United Nations Conference on Consular Relations

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was that they must not render those rights completely inoperative. It was realized that consulates must comply with laws and regulations on such matters as prison visiting and what might be given to the prisoner. It was of the greatest importance, however, that the substance of the rights and obligations in paragraph 1 must be preserved. His delegation had therefore proposed in its amendment that the proviso at the end of paragraph 2 should be re-drafted to provide " that the said laws and regulations must enable full effect to be given to the purposes for which the rights agreed under this article are intended ".

48. Mr. AVAKOV (Byerolussian Soviet Socialist Republic) said that the International Law Commission's draft of article 36 represented a reasonable compromise between the interests of the sending State, with the duty of its consulates to protect its nationals, and those of the receiving State, concerned with the safeguarding of its own country. The United Kingdom amendment to paragraph 2 was not acceptable as it was less clear than the International Law Commission's draft; it would weaken the text by making it less imperative and introduce the idea that a government should exercise limitation of its own laws and regulations.

The meeting rose at 1.5 p.m.

NINETEENTH MEETING

Monday, 18 March 1963, at 3.20 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 2

1. The CHAIRMAN invited the Committee to continue its consideration of article 36, paragraph 2, and of the United Kingdom amendment (L.107) to that paragraph.

2. Mr. DAS GUPTA (India) said that the second part of paragraph 2 might raise difficulties of interpretation. He would prefer the wording proposed by the United Kingdom in its amendment (L.107), which was an improvement on the International Law Commission's draft.

3. Mr. ANGHEL (Romania) said that he agreed with the principle stated in article 36, paragraph 2, but considered the wording obscure and difficult to interpret, especially in view of the differences in existing legislation. The two phrases contained two different criteria. The United Kingdom amendment did not improve the text. Did it mean that States signing the Convention would have to change their laws in order to permit the full exercise of the rights in question ? He did not think that was meant by either the United Kingdom amendment or the International Law Commission's draft. Under the legislation of various countries, aliens were subject to the penal laws of the receiving State in the same way as nationals of that State. The law differed from country to country, and the receiving State could hardly be expected to accord privileged status to aliens. The second part of paragraph 2 should preferably be deleted.

4. Mr. MARESCA (Italy) said that the second part of paragraph 2 contained a recommendation that was difficult to interpret. The United Kingdom amendment proposed a more precise wording for which the Italian delegation would be prepared to vote.

5. Mr. PEREZ HERNANDEZ (Spain) likewise expressed support for the United Kingdom amendment, which conformed to the principle that international law prevailed over municipal law. There was no intention, as feared by the Romanian delegation, of according a privileged status to aliens. In all the countries represented at the Conference, citizens were equal before the law, but by reason of his status the alien needed the assistance and protection of a consul in certain respects. The United Kingdom amendment expressly safeguarded the exercise of the rights referred to in article 36, paragraph 1, and should therefore receive the Committee's assent.

6. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) said that sub-paragraphs *(a)*, *(b)* and *(c)* of article 36, paragraph 1, specified in what circumstances consular officials and nationals of the sending State could best communicate with each other. Paragraph 2 stipulated that the exercise of the rights conferred by paragraph 1 was subject to the laws and regulations of the receiving State, a provision fully consistent with accepted international practice, but the usefulness of the last part of the paragraph was debatable.

7. The United Kingdom amendment tended to weaken paragraph 2 still further, but did not provide for the case of a conflict between the rights defined in paragraph 1 and the laws and regulations of the receiving State. Would the consul's rights be violated, for instance, if he wished to pay a visit to one of his nationals in prison on a day on which the prison rules obtaining in the receiving State did not allow visits? The Ukrainian delegation was unable to support the United Kingdom amendment.

8. Mr. PETRENKO (Union of Soviet Socialist Republics) said that paragraph 2 was an important provision, for it laid down the conditions under which the rights conferred by paragraph 1 could be exercised. From the summary records of the twelfth and thirteenth sessions of the International Law Commission, it was clear that its object had been to safeguard the interests of the sending State and of its consular officials without infringing the respect due to the sovereignty of the receiving State. Those discussions had resulted in the unanimous adoption of a compromise provision, which should be acceptable to the great majority of States. Admittedly, paragraph 2 did not solve all the problems which might arise, but he considered that the International Law Commission's draft offered the most satisfactory wording.

9. The object of the United Kingdom amendment seemed to be to relieve consular officials of their duty to conform to the laws and regulations of the receiving State; yet surely, it was patent that laws and regulations varied from country to country. The Commission on Human Rights was currently drafting an instrument on arbitrary arrest, one of the most interesting features of which was that it took account of the differences in law as between States. The Romanian representative had quite rightly pointed out that aliens should not enjoy a status more favourable than that of citizens; the United Kingdom amendment, if adopted, would in effect restore the system of capitulations.

10. Mr. EVANS (United Kingdom), replying to the various criticisms relating to his delegation's amendment, said that the new provision proposed was longer than that in the draft article because his delegation considered clarity to be preferable to conciseness. The Romanian representative had expressed the fear that the effect of the amendment would be to give a privileged status to aliens; but after all it was precisely with aliens and their rights that article 36 was concerned. The Ukrainian delegation had implied that municipal law should prevail over international law; but that objection could not apply to the rights recognized in paragraph 1 of article 36.

The United Kingdom amendment (A/CONF.25/C.2/L.107) was adopted by 42 votes to 14, with 11 abstentions.

Paragraph 2, as amended, was adopted by 47 votes to 10, with 12 abstentions.

11. Mr. JESTAEDT (Federal Republic of Germany) said that he had voted against the United Kingdom amendment, not because he opposed its underlying principle, but because he considered that the International Law Commission's wording provided better safeguards for the principles stated in article 36, paragraph 1.

12. Mr. ANGHEL (Romania) said he had voted against the second part of article 36 as it stood, for the reasons he had already explained.

13. Mr. KANEMATSU (Japan) said that his delegation had abstained because it considered that, in so difficult a technical problem, the United Kingdom amendment might give rise to misunderstanding, since it did not make it clear whether national or international law was to prevail.

Article 36 as a whole, as amended, was adopted by 42 votes to none, with 27 abstentions.

14. Mr. WOODBERRY (Australia), explaining his delegation's abstention, pointed out that neither in sub-paragraphs (*a*) or (*b*), nor in the new sub-paragraph of paragraph 1, was any specific reference made to the right of an individual to decide on the extent of his relations with the consular representatives of the State of nationality, although paragraph 1 (*c*) contained what might be interpreted as such a provision. Secondly, the Australian delegation wished to reiterate its understanding that the word " freedom " in paragraph 1 (*a*) should be construed in the sense of " option ". Thirdly, in introducing his proposal for a new sub-paragraph between sub-paragraphs (*b*) and (*c*), the French representative had led the Australian delegation to understand that the object of the proposal was not to place an additional burden on receiving States, but rather an obligation on those receiving States which thought themselves unable to comply with the provisions of sub-paragraph (*b*).

15. Mr. HEUMAN (France) said that his delegation had abstained for the reasons already explained when the Committee had voted on paragraph 1 (*b*). Furthermore, it was paradoxical that the Committee should have rejected the right to refuse in sub-paragraph (*b*) and in the second part of the French amendment, but not in sub-paragraph (*c*). Thirdly, paragraph 2, as amended by the adoption of the United Kingdom amendment, was unacceptable to the French delegation because it set too strict a limitation on national law.

Article 37 (Obligations of the receiving State)

16. The CHAIRMAN invited debate on draft article 37 and on the amendments thereto.[1] In view of the fact that the amendments by the United States of America (L.4) and Thailand (L.66) were identical, he suggested that the sponsors might agree to treat them as a joint amendment.

17. Mr. SRESHTHAPUTRA (Thailand) accepted that suggestion.

18. Mr. BLANKINSHIP (United States of America), also agreeing, said that his delegation proposed the deletion of sub-paragraph (*a*) on the ground that it was unnecessary to impose on the receiving State the duty to inform the consulate of the death of a national of the sending State. That would be an excessive obligation and of no practical value. The question of reporting deaths to the consulate was not so serious as to require an express provision in the convention. In the United States, for example, at least in some States, there were no means of tracing the movements of aliens and hence it might be difficult to notify the consulate. In view of those considerations, sub-paragraph (*a*) was unacceptable to his delegation. For similar reasons, sub-paragraph (*b*) was superfluous; a reference to the appointment of a guardian or trustee for a national who was a minor would be out of place in the convention.

19. Mr. WASZCZUK (Poland) said that his delegation attached great importance to the provision concerning the notification of deaths. The deceased's family, who were usually in the country of origin, had be to informed. Moreover, the obligation was laid down in many bilateral conventions, in particular in article 10 of the Consular Convention of 30 December 1925 between Poland and France.[2] His delegation had origi-

[1] The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.4; Austria, A/CONF.52/C.2/L.49; Brazil, A/CONF.25/C.2/L.63; Thailand, A/CONF.25/C.2/L.66; Federation of Malaya, A/CONF.25/C.2/L.76; Ireland, A/CONF.25/C.2/L.77; Switzerland, A/CONF.25/C.2/L.79; Romania, A/CONF.25/C.2/L.93; Poland, A/CONF.25/C.2/L.94; India, A/CONF.25/C.2/L.113; Australia, A/CONF.25/C.2/L.144.

[2] League of Nations, *Treaty Series*, vol. LXXIII, No. 1719.

nally thought of proposing a time-limit of thirty days within which the death should be reported, but had dropped the idea on account of the difficulties that might arise for certain very large countries. Nevertheless, the basic principle set out in sub-paragraph (*a*) should be retained. Naturally, the obligation in question would exist only in cases where the authorities were aware of the deceased's nationality. Moreover, sub-paragraphs (*b*) and (*c*) of the International Law Commission's text provided that in the cases there dealt with the consulate should be informed " without delay ", and that expression should be included in sub-paragraph (*a*) also.

20. Mr. WALDRON (Ireland) said that the article should not raise as many difficulties as the three preceding articles, but perhaps it was not in its proper context in the draft; he suggested that that question might be referred to the drafting committee. The purpose of his delegation's amendment (L.77) was to include in the text a point indicated in the International Law Commission's commentary, but he would be prepared to accept an alternative text along the same lines. He considered his proposal a reasonable compromise between the rather demanding form of the article as it stood and the solution proposed by Thailand and the United States, namely, the deletion of sub-paragraphs (*a*) and (*b*).

21. Mr. WOODBERRY (Australia) said that the scope of the article should be narrower. He could not entirely share the opinion of the United States representative, nor that of the representative of Ireland; the Australian delegation's amendment (L.144) might be regarded as a compromise.

22. Mr. SRESTHAPUTRA (Thailand) said that his statement on article 36 would also apply to sub-paragraph (*a*) of article 37, which his delegation proposed to delete (L.66). There were about four million foreign residents in Thailand who in some cases moved from place to place without reporting to the competent authorities; accordingly it would be impossible for his government to assume the obligation in question. In his delegation's view, sub-paragraph (*b*) should also be omitted, not only for the reasons just stated, but also because the laws and regulations governing guardianship or trusteeship varied from country to country; so far as his country was concerned, the institution of trust was not recognized and would have no effect as such under the civil and commercial code of Thailand. Furthermore, there was no need to provide in the article that the consul should be informed of the appointment of a guardian by the court, because all court orders were published in the Official Gazette.

23. Mr. ANGHEL (Romania) said that the inclusion in the convention of the text of article 37 as drafted by the International Law Commission was fully justified by its practical interest. On the other hand, the words " appointment of a guardian or trustee " in the case of a minor or other person lacking full capacity were not sufficiently precise, and failed to take account of the great mass of legislation on the subject. According to some legal systems trusteeship was not confined to persons lacking full capacity from the legal standpoint; it also applied to other persons who did not lack full capacity but whose interests had to be protected because of illness or infirmity. With a view to improving sub-paragraph (*b*), and because there was a variety of laws concerning guardians and trustees, he proposed that the words " a minor or other person lacking full capacity who is " should be omitted (L.93) so that the text should also apply to other persons requiring protection and thus be fully effective.

24. Mrs. VILLGRATTNER (Austria) said that the reason for her delegation's amendment (L.49) to sub-paragraph (*a*) was that aliens resident in a country frequently left incorrect addresses, and the duty to inform the consulates concerned of a death would be the best means of informing the deceased's families. Austria further proposed to provide for the transmission of a certificate of death.

25. Mr. SALLEH bin ABAS (Federation of Malaya) said that, in the light of the Australian representative's explanations of his delegation's amendment and in order to facilitate the Committee's work, he would withdraw the amendment submitted by the Federation of Malaya (L.76). Sub-paragraphs (*a*) and (*b*) might give rise to difficulties, in particular for newly independent countries in which persons were living whose nationality had not yet been determined. He would support the joint amendment by the United States and Thailand, but if it was rejected he would accept the Australian amendment, limiting the obligation to inform the consulate of deaths to cases in which the whereabouts of the next-of-kin or close relatives were not known. He hoped that the Australian representative would agree to extend his amendment also to sub-paragraph (*b*).

26. Mr. DAS GUPTA (India) said he appreciated the motives underlying the joint amendment and the practical difficulties raised by sub-paragraph (*a*). It would be asking the impossible to impose the obligations laid down in the International Law Commission's text. India was so vast, the number of aliens living in India so large and communications so difficult that his government would find it hard to assume the obligations in question. Those were reasons for his delegation's amendment (L.113). He would not oppose the Irish amendment (L.77).

27. Mr. PEREZ-CHIRIBOGA (Venezuela) said that obligations which were thereoretically defensible but inoperative in practice should not be imposed upon the receiving State. His delegation would support the joint amendment deleting sub-paragraphs (*a*) and (*b*). Like all countries of immigration, Venezuela would have some difficulties in assuming the duty to report the deaths of aliens to their consuls. Moreover, if deaths were to be reported to the consulate, why not marriages and births as well ? The International Law Commission, realizing that that would be excessive, had wisely refrained from providing for such cases. With regard to sub-paragraph (*b*) he said that the clause did not apply to Venezuela, because the statutory provisions concern-

ing the appointment of tutors for minors were applicable equally to citizens and to aliens.

28. Mr. LEE (Canada) said that the article would create an imbalance between the obligations of the receiving State and the benefits accruing to the sending State. He would therefore vote for the joint amendment deleting both sub-paragraphs.

29. Mr. SPACIL (Czechoslovakia) said he agreed with the delegations which thought that the principles laid down in the draft should be strengthened. The consul's essential function was to assist the nationals of the sending State, which implied that the consular authorities should be kept informed of everything affecting their nationals. In countries of vast size or in those with large numbers of immigrants it might admittedly be very difficult for the local authorities to provide the consular authorities with accurate information. Such cases, however, were not in the majority; he thought that the Irish and Indian amendments offered a satisfactory solution. Incidentally, those proposals were not incompatible with that of Poland (L.94) and, if the sponsors were agreeable, the different proposals could be easily combined. The Austrian amendment expressed the general idea of the original draft in more concrete terms and was in keeping with general practice. The Australian amendment was unacceptable because it would involve a heavy administrative burden.

30. Mr. KAMEL (United Arab Republic) expressed support for the Irish amendment. Agreeing with the representatives of the United States, Thailand, India and the Federation of Malaya, he thought that it might be difficult to obtain all the necessary particulars in countries with a large number of resident aliens. The particulars should, however, be communicated wherever they existed. He would also support the Polish amendment and would vote for the draft text as amended by both proposals.

31. Mr. SPYRIDAKIS (Greece) agreed with the principle that the authorities of the receiving State should inform the consulate of the sending State of the death of any of the nationals of that State, for that would considerably facilitate the consul's work. He appreciated the force of the objections raised by the representatives of the United States and Thailand. He fully supported the Austrian amendment and paid tribute to the Austrian authorities for their promptness and efficiency in communicating the death certificates of Greek nationals to the Greek consular authorities in Austria. If the Committee preferred to omit sub-paragraph (*a*) of article 37, his delegation would support the Australian amendment as a compromise solution. It would also support the Irish amendment.

32. Mr. EVANS (United Kingdom) said that the bilateral conventions of which the Polish representative had spoken, and particularly those to which the United Kingdom was a party, contained no provision exactly identical with those in sub-paragraphs (*a*) and (*b*) of draft article 37. Where they contained analogous provisions, they did not require the communication of information by the authorities of the receiving State, except where the information had been brought to their knowledge. Actually, United Kingdom practice was close to the sense of the Irish amendment. If amended in that sense, sub-paragraphs (*a*) and (*b*) lost a great deal of their meaning and, after listening to the forceful case presented by the representatives of the United States and Thailand, he thought there would be little point in retaining them. Hence, he would vote for the joint United States-Thailand amendment; if that amendment should be rejected, he would vote for the Irish amendment (L.77). He would also vote for the Austrian amendment (L.47), that of Switzerland (L.79) and of Australia (L.144), but he would vote against the Romanian amendment (L.93), which would broaden the scope of the provision so much that it would become impracticable in the United Kingdom. The Polish amendment (L.94) and that of India (L.113) were to a great extent covered by the Irish amendment.

33. Mr. MARESCA (Italy) said that sub-paragraphs (*a*) and (*b*) of draft article 37 could not be dissociated from article 5. One of the consul's main functions was to protect minors and persons lacking full capacity and to safeguard rights in the estate of deceased persons. Hence, the two sub-paragraphs were indispensable, and rightly reaffirmed the principle of collaboration between the sending and the receiving States. Accordingly, he would support all the amendments, including that of Austria, which tended to strengthen the draft article.

34. Mr. VAZ PINTO (Portugal) said that sub-paragraphs (*a*) and (*b*) should stand. They were based on a sound principle, and to drop them would be a retrograde step in consular law; besides, they reflected a very widespread practice. If some of the great powers should find it difficult to conform to the proposed provisions, it was to be hoped that they would find means proportionate to the scope of the problem affecting their territory. In any case, impossibility of performance would be excusable on grounds of force majeure.

35. Mr. NWOGU (Nigeria) said that both the arguments for and those against the omission of sub-paragraphs (*a*) and (*b*) had been presented with much force. It should be noted, however, that in some newly independent States it was not obligatory to report deaths, and as a consequence it would be very difficult to apply the provisions in question in those cases. For that reason the Indian and Australian amendments seemed to him to offer an acceptable compromise. The idea that the death should be reported to the consulate only if the whereabouts of the next-of-kin of the deceased was unknown seemed sound. Sub-paragraphs (*a*) and (*b*), as so amended, and with the Irish amendment, would be prefectly acceptable to the Nigerian delegation.

36. Mr. SERRA (Switzerland) said that his country had very strict laws regarding trusteeship and guardianship; the reason behind the amendment submitted by his delegation (L.79) was that the powers of the authorities responsible for applying those laws should not be impaired.

37. Mr. DAS GUPTA (India) said that he recognized that the amendments of the United States, Thailand,

India, Ireland and Australia largely reflected a common concern. Yet the difficulties should not be over-estimated, nor should the Committee go to the other extreme and simply delete the sub-paragraphs in question. A person's death produced certain important consequences which the Committee should not ignore. The Indian amendment tried to offer a practical solution to the problem by simplifying sub-paragraph (*b*). The Polish and Irish amendments were based on the same idea. On the other hand, he thought that the Australian amendment would put the local authorities to a great deal of trouble, for apparently it meant that the receiving State would be expected to institute inquiries for the next-of-kin of the deceased, even in the sending State.

38. Mr. WOODBERRY (Australia) said he could not agree to the scope of his amendment being extended to cover sub-paragraph (*b*), as had been suggested by the representative of the Federation of Malaya.

39. Mr. BLANKINSHIP (United States of America) said that he recognized that the receiving State had a moral duty to communicate particulars to the consulate of the receiving State in the cases contemplated. Indeed, the United States scrupulously conformed to existing practice in that respect. The United States was, moreover, at one and the same time a sending and a receiving State, and he was glad to say that the attitude of the authorities of States in which American citizens were residing was admirable. Nevertheless, he did not think that a moral duty should be transformed into a legal obligation without qualification.

40. Mr. WASZCZUK (Poland), replying to the representative of the United Kingdom, said that the conventions to which he had referred mentioned at least the obligation to inform the consular authorities of the sending State in cases of death.

41. Mr. ANGHEL (Romania) said that his delegation's amendment (L.93) was not incompatible with the Indian, Australian, Swiss, Polish, Irish and Austrian amendments which, in the final analysis, had the same purport.

42. Mr. HEUMAN (France) moved the closure of the debate under rule 26 of the rules of procedure.

43. In the absence of objection, the CHAIRMAN declared the discussion closed. He then put to the vote the various amendments relating to paragraphs (*a*) and (*b*) of draft article 37.

The United States amendment (A/CONF.25/C.2/L.4) and the Thailand amendment (A/CONF.25/C.2/L.66) were rejected by 46 votes to 11, with 10 abstentions.

The Irish amendment (A/CONF.25/C.2/L.77) was adopted by 32 votes to 12, with 19 abstentions.

The Polish amendment (A/CONF.25/C.2/L.94) was adopted by 40 votes to 10, with 15 abstentions.

The Australian amendment (A/CONF.25/C.2/L.144) was rejected by 33 votes to 18, with 16 abstentions.

The Austrian amendment (A/CONF.25/C.2/L.49) was adopted by 35 votes to 12, with 19 abstentions.

The Indian amendment (A/CONF.25/C.2/L.113) was rejected by 38 votes to 7, with 24 abstentiond.

The Romanian amendment (A/CONF.25/C.2/L.93) was rejected by 29 votes to 12, with 26 abstentions.

The Swiss amendment (A/CONF.25/C.2/L.79) was adopted by 35 votes to 14, with 19 abstentions.

The introductory sentence and paragraphs (a) and (b) of article 37, as amended, were adopted by 56 votes to 3, with 10 abstentions.

44. Mr. BOUZIRI (Tunisia) explained that he had voted against the United States amendment which went too far and did not correspond either to existing practice or to any desirable practice. On the other hand, he had voted for the Irish amendment, which established a judicious balance between the rights of the sending State and the obligations of the receiving State.

45. Mr. CHIN (Republic of Korea) said that he had voted against the United States and Thailand amendments because a large number of Koreans, students in particular, were living abroad and their families as well as the Korean authorities were anxious to know where they were living and under what conditions.

The meeting rose at 6.35 p.m.

TWENTIETH MEETING

Tuesday, 19 March 1963, at 10.40 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 37 (Obligations of the receiving State) (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 37.

2. Mr. BLANKINSHIP (United States of America) explained that his delegation had abstained at the previous meeting from voting on paragraphs (*a*) and (*b*) of article 37 because it wished to evaluate fully, before the final vote, the new obligations imposed by those paragraphs in conjunction with the additional obligations imposed by article 36 as approved by the Committee. The obligations placed upon the receiving State, for example, to communicate periodical lists of detained foreign nationals and to report all deaths of foreigners, extended well beyond the existing rules of international law. The implications of the new obligations were far-reaching and the manner in which they could be put into effect in many of the contracting States was doubtful. The United States wished to avoid undertaking obligations it would be unable or unwilling to carry out fully in practice.

3. The CHAIRMAN invited the Committee to consider sub-paragraph (*c*) of article 37, the amendment thereto by Austria (L.49), and the proposals for new sub-paragraphs by Brazil (L.63) and the Federation of Malaya (L.76).[1]

[1] For the list of amendments to article 37, see the summary record of the nineteenth meeting, footnote to para. 16.