

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.2/SR.42

42nd 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)

The phrase was rejected by 25 votes to 19, with 18 abstentions.

The joint amendment by the United States and South Africa (A/CONF.25/C.2/L.184), as so amended, was adopted by 50 votes to 1, with 16 abstentions.

Article 59, paragraph 2, was adopted by 61 votes to none, with 4 abstentions.

Article 59 as a whole, as amended, was adopted by 58 votes to 1, with 6 abstentions.

60. Mr. VRANKEN (Belgium) said that he had voted against paragraph 1 as proposed by the United States because under that paragraph the premises of honorary consuls would receive greater protection than those of career consuls.

61. Mrs. VILLGRATTNER (Austria) asked that the drafting committee be instructed to bring the wording of paragraph 2 into line with that of the new paragraph 1.

The meeting rose at 6.5 p.m.

FORTY-SECOND MEETING

Wednesday, 3 April 1963, at 10.10 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 60

(Inviolability of consular archives and documents)

1. The CHAIRMAN invited the Committee to consider article 60, to which amendments had been submitted by the Netherlands (A/CONF.25/C.2/L.20), Austria (A/CONF.25/C.2/L.53) and South Africa (A/CONF.25/C.2/L.221).

2. Mr. DRAKE (South Africa) introduced his amendment in which he said it was proposed to amplify the wording in the International Law Commission's draft of article 60 to include papers and documents other than those mentioned in the text, which was too specific. The honorary consular official was almost invariably a citizen, or at least a permanent resident of the receiving State, and would in either case usually be occupied in carrying on his own private business; his duties as an honorary consul would normally be of a part-time character only. It might reasonably be assumed, therefore, that he would have on his business premises — which would probably also house the consulate as well — material of a non-official character, as was recognized in the article. The text did not go far enough, however, for it did not stipulate that the consular archives and documents must be kept separate from all non-official material or property which might happen to be on the premises. The draft article did not mention the possibility that the property of third parties, employed neither in the consulate nor in the business in which the honorary consul might be associated, might from time to time

come to be on the premises as a normal consequence of the honorary consul's business activities.

3. Even if article 69 were to be amended subsequently to include permanent residents as well as nationals of the receiving State, it did not cover the inviolability of consular archives and documents, which was an immunity attached not to the individual but to the archives themselves. It would therefore in no way affect the operation of article 60, which had a wide application extending to all honorary consulates, whether the honorary consul concerned was a national or a permanent resident of the receiving State, or a national of the sending State or of a third State. It was therefore all the more necessary to consider the article with care.

4. Mr. RUSSELL (United Kingdom) supported the South African amendment.

5. Miss LAGERS (Netherlands) explained that the amendment submitted by her delegation (L.20) concerned drafting only, since it proposed the replacement of the word "consul" by "consular official".

6. The CHAIRMAN said that the drafting committee would take the proposed change into consideration, and that it would therefore be unnecessary to put the Netherlands amendment to the vote.

7. Mrs. VILLGRATTNER (Austria) withdrew her delegation's amendment (L.53), since a similar amendment had not been upheld in connexion with an earlier article.

The South African amendment (A/CONF.25/C.2/L.221) was adopted by 48 votes to none, with 4 abstentions.

Article 60, as amended, was adopted unanimously.

Article 61 (Special protection)

8. The CHAIRMAN announced that the United States proposal (L.11) to delete article 61 had been withdrawn since it had been introduced as dependent on the adoption of the United States proposal (L.182) to add a reference to article 40 in article 57, which had, however, been rejected by the Committee at its fortieth meeting. The Committee therefore had before it amendments to article 61 submitted by Canada (A/CONF.25/C.2/L.121), South Africa (A/CONF.25/C.2/L.190) and India (A/CONF.25/C.2/L.208).

9. Mr. LEE (Canada) said that the International Law Commission's draft of article 61 on the receiving State's duty to accord "special protection" to an honorary consular official suggested that an honorary consular official should enjoy a more privileged status than citizens of the receiving State. In the view of his delegation, the criterion should be the honorary consul's need for protection which, it was recognized, might in certain circumstances be greater than that of the ordinary citizen. His delegation had therefore submitted an amendment to provide that the honorary consul should be accorded such additional protection as he might require by reason of his official position. In order to expedite the Committee's work, however, his delegation had decided, after consultation with the South

African delegation, to sponsor a joint amendment, the text of which was that contained in the amendment submitted by South Africa with the deletion of the word "special" before "protection". It was hoped that the delegation of India, which had submitted a similar amendment, might also agree to join in sponsoring the joint amendment.

10. Mr. KHOSLA (India) said that his delegation would joint South Africa and Canada in sponsoring the amendment, which adequately expressed the intention of the Indian amendment.

11. Mr. DRAKE (South Africa) said that it seemed advisable to reduce to reasonable limits the obligation resting on the receiving State to give adequate protection to an honorary consular official. The International Law Commission's draft of article 61 would seem to imply the necessity for a certain measure of continuing vigilance on the part of the authorities of the receiving State; they would have a permanent obligation to keep a watchful eye over the safety of the honorary consular official. Such an obligation, stated in such equivocal terms, was unreasonable and unnecessary. It would be only in exceptional circumstances that the honorary consular official would in fact require protection: in that unfortunate event, he must be able to look to the receiving State for it, but as an honorary consular official, he could not ask more than that and indeed, would almost certainly not find it necessary to do so. The joint amendment sought to strike a reasonable balance by lessening, but by no means removing, the obligation contained in the International Law Commission's draft.

12. Mr. HEUMAN (France) said that the approval either of the International Law Commission's text or of the joint amendment would result in the paradox that an honorary consular official was accorded a greater degree of protection than a career consular official. Article 40 as approved by the Committee confined the obligation of the receiving State in regard to career consular officers to treating them "with due respect": the reference in the original text to "special protection" had been deleted. Moreover, the title of article 61, "Special protection", would not correspond to the text of the joint amendment, nor did the title of article 40 correspond to the revised text approved by the Committee.

13. Mr. LEVI (Yugoslavia) did not agree that the joint amendment, which his delegation accepted, would accord greater protection to honorary consuls than was accorded to career consuls under article 40. The joint amendment provided that the receiving State should accord to an honorary consular official such protection "as may be required by reason of his official position", while article 40 provided that the receiving State should "take all appropriate steps" to prevent any attack on the person, freedom or dignity of career consular officers.

14. Mr. BLANKINSHIP (United States of America) said that it was clear that the joint amendment, particularly if read in conjunction with the International Law Commission commentary on article 61, would give

less, and not more, protection to the honorary consular official. His delegation would therefore support the amendment.

15. Mr. MARESCA (Italy) endorsed that view.

16. The CHAIRMAN said that the titles of articles 40 and 61 would be considered by the drafting committee in relation to the texts approved.

17. He invited the Committee to vote on the joint proposal to amend article 61 to read: "The receiving State is under a duty to accord to an honorary consular official such protection as may be required by reason of his official position."

Article 61, as so amended, was adopted by 50 votes to 1, with 11 abstentions.

Article 62 (Exemption from obligations in the matter of registration of aliens and residence permits)

18. The CHAIRMAN invited the Committee to consider article 62 and the amendments thereto submitted by Austria (A/CONF.25/C.2/L.54) and Japan (A/CONF.25/C.2/L.225).

19. Mrs. VILLGRATTNER (Austria) and Mr. KANEMATSU (Japan) withdrew their amendments in view of the decisions already taken by the Committee with regard to chapter III.

The International Law Commission's draft of article 62 was adopted by 58 votes to 2, with 4 abstentions.

20. Mr. JESTAEDT (Federal Republic of Germany) explained that his delegation had voted against article 62 which had no meaning since there appeared to be no honorary consuls who did not carry on a private gainful occupation.

Article 63 (Exemption from taxation)

21. The CHAIRMAN drew the Committee's attention to the amendments to article 63 submitted by India (A/CONF.25/C.2/L.209) and Portugal (A/CONF.25/C.2/L.222).

22. Mr. KHOSLA (India) said that his delegation proposed the deletion of article 63. Honorary consular officials were normally chosen from among persons with a substantial earning capacity, who therefore paid considerable tax. If they were granted exemption from taxation, it might lead to competition for appointment as honorary consuls and would also have the undesirable effect of creating a special privileged class of citizens with consequent discrimination against other citizens.

23. Mr. VAZ PINTO (Portugal) introduced his delegation's proposal to add a sentence to article 63 providing that if the honorary consular official did not carry on a gainful private occupation, he should enjoy also the exemption from customs duties as provided in article 49, paragraph 1 (b). It was true that the International Law Commission had given separate consideration to exemption from taxation and exemption from customs duties. In his view, however, customs duties were

generally regarded as taxes and it might not be considered inappropriate to include a reference to customs duties in an article headed "Exemption from taxation". Alternatively, the Committee might wish to amend the title of article 63 if it were decided to include the proposed reference to customs duties, or it might prefer that the Portuguese amendment should be included in the convention as a separate article. The Committee had decided, in regard to article 57, that article 49, paragraph 1 (b), should be excluded from the list of articles applying to honorary consular officials. Article 57, however, dealt with the facilities, privileges and immunities to be granted to honorary consular officials in general, while the Portuguese amendment was intended to cover the very special case of honorary consuls who were not nationals of the receiving State — those who were came within the scope of article 69 and not that of article 63 — but who did not carry on any gainful private occupation. It was recognized that the category was not common, but it did exist. It was sometimes found expedient for reasons of economy, by the Portuguese Government, for example, to appoint such honorary consuls who, although they were not recruited from the limited foreign service staff, were sent by the State to exercise consular functions abroad, they did not carry on a gainful private occupation but devoted themselves exclusively to their consular functions. They were therefore much nearer to career consular officials than honorary consular officials, since they lived exclusively on the remuneration received from the State they served.

24. The proposed amendment was not based on financial considerations but was submitted with a view to avoiding difficulties which might arise even when relations between the sending and receiving States were very friendly. It had happened, for instance, that the regulations in a receiving State made the import of cars difficult, particularly for foreigners. The officials concerned were not considered as career consular officials by the receiving State, but as honorary consular officials. The legislation of the receiving State, however, recognized only honorary consular officials who were nationals of the receiving State. The honorary consular officials concerned, therefore, did not even enjoy the privileges of the ordinary citizen, and when the authorities generously decided to allow the import of cars, under certain conditions, by diplomatic and consular officials who carried on no gainful private occupation, the officials concerned were in an invidious position. Although the authorities of the receiving State had shown great understanding and co-operation, considerable difficulties had arisen which had been very hard to solve. His delegation recognized that its amendment, which in itself seemed reasonable, applied to a very limited number of cases only; it merely contained a special provision to cover the special cases to which he had referred and did not contradict any of the principles already approved by the Committee.

25. His delegation did not share the view expressed by some members of the Committee that too great a measure of facilities, privileges and immunities was being conferred on honorary consular officials. It must

be remembered that so far the Committee had been dealing only with honorary consular officials who were not nationals of the receiving State. It was unfortunate that the structure of the Convention was such that article 69, which regulated the situation of honorary consular officials who were nationals of the receiving State, could not have been discussed earlier, for that would have made the situation much clearer. His delegation strongly supported the proposals that article 69 should be amended to include permanent residents of the receiving State.

26. Mr. ALVARADO GARAICOA (Ecuador) supported the Indian proposal to delete article 63 which would grant special privileges to a particular class in the receiving State, of which honorary consuls were usually nationals. His delegation would therefore vote against the International Law Commission's text and the Portuguese amendment.

27. Mr. JESTAEDT (Federal Republic of Germany) suggested that the best solution for the case described by the Portuguese representative would be for the Portuguese Ministry of Foreign Affairs to confer on the persons concerned the status of career consular officials, and thus obviate all the difficulties to which reference had been made.

28. Mr. BLANKINSHIP (United States of America) said that, although article 63 appeared to have no great significance, his delegation would favour its retention on the understanding that article 69 would be amended to include permanent residents of the receiving State. His delegation had accepted the preceding article, and would support the following article, on that same understanding. The effect of the tax exemption granted by article 63 would then be reduced to a bare minimum in contrast with the broader tax exemption granted to career consular officials in article 48. Moreover, article 63 granted no exemption from taxation to members of families of honorary consular officials.

29. Mr. MARESCA (Italy) said that article 63 was based on the principle of non-interference by the receiving State in the internal affairs of a consulate, for to tax the remuneration and emoluments which an honorary consular official received from the sending State would constitute interference. It was known that most honorary consular officials did not receive emoluments in the strict sense, but merely financial help to enable them to carry out their functions. The deletion of the article would obstruct the functioning of consulates headed by honorary consuls for whom such financial aid from the sending State was necessary.

30. He sympathized with the Portuguese amendment which was intended to meet a situation where certain consuls described as honorary were not honorary consuls in the traditional sense — i.e., persons with a private gainful occupation. If the Committee could adopt a definition of honorary consuls sufficiently wide to include the category mentioned by the Portuguese representative, the case would be settled automatically. In the absence of such a definition, the Portuguese amendment was justified.

31. Miss ROESAD (Indonesia) said that her delegation preferred the International Law Commission's text. She agreed with the Italian delegation that the remuneration of honorary consuls was a matter for the sending State and that any emoluments paid to them to facilitate the exercise of their functions should be exempt from taxation. That would not amount to discrimination between nationals of the receiving State, as the Indian representative had suggested; that point was made clear in the International Law Commission's commentary on article 69. For those reasons she could not support the Indian amendment and she was also unable to support the Portuguese amendment.

32. Mr. ZELLINGER (Costa Rica) said that he did not understand article 63, which exempted honorary consul officials from dues and taxes on the remuneration or emoluments they received from the sending State. If consuls received remuneration from the sending State they were not honorary consuls but career consuls.

33. Mr. NASCIMENTO e SILVA (Brazil) fully appreciated the reasons for the two amendments; but with regard to the Portuguese amendment he agreed with the representative of the Federal Republic of Germany that the question could be more easily solved by the Portuguese authorities than by the Conference. The question was internal, not international.

34. With regard to the Indian amendment, he thought it desirable to retain article 63. It was quite possible that article 69 would be amended to include permanent residents of the receiving State; in that case article 63 would refer to only a very limited number of cases. Moreover, the receiving State had no tax control over sums paid as remuneration to honorary consuls by the sending State. In any case, the sums involved were small for, if a consular post headed by an honorary consul received large sums, it would be transformed into a career consulate. The Indian amendment was a precaution against the possibility that the amendments submitted to article 69 would not be approved, but he thought it was better to retain the article than to leave a gap which might lead to abuse.

35. Mr. RUSSELL (United Kingdom) said that he had listened with great interest to the Portuguese representative's statement; but he could not support this proposal. As many speakers had pointed out, the traditional distinction between *consules missi* and *consules electi* had become blurred under modern conditions. His delegation thought that the category of consular officials referred to by Portugal were properly speaking career consuls, not honorary consuls. He agreed with the representatives of the Federal Republic of Germany and Brazil that the question could be settled internally and was not a matter for an international agreement.

36. His delegation could not agree with the Indian proposal to delete the article. Honorary consular officials were appointed to perform certain functions on behalf of the sending State, and it was the practice of many if not most States to make some kind of payment to them in return for the performance of those functions. Some States which took the view that such emoluments

should be treated as exempt from liability to taxation considered that the relevant principle was that one State should not tax another. Other States, including the United Kingdom, preferred to consider it as deriving from the principle that it was the exclusive right of the sending State to impose direct taxation on its own officials, whether serving at home or abroad, in respect of their official emoluments. However, whatever the theoretical basis, it was a very widespread usage that honorary consuls were not taxed in respect of their official emoluments. The United Kingdom delegation was therefore in favour of the International Law Commission's draft, which reflected prevalent international usage and seemed right and desirable in principle.

37. Mr. AMLIE (Norway) pointed out that article 63 referred to "remuneration and emoluments". "Remuneration" clearly meant the salary. It was not clear whether the expression "emoluments" included reimbursement for expenses incurred in the exercise of consular functions. That was important because article 69 laid down that honorary consular officials who were nationals of the receiving State should not enjoy the privileges granted under article 63. Though honorary consuls who were nationals of the receiving State should not be exempted from taxation on their remuneration, reimbursement of expenses incurred in the exercise of their functions should be exempted.

38. Mr. EL KOHEN (Morocco) said that he agreed with the substance of the arguments of the representatives of India and Ecuador, but disagreed with their method of settling the matter. Article 63 did discriminate between citizens of the same State and therefore contravened the principle of equality before the law of all citizens, the more so because honorary consular officials were generally men of means. Nevertheless, he did not think that the article should be deleted. He was opposed to the wholesale deletion of articles; if too many articles were deleted the Convention would be reduced to triviality. The International Law Commission's commentary on article 63 stated that the provisions of that article did not apply to honorary consular officials who were nationals of the receiving State. He suggested that the Indian representative, instead of proposing the deletion of the article, should propose its amendment by incorporating those words from the International Law Commission's commentary.

39. Mr. CHAVEZ VELASCO (El Salvador) said that his was a small country which employed many honorary consuls and it was therefore obliged to consider the matter from every angle. It was obvious that honorary consuls should enjoy the necessary minimum of privileges and immunities to enable them to exercise their functions, but if the minimum were exceeded difficulties would arise. Care was exercised in the selection of consular officials, but occasional errors were inevitable. When an error was discovered, there was a clear distinction between the procedure to be adopted in the case of career consular officials and in that of honorary consular officials. An error committed by a career consular official led to administrative measures on the part

of the sending State; an error by an honorary consular official was usually subject to one sanction only, namely, dismissal. He agreed with the United States representative that the scope of article 63 could be limited and reduced to its proper proportions by the provisions of article 69.

40. Mr. VAZ PINTO (Portugal) thanked the Italian representative for his support and the representatives of the Federal Republic of Germany, Brazil and the United Kingdom for their comments. He agreed that the matter could be settled by a clear definition of the expressions "career consular official" and "honorary consular official". The particular consular officials of whom he had spoken could either be recognized as career consular officials according to the municipal law of the sending State, or as a kind of *ad hoc* career consular official. If the first solution were adopted, then those consular officials would have to be treated as permanent members of a foreign staff and the whole advantage of employing them would be lost. Not to regard them as members of the foreign service would amount to introducing a new category of official into the convention, which — though a parallel institution did exist in diplomatic practice — might lead to abuses. Such officials would not belong to the diplomatic or to the consular services and it was doubtful if they could rank as career consuls.

The Indian amendment (A/CONF.25/C.2/L.209) was rejected by 27 votes to 13, with 26 abstentions.

The Portuguese amendment (A/CONF.25/C.2/L.222) was rejected by 42 votes to 10, with 17 abstentions.

Article 63 was adopted by 55 votes to 4, with 9 abstentions.

41. Mr. HEUMAN (France), Mr. VRANKEN (Belgium), Mr. MARAMBIO (Chile), Mr. SRESHTHEPUTRA (Thailand) and Mr. SHARP (New Zealand) said that they had voted for article 63 of the International Law Commission's text on the understanding that article 69 would cover permanent residents in the receiving State.

42. Mr. LEE (Canada) said that he had abstained from voting on the Indian amendment and had voted for draft article 63.

43. Mr. DRAKE (South Africa) said that he had abstained from voting on the Indian amendment and on the International Law Commission's draft article 63. His abstention on the Indian amendment was based on the understanding, which he shared with the previous speakers, that the exclusions provided for in article 69 would be extended to cover permanent residents as well as nationals of the receiving State. He would otherwise have voted in favour of the deletion of the article.

44. Mr. AMLIE (Norway) said that he had voted for the Portuguese amendment because there were very few honorary consuls who did not carry on a private gainful occupation, and, though the point did not directly affect his country, it was obviously of considerable importance to Portugal.

Article 64

(Exemption from personal services and contributions)

45. The CHAIRMAN stated that the Australian amendment (A/CONF.25/C.2/L.156) was the only amendment to article 64.

46. Mr. WOODBERRY (Australia) said that article 64 dealt not only with honorary consuls but with all officials employed in consulates headed by honorary consuls. He saw no reason to exempt all such officials who were permanent residents in the receiving State from all public services and obligations in that State, though an honorary consul might require exemption in certain circumstances.

47. Mr. KOCMAN (Czechoslovakia) pointed out that in accordance with paragraph 2 of the International Law Commission's commentary to article 57, honorary consuls who were nationals of the receiving State did not enjoy any of the immunities mentioned in the Australian amendment. He thought therefore that the purport of the Australian amendment would be dealt with in article 69, which would probably be amended to cover permanent residents in the receiving State.

48. Mr. VRANKEN (Belgium) pointed out that article 51 had been supplemented by a new sentence providing that the exemption from personal services and contributions referred to in the first part of the article should not apply to members of the families of consular employees if the latter carried on a private gainful occupation. It would be logical to add to article 63 a similar clause relating to honorary consular officials.

49. Mr. AMLIE (Norway) said that as there was no common formula regulating the status of members of families of consular officials carrying on private gainful occupations, it had been necessary to make a special addition to a number of articles. Members of families of consular officials who were nationals of the receiving State were covered by article 69; the Committee should therefore not deal with that question until it came to discuss article 69.

50. Mr. WOODBERRY (Australia) agreed with the Czechoslovak and Norwegian representatives that article 69 dealt with nationals of a receiving State and might deal with permanent residents; but if it were not adopted, or not amended, the Committee would be left with an article very much wider in scope than anything its members would wish. If the Australian amendment were adopted, it could be left to the drafting committee to bring it into harmony with whatever text of article 69 might subsequently be adopted.

51. Mr. LEVI (Yugoslavia) asked whether the drafting committee would be in a position to exclude those parts of the Australian amendment that proved to be unnecessary in the light of the text of article 69 which was subsequently adopted.

52. The CHAIRMAN said that the drafting committee could make any adaptations which proved to be necessary.

53. Mr. AMLIE (Norway) asked for a separate vote on the words "who are neither nationals nor permanent residents of the receiving State" in the Australian amendment.

54. Mr. HEUMAN (France) asked for separate votes on the references in the Australian amendment to nationals of the receiving State and to permanent residents.

55. The CHAIRMAN invited the Committee to vote on the retention of the words: "who are neither nationals" in the Australian amendment.

The words were retained by 53 votes to 6, with 8 abstentions.

56. The CHAIRMAN invited the Committee to vote on the retention of the words: "nor permanent residents" in the Australian amendment.

The words were retained by 48 votes to 7, with 10 abstentions.

The Australian amendment (A/CONF.25/C.2/L.156) as a whole was adopted by 48 votes to 5, with 15 abstentions.

57. The CHAIRMAN said that, in the absence of any objection, he would take it that article 64, as amended, had been adopted.

58. Mr. HEUMAN (France) said that the discussion of the Australian amendment had given further proof of how far the deliberations of the Committee would have been facilitated if article 69 had been taken before chapter III.

59. Mr. JESTAEDT (Federal Republic of Germany) said that he had voted against the retention of the words "permanent residents" because, if that expression were approved, no other honorary consular officials would be left within the scope of article 64.

Article 65 (Obligations of third States)

60. The CHAIRMAN said that, after carefully considering the matter, he was still of the opinion that, as the Committee had added article 54, paragraph 3, to the enumeration in article 57, article 65 should be regarded as having been deleted. The provisions of paragraph 3 of article 54 were wider than those of the International Law Commission's draft for article 65; consequently, if the Committee were now to approve article 65, an impossible position would arise.

61. Mr. HEUMAN (France) said that he too had reconsidered the matter and after carefully comparing the texts of article 54, paragraph 3, and article 65, he had arrived at the same conclusion as the Chairman.

62. He expressed his regret that so many facilities had been accorded to honorary consuls; he would have preferred a more discriminatory text, such as that of article 65.

Article 66 (Respect for the laws and regulations of the receiving State)

63. The CHAIRMAN said that amendments to article 66 had been submitted by Switzerland (A/CONF.25/C.2/L.165) and the United Kingdom (A/CONF.25/

C.2/L.224). The Swiss amendment was covered by the text already approved by the Committee.

64. Mr. REBSAMEN (Switzerland) agreed and withdrew his amendment.

65. The CHAIRMAN recalled that at the 40th meeting the representative of the Federal Republic of Germany had suggested that the whole of article 66 had not been disposed of by including a reference to article 55 in the enumeration in article 57, and he had accepted the point. The words in question were those at the end of the second sentence of article 66 as drafted by the International Law Commission: "not to misuse their official position for the purpose of securing advantages in any private activities in which they may engage." The Committee would have to vote on that provision. If it were adopted it might be best if it constituted a new article, though in that case a new introductory phrase would have to be drafted. The provision referred only to honorary consular officials and not to career consular officials.

66. Mr. VRANKEN (Belgium) suggested that the proposed new article might begin with the words: "Without prejudice to their privileges and immunities, it is the duty of honorary consular officials not to misuse..."

67. Mr. HEUMAN (France) suggested that an alternative method would be to introduce a new article on the following lines: "Without prejudice to their obligations under article 55, honorary consuls also have a duty not to misuse their official position..."

68. Mr. RUSSELL (United Kingdom) said he had proposed the inclusion of article 55 in the list of articles in article 57 on the understanding that article 66 would be entirely deleted. He appreciated the arguments for both sides of the question but, after weighing up the situation, had come to the conclusion that it would be better not to include article 66 in the Convention. If it were retained it might be interpreted as implying that career consular officials were not under the same obligation as honorary consular officials not to misuse their official position for private advantage. If such a provision were included in the article it should apply equally to career and honorary consular officials. In the circumstances, therefore, it would be better for article 66 not to appear.

69. The CHAIRMAN suggested that for procedural purposes the Committee should vote on the text of article 66. There were two suggestions before the Committee and if the Belgian representative did not maintain his proposal he would prefer the text presented by the French representative.

70. Mr. VRANKEN (Belgium) withdrew his proposal but pointed out that the words "without prejudice" in the French representative's text were unnecessary because the obligation under article 66 was additional to the obligations under article 55.

71. Mr. HEUMAN (France) said he would replace the words "without prejudice" by the words "in addition".

72. Mr. BLANKINSHIP (United States of America) considered that article 66 should be deleted for the reasons put forward by the United Kingdom representative. A provision of that kind in an international convention, however carefully worded, would inevitably appear insulting and would be difficult to enforce. The provisions of article 55 fully covered the situation.

73. Mr. WALDRON (Ireland) agreed with the representatives of the United Kingdom and the United States. At first sight it had seemed quite proper to include such an article in the Convention. After reconsidering the question, however, and reading the rather harsh words proposed, he thought the proposed text would strike a discordant note and would be hard to fit into a convention of the kind in view.

74. Mr. MARAMBIO (Chile) thought it essential to maintain the last sentence of article 66. He approved of the text proposed by the representative of France.

75. Mr. HENAO-HENAO (Colombia) opposed the inclusion of a reference to the misuse of official position for private advantage. A conference of highly qualified legal experts might well be criticized for laying down such elementary principles. The obligation in question was the obvious complement to the receipt of the privileges accorded to honorary consular officials. The article should be deleted.

76. Mr. NASCIMENTO e SILVA (Brazil) said he had been impressed by the reasoning of the United Kingdom representative, since article 66 would affect only a limited category of consular officials. The proposed text was somewhat harsh and its legal effect would be small so he would prefer to see the article deleted.

77. Mr. MARESCA (Italy) said that the Committee was free to approve changes in the status of honorary consular officials or limitations on the privileges granted to them. It was not free to introduce an offensive article into the Convention; he considered that article 66 should be deleted.

78. The CHAIRMAN invited the Committee to vote on the United Kingdom amendment (A/CONF.25/C.2/L.224) to delete article 66.

The United Kingdom amendment was adopted by 35 votes to 23, with 12 abstentions.

79. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted against deleting the article for the reasons given by the representative of Chile. He would have accepted the text proposed by the representative of France.

Article 67 (Optional character of the institution of honorary consular officials)

80. The CHAIRMAN invited the Committee to consider draft article 67 and the amendment submitted by Japan (A/CONF.25/C.2/L.226).

81. Mr. KANEMATSU (Japan) withdrew his amendment on the ground that the committee had approved the regime for honorary consular officials.

82. Mr. AMLIE (Norway) said that article 67 implied that the system of honorary consulates was not normal and that honorary consular officials were an inferior class of persons subject to the receiving State's acceptance. Article 67 was unnecessary since article 11 fully safeguarded the interests of the receiving State. He would therefore reintroduce the Japanese amendment.

83. Mr. RUSSELL (United Kingdom) opposed the deletion of article 67. He did not agree with the representative of Norway that the receiving State was safeguarded by article 11, for it would be an abuse of article 11 to use it for refusing acceptance of an honorary consular official. Article 67 was a necessary part of the International Law Commission's structure for the convention, which included a separate set of articles for honorary consuls.

84. Mr. VRANKEN (Belgium) inquired if the Swiss proposal on consular agencies (A/CONF.25/C.1/L.102/Rev.1), which had been dealt with by the First Committee, would affect article 67.

85. Mr. REBSAMEN (Switzerland) said that, at its 28th meeting, the First Committee had adopted a new article on consular agencies to be inserted after article 67. Although it followed the pattern of article 67, the new article had no direct or fundamental relation to article 67 and would thus not be affected by the possible deletion of the latter.

86. Mr. PETRENKO (Union of Soviet Socialist Republics) thought that article 67 should be kept, as it contained one of the most important principles concerning the institution of honorary consular officials. He strongly supported the optional principle because, although legislation in the Soviet Union did not permit the sending or receiving of honorary consular officials, the Conference was drafting an international convention and many countries made wide use of honorary consuls.

87. Mr. HENAO-HENAO (Colombia) considered that the article should be deleted. If it were put to the vote, he would ask for separate votes on appointing and receiving honorary consular officials: it was not within the competence of the draft convention to lay down rules concerning the appointment of officials.

88. Mr. NWOGU (Nigeria) also thought the article should be deleted because it was superfluous once the institution of honorary consular officials was recognized. Moreover, it implied that receiving States could influence the choice of honorary consular officials, which would be unacceptable, particularly to the developing countries. There was adequate provision in the convention for the receiving State to object to a person appointed but there should be no right to object to the institution.

89. Mr. ANGHEL (Romania) opposed the deletion of article 67 because the principle it contained was an important one. It was the practice of a large number of States not to appoint or to admit honorary consuls; it would be wrong to impose on those States an institution which was unknown to them. The International Law Commission had included a chapter III on honorary consuls in its draft solely because of article 67. Had it not

been for that articles, the Commission would have considered submitting a separate draft convention on the subject.

90. Mr. KANEMATSU (Japan) said that he had originally proposed the deletion of article 67 in the context of a proposal for re-drafting chapter III, but since his proposal concerning chapter III had been rejected, he had withdrawn his amendment (L.226).

91. Mr. SILVEIRA-BARRIOS (Venezuela) considered that article 67 should be retained. He did not agree with the Colombian representative's arguments in favour of deleting the article because it provided an optional formula suitable for countries with differing practice.

92. Mr. LEVI (Yugoslavia) said that article 67 was not of great importance to his country, which both appointed and received honorary consular officials. Nevertheless, it would be better to keep the article since it represented a compromise between the views of States with differing customs and was therefore valuable in a convention which it was hoped would be ratified by as many States as possible.

93. Mr. TILAKARATNA (Ceylon) said that the deletion or retention of article 67 was really nothing more than a procedural matter. The important thing to establish in connexion with chapter III was that the honorary consular official was a representative of the receiving State; a worthy and hard-working citizen with little or no remuneration, whose only concern was to promote friendly relations between receiving and sending State. He was not regarded as a suspicious person whose activities should be restricted, and there was no such intention in article 67.

94. Mr. NASCIMENTO e SILVA (Brazil) agreed with the representative of Yugoslavia that article 67 was intended as a compromise to meet the needs of countries, like his own, which appointed and received honorary consular officials and was well served by them, and countries that did not admit the system. He also agreed that the draft convention must be acceptable to as large a number of countries as possible. Article 67 was therefore indispensable and was one of the most important articles in chapter III.

95. He did not agree with the representative of Norway that the receiving State could prevent the appointment of an honorary consular official by refusing the exequatur, because article 2, paragraph 2, stated that consent to the establishment of diplomatic relations between two States implied consent to the establishment of consular relations.

96. Mr. MARESCA (Italy) saw no necessity for keeping article 67. The optional nature of consular relations was apparent throughout the convention and there was no need to restate it in article 67.

97. Mr. MORGAN (Liberia) said he would vote for the retention of article 67, which made it clear that States were under no obligation to appoint or to receive honorary consular officials.

98. Mr. RODRIGUEZ (Cuba) was also in favour of

keeping article 67, which codified a long-established international practice and did not impose any obligation.

99. Mr. TOKER (Turkey) said he would vote in favour of article 67, which was in accord with international practice.

100. Mr. KEITA (Mali) said that he, too, was in favour of article 67 because the optional character was an important element in the system of honorary consular officials.

101. Mr. AMLIE (Norway) said that he appreciated that article 67 represented a compromise between the different points of view, and that the purpose of article 11 was primarily to give the receiving State the power to refuse an individual honorary consular official. But he was not convinced by the argument that article 11 was not applicable in the present context; in his opinion, article 11 fully safeguarded the receiving State's interests and a receiving State would not be abusing it nor infringing the optional principle if it were invoked to refuse an individual. Nor did he agree that the deletion of article 67 would complicate the machinery of the Convention.

102. The CHAIRMAN invited the Committee to vote on the Japanese amendment, reintroduced by Norway (A/CONF.25/C.1/L.226) to delete article 67.

The amendment was rejected by 56 votes to 11, with 4 abstentions.

103. The CHAIRMAN invited the Committee to vote on article 67 as drafted by the International Law Commission.

104. Mr. HENAO-HENAO (Colombia) asked for separate votes on the appointing and receiving of honorary consular officials.

105. Mr. TOURE (Guinea) opposed the motion.

106. Miss ROESAD (Indonesia) also opposed the motion because the rejection of the proposal to delete the article implied that it had been accepted in its entirety.

The proposal for separate votes was rejected by 55 votes to 6, with 10 abstentions.

Article 67 was adopted by 63 votes to 3, with 6 abstentions.

The meeting rose at 1.10 p.m.

FORTY-THIRD MEETING

Wednesday, 3 April 1963, at 3.15 p.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

**Tribute to the memory of Mr. Quinim Pholsena,
Minister for Foreign Affairs of Laos**

On the proposal of the Chairman, the members of the Committee observed a minute of silence in tribute to the memory of Mr. Quinim Pholsena, Minister for Foreign Affairs of Laos.