

# **United Nations Conference on Consular Relations**

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**16<sup>th</sup> meeting of the Second 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)*

54. Mr. ALVARADO GARAICOA (Ecuador) proposed the addition to the Venezuelan amendment of the words "nationals of the sending State shall have the same rights".

The meeting rose at 5.45 p.m.

## SIXTEENTH MEETING

Friday, 15 March 1963, at 10.45 a.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

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

#### Article 36 (Communication and contact with nationals of the sending State) (continued)

##### Paragraph 1 (a)

1. The CHAIRMAN invited the Committee to continue its consideration of article 36, paragraph 1 (a), and amendments relating to it.<sup>1</sup>

2. Mr. PEREZ-CHIRIBOGA (Venezuela), announcing the withdrawal of his delegation's amendment (L.100), said that Venezuela would instead submit, jointly with Ecuador, Spain, Chile and Italy, an alternative text for paragraph 1 (a) in the following terms:

"Consular officials shall be free to communicate with the nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officials of the sending State."

3. Mr. AJA ESPIL (Argentina) referred to the two important oral amendments proposed at the previous meeting, one by India (omission of the words "in appropriate cases") and the other by Australia to delete those words and to insert the words "subject to the wishes of the person concerned". He agreed to the first of those proposals, inasmuch as paragraph 1 (a) laid down a general principle which should not be weakened. The Australian amendment likewise appeared appropriate. The object was to lay down a right exercisable by a consular official vis-à-vis the receiving State, but not vis-à-vis a national of the sending State; the consent of the national in question was required.

4. Mr. LEVI (Yugoslavia) proposed two sub-amendments to the joint oral amendment just submitted: in the first sentence the words "in the exercise of their functions" should be added, and in the second sentence the words "for the same purposes" should be added.

5. Mr. EVANS (United Kingdom) said that article 36 was an important provision and should be drafted in unambiguous terms; it dealt with a matter which was

all the more delicate in modern times when means of transport and travel were developing steadily. On the other hand, it should be noted that the scope of the article was limited by the opening words: "with a view to facilitating the exercise of consular functions". His delegation supported the Indian amendment to omit the words "in appropriate cases". If those words were left in the text it would remain an open question who would decide in what cases there should be freedom of communication. Some such phrase as "subject to the express wish of the person concerned" would be preferable to "in appropriate cases". He realized the motives underlying the amendments before the Committee. In particular, he wished to mention that cases had occurred in which political refugees had been molested by consular officials of their State of origin. That was not a proper exercise of consular functions and his government had made it clear that it would not permit it. However, his delegation and others would propose a separate article of more general scope to deal with the broader question of political refugees.<sup>2</sup> For that reason, and because the Australian delegation's amendment, though attractive, introduced an element of uncertainty into article 36 and was open to certain technical objections, he thought it would be better simply to omit the words "in appropriate cases" without substituting the phrase proposed by Australia. He would prefer the text as drafted by the International Law Commission (without the words "in appropriate cases") to the joint amendment just submitted.

6. Mr. TILAKARATNA (Ceylon) supported the Australian delegation's amendment. He also supported the Swiss delegation's proposal (L.78) that another paragraph should be added. He agreed with the Italian delegation that the article should stress consular functions and that the drafting committee should be instructed accordingly.

7. Mr. SHITTA-BEY (Nigeria) said that the Indian delegation's amendment was acceptable to him. With reference to the Australian delegation's amendment and the United Kingdom's suggestion, he thought it would not be excessive to qualify the clause by some such phrase as "subject to the wishes of the person concerned". He thought there was little difference in substance between the new joint amendment and the original draft as amended by India.

8. Mr. ADDAI (Ghana) associated himself with the remarks of the United Kingdom representative.

9. Mr. WOODBERRY (Australia) said that article 36 suffered from the defect that it empowered the consul to get into touch with the nationals of the sending State regardless of their wishes. He opposed the Indian amendment, which would in effect strengthen the language of the existing text.

10. Mr. SRESHTHAPUTRA (Thailand) said that his delegation attached great importance to article 36. With regard to sub-paragraph (a) of paragraph 1, he shared

<sup>1</sup> At the fifteenth meeting, an amendment had been submitted by Venezuela (A/CONF.25/C.2/L.100) and oral amendments by Australia and India. For the full list of amendments to article 36, see the summary record of the fifteenth meeting, footnote to para. 28.

<sup>2</sup> See document A/CONF.25/C.1/L.124.

the opinion of the Australian representative that the wishes of the persons concerned should be considered.

11. Mr. SERRA (Switzerland) said that, after listening to the debate on paragraph 1 (a) of article 36, he noted that many amendments reflected an identical concern. The freedom of the human person and the expression of the will of the individual were the fundamental principles which governed instruments concluded under the auspices of the United Nations. The text being drafted by the Conference should likewise reflect those principles. The Swiss delegation was prepared to agree to any proposal which referred to the freely expressed wish of the person concerned. That was the object of its amendment for the addition of a new paragraph, but it would not oppose the suggestion that the same idea should be reflected in a passage appearing at the beginning of paragraph 1, or in each of its sub-paragraphs, or at the end of paragraph 2. What mattered was that the essential principle which he had mentioned and which was laid down in a number of bilateral conventions should be stated in the text being prepared by the Conference. He would be unable to accept any formula which ignored the will of the persons concerned.

12. Mr. N'DIAYE (Mali), referring to article 36 as a whole, said that the protection of nationals of the sending State was the principal function of consulates, as was expressly provided in many bilateral consular conventions. The natural protector of a person abroad was undoubtedly his country's consul. In the case of an arrest, for example, the consul should be notified immediately so that he could take whatever action was needed under article 5 which had already been adopted by the First Committee.

13. He could not agree to the amendment submitted by Japan (L.56) or to that submitted by Switzerland (L.78), for under the first of those amendments there had to be an express request by the person in custody before the consul could be notified, while under the other the operation of sub-paragraphs (b) and (c) would be subject to the express wish of that person. Similarly, he would oppose the United States amendment (L.3), under which the consul would not be notified except in cases where the person detained suffered from some physical or mental incapacity. He would be unable to vote for the amendment submitted by Thailand (L.101) for if sub-paragraph (b) were omitted, article 36 would lose much of its substance. Nor could he agree to the amendment submitted by Spain (L.114). On the other hand he could accept the joint amendment which was more concise than the International Law Commission's draft.

14. His delegation might, however, be prepared to vote for the United Kingdom amendment (L.107) under which the authorities of the receiving State would be bound to notify the consul forthwith; the amendment of the Federal Republic of Germany (L.74) which stipulated a specific period beyond which a national of the sending State could not be held *incomunicado*, which would normally be the period necessary for the preliminary investigation; and the Belgian amendment (L.25) under which the consul would be authorized not only to converse with the person in custody, but also to write to him.

15. Mr. PEREZ HERNANDEZ (Spain) said that the object of the joint amendment, of which his delegation was one of the sponsors, was to offer a compromise. It guaranteed freedom of communication between nationals of the sending State and its consular officials, in keeping with the principle laid down in article 36. Naturally if the person concerned declined to receive the consul's visit, he could hardly claim the benefit of protection by the sending State.

16. Mr. SPYRIDAKIS (Greece) said that the article under discussion was of particular interest to his country because many Greek nationals lived abroad. He preferred the joint amendment to the original draft and would vote for it. The principle on which the Swiss amendment was based was sound, but might not be easy to apply in practice.

17. Mr. BOUZIRI (Tunisia) pointed out that the Swiss delegation's amendment was not concerned with sub-paragraph 1 (a) of article 36.

18. The CHAIRMAN said that it was quite correct that the amendment in question did not affect sub-paragraph (a), but it laid down a general principle which had a bearing on the article as a whole. The substance of the amendment would, of course, be discussed in connexion with sub-paragraph (b).

19. Mr. DAS GUPTA (India) said that a person, even though abroad, still remained subject to the jurisdiction of his country of origin; accordingly that country's consul should be empowered to communicate with him in any case. What was really at stake was an undeniable right vesting in the sending State. So far as substance was concerned, the joint amendment was consistent with the International Law Commission's draft, but he did not think that the amendment was drafted in formal legal terms.

20. Mr. PEREZ-CHIRIBOGA (Venezuela) said that the joint amendment, if adopted, would no doubt be referred to the drafting committee for final drafting. He thought it logical that in chapter II, entitled "Facilities, privileges and immunities of career consular officials and consular employees", a provision concerning consular officials should precede a clause relating to nationals of the sending State.

21. The CHAIRMAN put to the vote the Australian delegation's amendment replacing the words "in appropriate cases" in paragraph 1 (a) by the words "subject to the wishes of the person concerned".

*At the request of the representative of Thailand, a vote was taken by roll-call.*

*Peru, having been drawn by lot by the Chairman, was called upon to vote first.*

*In favour:* Thailand, Argentina, Australia, Canada.

*Against:* Philippines, Poland, Portugal, Romania, San Marino, Saudi Arabia, Sierra Leone, South Africa, Sweden, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Ceylon, Congo

(Leopoldville), Cuba, Czechoslovakia, Denmark, Finland, Federal Republic of Germany, Ghana, Greece, Hungary, India, Indonesia, Kuwait, Laos, Liberia, Libya, Luxembourg, Mali, Mexico, Mongolia, Morocco, Norway, Pakistan.

*Abstaining:* Spain, Switzerland, Syria, United States of America, Venezuela, Republic of Viet-Nam, Yugoslavia, Austria, Chile, China, Colombia, Ecuador, Federation of Malaya, France, Holy See, Iran, Ireland, Israel, Italy, Japan, Republic of Korea, Liechtenstein, Netherlands, New Zealand, Nigeria.

*The Australian delegation's oral amendment was rejected by 44 votes to 5, with 25 abstentions.*

22. The CHAIRMAN put to the vote the joint oral amendment submitted by Chile, Ecuador, Italy, Spain and Venezuela.

*At the request of the representative of Thailand, a vote was taken by roll-call.*

*Brazil, having been drawn by lot by the Chairman, was called upon to vote first.*

*In favour:* Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Chile, China, Columbia, Czechoslovakia, Ecuador, France, Federal Republic of Germany, Greece, Guinea, Holy See, Hungary, Ireland, Italy, Japan, Republic of Korea, Kuwait, Laos, Liberia, Libya, Luxembourg, Mali, Mexico, Mongolia, Morocco, Pakistan, Poland, Portugal, Romania, San Marino, Sierra Leone, South Africa, Spain, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Republic of Viet-Nam, Yugoslavia, Argentina, Australia, Belgium.

*Against:* Ceylon, Ghana, India.

*Abstaining:* Cambodia, Congo (Leopoldville), Cuba, Denmark, Federation of Malaya, Finland, Indonesia, Iran, Israel, Liechtenstein, Netherlands, New Zealand, Nigeria, Norway, Philippines, Saudi Arabia, Sweden, Switzerland, Syria, Thailand, United Arab Republic, Austria.

*The joint amendment was adopted by 48 votes to 3, with 22 abstentions.*

23. Mr. JESTAEDT (Federal Republic of Germany) said that paragraph 1 (a) of article 36 did not debar consulates from having access to persons who were not nationals of the sending State and who wished to talk to consular officials.

24. Mr. BLANKINSHIP (United States of America) said that his delegation's abstention on the Australian amendment should not be construed as meaning that the United States in any way admitted that consular officials had the right to exert any pressure on their compatriots who were political refugees.

25. Mr. SHARP (New Zealand) said that, despite the close bonds and numerous interests in common between Australia and New Zealand, he had had to abstain on the Australian amendment. New Zealand, like Australia, was a country of immigration which had admitted a

large number of political refugees. It would be most undesirable if consular officials of the countries of origin of such persons should enter into contact with them despite objections on their part. The United Kingdom proposal for adding a new article concerning political refugees would partly dispel the New Zealand delegation's concern in that respect. The convention did not, of course, diminish in any way the rights of the nationals of the sending State, and New Zealand would not interpret paragraph 1 (a) of article 36 as empowering consular officials to persist in a course of conduct which was repugnant to the wishes and freedoms of the individuals concerned.

26. Mr. BOUZIRI (Tunisia) thanked the delegation of Venezuela for having agreed to sponsor a compromise text in lieu of its own earlier amendment. The joint compromise text hardly differed from the text as originally drafted by the International Law Commission, and accordingly Tunisia had been able to vote in its favour.

27. Mr. DAS GUPTA (India) said that the joint amendment in substance resembled the original draft but, for stylistic reasons and because it was drafted in more precise legal language, he would have preferred the original text. Accordingly, he had voted against the joint amendment.

28. Mr. DE CASTRO (Philippines), explaining his abstention, said that the original draft of the International Law Commission was fully satisfactory to his delegation.

29. Mr. WALDRON (Ireland) explained that he had been unable to vote for the Australian amendment because it qualified the right of consular officials to communicate with their fellow-nationals.

30. Mr. WOODBERRY (Australia) stated for the record that his government would interpret the expression "freedom" in the sense of "optional".

31. Mr. RODRIGUEZ (Cuba) said that he had felt obliged to abstain on the joint amendment because it introduced no innovations.

32. Mr. ADDAI (Ghana) said he had voted against the joint amendment because the original was preferable from the drafting point of view.

#### *Paragraph 1 (b)*

33. The CHAIRMAN invited debate on article 36, paragraph 1 (b), and drew attention to the amendments thereto.<sup>3</sup>

34. Mr. SRESHTHAPUTRA (Thailand) said that the reasons for proposing the deletion of paragraph 1, sub-paragraph (b), had been stated in his government's comments on the draft. There were over four million aliens in Thailand, and they were free to live in any part of the territory — an area of 500,000 square kilometres — except for the areas which were prohibited

<sup>3</sup> Amendments to paragraph 1 (b) had been submitted by the United States of America, Japan, the Federal Republic of Germany, Thailand, the United Kingdom and Greece.

on security grounds; some of them resided in very remote districts. Sub-paragraph (b) imposed an obligation which his government would be unable to fulfil, and he would therefore oppose it.

35. Mr. KANEMATSU (Japan) said that the interests of the sending State were not so great that it was necessary to provide for the receiving State's obligation to inform the consulate of the detention of a national of the sending State. That obligation was owed only if the person concerned wished the consulate to be informed. The provision proposed by Japan (L.56) was very close to that proposed by Switzerland (L.78)<sup>4</sup> and accordingly the Japanese delegation would, if the Swiss amendment was adopted, withdraw its amendment.

36. Mr. LEE (Canada) said that he likewise regarded the obligation stipulated in paragraph 1 (b) as excessive; besides, what would be the position if a person had double nationality? Other possible cases which illustrated his point were, for example, those where a person was arrested for a minor offence during a short stay in a neighbouring country; so strict a rule as that laid down in paragraph 1 (b) should surely not be applicable in such cases. He would accept the proposals of the United States (L.3), the United Kingdom (L.107) and Greece (L.125).

37. Mr. KAMEL (United Arab Republic) proposed the deletion of the first sentence of paragraph 1 (b) and the amendment of the second sentence by the deletion of the word "undue", as proposed by the United Kingdom.

38. Mr. JESTAEDT (Federal Republic of Germany) referring to his delegation's amendment (L.74), under which the receiving State would have one month's time limit by which to inform the consulate of the sending State of the arrest or detention of a national of that State, said that he would be prepared to accept a shorter time limit.

39. Mr. BLANKINSHIP (United States of America) said that under his delegation's amendment (L.3) the receiving State would not be bound to notify the consulate of the sending State of the arrest of one of the nationals of that State who did not wish to have his name notified to the authorities of the sending State. The object of the amendment was to protect the rights of the national concerned. His delegation's purpose should not be misconstrued. As the Canadian representative had said, a person spending a short period in a neighbouring State might commit a trivial offence of which, for very understandable reasons, he might not like his consulate to be informed. To avoid such situations the United States proposed that the words "at the request of a national of the sending State" should be added. In addition, in referring to the cases of persons suffering from some physical or mental incapacity, the amendment filled a gap in the original draft.

40. While recognizing the force of the argument of the representative of Thailand, he said that no country could disregard its obligation in certain circumstances

to inform the sending State's consulate of the arrest of one of the nationals of that State. The United Kingdom amendment (L.107) was acceptable to the United States.

The meeting rose at 1.10 p.m.

## SEVENTEENTH MEETING

Friday, 15 March 1963, at 3.15 p.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

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

Article 36 (Communication and contact with nationals of the sending State) (continued)

#### Paragraph 1 (b)

1. The CHAIRMAN invited the Committee to continue consideration of paragraph 1 (b) of article 36 and the relevant amendments.<sup>1</sup>

2. Mr. HEUMAN (France) said that article 36 was one of the most important in the whole draft. For theoretical purposes, the International Law Commission's formulation of the principle stated in paragraph 1 (b) could not be improved on. The absolute and unconditional obligation of the authorities of the receiving State to notify the sending State's consul if a national of that State was committed to prison or detained in custody was included whenever possible in bilateral conventions signed by France, and he had been glad to see it included in the draft convention.

3. It must be recognized, however, that principles were often very different from practical possibilities. Many countries, such as Thailand and Canada, had a large number of permanent foreign residents; others, such as his own, had a large seasonal influx of foreign tourists and week-end visitors. In both cases paragraph 1 (b) would impose an impossible task on the authorities of the sending State, and it would not be wise or reasonable, or even honest, to approve an article which could not be complied with. A less ambitious solution must be found, even if it were an inferior one, to meet the facts of the situation.

4. He was therefore forced to compromise by accepting the idea, supported by many representatives at the previous meeting, that consuls should be notified only when the person concerned so requested. Of the various amendments before the Committee, that submitted by the United States of America (L.3) offered the best solution. It was based on the idea that the person detained should take the initiative, unless he was prevented from doing so by mental or physical incapacity, in which

<sup>1</sup> For the full list of amendments to article 36, see the summary record of the fifteenth meeting, footnote to para. 28; for the amendments to paragraph 1 (b), see the summary record of the sixteenth meeting, footnote to para. 34. An oral amendment to paragraph 1 (b) had also been proposed by the United Arab Republic.

<sup>4</sup> The Swiss amendment proposed the insertion of a new paragraph 2.