

# **United Nations Conference on Consular Relations**

Vienna, Austria  
4 March – 22 April 1963

Document:-  
**A/CONF.25/C.1/SR.6**

## **6<sup>th</sup> 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)*

principle of the proposed new provision and refer the question of its position in the convention to the drafting committee.

68. Mr. N'DIAYE (Mali) agreed with the previous speaker and urged that the Committee should not defer its decision on the principle.

69. Mr. MARAMBIO (Chile) suggested that the two proposals should be combined and that a new provision on the following lines should be adopted as paragraph 6 of article 4: "The consul may, in certain cases, exercise his functions outside his consular district with the consent of the receiving State."

70. Mr. DADZIE (Ghana) supported the text proposed by the representative of Canada, which avoided the negative form of the Greek proposal. Both the Greek and the Chilean proposals used the term "consul"; in fact, consular functions were not exercised by consuls only, but also by other consular officials and it was therefore necessary to use a broader term.

71. While his delegation favoured the text proposed by the Canadian representative, it thought that the formulation of the final text could well be left to the drafting committee.

72. Mr. USTOR (Hungary) urged that the Committee should first decide whether the idea contained in the proposals by Greece and Japan should be introduced into article 4 or be the subject of a new article. He himself thought it would be out of place in article 4 (Establishment of a consulate).

73. The CHAIRMAN pointed out that the Japanese proposal called for a new article; hence the procedural question raised by the Hungarian representative related only to the Greek proposal. He invited the Committee to decide whether the Greek proposal should be treated as an amendment to article 4 or not.

*The Committee decided by 46 votes to 15, with 2 abstentions, that the Greek proposal (A/CONF.25/C.1/L.49) should not be treated as an amendment to article 4.*

*Article 4, as amended, was adopted.*

74. The CHAIRMAN said that, in accordance with the decision just taken, the Greek proposal would be treated as a new provision. It would be discussed together with the Japanese and other related proposals at the next meeting.

75. Mr. WU (China) recalled his suggestion that the word "prior", used in paragraph 5 of article 4, should be inserted in paragraphs 1, 3 and 4 of that article. He thought that suggestion should be referred to the drafting committee.

76. The CHAIRMAN said that, as the word proposed raised a question of substance, he could not refer the matter to the drafting committee.

The meeting rose at 6 p.m.

## SIXTH MEETING

Friday, 8 March 1963, at 11 a.m.

Chairman: Mr. SILVEIRA-BARRIOS (Venezuela)

### 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 (Exercise of consular functions outside the consular district)

1. The CHAIRMAN recalled that the Committee had decided at its fifth meeting to examine the Greek amendment (L.49) at the same time as the Japanese proposal (L.48) to insert a new article between articles 4 and 5. Those proposals had been withdrawn in favour of the joint proposal by Canada, Chile, Cuba, Ghana, Greece and Japan (A/CONF.25/C.1/L.68). Since he understood that the fate of the joint proposal was bound up with article 38, to be examined by the Second Committee, it would perhaps be better to wait till the Second Committee had come to a decision on article 38 before discussing it.

2. Mr. LEE (Canada) said that he did not agree. The joint proposal was a synthesis of points brought up in the previous day's debate and it was logical that the discussion of the proposal should immediately follow the debate. Moreover, the joint proposal was based on principles which the Committee seemed to have accepted. It did not run counter to article 38 and was not connected with it.

3. Mr. PALIERAKIS (Greece) hoped that the joint proposal would be examined without further delay as it had no connexion with article 38.

4. Mr. DADZIE (Ghana) introduced the joint proposal and said that its sponsors left it to the drafting committee to decide where the new article should be inserted. In substance the joint proposal would allow a consular official posted to a certain consular district to exercise his functions outside that district when circumstances required it, subject to the express consent of the receiving State.

5. Mr. GUNWARDENE (Ceylon) supported the Canadian representative and said that he was in favour of the principle of the joint proposal. It was for the drafting committee to decide where the new article should be placed.

6. Mr. CONTRERAS CHAVEZ (El Salvador) said that the International Law Commission had been careful not to deal with the question of the exercise of consular functions outside the consular district, which gave rise to a delicate question of law. The Conference would do well to follow the same prudent course as the International Law Commission and to omit that point from the convention. Article 4, paragraph 3, adopted the day before, would provide an adequate solution for any questions that might arise.

7. Mr. USTOR (Hungary) said that it was a pity that the order for the study of proposals suggested by the Chairman had not been adhered to. The new article was closely connected with article 38, and it seemed premature to discuss it already. It dealt with consular functions and should not be discussed before article 5. However, since the Committee seemed to have decided otherwise, he would state the position of his delegation.

8. Firstly, for reasons already given, the proposed new article should be placed not between articles 4 and 5, but between articles 5 and 6. Again, it should have a title, which might read: "Exercise of consular functions outside the consular district". Lastly, the text of the proposal should be recast as follows: "Consular functions may, upon notification to, and in the absence of objections from, the receiving State, be performed outside the consular district."

9. In his view, those modifications constituted an amendment to the joint proposal.

10. Mr. de ERICE y O'SHEA (Spain), speaking on a point of order, said that the Hungarian proposal could not be regarded as an amendment to the joint proposal as it was entirely different. It provided, in effect, that consular functions could be exercised outside the consular district so long as the receiving State did not raise objection, whereas according to the joint proposal the express consent of the receiving State was necessary. The Hungarian text should therefore be regarded as a separate proposal.

11. Mr. SOLHEIM (Norway) said that the joint proposal filled an obvious gap in the International Law Commission's draft. The text of article 4, paragraph 2, implied that consular officials were not authorized to exercise their functions outside their consular district, and that interpretation was confirmed by paragraph 3 of the International Law Commission's commentary on that article.

12. The purpose of the joint proposal was to allow consular officials, including heads of posts, to exercise their functions outside the consular district. Two cases might arise: either the consular official foresees some time ahead the necessity of spending some time outside his district, in which case the consulate would have time to request the express consent of the receiving State, or he might receive an urgent call to go outside the consular district, in which case it should be enough that the receiving State raised no objection. Could not the two cases be provided for in the draft convention?

13. Mr. von HAEFTEN (Federal Republic of Germany) said that account should be taken of special circumstances that might arise, for example a shipwreck or an air crash, which required the immediate presence of a consular official. In such cases, the consulate would not have time to notify the receiving State of the departure of its official and to wait till it knew that the receiving State raised no objection. The Hungarian proposal was not satisfactory on that point.

14. With regard to the joint proposal, the German delegation suggested amending it by deleting the word "express", which would allow a consulate, in case of

emergency, to request the consent of the receiving State by telephone.

15. Mr. DONATO (Lebanon) said that the joint proposal was wholly beneficial as it took account of special circumstances without requiring the receiving State to give its consent.

16. Mr. de ERICE y O'SHEA (Spain), on a point of order, pointed out that the English and Spanish versions of the Hungarian proposal did not coincide: the English text said "in the absence of objections from the receiving State" whereas the Spanish version read "con el consentimiento del Estado de residencia" [with the consent of the receiving State], which was quite different. The Spanish version should be rectified to bring it into harmony with the original version.

17. Mr. BERGENSTRAHLE (Sweden) said that he could accept the Hungarian proposal if its author would agree that the text of the proposal should begin with the words: "In special circumstances . . ."

18. Mr. BOUZIRI (Tunisia) said that he was not satisfied with the joint proposal. Its most serious defect was that it spoke of consular officials instead of consular functions, the term adopted in the preceding articles. It also had the defect of speaking of "special circumstances", which was too vague an expression and added nothing to the text. It was for the receiving State to judge whether existing circumstances required the exercise of consular functions outside the consular district.

19. With regard to the Hungarian proposal, it would be acceptable if its author would agree to the following wording: "Consular functions may, with the consent of the receiving State, be performed outside the consular district."

20. Mr. USTOR (Hungary) said that the Tunisian representative's suggestion constituted a compromise between the two proposals before the Committee. He therefore accepted the text proposed by Tunisia, which could be regarded as a joint proposal.

21. Mr. de MENTHON (France) remarked that the insertion of an additional article was necessary only to provide for exceptional circumstances, such as a shipwreck or an air crash. But in such cases, as the Norwegian and German representatives had pointed out, the express consent of the receiving State could not always be obtained in time. The consular official should be able to perform his functions very rapidly. That was why the amendment submitted by the Federal Republic of Germany seemed necessary. In an urgent case, one should be able to assume the consent of the receiving State.

22. He did not, however, see what purpose would be served by the Hungarian or Tunisian amendments since in the absence of special circumstances the receiving State would have time to give its consent.

23. Mr. RABASA (Mexico) said that the principle of agreement between the two States concerned was essential. That was why he was not in favour of the Hungarian proposal, which replaced the word "consent" by the words "notification" and "absence of objec-

tions". But the modification proposed by Tunisia seemed well advised. He also preferred the term "consular functions" rather than "consular officials". He was therefore inclined to accept the text of the joint proposal (L.68) modified in accordance with the Tunisian amendment. That would uphold the essential principle of mutual consent. He was also in favour of retaining the phrase "in special circumstances", as the derogation from the normal practice should be quite exceptional.

24. He requested that his proposal, intended to harmonize the texts of the joint proposal (L.68) and the Hungarian-Tunisian proposal, should be regarded as a separate amendment, which would read: "In special circumstances and with the consent of the receiving State, consular functions may be exercised outside the consular district concerned."

25. Mr. EL-SABAH EL-SALEM (Kuwait) said that Tunisia's efforts at reconciliation would be crowned with success if the sponsors of proposal L.68 would accept the joint proposal of Hungary and Tunisia. The difference between the two texts was slight for it concerned only one term: the first text spoke of "a consular official", and the second of "consular functions". The Committee had expressed its preference for the second formula. It should therefore be possible to reconcile the two texts.

26. Mr. MARAMBIO (Chile), speaking on behalf of the sponsors of the joint proposal (L.68), insisted that the expression "a consular official" should be retained in the text. It was, in fact, not the functions, but the consular official, who left the consular district. On the other hand, he accepted the deletion of the word "express". The text would then read: "A consular official may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district."

27. The CHAIRMAN pointed out that, since the word "express" had been deleted, the amendment of the Federal Republic of Germany was no longer applicable.

28. Mr. BARUNI (Libya) agreed with the remarks of the Tunisian representative on the Hungarian amendment.

29. Mr. BOUZIRI (Tunisia) said that he saw no objection to accepting the expression "in special circumstances" proposed by the representative of Mexico.

30. Mr. USTOR (Hungary) said that his delegation did not oppose the insertion of the words "in special circumstances"; it therefore accepted the text proposed by the representative of Mexico except for the word "concerned", which seemed unnecessary.

31. The CHAIRMAN observed that the Committee now had before it a joint proposal by Hungary, Tunisia and Mexico, in addition to the earlier joint proposal in document A/CONF.25/C.1/L.68.

32. Mr. BARUNI (Libya) said that he unreservedly supported the proposal by Hungary, Tunisia and Mexico.

33. Mr. ZEILINGER (Costa Rica) expressed the opinion that the proposal should not be discussed in connexion with article 4, but in connexion with article 5, which dealt with consular functions. Nevertheless, if

the Chairman insisted that it should be examined in the current meeting, the delegation of Costa Rica would support the last proposal of Tunisia with the modification proposed by Chile, which would improve the text.

34. Mr. WU (China) said that the difference between the two texts was now very slight and was merely a matter of drafting. He preferred the proposal in document L.68, provided the word "express" were deleted.

35. Mr. MARTINS (Portugal) said that he preferred the proposal by Hungary, Mexico and Tunisia.

36. Mr. HEPPEL (United Kingdom) said he was prepared to support the joint proposal (L.68). The final phrase should be changed, however, to read: "outside the district of the consular official concerned".

37. Mr. PETRŽELKA (Czechoslovakia) stated that the only difference between the two texts lay in the wording of the first line: the one contained the formula "consular functions" and the other "consular official". The second formula seemed to be contrary to practice. It implied that the consent of the receiving State would be necessary not only in so far as the consulate was concerned, but also as regarded every consular official, which was impossible. He would therefore vote for the proposal by Hungary, Tunisia and Mexico.

38. Mr. von HAEFTEN (Federal Republic of Germany) said that he had no serious objections to either text, but he preferred the joint proposal (L.68). It would in practice be important to know which consular official would exercise his functions outside the consular district in exceptional circumstances.

39. Mr. de ERICE y O'SHEA (Spain) thought it should be possible to arrive at a single text. The principle of the consent of the receiving State was expressed in both proposals. It remained to decide which of the two formulae: "consular functions" or "consular officials" was preferable. He regarded the two terms as equivalent. He asked the authors of the two proposals to reach agreement on this question of terminology.

40. Mr. RABASA (Mexico) said that the texts of the joint proposal (L.68) and of the proposal by Hungary, Mexico and Tunisia were absolutely incompatible. He recalled the discussions at the 4th meeting on the formulae "consular functions" and "consular official" in connexion with article 3. They could unquestionably not be regarded as equivalent. The Committee had pronounced in favour of the formula "consular functions", which had been retained in the text of article 3. He was not prompted by a lack of conciliatory spirit but by a concern for logic; it had been in an endeavour to reach a compromise that the Mexican delegation had submitted its proposal.

41. Mr. ABDELMAGID (United Arab Republic) said he would vote for the joint proposal of Hungary, Tunisia and Mexico. But he would prefer to replace the formula "In special circumstances" by "In case of emergency" so as to emphasize the exceptional character of the circumstances referred to.

42. The CHAIRMAN said he regarded that suggestion as a sub-amendment to the proposal by Mexico, Tunisia and Hungary.

43. Mr. GUNewardene (Ceylon) said that he did not see any important difference between the two joint proposals. It seemed to him to be a matter of form of which the drafting committee would be the best judge. The same applied to the order of the articles. He requested therefore that both proposals should be sent to the drafting committee.

44. The CHAIRMAN said that, as it was a question of substance, he could not take up the suggestion of the representative of Ceylon.

45. Mr. SOLHEIM (Norway) said he would vote for the proposal by Hungary, Tunisia and Mexico without accepting the modification of the final phrase proposed by the United Kingdom.

46. Mr. RUDA (Argentina), speaking on a point of order, moved the closure of the debate under rule 26 of the rules of procedure.

47. The CHAIRMAN noted that no members desired to speak on the motion and put the closure of the debate to the vote.

*The motion to close the debate was adopted by 59 votes to nil, with one abstention.*

48. Mr. ABDELMAGID (United Arab Republic) said that, in order to facilitate the work of the Committee, his delegation withdrew its amendment.

49. The CHAIRMAN invited the Committee to vote on the joint proposal (A/CONF.25/C.1/L.68) from which the word "express" had been deleted.

50. Mr. RABASA (Mexico), speaking on a point of order, said that, under rule 41 of the rules of procedure, the proposal by Hungary, Mexico and Tunisia constituted an amendment to the original proposal (L.68) and should therefore be voted on first.

51. The CHAIRMAN said that he regarded the proposal of Hungary, Mexico and Tunisia as a separate proposal from that of the other countries which, as it had been submitted first, should be voted on first.

52. He put the joint proposal (A/CONF.25/C.1/L.68) to the vote.

*The proposal was adopted by 31 votes to 30, with 9 abstentions.*

53. The CHAIRMAN stated that, as the joint proposal L.68 had been adopted, there was no necessity to put the proposal of Hungary, Mexico and Tunisia to the vote.

The meeting rose at 1.15 p.m.

## SEVENTH MEETING

Friday, 8 March 1963, at 3.15 p.m.

Chairman: Mr. SILVEIRA-BARRIOS (Venezuela)

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

#### Article 5 (Consular functions)

1. The CHAIRMAN drew attention to the fact that, in the various stages of the work on the article dealing with consular functions, there had been a division of opinion, both among the members of the International Law Commission and among the governments, concerning the choice between a general definition and an enumerative definition.

2. For the final draft adopted at its thirteenth session, the International Law Commission had decided in favour of the non-exhaustive enumeration of consular functions set out in article 5 of the draft.

3. The Committee had before it no less than twenty amendments to article 5,<sup>1</sup> most of which related to the various sub-paragraphs of the enumerative definition. In order to facilitate the work, he proposed that the choice between a general definition and an enumeration be discussed first; if the Committee decided in favour of a general definition, many of the amendments submitted need not be discussed.

4. Mr. BARTOŠ (Yugoslavia) observed that, out of the twenty amendments submitted, only the joint amendment by Canada and the Netherlands (L.39) changed the whole system of article 5 by replacing the enumeration of consular functions by a general definition. The Austrian amendment (L.26) also replaced the whole of article 5 by a new text. It did not, however, depart from the system on which the International Law Commission's draft was based, but divided the various functions enumerated into two categories: general functions and specific functions.

5. The eighteen amendments which called for changes in the various sub-paragraphs of article 5 or the addition of new paragraphs raised some fifty different specific issues. The Committee was thus presented with a formidable task and it was necessary to consider the best method of work. He suggested that the Committee should begin by considering the general amendments to article 5. If, as he hoped, it decided in favour of a

<sup>1</sup> The following amendments had been submitted by the date of the meeting: Hungary, A/CONF.25/C.1/L.14; Ukrainian Soviet Socialist Republic, A/CONF.25/C.1/L.15; Switzerland, A/CONF.25/C.1/L.16; Venezuela, A/CONF.25/C.1/L.20; South Africa, A/CONF.25/C.1/L.25; Austria, A/CONF.25/C.1/L.26; France, A/CONF.25/C.1/L.32; Czechoslovakia, Hungary and Romania, A/CONF.25/C.1/L.33; Czechoslovakia, A/CONF.25/C.1/L.34; India, A/CONF.25/C.1/L.37; Cambodia, A/CONF.25/C.1/L.38; Canada and the Netherlands, A/CONF.25/C.1/L.39; Italy, A/CONF.25/C.1/L.43; Spain, A/CONF.25/C.1/L.45; Indonesia, A/CONF.25/C.1/L.51; Mexico, A/CONF.25/C.1/L.53; Japan, A/CONF.25/C.1/L.54; Australia, A/CONF.25/C.1/L.61; Norway, A/CONF.25/C.1/L.63; United States of America, A/CONF.25/C.1/L.69.