

# **United Nations Conference on Consular Relations**

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**28<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)*

40. Mr. LEVI (Yugoslavia) said that he did not see how it was possible to vote on paragraph 2 before voting on the Australian amendment.

41. The CHAIRMAN put to the vote paragraph 1 of article 45 as drafted by the International Law Commission.

*Paragraph 1 was approved by 63 votes to none, with 1 abstention.*

42. The CHAIRMAN put to the vote the proposal in the Japanese amendment (A/CONF.25/C.2/L.82) for the addition to paragraph 2 of the passage "shall be communicated to the receiving State in writing".

*The passage was approved by 31 votes to 22, with 11 abstentions.*

43. The CHAIRMAN put to the vote the proposal in the Japanese amendment for the addition to paragraph 2 of the phrase "through the diplomatic channel".

*The proposal was rejected by 32 votes to 13, with 19 abstentions.*

44. Mr. LEVI (Yugoslavia) suggested the postponement of further voting and the adjournment of the meeting.

*It was so agreed.*

The meeting rose at 6.5 p.m.

## TWENTY-EIGHTH MEETING

Monday, 25 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 45 (Waiver of immunities) (continued)

1. The CHAIRMAN recalled that, at its previous meeting, the Committee had adopted article 45, paragraph 1, and the first part of the Japanese amendment (L.82) to paragraph 2. The Australian amendment (L.152) to paragraph 2, after being withdrawn, had been re-submitted by the Federal Republic of Germany.

2. Mr. JESTAEDT (Federal Republic of Germany) said that he had resubmitted the Australian amendment (L.152) because he doubted whether a consul who initiated proceedings in the receiving State must first expressly waive his immunity. The amendment had the advantage of showing that the waiver was provided for by implication in paragraph 3 of the article.

3. Mr. LEVI (Yugoslavia) said that he accepted the amendment, though he regretted that it appeared to refer to the second part of paragraph 3, not to the first.

*The Australian amendment (A/CONF.25/C.2/L.152), re-introduced by the Federal Republic of Germany, was adopted by 27 votes to 11, with 21 abstentions.*

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*Paragraph 2, as amended, was adopted by 45 votes to none, with 13 abstentions.*

*Paragraph 3 was adopted unanimously.*

4. Mr. BOUZIRI (Tunisia) introduced his delegation's amendment (L.169) to paragraph 4. He reminded the Committee of the importance attached to the inviolability granted to consular officials, which had been shown by the discussions on articles 41 and 43. But article 45, paragraph 4, seemed to him indirectly to introduce a further immunity relating to measures of execution of a judgement. That paragraph would be an attack on the sovereignty of the receiving State and on the dignity of its judges. The Tunisian delegation had not wished to ask for its complete deletion, but had sought by its amendment to change the spirit of the paragraph and restrict its unfortunate effects.

5. Mr. NASCIMENTO e SILVA (Brazil) regretted that he could not share the Tunisian representative's views on article 45. The proposed amendment might give the impression that a consul misused the privileges and immunities he enjoyed. He pointed out that, under article 43, a consul did not enjoy immunity from jurisdiction in respect of acts of a private nature, but only in respect of acts performed in the exercise of consular functions. The same applied to the provisions of article 41, to which the Tunisian representative had already objected. Therefore, article 45 dealt, not with inviolability, but with consular immunities with respect to his official acts, in other words with the problem of state immunities. How could the sending State facilitate the execution of a final judgement? That was a matter for the local authorities. Did it mean that the consul would not even be able to defend himself in connexion with acts of a private nature before the judicial authorities? If that were so, he would be in a position of inferiority as compared with other nationals of the sending State. The Brazilian delegation would therefore vote against the Tunisian amendment.

6. Mr. JESTAEDT (Federal Republic of Germany) said he wished to add the further comment that article 45 should be taken in its context. The only case to be considered was where the consul initiated proceedings in the exercise of his consular functions and probably on the instructions of the sending State; the judgement would then directly or indirectly affect the sending State itself. Logically, the question of measures of execution thus also concerned the sending State and that was where the question of immunities arose. Consequently, the Tunisian amendment did not seem to be acceptable.

7. Mr. HARASZTI (Hungary) said that he too was unable to endorse the opinion expressed by the Tunisian representative. The provision in paragraph 4 did not violate the authority of States; it stated a generally accepted rule of international law.

8. Mrs. VILLGRATTNER (Austria) suggested that the special rapporteur of the International Law Commission should explain whether the waiver of immunity related only to civil and administrative proceedings or whether it also related to criminal proceedings.

9. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, said that the rule stated in article 45, paragraph 4, of the International Law Commission's draft was intended to apply only to civil and administrative proceedings. The Commission had been guided in the matter by article 32, paragraph 4, of the 1961 Vienna Convention. In the case of consuls, moreover, the scope of those provisions was much more restricted. Members of the consulate could logically be exempted from the jurisdiction of the receiving State only for acts performed in the exercise of consular functions — i.e., for acts attributable to the sending State.

10. Mr. BOUZIRI (Tunisia) said that his delegation had adopted a similar attitude to the corresponding provisions of the 1961 Convention. He wished to point out, however, that the Brazilian representative must have misunderstood his previous remarks. He had certainly not meant to say that a consular official did not have the same rights as other nationals of the sending State and it was quite clear that the scope of the article should be restricted to acts performed in the exercise of consular functions. Nevertheless, his delegation wished to prevent abuses.

*The Tunisian amendment (A/CONF.25/C.2/L.169) was rejected by 25 votes to 14, with 26 abstentions.*

*Paragraph 4 was adopted by 65 votes to 1.*

*Article 45 as a whole, as amended, was adopted by 65 votes to 1.*

*Article 46 (Exemption from obligations in the matter of registration of aliens and residence and work permits)*

11. The CHAIRMAN invited consideration of draft article 46 and the amendments thereto.<sup>1</sup>

12. Mr. HART (United Kingdom) said that the effect of the United Kingdom amendment was, first, to restrict the classes of persons who should enjoy exemption under paragraph 1 as regards registration of aliens and residence permits and, secondly, to secure that there should be no exemption as regards work permits under paragraph 2. The amendment therefore provided for the replacement of the article by a new article in which paragraph 1 of the International Law Commission's draft would be replaced by two new paragraphs; there would be no provision corresponding to paragraph 2 of that draft.

13. Paragraph 1 of the draft article granted exemption in respect of the registration of aliens and residence permits to members of the consulate, members of their families and members of their private staff. That went too far and might cause difficulties for the receiving State. Under the amendment the exemption would be enjoyed only by consular officials and by those con-

sular employees who were members of the administrative or technical staff and were permanent employees of the sending State, not engaged in private occupation for gain in the receiving State. The exemption would extend to members of the family of a person who was exempt. Those distinctions corresponded to distinctions made elsewhere in the International Law Commission's draft; they also appeared in all the bilateral conventions which the United Kingdom had concluded except conventions which gave no exemption at all to consular employees. The provision that a consular employee should lose his exemption if he was gainfully employed was justified because even a consular official would lose his exemption in such a case under articles 56 and 62. In addition, the exclusion of members of the service staff and of the private staff was justified because members of the service staff of a diplomatic mission, or of the private staff of a diplomatic agent, enjoyed no corresponding exemption under the Vienna Convention on Diplomatic Relations. Paragraph 7 of the commentary attempted to justify that difference between the 1961 Convention and the draft convention by referring to the wide immunities enjoyed by the corresponding classes of persons under the 1961 Convention; but in fact under article 37 of that convention those persons enjoyed no immunities which were in any way relevant to the exemptions provided for in draft article 46. In paragraph 3 of the commentary it was also argued that it would be "difficult" to require a member of the consulate to see that a member of his private staff complied with the obligations when the member of the consulate and his family were exempt. That argument was wholly unconvincing.

14. Paragraph 2 of the draft article was not justified. It could not in any event apply to employment in the consulate, which was governed by article 19, as pointed out in paragraph 5 of the commentary. If a person wished to engage in private gainful occupation outside the consulate, he should comply with the laws and regulations of the receiving State. It might be argued that there should be an exemption in favour of the private staff of a member of the consulate, but there was no corresponding provision in the 1961 Convention so far as the private staff of a member of a diplomatic mission was concerned, and it was not logical that members of a consulate should be put in a more favourable position than members of a diplomatic mission.

15. Baron van BOETZELAER (Netherlands) thought that the United Kingdom amendment would improve the text of the draft article. If it were approved, his delegation would not press its own amendment (L.17) to the vote.

16. Mr. HEUMAN (France) remarked that of all the amendments submitted, that of France (L.175) was the most liberal in recognizing exemptions for certain members of the private staff. That exemption, nevertheless, should not apply to persons in the service of consular employees who were themselves members of the service staff. His delegation's amendment thus expressly reserved exemption for the private staff of consular officials and of consular employees who performed administrative and technical functions.

<sup>1</sup> The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.7; Netherlands, A/CONF.25/C.2/L.17; Japan, A/CONF.25/C.2/L.83; Greece, A/CONF.25/C.2/L.97; China, A/CONF.25/C.2/L.124; Cambodia, A/CONF.25/C.2/L.127; Belgium, A/CONF.25/C.2/L.132; United Kingdom, A/CONF.25/C.2/L.136; Switzerland, A/CONF.25/C.2/L.157; France, A/CONF.25/C.2/L.175.

17. He had no objection to the Cambodian amendment (L.127), and paragraph 2 of the United Kingdom amendment (L.136) was also acceptable to his delegation. The Chinese amendment (L.124) was a different matter; if the Chinese delegation would agree to replace the list at the beginning of its text by the words "The persons referred to in paragraph 1", the French delegation would vote for it.

18. Mr. SHU (China) explained that his delegation had submitted its amendment (L.124) because it had wished to take account of a practice followed by a great many States and recognized in many bilateral conventions. The issue of special identity cards to the persons covered by paragraph 1 of article 46 imposed no additional obligation on the receiving State and facilitated both the exercise of consular functions and the administrative control of the receiving State. He thanked the French delegation for its suggestion and agreed to change the text of his amendment in the manner proposed.

19. Mr. MARESCA (Italy) feared that the International Law Commission's text would extend exemption to an unduly large number of persons. The text should specify that the members of consular families should not carry on a gainful occupation, and there should be proper recognition of the distinction proposed by the French delegation between the staff in the service of consular officials and the staff in the service of consular employees who did not perform administrative and technical functions. His delegation would support the amendments restricting the exemptions granted to private staff.

20. Mr. BLANKINSHIP (United States of America) said that in submitting its amendment (L.7) to paragraph 2 of the draft article his delegation had not wished to modify its sense, but to improve the text. In paragraph 1 he would exclude from exemption persons permanently residing in the receiving State. When the Committee took up article 69 it might very well amend the text in order to exclude persons in that category. Moreover, the International Law Commission, bearing in mind article 38 of the 1961 Vienna Convention, seemed to have intended to include that stipulation in its text although it had not done so. Unless draft article 69 were amended in that sense, his delegation would find itself in a difficult situation. The formula in paragraph 2 lacked clarity. It would be better to say, as in paragraph 4 of the commentary, "members of the consulate and members of the private staff". After studying the various amendments his delegation would support that of the United Kingdom (L.136).

21. Mr. REBSAMEN (Switzerland) said that, as proposed in his delegation's amendment (L.157), the words in paragraph 1 "and their private staff" should be deleted. There was no similar provision in the 1961 Vienna Convention, and it might be asked why the private staff of the consulate should enjoy an exemption which was withheld from the private staff of a diplomatic mission. In many countries, notably in Switzerland, the service staff was subject to strict control from the point of view of labour regulations and residence

permits. The periods of employment of that staff were by no means regular and if it was not composed of nationals of the sending State difficulties might arise with regard to work permits, for which, in many countries, including Switzerland, application had to be made by the employee and not the employer.

22. With regard to paragraph 2, the Swiss delegation would support the Belgian amendment (L.132) or any other proposal of the same kind.

The meeting rose at 1 p.m.

## TWENTY-NINTH MEETING

Monday, 25 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 46 (Exemption from obligations in the matter of registration of aliens and residence and work permits) (continued)

1. The CHAIRMAN invited the Committee to continue its consideration of article 46 and the amendments thereto.<sup>1</sup>

2. Mr. VRANKEN (Belgium) said that it must be borne in mind that there were as yet no agreed definitions of such terms as "members of the consulate", "consular official" and "private staff". When article 1 had been adopted, therefore, it would be necessary to reconsider each article to ensure that the terms used were in accordance with the definitions in article 1. The amendment submitted by his delegation (L.132) did not affect the International Law Commission's text but proposed the addition of a new paragraph to provide that the persons referred to in paragraph 1 should not enjoy the exemptions provided under article 46 if, in addition to their functions at the consulate, they were engaged in any gainful private occupation. The Belgian delegation could accept the French amendment (L.175).

3. Mr. HONG (Cambodia) said that his delegation had submitted its amendment (L.127) because it considered it desirable to state explicitly what might perhaps be implicit in the International Law Commission draft, that only those members of the private staff who were nationals of the sending State should benefit from exemption under article 46. His government could not agree that members of the private staff who were nationals of a third State should so benefit. His delegation would not press for a vote, however, since the question appeared to be mainly one of drafting, and would be prepared to withdraw the amendment and request the Chairman to refer the point to the drafting committee.

<sup>1</sup> For the list of amendments to article 46, see the summary record of the twenty-eighth meeting, footnote to para. 11.