

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.2/SR.30

30th 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)

no longer exist. It seemed only fair that the Committee should first vote on the question whether paragraph 2 still stood.

59. The CHAIRMAN ruled that the motion was an oral amendment and therefore out of order. He invited the Committee to vote on the retention of the words "private staff" in the United States amendment (A/CONF.25/C.2/L.7) reintroduced by Norway.

The words "private staff" were rejected by 26 votes to 25, with 10 abstentions.

60. The CHAIRMAN invited the Committee to vote on the amendment as modified by the deletion of the references to "private staff".

The amendment was rejected by 22 votes to 21, with 16 abstentions.

61. Baron van BOETZELAER (Netherlands) said that he maintained his amendment because paragraph 2 of the International Law Commission's draft had not been rejected and because his amendment excluded a category of persons mentioned in paragraph 1 as adopted in the United Kingdom amendment.

62. Mr. VRANKEN (Belgium) said that his amendment (L.132) covered the same point as the Netherlands amendment but he had drafted it in a more general form so that it did not apply solely to the families of the members of the consulate. The article could apply to part-time staff.

63. Mr. HEUMAN (France) said that, although his amendment (L.175) had been implicitly rejected by the adoption of the United Kingdom amendment replacing paragraph 1, he considered that it was still valid for paragraph 2, since paragraph 2 provided exemption in respect of work permits for the persons referred to in paragraph 1. He would therefore like his amendment to be considered with the other amendments to paragraph 2.

64. The CHAIRMAN concurred.

65. Mr. BOUZIRI (Tunisia) pointed out that the rejection of the former United States amendment (L.7) was tantamount to rejecting the International Law Commission's paragraph 2, since the deletion of the references to "private staff" made the two paragraphs more or less identical. Moreover, the persons referred to in paragraph 2 were no longer the ones intended by the International Law Commission, because the Commission's first paragraph had been replaced by the United Kingdom amendment. The same applied to the Belgian amendment.

66. The CHAIRMAN said that the point was valid. The representatives of Belgium and the Netherlands might wish to reconsider their amendments to the International Law Commission's paragraph 2.

67. Mr. VRANKEN (Belgium) agreed with the representative of Tunisia. He suggested that his amendment could be altered to set out the persons concerned instead of indicating them by reference to paragraph 1.

68. Mr. SILVEIRA-BARRIOS (Venezuela) did not agree with the argument of the French representative

that his amendment (L.175) was applicable to paragraph 2. It was clearly stated in the amendment that it referred to paragraph 1.

69. Mr. HEUMAN (France) said that the Committee was still free to approve exemption in respect of work permits, for it was not bound to follow the same policy for residence permits as for work permits. He agreed with the Belgian representative's suggestion: whichever of the amendments was adopted, the opening sentence could be amended to state the persons concerned instead of referring to paragraph 1.

70. Baron van BOETZELAER (Netherlands) said that the reasoning of the representative of France would hold good if it had not been agreed to delete the reference to "private staff" from the United States and Norwegian amendment (L.7).

71. Mr. BOUZIRI (Tunisia) said that the point made by the representative of France was true but theoretical. He himself had merely pointed out that the persons referred to in paragraph 1 were no longer the same and that the fact should be taken into account in the Netherlands and Belgian amendments. Moreover, although in theory two categories of persons could exist and the decision on paragraph 1 would not necessarily affect paragraph 2, there had also been other decisions concerning paragraph 2. The words "private staff" in the United States amendment had been rejected. He could not agree that the French amendment was applicable to paragraph 2. It was proposed in respect of paragraph 1, and the words it proposed to replace no longer existed.

72. Mr. REBSAMEN (Switzerland) considered that the French amendment was valid in principle. He suggested that a separate vote should be taken on the words "private staff" in that amendment.

73. Mr. LEVI (Yugoslavia), moved the adjournment of the debate.

It was so decided.

The meeting rose at 6.10 p.m.

THIRTIETH MEETING

Tuesday, 26 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 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, paragraph 2.¹

2. Mr. MARESCA (Italy) suggested that the French amendment (L.175) applied equally to paragraph 2 of

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

the draft article, as did the Netherlands amendment (L.17). His delegation would support either of those amendments.

3. Mr. VRANKEN (Belgium) said that the adoption of the United Kingdom amendment, together with the provisions of article 56, were acceptable to his delegation and he would not press his own amendment (L.132) to the vote.

4. Baron van BOETZELAER (Netherlands) said that since article 56 did not cover the cases mentioned in his amendment (L.17) his delegation would maintain it.

5. Mrs. VILLGRATTNER (Austria) said that paragraph 2 seemed to be ambiguous because the reference to paragraph 1 might be understood to mean that the persons concerned were members of the consulate, members of their families and their private staff. The drafting committee would do well to improve the text.

6. Mr. von NUMERS (Finland) pointed out that paragraph 2 dealt with work permits and did not necessarily apply to the same persons as paragraph 1. Moreover, article 19 applied to consular officials and made no mention of their private staff.

7. The CHAIRMAN said that the two paragraphs of article 46 might be regarded as two separate articles, for they dealt with two different matters — namely, work permits and residence permits.

8. He proposed that paragraph 2, which would become new draft article 46 A, should be considered later.²

It was so decided.

*Article 47 and proposed new article
(Social security exemption)*

9. The CHAIRMAN invited the Committee to consider article 47 and the amendments thereto submitted by India (A/CONF.25/C.2/L.160) and France (A/CONF.25/C.2/L.186).

10. Mr. KHOSLA (India) observed that article 47 was based on article 33 of the 1961 Vienna Convention. Nevertheless, in submitting its amendment (L.160), the Indian delegation had wished to make one point clear and to confer the exemption upon members of the families of members of the consulate "forming part of their households who are not engaged in gainful occupation or professional or other activities". Two points were included in the phrase added — the first that members of the family of members of the consulate must be included in the exemption and the second that only those should be included in the exemption who did not carry on any private gainful occupation of any kind. The Indian delegation felt that that would contribute towards filling a gap in the International Law Commission's text. Some delegations seemed to have doubts

about the phrase "professional or other activities" in that such a phrase might possibly include activities which were not gainful. He suggested that the phrase as it stood should be referred to the drafting committee with a view to the insertion of a phrase which, while having as wide a meaning as possible, would contain a specific reference to the fact that the activities must be gainful.

11. Mr. HEUMAN (France) said that, since the First Committee had adopted article 71, the French amendment had become purposeless and therefore he would not press for a vote. He was, however, in favour of deleting paragraph 4 of the draft article, since the mere possibility of participating in the social security system of the receiving State would entail certain administrative difficulties.

12. Mr. SMITH (Canada) considered that the term "services rendered" in paragraph 1 might lead to confusion because it was not clear whether the exemption would also apply to services rendered by persons other than members of the consulate. He suggested that it might be replaced by the words "services they render". His delegation also wished to make it clear that, in its view, the exemption from indirect taxes in paragraph 1 (a) of article 48 prevailed over the exemption from "social security provisions" provided for in article 47. It was possible that the term might be interpreted to include "social security taxes", including indirect taxes, but it should be subject to paragraph 1 (a) of article 48. The text of the Indian amendment was clearer than that of the Commission, and the Canadian delegation would vote for it. He shared the misgivings expressed on a number of occasions by the United States representative and hoped that persons permanently resident in the receiving State would be excluded from the exemptions provided in article 47 and other articles of the convention.

13. The CHAIRMAN said he would ask the drafting committee to take the Canadian representative's remarks into account.

14. Mr. JESTAEDT (Federal Republic of Germany) said that his delegation would reintroduce the amendment (L.186) withdrawn by the French delegation. The First Committee had adopted article 71, but the application of "social security provisions" would impose an additional burden of work on the administrative staff of consulates and diplomatic missions, and voluntary participation in the social security system of the receiving State would be difficult to put into practice.

15. Mr. RUSSELL (United Kingdom) said that the International Law Commission had prepared a generally satisfactory text for article 47. The United Kingdom delegation would, however, be prepared to vote in favour of the Indian amendment extending the exemption to members of the families of consular officials, provided that certain modifications were made in the wording of the amendment; in the first place the words "private" should be inserted before the words "gainful occupation" and secondly, the expression "a gainful occupa-

² See the summary record of the thirty-second meeting.

tion or profession or other activities" should be replaced by the expression "any gainful occupation whatsoever"; it was desirable to maintain uniformity with article 56. With regard to the amendment in document L.186 originally proposed by France and reintroduced by the Federal Republic of Germany, the United Kingdom delegation considered that it was redundant in view of the adoption of article 71 by the First Committee; that article provided that existing agreements, bilateral or multilateral, would remain in force and that States would be free to conclude further such agreements as they saw fit.

16. Mr. SHARP (New Zealand) said that his country's legislation on social security imposed certain obligations on persons permanently resident in New Zealand. That matter should, however, be dealt with in connexion with article 69.

17. Mr. LEVI (Yugoslavia) thought that the adoption of article 71 by the First Committee had rendered the amendment in document L.186 redundant.

18. Mrs. VILLGRATTNER (Austria) pointed out that social security was assuming increasing importance and that article 71 would not suffice to settle questions of exemption. Her delegation would therefore support the amendment in document L.186, but would like the words "and shall not preclude the conclusion of such agreements in the future" to be replaced by the words "and those which may be concluded in the future".

19. Mr. NASCIMENTO e SILVA (Brazil) observed that the Committee could choose one of many solutions. It could adopt the amendment in document L.160 or the amendment in document L.186, and it could also delete paragraph 4. The Brazilian delegation considered that paragraph 4 should be retained, because due account should be taken of subordinate staff, who should, if they wished, be able to participate voluntarily in the social security system of the receiving State. It should be noted that the last phrase of paragraph 4 referred to cases where the receiving State did not permit such participation. The Indian amendment would improve the text of the draft article; he endorsed the United Kingdom representative's suggestion that the word "private" should be inserted before "gainful occupation".

20. Mr. JESTAEDT (Federal Republic of Germany) pointed out that, in again placing before the Committee the amendment withdrawn by France, he was proposing to replace paragraph 4 by that text, and not to add any new paragraph.

21. Mr. WASZCZUK (Poland) thought that the Indian amendment would improve the Commission's text. It was obvious that the families of members of the consulate should be exempt from social security provisions, and his delegation would therefore support that amendment. With regard to the amendment reintroduced by the Federal Republic of Germany, article 71 covered all agreements concluded in the matter; he doubted the wisdom of including a clause similar to article 71 in each article. His delegation was against the deletion of para-

graph 4, because it was inadvisable to exclude the possibility of voluntary participation in the social security arrangements of the receiving State if such participation was permitted by that State.

22. Mr. KHOSLA (India) accepted the drafting changes suggested by the United Kingdom representative, on the understanding that the activities or occupation therein mentioned would be those which would normally be subject to the social security system of the receiving State. The matter might be considered by the drafting committee.

23. The CHAIRMAN put to the vote the Indian amendment (A/CONF.25/C.2/L.160), as orally revised by the United Kingdom representative.

The amendment, as revised, was adopted by 55 votes to 3, with 7 abstentions.

Paragraphs 2 and 3 were adopted unanimously.

24. Mr. JESTAEDT (Federal Republic of Germany) accepted the Austrian representative's suggestion to alter the wording of the amendment in document L.186.

25. The CHAIRMAN put to the vote the amendment reintroduced by the Federal Republic of Germany (A/CONF.25/C.2/L.186), as modified by the Austrian representative's suggestion.

The amendment was rejected by 41 votes to 7, with 17 abstentions.

Paragraph 4 was adopted by 65 votes to 1, with 2 abstentions.

26. Baron van BOETZELAER (Netherlands) introduced an amendment (L.109) in which his delegation proposed the addition of two new articles.³ He explained that paragraph 3 of the article that the Committee had just adopted provided for only one case, that in which members of the consulate employed persons who were not exempted from the social security system. The purpose of the second article in his delegation's proposal was to supplement the provisions of paragraph 3.

The second article in the Netherlands amendment (A/CONF.25/C.2/L.109) was rejected by 27 votes to 16, with 20 abstentions.

Article 47, as a whole, as amended, was adopted by 65 votes to none, with 1 abstention.

27. Mr. SILVEIRA-BARRIOS (Venezuela) said he had been unable to vote for the text as a whole because, in his opinion, the addition of the word "private" limited the scope of the article.

28. Mr. BLANKINSHIP (United States of America) said that he had voted on the understanding that the article would be interpreted in accordance with the commentary of the International Law Commission to mean that its provisions did not apply to nationals of the receiving State or to persons permanently resident in

³ The first of these was later withdrawn.

that State. He assumed that article 69 would be amended accordingly.

29. Mr. DRAKE (South Africa) said he had voted in favour of the article as a whole on the same understanding as the United States representative.

Article 48 (Exemption from taxation)

30. The CHAIRMAN invited debate on article 48 and the amendments relating to it.⁴

31. Baron van BOETZELAER (Netherlands) submitted his amendment (L.18/Rev.1) and pointed out that in drafting article 48 the International Law Commission had made use of a different method from that employed with the previous articles. It provided that the members of the consulate should be exempt from all dues and taxes save those expressly specified in the article. That was liable to give rise to considerable difficulty, if, for instance, new taxes were imposed; the question might arise whether the members of the consulate would be automatically exempted. Under the Netherlands amendment, on the other hand, the receiving State would still be in a position to negotiate.

32. Mr. VRANKEN (Belgium) said that his amendment (L.133) made no changes of substance to article 48. One category of persons had, however, been omitted from the original version — namely, consular employees engaged in a private gainful occupation. He had therefore considered it advisable to include that category under paragraph 3 of his amendment.

33. Mr. KANEMATSU (Japan), introducing his amendment (L.84/Rev.1), said that there was no general rule in international law giving tax exemption to the family of members of the consulate, and he proposed to delete the reference to them in article 48 and also to the members of the private staff in paragraph 2. He wished to draw attention to the interpretation given by his delegation to the English term “dues”, which was used in article 48 and various other articles of the draft convention. The term referred to revenue taxation and not to charges levied by the State or by public administrations in return for special services rendered by those administrations. He requested that his statement should be recorded.

34. Mr. DRAKE (South Africa) said that, after studying the French amendment (L.195), his delegation had decided to withdraw the amendment (L.170) it had proposed to make to paragraph 1(b). The French amendment, which referred directly to article 31, seemed to him to be preferable, and his delegation would be glad to accept it, subject to certain drafting changes

which might be referred to the drafting committee. He supported the remarks on article 69, made by the United States representative at the 28th meeting.

35. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) thought that the International Law Commission's draft was acceptable. Nevertheless, his delegation proposed in its amendment (L.142) to extend tax exemption to “service staff”, since the convention under discussion should go further than the 1961 Convention. That measure would have practical consequences and contribute to the proper performance of consular duties.

36. Mr. LEVI (Yugoslavia) pointed out that the term “member of the consulate” remained undefined, since article 1 had not yet been adopted.

37. Mr. SRESHTHAPUTRA (Thailand) said that his delegation's amendment (L.67) was self-explanatory. His delegation considered that nationals of the receiving State and persons who were locally recruited should not be entitled to the exemption under paragraph 2.

38. Mr. ROSSI LONGHI (Italy) thought that paragraph 1 was indispensable and that its deletion might create confusion.

39. Mr. REBSAMEN (Switzerland) said that his delegation's amendment (L.158) was on very much the same lines as sub-paragraph (a). It did not make any change in substance and was intended to clarify the original text.

40. Mr. CONRON (Australia) said that the purpose of his amendment (L.197) was to modify paragraph 2 so that the conditions for tax exemption should be similar to those laid down in the 1961 Convention. The International Law Commission's text did not restrict the tax concession in paragraph 2 to domestic servants in the private employment of members of the consulate as the 1961 Convention had done. It would give a tax exemption to certain other classes of persons employed by members of a consulate, while similar people in the employ of diplomatic agents would be taxable under the terms of the 1961 Convention.

41. Mr. KHOSLA (India) said that he did not consider the conditions in the International Law Commission draft satisfactory. He supported the amendment by Thailand (L.67) and proposed to withdraw his own amendment (L.177) in favour of the amendment of Japan, since they were exactly the same. He suggested that a vote should be taken on paragraph 1 of the Japanese amendment (L.84/Rev.1) and also on the Thailand amendment. He would vote against amendments that would result in a radical alteration to the text.

42. Mr. SILVEIRA-BARRIOS (Venezuela) associated himself with the remarks made by the Yugoslav representative and hoped that the drafting committee would establish uniformity of terminology between the terms “members of the consulate” and “consular officials”.

The meeting rose at 12.55 p.m.

⁴ The following amendments had been submitted; Netherlands, A/CONF.25/C.2/L.18/Rev.1; Thailand, A/CONF.25/C.2/L.67; Japan, A/CONF.25/C.2/L.84/Rev.1; Belgium, A/CONF.25/C.2/L.133; Ukrainian Soviet Socialist Republic, A/CONF.25/C.2/L.142; Switzerland, A/CONF.25/C.2/L.158; South Africa, A/CONF.25/C.2/L.170; India, A/CONF.25/C.2/L.177; Canada, A/CONF.25/C.2/L.193; France, A/CONF.25/C.2/L.195; Australia, A/CONF.25/C.2/L.197. The Netherlands had also submitted a proposal (A/CONF.25/C.2/L.110) to add a new paragraph.