

# **United Nations Conference on Consular Relations**

Vienna, Austria  
4 March – 22 April 1963

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**A/CONF.25/C.2/SR.40**

**40<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)*

32. Mr. MARAMBIO (Chile) said that he could not support the first part of the Canadian amendment because that text would broaden the scope of article 57, paragraph 1. On the other hand, he supported the new article proposed by the Canadian delegation, because it would limit the exemption from duties and taxes on imports. When the various amendments were put to the vote, the Chilean delegation would vote in favour of all those which restricted the scope of the privileges and immunities granted to honorary consuls.

33. Mr. RUSSELL (United Kingdom) explained that, in his previous statement, he had referred to employees paid by the sending State or from funds provided by the sending State and not to persons whose remuneration came from a different source — for example, from the honorary consular official concerned in his private capacity.

34. Mr. HENAO-HENAO (Colombia) commended the Norwegian amendment, which took into account the amendments to the draft articles adopted by the Committee. It would facilitate the work of the Committee to take a decision on the Norwegian amendment first.

35. Mr. ADDAI (Ghana) said that the privileges and immunities set forth in article 57 were indispensable to the satisfactory exercise of consular functions. His delegation would therefore oppose any departure from that principle and would vote against the amendments of South Africa and Pakistan. On the other hand, it would vote in favour of the amendments of the United States, the United Kingdom and Norway.

36. Mrs. VILLGRATTNER (Austria) pointed out that if certain articles enumerated in paragraph 1 of article 57 were removed, it would not necessarily follow that the corresponding articles of chapter III would disappear from the text of the Convention. Those articles could be altered in accordance with the amendments which the Commission would adopt. Her delegation also wished to point out that the new paragraph 3 which the Commission had added to article 49 should not, in its opinion, apply to honorary consuls.

37. Mr. DAS GUPTA (India) noted that the delegation of Pakistan proposed in its amendment to delete from article 57, paragraph 1, the reference to article 43, which laid down immunity of jurisdiction only in respect of acts performed in the exercise of consular functions. It was true that an honorary consul was more often than not a national of the receiving State, but it should not be forgotten that the receiving State itself had accepted his appointment as honorary consul. Nor did it seem advisable to delete the reference to paragraph 3 of article 44 and thus oblige an honorary consul to give evidence concerning matters connected with the exercise of his functions, or the reference to article 49, except for paragraph 1 (b), because honorary consular officials should be privileged with regard to all their official acts.

38. The Norwegian amendment raised a question of method, but it would also have the effect of refusing to grant honorary consul facilities which were necessary for the performance of his functions. As for the Canadian amendment, he would willingly vote in favour of it, but

the enumeration contained in paragraph 2 of the proposed new article was much too vague, and some articles, such as books, office equipment and office furniture should not be included. He found it difficult to accept the amendments of the United Kingdom (L.213) and the United States (L.182) because they would broaden the scope of draft article 57 as proposed by the International Law Commission.

39. Mr. HEUMAN (France) observed that a comparison between draft article 57 and the various amendments showed that 23 texts were in question. The French delegation would oppose the inclusion in article 57 of five articles, because of their discriminatory character. It would therefore vote against the amendments to add articles 30, 31, 40 and 55 and article 54, paragraph 3, to the enumeration in paragraph 1 of article 57.

The meeting rose at 6.10 p.m.

## FORTIETH MEETING

Tuesday, 2 April 1963, at 10.20 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 57 (Regime applicable to honorary consular officials)

1. The CHAIRMAN invited the Committee to continue its consideration of article 57 and the amendments relating to it.<sup>1</sup>

2. Mr. PAPAS (Greece) said that it would be inappropriate to grant the same privileges and immunities to honorary consular officials as to career consular officials, since the honorary consular official was usually a national of the sending State, recruited on the spot, and pursuing a gainful occupation. There was a special category, sometimes described as honorary consuls, who were really officials of the sending State; they received emoluments in respect of their consular activities and did not pursue any other gainful occupation. They should be treated in every way as career consular officials, but otherwise it was necessary to maintain a sharp distinction between career and honorary consular officials. The same was true of honorary consulates which were usually located on the private or professional premises of the consul and therefore could not lay claim to the immunities to which consulates headed by a career consul were entitled.

3. He agreed that honorary consular officials should be granted the facilities accorded to career consular officials by articles 33, 34, 36, 37, 38, 39, 43, 44 (paragraph 3), 45 and 53. Moreover, article 28 should apply to consular premises and to consular officials only when engaged in the exercise of their functions. He supported

<sup>1</sup> For the list of amendments to article 57, see the summary record of the thirty-ninth meeting, footnote to para. 4.

the South African amendment (L.189) to delete reference to article 29 and article 41, paragraph 3; he also supported the second paragraph of the United Kingdom amendment (L.213) and the Australian amendment (L.154). The question of tax exemption should be dealt with in article 59. Lastly, he supported the Indian proposal to delete reference to article 49.

4. Mr. SRESHTHAPUTRA (Thailand) said that in his delegation's view the institution of honorary consuls was a very important feature of consular practice and was indispensable for a large number of States. In regulating the status of honorary consuls it was very necessary to try to find the common denominator which would strengthen the functional concept. That could only be achieved by establishing a strict balance between the rights and duties of the sending and the receiving States. His delegation would be guided by that line of approach and would be prepared to support those proposals which tended to strengthen the functional concept, while opposing those which would jeopardize it. He would support the addition of articles 30 (paragraphs 1 and 2), 31, 40, 54 (paragraph 3) and 55 to article 57 and the deletion of articles 29, 41 (paragraph 3) and 49, except paragraph 1 (b), from the article. He also supported the Canadian proposal (L.122/Rev.1) to insert a new article in the convention.

5. Mr. NALL (Israel) said the institution of honorary consuls was born of necessity, recognized by some States, rejected by others and tolerated by a few. The definitive determination of their status by the convention would have momentous consequences and required very careful consideration. There were three main difficulties: firstly, honorary consuls were not defined in the draft. That was not due to an enigmatic secretiveness or an oversight on the part of the International Law Commission; it was a deliberate omission, because the Commission had found that the domestic laws of the different countries did not fall into a uniform pattern capable of codification in a multilateral convention. The second difficulty was that no general rule could be laid down concerning honorary consular officials corresponding to that laid down for consular officials in article 22, paragraph 1 — namely, that the latter should in principle be nationals of the sending State. Thirdly, chapter III appeared to refer to two types of honorary consul: those who carried on a private gainful occupation and those who did not.

6. Mr. Žourek had confirmed that in the vast majority of cases honorary consuls were either nationals of the receiving State (90 per cent) or residents of the receiving State, and received some sort of remuneration. There seemed, therefore, to be no reason to exempt honorary consuls who engaged in a private gainful occupation from the fiscal and civil obligations laid down by the law of the receiving State. They should, on the contrary, be liable to the same obligations as other residents of the receiving State.

7. Chapter III dealt only with honorary consular officials and not with "honorary consulates". No such thing existed; there were only ordinary consulates, which might be headed by honorary consuls. A clear

distinction should therefore be made between the privileges and immunities accorded to honorary consuls and the privileges and immunities accorded to the sending State. In so far as chapter III referred to consular premises, documents and archives and their inviolability, privileges and immunities, it should be construed as referring to consulates headed by honorary consular officials.

8. It was understandable that certain States should argue that the privileges and immunities of honorary consuls should be equal to those of career consuls in every respect, because for many countries honorary consuls were particularly valuable for financial reasons and because of their special local knowledge as residents of the receiving State. But it could be no part of the Conference's intention in drafting the convention to set up a third arm of the foreign service. The institution of honorary consular officials was only a temporary device and whenever the work of a consulate exceeded the capacity of honorary officials, the sending State would appoint a career consul.

9. While the usefulness of honorary consular officials should not be underestimated, article 57 should not over-emphasize the importance of their role. He thought that the reference to sixteen articles covering their facilities, privileges and immunities constituted such an over-emphasis. He would urge the Committee to consider the question in that perspective and with those observations in mind.

10. Mr. TILAKARATNA (Ceylon) said that he was impressed by the statement made by the representative of Israel and he agreed with his thesis; but the privileges of consulates and those of consular officials were closely interwoven and could not be separated. His country was essentially a receiving State, and did not have many honorary consular officials abroad. Most honorary consular officials in Ceylon were also engaged in a private gainful occupation which provided them with a generous income so that their consular activities were generally only incidental.

11. Career consuls should enjoy the same privileges as their diplomatic counterparts. Immunities were given to honorary consular officials with the object of facilitating the performance of their functions, but many States, particularly the emerging States, had to impose restrictions for financial reasons.

12. With regard to the United States amendment (L.182) for the addition of a reference to article 30, paragraphs 1 and 2, he could not agree that inviolability should be conceded to the consular premises of an honorary consular officer since he might use the same premises for his private business and keep his business documents there; but he had no objection to the addition of paragraph 3 of article 30. Small States could not agree to the inclusion of a reference to article 31, as proposed by the United Kingdom delegation (L.213), nor to article 49, paragraph 2, as proposed by the Canadian delegation (L.122/Rev.1). An honorary consul was generally a person of means — otherwise he would not be appointed honorary consul — and it would be unfair to exempt him from taxation. On the other hand, the

inclusion of a reference to article 40 was quite acceptable. With regard to the second paragraph of the Canadian amendment proposing the insertion of a new article, his delegation could not accept the reference to office furniture and equipment, as in certain cases their own nationals were not permitted to import such things. He had no quarrel with the addition of a reference to article 55. The Indian amendment (L.200) for the deletion of the reference to article 28 did not seem useful but he agreed with the Pakistan amendment (L.214) to delete the reference to articles 43 and 44. He could not support the reference in the Norwegian amendment (L.212) to articles 60 to 66 as it was not yet known whether those articles would be included in the final draft.

13. Miss ROESAD (Indonesia) thought that too much importance had been attached to the regime of honorary consuls. Though chapter III was right in suggesting that certain facilities should be granted to honorary consuls to enable them to perform their functions, they should not be equivalent to those accorded to career consuls, particularly as most honorary consuls also carried on a private gainful occupation. She would support any amendment for the deletion of a reference to articles giving unnecessary facilities to honorary consuls. She would vote for the Indian amendment (L.200) but not for the Pakistan amendment (L.214), since article 43 referred to acts performed in the exercise of consular functions, and the same applied to the proposal to delete reference to article 44, paragraph 3. She could not support the Canadian amendment (L.122/Rev.1), which coincided with the third part of the Pakistan amendment.

14. Mr. AMLIE (Norway) said that the Committee seemed to be divided into two groups: those who regarded honorary consular officials with suspicion and sought to curtail their rights in order to avoid possible abuses, and those, to which the Norwegian delegation belonged, whose concern was rather to ensure that facilities were granted enabling honorary consular officials to perform their functions as efficiently as possible.

15. Large States did not need to have recourse to honorary consuls; they had the resources to appoint career consuls to all posts. But smaller States often could not even afford to have diplomatic representation in all countries, let alone career consuls in major cities or ports. Some smaller countries were today predominantly receiving States, and as such concerned to prevent abuses, but in the future those States might develop world-wide interests necessitating the appointment of numerous honorary consuls. The representatives of those States should bear that point in mind when dealing with the problem before the Committee. Honorary consuls were not a phenomenon of yesterday but a reality of tomorrow.

16. His government had urged him to do his best to see that the text finally adopted by the Conference retained as a minimum the privileges and immunities provided by the International Law Commission's draft. He therefore favoured the proposals to amplify the enumeration in article 57 of articles which should apply

also to honorary consular officials and consulates headed by such officials. Of the proposed additions to article 57, he especially supported the United Kingdom proposal to include a reference to article 54, paragraph 3. He did not understand why the Indian amendment proposed to delete a reference to article 28. A flag or a coat-of-arms helped the public to find its way to the consulate. If the Pakistan amendment to delete a reference to article 43 and paragraph 3 of article 44 were adopted, the Conference might as well delete the whole of chapter III, because the privileges and immunities contained in article 43 and paragraph 3 of article 44 constituted the whole basis of the activity of honorary consular officials. To adopt that amendment would be to destroy the institution of honorary consular officials. With regard to the reference to article 49, he agreed that honorary consular officials should not be free to import articles for personal use. That was expressed in the International Law Commission's draft. Articles for the official use of a consulate headed by an honorary consular official should, however, be exempt from customs duties, a point made in his delegation's amendment which referred explicitly to article 49, paragraph 1 (a); that became even more clear in the Canadian delegation's proposal for the insertion of a new article to that effect. He asked the Canadian representative to include in paragraph 2 of that proposal a reference to information material as well.

17. He requested the Chairman to put the Canadian amendment to article 57 to the vote. If it were adopted, the Norwegian amendment would automatically drop out, but if the vote on the Canadian amendment were postponed, he would have to retain that point in his own amendment.

18. The attempt in the United Kingdom and Japanese amendments to legislate on the position of employees at consulates headed by an honorary consular official threatened to upset the structure of the draft convention. The position of consular employees was, according to the draft, to be the same, irrespective of whether the employee concerned worked at a consulate headed by a career official or at one headed by an honorary official. He would strongly urge against embarking upon the dangerous adventure of changing the structure of the draft in that respect. The clerks in shipping offices mentioned by the United Kingdom representative as employees of honorary consular officials were not consular employees at all, but private staff.

19. So far as the new technical approach was concerned, the Norwegian amendment was more far reaching than the Australian and Japanese amendments, and he therefore asked the Chairman to call for a vote on the Norwegian amendment before the corresponding parts of the Australian and Japanese amendments.

20. Mr. DE CASTRO (Philippines) said he wished to refer to article 69 because, as there was no definition of honorary consuls, the term could apply equally well to nationals of the sending State and nationals of the receiving State. The International Law Commission's article 69 referred to members of consulates who were nationals of the receiving State. A number of amend-

employees who were nationals of, or permanent residents additional classes of honorary consular officials — i.e., permanent residents of the receiving State and honorary consular officials carrying on gainful occupations. It seemed that article 57 would apply to very few honorary consular officials. They would include only nationals of the sending State who neither carried on a gainful occupation nor sought permanent residence in the receiving State and received no salary, and similarly-placed nationals of third States. He thought there were no such persons.

21. With regard to article 57, his delegation favoured all proposals to increase the scope of the privileges and immunities of honorary consular officials. The officials dealt with by the article only differed from career consuls in that they drew no salary. He found the Norwegian amendment satisfactory and he favoured some of the provisions of the Canadian proposal. But he feared that when they came to consider article 69 they might find that all their work on article 57 had been in vain.

22. Mr. WESTRUP (Sweden) said he had essentially the same attitude to the problem as the representative of Norway for he too represented one of the countries which made extensive use of honorary consuls. He had been glad to observe from the discussion that many representatives — even those of larger countries like France and the United States of America — seemed to understand the difficulties of those countries. Other representatives, however, seemed to regard honorary consuls as rather suspect and he appealed to them to consider carefully if their attitude was really justified. Sweden had a very large number of consulates in ports and commercial centres all over the world; but it was impossible to provide them all with career consuls and honorary consuls were therefore essential. His government set great store by those honorary consuls, who were carefully chosen and had amply proved their worth and integrity. Their duties were concerned with shipping and commercial relations and, far from being a source of suspicion, they did useful work in fostering good relations between sending and receiving State. If friendly relations existed between receiving and sending State and the receiving State had given the exequatur, it seemed unreasonable to suggest that the honorary consul was a subject of suspicion. Objections had been raised concerning the use of the national flag, but it was used not as a personal attribute of the honorary consul but solely to help nationals needing assistance to find their consulate. The system of honorary consuls might seem unnecessary to some States, but those same States might well one day need such consuls themselves.

23. The merits of the Norwegian amendment had been fully described and he would vote for it. Of the other amendments he would support the generous but not the restrictive ones.

24. Mr. LEVI (Yugoslavia) said that he considered the amendments submitted by Japan (L.217), the United Kingdom (L.213) and the United States of America (L.182) out of order, for they were based on the method which the Committee had rejected in the case of the

Japanese amendment (L.89/Rev.1) which proposed to replace twelve articles by one. He would therefore vote against them. With regard to the Canadian amendment (L.122/Rev.1) he would accept the deletion in the first part, now that it had been explained by the representative of Norway, but he saw no reason for adding a reference to article 49, paragraph 2. With regard to the amendment of Pakistan (L.214) to delete the reference to articles 43, 44 and 49, he endorsed the Indian representative's statement at the previous meeting on the reasons why the reference to articles 43 and 44 should not be omitted. He would agree to the deletion of the reference to article 49 if the Norwegian representative's suggestion with regard to the Canadian amendment were adopted, otherwise the reference should be retained. He could not support the South African amendment (L.189) as the reference to article 41, paragraph 3, had important repercussions.

25. The CHAIRMAN said he could not agree with the Yugoslav representative that the amendments of Japan, the United Kingdom and the United States of America were out of order; he would invite the Committee to vote on them at the appropriate time.

26. Mr. CAMPORA (Argentina) said that in his opinion, honorary consular officials should not have the same privileges and immunities as career consular officials but they should have a status to enable them to carry out their duties. He would therefore support any proposal which would reconcile the interests of the receiving State with the functions of honorary consular officials. He would vote in favour of the method proposed in the Norwegian amendment (L.212) and for the new article proposed in the Canadian amendment (L.122/Rev.1).

27. Mr. VAZ PINTO (Portugal) strongly supported the Norwegian amendment, the presentation of which was superior to that of the International Law Commission. He hoped that the Committee would be given an opportunity to vote on it. He also supported the French representative's suggestion at the previous meeting that the Committee should vote on the questions raised in the amendments and not on the amendments themselves.

28. He agreed with the views of the representative of Norway since he represented one of the countries which was concerned more with enabling the honorary consul to carry out his duties than with the possibility of abuse. The acceptance of an honorary consul by the receiving State implied that it was obliged to see that he could carry out his duties. The privileges provided by article 57 as drafted by the International Law Commission might not be absolutely essential for consular functions but they would be of great help. He was opposed to amendments that would limit those privileges and immunities. In addition to the arguments already stated in the discussion, the desire not to increase privileges was no reason for denying them altogether. A very important point to be borne in mind when voting was that article 57 was concerned only with honorary consuls who were not nationals of the receiving State — a very small proportion of the category as a whole. Most honorary consuls were nationals of the receiving State and would

ments to that article now proposed that it should govern be dealt with under article 69. He also agreed with the representative of Norway that honorary consuls were usually appointed for practical reasons which were often of a financial nature and it would be unfair to prevent newly independent countries and countries with limited resources from using the services of foreign nationals to establish the consulates they needed.

29. Mr. BLANKINSHIP (United States of America) said that the word "likewise" in the first paragraph of the Norwegian amendment was ambiguous. He suggested the wording "to the extent applicable to consulates".

30. Mr. MARESCA (Italy) pointed out that the effect of the amendments to article 57 would be to upset the balance of chapter III. The International Law Commission had designed chapter III so that in certain cases precise rules were laid down but in others it was only necessary to refer to particular articles governing career consular officials.

31. Mr. AMLIE (Norway), replying to the United States representative, said that the word "likewise" was taken from the International Law Commission's text; it should be kept because it established a link between the earlier articles applying to career consular officials and the provisions concerning honorary consular officials. If it were deleted, there was a risk of misunderstanding if article 57 were read out of the context of the whole convention. The additional words proposed by the United States representative would be inappropriate because the articles listed in paragraph 1 of his amendment referred to consulates, not to consular officials.

32. Mr. KANEMATSU (Japan) strongly supported the statement by the representative of Israel on the system of honorary consuls. He fully appreciated the needs of governments which depended on the institution of honorary consuls, as explained by the representatives of Norway and Yugoslavia. The Japanese amendment was intended solely to remedy certain inconsistencies in the International Law Commission's text concerning the articles which would place the honorary category on the same footing as the career category, and the articles which would discriminate between the two. His amendment would make it clear that the articles in chapter II did not apply to members of the families of honorary consular officials or to employees of a consulate headed by an honorary consular official. Paragraph 3 of his amendment covered part of paragraph 1 of the Norwegian amendment.

33. Mr. BLANKINSHIP (United States of America) said it should be clearly understood that after the voting on article 57, representatives would be free to submit amendments to the next articles, for it was impossible at the moment to see how the decision on article 57 would affect them. His whole attitude, in voting and in introducing his amendments, had been governed by the assumption that permanent residents would be included under article 69. He believed that the Committee was discussing privileges for individuals as well

as for consulates; for example, article 28 concerned the use of the flag by the individual; and article 34 concerned freedom of movement and travel. It seemed to him that it was possible that, by referring to some articles as dealing with consulates, something else was being inserted into the convention. His attitude was not prejudicial to honorary consular officials; he merely believed that the matter should be examined very carefully.

34. The CHAIRMAN said that the question of amendments to the other articles would be considered after the voting on article 57 and the amendments to that article. He would explain the implications of each amendment at the time of each vote.

35. Mr. HABIBUR RAHMAN (Pakistan) said that the best of all the statements on honorary consuls was the one by the representative of Israel, which went to the core of the matter. The representative of Norway was mistaken in thinking that representatives proposing the deletion of certain articles looked upon honorary consuls as black sheep. It must be borne in mind that the Convention was to provide for future as well as existing conditions and he understood why the representative of Norway wished honorary officials to be given as many privileges as possible.

36. The deletion of article 43 and article 44, paragraph 3, as proposed in his amendment (L.214) would not, as the Indian representative had suggested, hamper the functioning of honorary consuls, for the vast majority of honorary consuls were nationals of the receiving State. If such persons claimed the privileges in question, they might put the receiving State in a difficulty and even cause trouble between the receiving State and the sending State. In any case, the privileges were not very great. With regard to paragraph 49, which he also proposed should be deleted, he agreed with the views of the Indian representative and did not consider that honorary consuls should be exempt from customs duties. He asked that the Committee should vote separately on the deletion of each of the three articles.

37. Mr. SMITH (Canada) said that at the previous meeting the Austrian representative had drawn attention to a point which had escaped his attention: namely, that it was provided that personal luggage accompanying consular officials and their families should be exempt from customs inspection. His amendment to article 57 was thus a little further removed from the International Law Commission's draft than he had indicated in presenting it, but his action at the previous meeting would not have been affected thereby.

38. He regretted that he could not accept the suggestion made by the Norwegian representative earlier in the present meeting. As he had already mentioned, he would accept the addition of the words "at the instance of" suggested by the South African representative.

39. At the previous meeting, the representative of the Federation of Malaya had asked why his amendment made no reference to article 49 (1) (a). He explained that that paragraph referred to articles for the official use of the consulate and he feared that the privilege might be open to abuse by honorary consular officials or their

employees who were nationals of, or permanent residents in, the receiving State. It was important that taxes and duties should be applied equally to all residents of the receiving State. Moreover, however restrictive the Committee might wish to make article 69 — and he hoped that it would include permanent residents of the receiving State — it would not affect the customs privileges for the consulate, and article 57 was the only place to provide against possible abuse in that respect.

40. Mr. RUSSELL (United Kingdom) said that in his second statement during the debate the Norwegian representative had reverted to the question of consular employees. The experience of different countries no doubt varied; in the experience and practice of the United Kingdom, however, there certainly existed a category of consular employees which were analogous to honorary consular officials rather than to career consular officials. An example was that of a clerk in a shipping office of which the manager was an honorary consul; that was, of course, on the assumption that the clerk received remuneration for his consular services either direct from the sending State or from the honorary consul out of sums provided by the sending State. The question was perhaps primarily one of terminology; however, it was not possible to be definite in matters of terminology pending the adoption of article 1. Whatever the outcome of discussions elsewhere on article 1 it would be necessary at one place or another in the convention to make appropriate provision for that category of employee.

41. It was not exact, as had been suggested by the representative of Yugoslavia, that the United Kingdom amendment was intended to reintroduce a principle included in the Japanese proposal contained in document (L.89/Rev.1); it was intended merely to fill certain gaps in the International Law Commission's draft and not to introduce a different structure.

42. It had been said that some of the larger countries regarded the institution of honorary consuls with disfavour; that was certainly not the case so far as his country was concerned. The United Kingdom appointed a number of honorary consular officials in foreign states and received large numbers of honorary consuls in its own territories; it recognized that not all States could rely wholly on career consuls and that honorary consuls were an indispensable element in international relations. Given the existence of the institution of honorary consuls, it followed that honorary consuls should be granted the appropriate facilities, privileges and immunities for the performance of their duties. The question that arose was: what was the correct criterion? In the opinion of his delegation the answer was clear. The criterion to apply was what was, strictly speaking, necessary for the effective performance of consular functions? It would be wrong to give more than was strictly necessary; equally, it would be wrong to give less.

43. Mr. KHOSLA (India) said, in reply to certain comments, that his delegation's amendment was not intended to interfere in any way with the exercise of consular functions. To allow the honorary consul exemption from customs duties in accordance with article 49,

however, would mean that the sovereignty of the receiving State would not apply to him. It would be inadmissible to create a separate class of persons on the sole ground that they were honorary consuls. In practice, it was quite impossible to distinguish between articles which the honorary consul might wish to import for his private use and those the import of which was necessary for official purposes. Apart from the principle involved, to allow honorary consuls to benefit from exemption would in practice affect the less developed countries to a much greater extent than the more highly developed countries. The deletion of any reference to article 49 from article 57 was of such importance to his delegation that he would request a roll-call vote to be taken.

44. Mr. DRAKE (South Africa) requested that a separate vote should be taken on the Canadian proposal (L.122/Rev.1) to add a reference to article 49, paragraph 2.

45. The CHAIRMAN said that he would first ask the Committee to vote, separately in the case of each article, on the proposals for the deletion from article 57 of references to other articles.

*The Indian proposal (A/CONF.25/C.2/L.200) to delete the reference to article 28 was rejected by 55 votes to 13, with 9 abstentions.*

*The South African proposal (A/CONF.25/C.2/L.189) to delete the reference to article 29 was rejected by 29 votes to 28, with 21 abstentions.*

*The South African proposal (A/CONF.25/C.2/L.189) to delete the reference to article 41, paragraph 3, was rejected by 43 votes to 17, with 15 abstentions.*

*The Pakistan proposal (A/CONF.25/C.2/L.214) to delete the reference to article 43 was rejected by 57 votes to 11, with 8 abstentions.*

*The Pakistan proposal (A/CONF.25/C.2/L.214) to delete the reference to article 44, paragraph 3, was rejected by 59 votes to 12, with 6 abstentions.*

46. The CHAIRMAN invited the Committee to vote on the Indian proposal for the deletion of any reference to article 49. The vote would decide whether or not the Committee accepted the proposal of Canada (A/CONF.25/C.2/L.122/Rev.1) and Pakistan (A/CONF.25/C.2/L.214) to delete from article 57 the words "49, with the exception of paragraph (b)".

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

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

*In favour:* Libya, Mali, Nigeria, Pakistan, Philippines, Saudi Arabia, Sierra Leone, South Africa, Syria, Thailand, Tunisia, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Republic of Viet-Nam, Algeria, Australia, Ceylon, Federation of Malaya, France, Greece, Guinea, India, Indonesia, Iran, Israel, Lebanon.

*Against:* Liechtenstein, Luxembourg, Mexico, Mongolia, Netherlands, New Zealand, Norway, Panama, Peru, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Ukrainian Soviet Socialist Republic, Union

of Soviet Socialist Republics, Upper Volta, Uruguay, Yugoslavia, Argentina, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Chile, Colombia, Congo (Leopoldville), Costa Rica, Cuba, Czechoslovakia, Denmark, Finland, Federal Republic of Germany, Ghana, Hungary, Italy, Liberia.

*Abstaining:* Austria, Cambodia, Canada, China, Ecuador, El Salvador, Honduras, Ireland, Japan, Republic of Korea.

*The Indian proposal (A/CONF.25/C.2/L.200) to delete all reference to article 49 was rejected by 38 votes to 29, with 10 abstentions.*

47. The CHAIRMAN invited the Committee to vote on proposals to add references to other articles in article 57.

*The United States proposal (A/CONF.25/C.2/L.182) to add a reference to article 30, paragraphs 1 and 2, was rejected by 39 votes to 23, with 13 abstentions.*

*The United Kingdom proposal (A/CONF.25/C.2/L.213) to add a reference to article 31 was rejected by 34 votes to 29, with 13 abstentions.*

*The proposals by the United States (A/CONF.25/C.2/L.182) and Japan (A/CONF.25/C.2/L.217) to add a reference to article 40 was rejected by 40 votes to 23, with 12 abstentions.*

*The proposal by Canada (A/CONF.25/C.2/L.122/Rev.1) to add a reference to article 49, paragraph 2, was rejected by 43 votes to 17, with 15 abstentions.*

48. The CHAIRMAN pointed out that the adoption of the United Kingdom proposal to add a reference to article 54, paragraph 3, would imply the deletion of article 65 of the International Law Commission's draft.

*The United Kingdom proposal (A/CONF.25/C.2/L.213) to add a reference to article 54, paragraph 3, was adopted by 31 votes to 30, with 15 abstentions.*

*The proposals by the United Kingdom (A/CONF.25/C.2/L.213) and Japan (A/CONF.25/C.2/L.217) to add a reference to article 55 was adopted by 41 votes to 17, with 18 abstentions.*

49. Mr. DE CASTRO (Philippines) asked whether the decision to include a reference to article 55 implied the deletion of article 66 of the International Law Commission draft.

50. Mr. JESTAEDT (Federal Republic of Germany) pointed out that article 66 incorporated a principle which had not been voted on and which his delegation considered to be of great importance since it referred to the duty of honorary consuls "not to misuse their official position for the purpose of securing advantages in any private activities in which they may engage".

51. The CHAIRMAN suggested that when the Committee came to consider article 66 it should vote, not on the article as a whole, but on the inclusion of the principle to which the representative of the Federal Republic of Germany had referred, and which would, if approved, be taken into account by the drafting committee.

*It was so agreed.*

52. Mr. HEUMAN (France) said that a similar procedure might be appropriate in connexion with article 65 since article 54, paragraph 3, concerned freedom of communication to a very limited extent.

53. The CHAIRMAN suggested that it would be preferable to consider the matter when the Committee came to discuss article 65.

*It was so agreed.*

54. Mr. HEUMAN (France) assumed that the express rejection by the Committee of the Canadian proposal to include a reference to article 49, paragraph 2, implied that the reference in article 57, paragraph 1, would be to article "49, with the exception of paragraph 1 (b) and paragraph 2".

55. Mr. LEVI (Yugoslavia) objected that the Committee had rejected both parts of the Canadian proposal for the amendment of article 57, paragraph 1, and that the reference should therefore remain as in the International Law Commission text, which would mean that article 49 "with the exception of paragraph 1 (b)" would apply to honorary consular officials.

56. Mrs. VILLGRATTNER (Austria) pointed out that a new paragraph 3 had been added by the Committee to article 49. In her view, a separate vote should be taken on the inclusion of a reference to that paragraph in article 57.

*The Committee decided, by 55 votes to 7, with 12 abstentions, to exclude article 49, paragraph 3, from the list of articles applying to honorary consular officials.*

57. Mr. OCHIRBAL (Mongolia), supported by Mr. VRANKEN (Belgium), said that there seemed to have been some misunderstanding with regard to the vote on the Canadian proposal, since it had been opposed by delegations that wished the provisions of article 49, paragraph 2, to be extended to honorary consuls.

58. The CHAIRMAN said that the matter would be discussed at the next meeting.

The meeting rose at 1.40 p.m.

#### FORTY-FIRST MEETING

*Tuesday, 2 April 1963, at 3.40 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 57 (Regime applicable to honorary consular officials) (continued)*

1. The CHAIRMAN said that, as some misunderstanding had arisen at the preceding meeting as to the meaning to be attached to votes on the paragraphs or sub-paragraphs of article 49 to be mentioned in the enumeration in article 57, paragraph 1, the best course would be to take each paragraph and sub-paragraph of