

# **United Nations Conference on Consular Relations**

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**A/CONF.25/C.1/SR.26**

**26<sup>th</sup> meeting of the First Committee**

Extract from the  
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*(Summary records of plenary meetings and of meetings of*  
*the First and Second Committees)*

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. GUNWARDENE (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. GUNWARDENE (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.

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## TWENTY-SIXTH MEETING

*Friday, 22 March 1963, at 10.35 a.m.*

*Chairman: Mr. BARNES (Liberia)*

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### **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

convention would prevent many States from ratifying it and would nullify eight years' work by the International Law Commission, a state of affairs for which the sponsors of the proposal would bear the responsibility. His delegation appealed to the good sense of the Committee to reject the draft article.

3. Mr. HEPPEL (United Kingdom) stressed the importance of the issue that confronted the Conference and the necessity for inserting the proposed new article in the draft convention, because the question had a direct bearing on consular relations and therefore was within the Conference's competence. It was regrettable that the question had taken a political turn yet its humanitarian aspect made it a subject of general interest.

4. Mr. RAHMAN (Federation of Malaya) regretted that the debates, which had been conducted so far in a spirit of harmony, should have become embittered. The hope of a compromise solution, however, which would represent a real success for the Conference, should not be abandoned. Both groups recognized the importance of the question and its humanitarian character. He would suggest therefore the establishment of a small sub-committee of representatives of the two groups to examine the question thoroughly.

5. The CHAIRMAN said that he would welcome such a solution, but the two sides had hardened in their attitudes and taken up diametrically opposite positions. There was little hope under those conditions of a sub-committee composed of representatives of the two groups reaching a compromise.

6. Mr. PAPAS (Greece), introducing his amendment (A/CONF.25/C.1/L.156), explained that its purpose was to alleviate the apprehension expressed by many delegations with regard to the proposed new article. Its text might be modified; there might be a provision, for instance, for the good offices of the International Committee of the Red Cross or the intervention of an impartial person. If, however, the sponsors of the joint proposal could not accept the Greek amendment, his delegation would not press it.

7. Mr. KRISHNA RAO (India) doubted whether the Committee was qualified to confer a mandate on the United Nations High Commissioner for Refugees, as proposed in the Greek amendment. The High Commissioner's mandate had been defined by the General Assembly, and the Conference had no authority to extend it to include new tasks.

8. Mr. BINDSCHEDLER (Switzerland), endorsing the Malayan representative's proposal, said that the Committee might decide to set up a sub-committee whose members would be chosen by the Chairman, and to adjourn the debate until the sub-committee had reported to the Committee on the result of its efforts to reach a compromise.

9. Mr. DADZIE (Ghana) said that if it were decided to set up the sub-committee suggested by the Malayan representative, it should be composed of representatives not belonging to either of the two groups.

10. The CHAIRMAN suggested the establishment of a sub-committee composed of the representatives of Brazil, Ceylon, the Federation of Malaya, the Union of Soviet Socialist Republics, the United Kingdom and the Upper Volta. In the meantime, as the Swiss representative had suggested, the debate could be adjourned.

*It was so decided.*

*Article 27 (Protection of consular premises and archives and interests of the sending State in exceptional circumstances) (continued)<sup>1</sup>*

11. The CHAIRMAN drew attention to the text of the amendment to article 27 submitted by the working group for the consideration of the Committee (A/CONF.25/C.1/L.157).

12. Mr. KEVIN (Australia) introduced the working group's proposal and said that the text suggested for the new paragraph 2 of article 27, replacing paragraphs 2 and 3 of the International Law Commission's draft, had been accepted by the sponsors of the various amendments.<sup>2</sup> The text of the introductory phrase of paragraph 1 in the amendment was a variant of the existing text and could be referred to the drafting committee.

13. Mr. CAMERON (United States of America) pointed out that the working group's draft of the new paragraph 2 did not take account of his delegation's amendment (L.5) to paragraph 1 (b) of the original text to substitute the words "of the consulate", taken from paragraph 1 (a), for the words "it contains". Moreover, his delegation had proposed to amend paragraph 1 (a) by changing the words "respect and protect", which went too far, to read "accord all due respect and protection to". The working group had not accepted those proposals, which his delegation submitted anew to the Committee.

14. Mr. HEPPEL (United Kingdom) said that his delegation had proposed an amendment (L.142) to insert the words "in the same territory of" in paragraph 2 before the words "the receiving State". On reflection, he thought that that amendment, which was not in the working group's text, did not call for a formal proposal and he would not press it.

15. Mr. WU (China) explained that his delegation's amendment (L.113) to the introductory phrase of paragraph 1 did not effect any substantial change in the International Law Commission's draft. It merely rounded off the text and made it easier to apply.

16. Mr. USTOR (Hungary) said that he would vote against the introductory phrase of paragraph 1 proposed by the working group, on which there had been some disagreement within the group. As to the second part of the United States amendment, his delegation preferred the International Law Commission's text.

7. Mr. VAN HEERSWIJNGHEL (Belgium) said that he would accept the working group's text if that

<sup>1</sup> Resumed from the twenty-fourth meeting.

<sup>2</sup> For the list of amendments to article 27, see the summary record of the twenty-fourth meeting, footnote to para. 1.

part of the introductory phrase to paragraph 1 beginning "... where the sending State ..." were deleted, since those words could lead to misunderstanding.

18. Mr. de MENTHON (France) said his delegation preferred the International Law Commission's text for the introductory phrase to paragraph 1 and the French delegation would therefore ask for a separate vote on the second part of that phrase as quoted by the Belgian representative.

19. The CHAIRMAN put to the vote the second part of the introductory phrase of paragraph 1 of the working group's text (A/CONF.25/C.2/L.157) beginning with the words "... where the sending State ..."

*That part of the phrase was rejected by 34 votes to 23, with 12 abstentions.*

20. The CHAIRMAN put to the vote the text of new paragraph 2 submitted by the working group, as amended by the United States proposal for paragraph 1 (b) of the original text.

*That text was adopted by 44 votes to none, with 21 abstentions.*

21. Mr. USTOR (Hungary) expressed doubts about the regularity of the voting procedure followed by the Chairman. The text of the working group's new paragraph 2, as amended by the United States, had been put to the vote without any decision of the Committee on the amendment itself.

22. The CHAIRMAN replied that he had taken the view that if the text of paragraph 2, as amended by the United States, were adopted then paragraph 1 (b) would have been amended as a result. He put to the vote draft article 27, as amended.

*Draft article 27, as amended, was adopted by 64 votes to none, with 4 abstentions.*

*Article 68 (Exercise of consular functions  
by diplomatic missions)*

23. The CHAIRMAN invited the Committee to consider article 68 of the International Law Commission's draft and the amendments thereto.<sup>3</sup>

24. Mr. ENDEMANN (South Africa) said that his delegation withdrew its amendments (L.140 and Add.1), since the amendments submitted by the United States to paragraph 2 and by the United Kingdom to paragraph 4 had made them superfluous.

25. Mr. CAMERON (United States of America) withdrew his amendment (L.6) to paragraph 4 in favour of the United Kingdom amendment (L.153). He proposed to modify his amendment to paragraph 2 by replacing the words at the end of the sentence in his amendment "shall be admitted to the exercise of their consular functions in accordance with article 11" by the words "shall exercise those functions only with the consent

<sup>3</sup> The following amendments had been submitted: United States of America, A/CONF.25/C.1/L.6; Italy, A/CONF.25/C.1/L.121; South Africa, A/CONF.25/C.1/L.140 and Add.1; United Kingdom, A/CONF.25/C.1/L.153.

of the receiving State, should that State so require". The United States delegation supported the United Kingdom amendment to paragraphs 1 and 3 of article 68.

26. Mr. HEPPEL (United Kingdom) pointed out that the amendments in document L.153 were based directly on decisions already taken by the two committees of the Conference. The object of the amendment to paragraph 1 was to substitute a more general reference to "the provisions of the present convention" for the reference to articles 5, 7, 36, 37 and 39. That was merely a drafting change, but it seemed to him necessary, particularly in view of the amendment to article 3, which had already been adopted. The other amendments were intended to bring the wording of paragraph 3 into line with that adopted by the Second Committee for article 38, and that of paragraph 4 with the wording of paragraph 2 of article 17 concerning the position of a head of consular post who was at the same time a representative to an international organization.

27. He thanked the United States delegation for having withdrawn its own amendments in favour of those of the United Kingdom and in particular the amendment to paragraph 4. For its part, the United Kingdom delegation would support the new wording of paragraph 2 proposed in document L.6, as modified by the oral sub-amendment submitted by the United States.

28. Mr. MAMELI (Italy) explained the amendment proposed by his delegation (L.121): a diplomatic mission authorized to exercise consular functions should be entitled to address the authorities of the receiving State, other than the Ministry of Foreign Affairs, which were competent under the law of that State.

29. Mr. von HAEFTEN (Federal Republic of Germany) said that he would vote for the United Kingdom amendment to paragraph 1, and for the amendment to paragraph 2 proposed by the United States. He was inclined to support the Italian amendment to paragraph 3, but he preferred the International Law Commission's wording of paragraph 4 since the United Kingdom amendment might cause confusion.

30. Mr. PETRŽELKA (Czechoslovakia) said that his delegation was opposed to both the United Kingdom and the United States amendments and would vote for the International Law Commission's text.

31. Diplomatic agents and consular agents constituted two separate categories and the status of diplomatic agents had already been fixed by a special convention. The privileges and immunities of diplomatic officials were recognized by all States. The proposed amendment conflicted with the corresponding clauses of the Convention on Diplomatic Relations, and for that reason he would be forced to vote against them.

32. Mr. DADZIE (Ghana) said that he would vote against the United States and United Kingdom amendments, which might lead to confusion. He preferred the International Law Commission's draft.

33. Mr. KONZHUKOV (Union of Soviet Socialist Republics) and Mr. CRISTESCU (Romania) supported

the views expressed by the Czechoslovak and Ghanaian representatives. The proposed amendments seemed liable to create difficulties. Their delegations would vote for the original International Law Commission draft.

34. Mr. de MENTHON (France) said that he supported the amendments submitted by the United Kingdom to paragraphs 1 and 3. On the other hand, he could not support the United Kingdom proposal for paragraph 4, nor that of the United States for paragraph 2.

35. Mr. HOANG XUAN KHOI (Republic of Viet-Nam) said he supported the United Kingdom amendments to paragraphs 1 and 3, which seemed to him to make the wording clearer, and also the United States amendment to paragraph 2, which upheld the principle of national sovereignty. The United Kingdom amendment to paragraph 4 seemed to him to follow on logically from article 17. Since the Committee had approved paragraph 2 of article 17, it could hardly reject the paragraph 4 proposed by the United Kingdom.

36. Mr. CAMERON (United States of America) thanked those representatives which had supported his delegation's amendment to paragraph 2. With regard to the amendment to paragraph 4 proposed by the United Kingdom in favour of which the United States delegation had withdrawn its own amendment, it had been said that the status of diplomatic officials exercising consular functions had been fixed by the 1961 Vienna Convention. He wished, however, to draw the Committee's attention to paragraph 2 of article 3 of that convention, which had been included with the precise object of leaving the 1963 Conference entire freedom of action in determining the circumstances in which diplomatic officials would be authorized to exercise consular functions.

37. Mr. DADZIE (Ghana) proposed that the words "shall continue to be governed" in paragraph 4 should be replaced by the words "shall be governed". There was no very clear-cut distinction in small countries between officials fulfilling diplomatic functions and those exercising consular functions. Hence, he did not feel able to vote for amendments the effect of which would be to reduce the privileges and immunities of a diplomatic official entrusted with consular functions.

38. Mr. OSIECKI (Poland) observed that article 68 was of very great importance for all States that were under the necessity of supplementing their consular network by consular sections of diplomatic missions. He was opposed to amendments that would complicate the position, and he was opposed in particular to the change proposed in document L.6, and in the United Kingdom amendments to paragraphs 1 and 4.

39. Mr. HEPPEL (United Kingdom), replying to criticism of the amendment to paragraph 4 proposed by his delegation, said that the proposed amendment would not result in depriving diplomatic officials of the personal immunity to which they were entitled. It simply meant that, in the exercise of consular functions, they should be in the same position as any other consular official fulfilling those functions. The amendment was

a logical sequel to the amendments made by the Committee to paragraph 2 of article 17, which had been adopted by 62 votes to none, with 7 abstentions.

40. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said he would vote against the amendments proposed by the United States and the United Kingdom, since they were contrary to accepted international practice, and also to the interests of small States.

41. Mr. PETRŽELKA (Czechoslovakia) pointed out that article 3, paragraph 2, of the Convention on Diplomatic Relations quoted by the United States representative referred only to that convention. With regard to the United Kingdom amendment, he drew the Committee's attention to paragraph 4 of the commentary on article 68.

42. Mr. GHEORGHIEV (Bulgaria) said that he was likewise not in a position to support the proposed amendments; he preferred the International Law Commission's wording.

43. Mr. N'DIAYE (Mali) said that, like the French representative, he approved the amendments to paragraphs 1 and 3 of article 68 proposed by the United Kingdom; but he was not able to accept its amendment to paragraph 4, nor that of the United States. It was inconceivable that in the case of small States, which lacked staff, diplomatic officials exercising consular functions should be deprived of a part of their privileges and immunities.

44. Mr. USTOR (Hungary), Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) and Mr. D'ESTEFANO PISANI (Cuba) entirely agreed with the views expressed by the representative of Mali, and said they were firmly opposed to the United Kingdom amendment to paragraph 4, which might gravely prejudice the inviolability of diplomatic officials.

*The United Kingdom amendment to paragraph 1 (A/CONF.25/C.1/L.153) was adopted by 42 votes to 16, with 11 abstentions.*

*The United States amendment to paragraph 2, as orally revised by its sponsors, was rejected by 25 votes to 24, with 19 abstentions.*

*The Italian amendment to paragraph 3 (A/CONF.25/C.1/L.121) was rejected by 23 votes to 11, with 34 abstentions.*

*The United Kingdom amendment to paragraph 3 (A/CONF.25/C.1/L.153) was adopted by 39 votes to 14, with 16 abstentions.*

*The United Kingdom amendment to paragraph 4 (A/CONF.25/C.1/L.153) was rejected by 34 votes to 18, with 17 abstentions.*

45. Mr. DADZIE (Ghana) said that his delegation's oral amendment to paragraph 4 was purely a question of drafting: it might be referred to the drafting committee without being put to the vote.

*It was so decided.*

*Article 68 as a whole, as amended, was adopted by 61 votes to none, with 10 abstentions.*

*Article 70 (Non-discrimination)*

46. The CHAIRMAN invited the Committee to consider article 70, to which two amendments (A/CONF.25/C.1/L.44 and L.82) had been submitted by the Federal Republic of Germany.

47. Mr. von HAEFTEN (Federal Republic of Germany) explained that the object of his delegation's amendment (L.44) was to replace the existing text of paragraph 2 by a wording similar to that of article 47 of the Convention on Diplomatic Relations. His delegation's second amendment (L.82) was in the nature of an explanation. The principle of reciprocity should apply just as much to consular as to diplomatic relations. If, for instance, as between two States, one State were to apply the rules of the Convention restrictively, the second State would not be bound to grant to the first rights and advantages greater than those conceded to it by the first State. Again, two States should be able to grant each other more favourable treatment than that laid down in the Convention, without bringing the most-favoured-nation clause into operation. He thought that the matter should be settled in the same way in both conventions.

48. Mr. BALTEI (Romania) said that he entirely approved of the International Law Commission's wording of article 70. Paragraph 1 of that article was based on the principle of the equal sovereignty of States. Paragraph 2, which enabled States to grant each other immunities and privileges more extensive than those provided for in the Convention, was of a nature to promote the development of consular relations. For that reason the Romanian delegation was opposed to the amendment (L.44) of the Federal Republic of Germany, which contemplated the possibility of a restrictive application of the Convention. Such a point a view was contrary to the very principle of the future convention.

49. The Romanian delegation considered it wrong to assume *a priori* that States would not observe the convention or would apply it restrictively. That would amount to casting doubt from the outset on the efficacy of the convention and on the very work of the Conference. On the contrary, the Romanian delegation considered that the convention would represent a starting point for the development of friendly consular relations among States; that was the main purpose of the instrument. Even to mention restrictive application of the convention would be equivalent to proclaiming that restriction as a principle, whereas the actual principle of international law was that of the strict observance of international conventions: *pacta sunt servanda*. A reference to the possibility of restrictive application would weaken by a general and declaratory provision the obligations upon which the Conference would agree.

50. The great majority of the members of the International Law Commission, including such eminent jurists as Mr. Ago of Italy, Mr. Tunkin of the Soviet Union, Sir Humphrey Waldock of the United Kingdom and Mr. Padilla Nervo of Mexico, had opposed the adoption of the restrictive application clause. At the 608th meeting of the International Law Commission, Mr. Ago and Mr. Padilla Nervo had said that the provisions

of article 47 of the 1961 Convention on Diplomatic Relations were the most regrettable in that instrument and that the introduction of the restrictive clause was particularly dangerous because it would tend to weaken the obligations assumed by States under the Convention. According to Mr. Padilla Nervo, it seemed a great mistake to imply that States could avoid fulfilling the obligations of the Convention on the grounds that they were taking retaliatory action.<sup>4</sup>

51. In the light of those considerations, the Romanian delegation would vote against the amendment and would support the text as drafted by the International Law Commission.

52. Mr. ABDELMAGID (United Arab Republic) pointed out that, in fact, article 47, paragraph 2, of the Convention on Diplomatic Relations did no more than make provision for reciprocity. With a view to bringing the wording of the two conventions into line, he would vote for the amendment of the Federal Republic of Germany. For the same reason, it would, in his opinion, be preferable if the wording of article 70, paragraph 1, followed that of article 47, paragraph 1, of the Convention on Diplomatic Relations and read "In the application of the provisions of the present convention the receiving State shall not discriminate as between States." He submitted that proposal to the Committee as a purely formal amendment.

53. Mr. DADZIE (Ghana) said that, for the reasons already stated by the Romanian representative, he was not in a position to accept the amendment submitted by the Federal Republic of Germany.

54. Mr. PAPAS (Greece) said that he was inclined to support that amendment.

55. Mr. FUJIYAMA (Japan) recalled that when the matter had been discussed by the International Law Commission in connexion with diplomatic relations, the Japanese representative had opposed the inclusion of such a provision, not because he was against the idea, but because in his opinion the clause was self-evident. Since, however, it appeared in the Convention on Diplomatic Relations, he would vote for the amendment of the Federal Republic of Germany with a view to keeping the two documents in line.

56. The CHAIRMAN put the amendment to the vote.

*The amendment of the Federal Republic of Germany (A/CONF.25/C.1/L.44) was adopted by 39 votes to 15, with 14 abstentions.*

57. The CHAIRMAN put to the vote article 70 as a whole, as amended, on the understanding that the oral amendment submitted by the representative of the United Arab Republic would be referred to the drafting committee direct.

*Article 70, as a whole, as amended, was adopted by 51 votes to 1, with 16 abstentions.*

The meeting rose at 1.5 p.m.

<sup>4</sup> See *Yearbook of the International Law Commission, 1961, vol. I* (United Nations publication, Sales No. 61.V.1, vol. I), pp. 165-166.