽELKA (Czechoslovakia) said that the United Kingdom representative had failed to answer the most important arguments which he had put forward at the previous meeting. A point which he wished to make in particular was that many countries were not parties to the international instruments on refugees, so that the inclusion of a provision on the proposed lines would not be codification of a general international practice.

61. Many States would not agree to renounce their right to protect their nationals. It was not possible to accept the proposition that the receiving State had the right to recognize or not to recognize the sending State's

² See the summary records of the sixteenth, seventeenth and eighteenth meetings of the Second Committee.

right to exercise consular functions in respect of its own nationals. Such a proposition would be inconsistent with the sovereign equality of States proclaimed in Article 2 (1) of the Charter. It would also be inconsistent with the provisions of article 3, paragraph 1 (b) of the 1961 Vienna Convention on Diplomatic Relations, which stated that it was the function of a diplomatic mission to protect in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law. Another legal shortcoming of the proposal was that it would deprive the sending State of its sovereign rights and give those rights to individuals, in defiance of international law.

62. As aptly pointed out by the Indian representative, the definition of the term "refugee" was crucial to the matter under discussion and it was not the task of the present conference to define that term.

63. It was undeniable that the joint proposal involved a dangerous political issue and that it constituted an effort to impose certain views, against the opinion of a large number of States. The adoption of such a proposal might make the convention unacceptable to a large number of States.

64. Mr. TORROBA (Spain), replying to the representative of Yugoslavia, said that the three countries he had mentioned were not the only ones with which the United Kingdom had concluded consular conventions containing a provision on refugees. The provision in question was also contained in the consular convention between the United Kingdom and Spain and he did not deny that there were certain Spaniards resident in the United Kingdom who regarded themselves as political refugees.

65. Mr. USTOR (Hungary) said that the Indian representative had already pointed out the legal shortcomings of the joint proposal and drew attention to the need to define the term "refugee". In the absence of such a definition, the vague language of the proposed new article would make it possible for almost any foreigner to be considered as a refugee.

66. Persons who left their country of origin did so in the hope of attaining a happier life; their reasons were mostly of an economic character, although sometimes there were other reasons as well. The question arose who was entitled to determine a person's reasons for taking the fateful decision to leave his country of origin. Any suggestion that it was the unilateral right of the receiving State to do so would be a flagrant interference in the sovereign rights of the sending State and an illegitimate intervention between that State and its own nationals.

67. Under the proposed new article, a consul would be faced with insurmountable practical difficulties. In particular, he would not know whether a person was considered as a refugee by the receiving State or not. And it would be clearly impracticable to allow the person concerned to decide that question for himself, because it would give an opportunity even to criminals to declare themselves refugees in order not to be deported.

68. A provision such as that under discussion might perhaps be included in a bilateral agreement, but it

would create chaos and confusion if introduced into a general multilateral convention. It would also detract from the universality of the convention and thus impede the process of codifying international law.

69. Mr. GUNewardene (Ceylon) pointed out that the Commission on Human Rights, the Economic and Social Council and the General Assembly itself had all dealt with the problems of refugees and asylum and was still working on those problems. If those competent organs of the United Nations had been unable to find a solution, it was futile to attempt the task in a conference of a limited character such as the present conference.

70. He appreciated the generosity of the United Kingdom and other countries to refugees, and felt sure that the four Commonwealth countries and the five other countries sponsoring the joint proposal had been prompted by the best intentions. But the proposal had introduced a cold war atmosphere into the Committee's discussion; he earnestly reiterated his appeal to the sponsors to withdraw it so as to enable the Conference to arrive at a convention that could be unanimously approved.

71. Mr. KEVIN (Australia) said that the sponsors of the joint proposal were not trying to define the term "refugee", but simply to specify how far a consul could go in the exercise of his functions. He saw no connexion between the proposal and the cold war.

72. Mr. GUNewardene (Ceylon) proposed that a vote on the joint proposal should be deferred until the next meeting.

It was so agreed.

The meeting rose at 6.20 p.m.

TWENTY-SIXTH MEETING

Friday, 22 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)

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) and drew attention to the revised text of that proposal (A/CONF.25/C.1/L.124/Rev.1).

2. Mr. AVILOV (Union of Soviet Socialist Republics) associated himself with the appeal made by the representative of Ceylon to the sponsors of the draft article to withdraw their proposal, discussion of which was inappropriate and was likely to introduce into the Conference a cold-war atmosphere and thus to jeopardize its success. Moreover, the insertion of the article in the