

# **United Nations Conference on Consular Relations**

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**A/CONF.25/C.2/SR.36**

**36<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)*

*Article 50 as a whole, as amended, was adopted by 62 votes to none, with 2 abstentions.*

41. Mr. HEUMAN (France) explained that his delegation had voted against the Canadian amendment because it could not understand the purpose of including in a provision which concerned only the estate of a deceased person a reference to "duties on transfers"; it had voted against the joint amendment sponsored by Belgium and Chile because the inclusion of a reference to "permanent resident of the receiving State" in article 50 would become redundant when article 69 was approved.

42. Mr. SPYRIDAKIS (Greece) said that he had abstained from voting on the United States amendment (L.181) to article 50. Although the amendment was more detailed, he found the International Law Commission's text more suitable to an international convention and more readily acceptable to a large number of States.

The meeting rose at 6 p.m.

### THIRTY-SIXTH MEETING

*Friday, 29 March 1963, at 10.35 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 51*

(Exemption from personal services and contributions)

1. The CHAIRMAN invited the Committee to consider article 51, to which amendments had been submitted by Belgium (A/CONF.25/C.2/L.147) and Romania (A/CONF.25/C.2/L.207).

2. Mr. ANGHEL (Romania) said that he approved the motives of the International Law Commission's draft article 51. One question, however, had attracted the attention of the Romanian delegation, causing it to submit its amendment. By refusing to grant to the service staff exemption from personal services and contributions — and it appeared from paragraph 1 of the International Law Commission's commentary on that article that members of the service staff might be subject to military service, service in the militia, jury service and other forms of service — the work of the consulate might be paralysed, especially if it employed only a small staff, because that staff would no longer be able to carry out its functions. After all, the service staff was sent to the receiving State for the same purpose as the other members of the consulate. Citizens of the sending State who belonged to the service staff should certainly not be drafted into the armed forces of the militia of the receiving State; as was well known, international law exempted aliens from any obligation to serve in the armed forces of a State other than their own. The question had undoubtedly escaped the attention of

the International Law Commission, and a solution should be found. Besides, in the course of the discussions in the International Law Commission, Mr. Padilla Nervo and Mr. Amado had spoken in favour of the exemption of the service staff from personal services and contributions, and particularly military service.<sup>1</sup> The Romanian amendment was not intended to impose additional obligations on the receiving State, but rather to avoid tension between States and to ensure the functioning of consular posts in the best possible manner. That was the reason for the amendment (L.207). He would, however, be prepared to accept a text for article 51 which would exempt members of the service staff from military obligations.

3. Mr. VRANKEN (Belgium) said that the purpose of the Belgian amendment (L.147) was plain. It seemed normal that a consular employee who carried on a private gainful occupation and enjoyed whatever advantages he might be given by the receiving State should also be under the obligation to serve it in the event of catastrophe or public calamity, for instance. The amendment did not affect the consular employees alone, but also all the members of their families.

4. Mr. MARESCA (Italy) said that consular immunities in respect of personal services were normally restricted to consuls and consular officials. Any extension of those immunities to other persons would be an innovation which would have to be restricted. The Belgian amendment was based on that consideration, and he would therefore support it. With regard to the Romanian amendment concerning service staff, account must be taken of the decisions reached in the 1961 Convention, since article 35 of that convention made no mention of service staff.

5. Mr. HEUMAN (France) said he had no objection to the substance of the Belgian amendment, but would raise a few objections of a technical nature. The Committee had doubtless noted that the question of members of the families of consular employees had arisen in connexion with so many articles that it would probably be better to deal with that matter in a general article which would then cover all the others, and that article could only be article 56.

6. The other general question — namely, the exclusion of permanent residents — should be dealt with in article 69. It was useless to overburden each article with an exclusion clause which the drafting committee might have to delete subsequently if the general safeguard clause was inserted in article 69. He therefore proposed that the Belgian representative should for the time being withdraw his amendment to article 51, pending the adoption of article 56. It would be advisable perhaps in that case to take up article 69 immediately after article 56.

7. The CHAIRMAN thanked the representative of France for his suggestion, but said that he was not convinced that such a procedure would help the Committee in its work, because, before considering article 56,

<sup>1</sup> See *Yearbook of the International Law Commission, 1961*, vol. I (United Nations publication, Sales No. 61.V.1, vol. I), p. 134.

the Committee would have to take up the Japanese amendment in document L.891/Rev.1 which covered chapter III as a whole.

8. Mr. LEVI (Yugoslavia) said that he would vote for the Romanian amendment, which seemed logical: there was no point in repeating the mistakes of the 1961 Convention. In view of paragraph 1 of the International Law Commission's commentary, he could not vote for the Belgian amendment.

9. Mr. CAMPORA (Argentina) said that the exemption in article 51 should cover the greatest possible number of persons working in the consulate. In view of the corresponding provisions of the 1961 Convention, however, if the Romanian amendment were adopted, the consular staff would be in a more advantageous position than the staff of diplomatic missions. He would therefore not vote for the amendment. With regard to permanent residents, he agreed with the representative of France that the matter should be studied in connexion with article 69.

10. Mr. SPACIL (Czechoslovakia) said that, on the contrary, the Romanian amendment was logical and indispensable; it was in keeping with the spirit of the Convention, the purpose of which was to facilitate the exercise of consular functions. Besides, it was not so much a question of immunities as of certain advantages. The only argument against the amendment was that the new convention would no longer be parallel to the 1961 Convention; but if a mistake had been made then, there was no need to repeat it.

11. Mr. RUSSELL (United Kingdom) said that his delegation was in general agreement with the draft prepared by the International Law Commission and would vote for it. It would be obliged, however, to oppose the Romanian amendment on two grounds; in the first place it was contrary to prevalent international usage and, secondly, it would create an anomalous situation if the proposed convention were to accord wider facilities than the Vienna Convention on Diplomatic Relations. With regard to the Belgian amendment, he agreed with the representatives of France and Argentina that it raised a much more general issue which would have to be settled at a later stage in the discussion of the draft articles.

12. Mr. HARASZTI (Hungary) said that the convention should ensure exemption from personal services for all, including the service staff; he would therefore support the Romanian amendment. The proper place for the matter covered by the Belgian amendment was in article 56 from which, moreover, there had been certain omissions; he was therefore unable to support that amendment.

13. Mr. VRANKEN (Belgium) said that the entire question could not be covered by article 56; furthermore, it was by no means certain that the article would be adopted. He would therefore be forced to defend his position in advance on each article in which the question arose. Nevertheless, if article 56 was adopted, his delega-

tion would be willing to agree that the provisions in question should be deleted in the various articles; in the meantime he would have to maintain his amendment.

14. Mr. ANGHEL (Romania) admitted that the Conference could take the 1961 Convention as a basis. But its task was to draw up a consular convention and it should not automatically transpose all the provisions of the one instrument into the other. The experience gained in 1961 should be sifted and compared with the facts and the texts should be compared in order to adopt the best solution. Article 35 of the 1961 Convention dealt with requisitioning, military contributions and billeting; in his opinion, the 1961 Conference had given to that article a meaning that was different from that attributed in the commentary to the text of article 51 of the draft under discussion. Moreover, since aliens were under no obligation to serve in the armed forces of the receiving State, there was all the more reason for treating at least in the same manner members of the service staff of a consulate who had the nationality of the sending State.

*The Romanian amendment (A/CONF.25/C.2/L.207) was adopted by 23 votes to 22, with 16 abstentions.*

*The Belgian amendment (A/CONF.25/C.2/L.147) was adopted by 26 votes to 11, with 25 abstentions.*

*Article 51 as a whole, as amended, was adopted by 39 votes to 2, with 20 abstentions.*

15. Mr. SILVEIRA-BARRIOS (Venezuela) explained that he had voted against article 51 because the text as amended had lost some of its restrictive character and thus had a wider range.

16. Mr. KANEMATSU (Japan) associated himself with the views expressed by the representative of Venezuela.

*Proposal to replace articles 56 to 67 by a single article*

17. The CHAIRMAN said that the Committee had before it a Japanese proposal (A/CONF.25/C.2/L.89/Rev.1) to replace articles 56 to 67 by a single new article. That proposal must be examined before starting to discuss any of the articles in question, in accordance with the decision taken by the Committee at its 33rd meeting.

18. Mr. LEVI (Yugoslavia) thought that if the Committee was to examine the Japanese amendment, it should likewise make a thorough study of articles 56 to 67.

19. The CHAIRMAN said that it might well be difficult for the Committee not to make a thorough examination of the draft articles in question, but that was a matter for the Committee itself to decide.

20. Mr. KANEMATSU (Japan) said that he shared the concern expressed by the representatives of France and Belgium; but in his view the case of honorary consular officials and assimilated persons should be dealt with more clearly than it was in the draft articles drawn

up by the International Law Commission. After a careful study of articles 56 to 67 of the draft, the Japanese delegation had come to the conclusion that to allot twelve articles to that question was too complicated a procedure and one which might create difficulties if it was desired to determine precisely the status of honorary consular officials. Mention was made in article 56 of honorary consular officials, although that article was part of chapter II, under the heading "Facilities, privileges and immunities of career consular officials and consular employees". Chapter III dealt solely with honorary consular officials and did not explicitly regulate the case of persons who were employed on half-time work in a consulate and were engaged at the same time in private gainful occupation. It would be a good solution to draw up a positive list and a negative list. The Japanese amendment would simplify the position with regard to honorary consular officials or employees and personnel on the same footing, and the procedure outlined would be of help to the Conference in its work.

21. The CHAIRMAN pointed out that the Committee had decided to study the Japanese proposal together with article 56. The proposal advocated a method different from that adopted by the International Law Commission. If the Committee decided to discuss the principle on which the Japanese proposal was based, it would be discussing the amendment itself. If it approved the principle, it could be considered as having approved the amendment, at least in part.

22. Mr. LEVI (Yugoslavia) pointed out that if the Committee rejected the Japanese proposal, then it would no longer lie before the Committee, and the Japanese delegation would be able to propose an amendment to each of the articles from 56 to 67.

23. The CHAIRMAN thought that if the Committee did not accept the proposed procedure it would not thereby be making a decision on the substance of the text itself.

24. Mr. VRANKEN (Belgium) said that the Committee would have to decide whether it would prefer to retain chapter III or adopt a single article. If the principle of the proposal were accepted, the substance would have to be examined; if it were rejected, the Committee would then have to study each article, from article 56 to article 67. If the method proposed was not accepted, the Japanese delegation could then submit an amendment to each article.

25. Mr. VAZ PINTO (Portugal) said that the Japanese proposal raised a question of method and of substance. He asked if the Japanese delegation would be willing to withdraw its amendment and submit amendments to each of the articles, 56 to 67.

26. Mr. BLANKINSHIP (United States of America) moved the adjournment of the meeting.

*It was so agreed.*

The meeting rose at 12.30 p.m.

### THIRTY-SEVENTH MEETING

*Friday, 29 March 1963, at 3.5 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)

*Proposal to replace articles 56 to 67 by a single article (continued)*

1. The CHAIRMAN recalled that the Committee had before it a proposal by the delegation of Japan (A/CONF.25/C.2/L.89/Rev.1) to replace articles 56 to 67 of the International Law Commission's draft by a single new article. He proposed to ask the Committee to decide, by an immediate vote, whether it wished to discuss first the approach adopted in the Japanese proposal, i.e., the replacement of articles 56 to 67 by a single article, or to proceed at once to discuss the substance of that proposal. If the Committee decided to begin by discussing the approach, and not the substance, it would vote, after the discussion, on whether it preferred the approach proposed by the Japanese delegation or that adopted by the International Law Commission. If the vote went in favour of the Japanese presentation, the Japanese proposal would become the basic text before the Committee, and amendments to it could be submitted before the substance of the proposal was discussed. If the vote went against the Japanese presentation the Committee would revert to the International Law Commission's draft as the basic text, and would proceed to discuss, and subsequently to vote on, article 56, followed by the remaining articles and the amendments thereto. In that case, however, the Chair would permit the Japanese delegation to submit amendments to any of those articles, since the substance of its proposal would not have been rejected, but merely the principle of substituting a single article for a whole series of articles.

2. Mr. RUSSELL (United Kingdom) moved that the meeting should be suspended to enable delegations to study the revised Japanese proposal.

*The motion was rejected by 25 votes to 17, with 17 abstentions.*

3. Mr. HEUMAN (France) moved the closure of the debate on the Chairman's proposal for an immediate vote.

*The motion for the closure of the debate was carried by 45 votes to 2, with 7 abstentions.*

4. The CHAIRMAN invited the Committee to decide whether it wished to begin by discussing the approach or the substance of the Japanese proposal.

*The Committee decided, by 45 votes to 1, with 10 abstentions, to begin by discussing the presentation in a single article adopted in the Japanese proposal.*

5. Mr. AMLIE (Norway) said that there was no doubt that honorary consular officials could not be treated in the same way as career consular officials. The Interna-