# United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
**A/CONF.25/C.2/SR.43**

## 43rd 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)*

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of a proposal for re-drafting chapter III, but since his proposal concerning chapter III had been rejected, he had withdrawn his amendment (L.226).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.*

**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. Mr. REBSAMEN (Switzerland) said he wished to amend the explanation of his delegation's vote on article 57, and especially on the Japanese amendment (L.217) to that article. His delegation had acted on the assumption that the Committee had adopted the Japanese amendment as drafted in French, but if the English text, which was slightly different, was authentic, his delegation's position no longer had any meaning. He reserved the right to return to that point in plenary session.

2. The CHAIRMAN explained that the English text was correct and had been put to the vote after the Japanese representative had rectified, during the forty-first meeting, an error in paragraph 2 of his amendment (L.217), pointing out that the words " nor to a consular employee " should be replaced by the words " or of a consular employee ".

3. Mrs. VILLGRATTNER (Austria) and Mr. JESTAEDT (Federal Republic of Germany) associated themselves with the Swiss representative's remarks and said that their explanations of the vote also required some amendment.

*Article 69* (Members of the consulate, members of their families and members of the private staff who are nationals of the receiving State)

4. The CHAIRMAN invited the Committee to consider article 69 and the amendments thereto.[1] Those submitted by the United States, India and Australia were identical.

5. Mr. ENDEMANN (South Africa) introduced a joint amendment (A/CONF.25/C.2/L.229) submitted by the delegations of Brazil, Canada, Ceylon, India, Japan, the Netherlands and South Africa. The object was to insert the words " or permanently resident in " in paragraph 1, which represented a substantive amendment to the International Law Commission's draft. In addition, the sponsors of the joint amendment proposed a new draft for paragraph 2 as a whole, since the Commission's draft contained no provision concerning the members of the families of consular officials and other members of the consulate who were permanently resident in the receiving State. The separate amendments previously submitted by the sponsors had been withdrawn.

6. Mr. LEVI (Yugoslavia), supported by Mr. HEUMAN (France), said that the joint amendment was rather complicated, in that the second sentence of paragraph 2 more or less restated the first sentence. He asked for some explanations on that point.

7. Mr. AMLIE (Norway) said that, on reconsidering his amendment (L.228), he thought that his reference to article 41, paragraph 3, second sentence, was not quite accurate. He would therefore alter the amendment to read: " Add the following new sentence to article 69, paragraph 1: ' If criminal proceedings are instituted against such an official the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.' "

8. Mr. VRANKEN (Belgium), supporting the Norwegian representative's proposal, said that his government had made an analogous proposal. The Belgian delegation opposed the addition of the words " or permanently resident in ", which had appeared in the first draft prepared by the International Law Commission, but had subsequently been dropped. It would be helpful if the special rapporteur of the International Law Commission would explain the circumstances in which that decision had been taken.

9. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, said that the International Law Commission had considered the question at its thirteenth session, when it had taken into account the outcome of the Vienna Conference of 1961. It had then laid down the principle that the provisions of the Vienna Convention on Diplomatic Relations should be followed as closely as possible in the draft on consular relations. After an exchange of views, the Commission had decided to include the expression " or permanently resident in " in article 69; the matter had then been referred to the drafting committee, which had unanimously recommended that the expression should not appear in the final draft. Two arguments had been advanced in support of that recommendation: first, the question had a different aspect for consular officials who, unlike diplomatic agents, were subject to the jurisdiction of the receiving State, except in respect of acts performed in the exercise of their functions; secondly, in the particular case the position of honorary consuls had to be taken into account.[2] For those two important reasons, the Commission had decided to accept the drafting committee's recommendation that the expression " or permanently resident in " should not appear in article 69.

10. Mr. BLANKINSHIP (United States of America) said that on several occasions his delegation had stressed the importance it attached to the addition of the phrase " or permanently resident in ", and had submitted its amendment (L.12) to that effect as early as 5 March. His country, which received many immigrants every year, supported the principle that those permanent residents, who often acquired United States citizenship after five years, should not only enjoy the privileges of United States citizens, but should also assume some of their obligations. Without wishing to press the Committee, he felt obliged to warn it that his government might consider the convention unacceptable if it did not mention permanent residents.

* Resumed from the forty-first meeting.

[1] The following amendments had been submitted: United States of America, A/CONF.25/C.2/L.12; Netherlands, A/CONF.25/C.2/L.21; Japan, A/CONF.25/C.2/L.90; Canada, A/CONF.25/C.2/L.112; Brazil, A/CONF.25/C.2/L.161; India, A/CONF.25/C.2/L.180; Australia, A/CONF.25/C.2/L.192; Norway, A/CONF.25/C.2/L.228.

[2] See *Yearbook of the International Law Commission, 1961*, vol. I (United Nations publication, sales No. 61.V.1, vol. I), summary records of the 603rd and 623rd meetings.

11. Article 69 was an extremely important provision; indeed, the French representative had asked that it should be considered as a matter of priority. He had been surprised by the categorical opposition of the Belgian delegation to the addition of the words " or permanently resident in ", and reserved the right to raise that point again.

12. Mr. WOODBERRY (Australia) said that his delegation considered that permanent residents should not, under the instrument being drafted, possess privileges and immunities; the Vienna Convention of 1961 constituted the correct precedent. It would be paradoxical if the members of the family of a consular official had more extensive privileges and immunities than the consular official himself. For that reason, he was in favour of the joint amendment (L.229). If that amendment was adopted, article 69 should appear as the first of the provisions in section II of chapter II, so as to show quite clearly that it applied to all the succeeding articles.

13. Mr. NASCIMENTO e SILVA (Brazil) said that in taking a decision on article 69, the Committee should take account of the United States representative's remarks. The question of permanent residents had been raised on several occasions in the past, and the Brazilian delegation had opposed special clauses regarding such persons, for it had expected that a general restrictive clause having reference to them would be added later in the convention. Hence, it found itself under a moral obligation to press for the inclusion of such a clause in article 69. Brazil had always considered that compromise solutions should be adopted, and that some delegations should not be obliged to submit to the wishes of the majority. For that reason, he urged the Committee to approach the question not merely in the context of article 69, but from a more general point of view, with the intention of drafting a convention acceptable to the largest possible number of States.

14. Mr. SMITH (Canada) said that the object of the changes proposed in the joint amendment was to ensure that the members of the family of a consular official would not enjoy more extensive privileges and immunities than the official himself: that would be an absurd position. Both from their statements and from their votes it appeared that many delegations shared that view. That had been the case, for instance, during the consideration of articles 47 and 48. Although the International Law Commission had not considered itself bound by the 1961 Convention, it had clearly indicated that the two instruments should as far as possible be parallel, and one of the advantages of the joint amendment was that it would achieve that purpose. The rejection of the joint amendment would make it impossible for some governments to ratify the convention. So far as Canada was concerned, he said that he was as certain as an official could be that no Minister of Finance would agree to exempt permanent residents in the country from normal taxation.

15. In reply to the Yugoslav representative, he explained that the second sentence of paragraph 2 of the joint amendment, while repeating a considerable part of the first sentence, also mentioned another category of persons. It was not therefore purely repetitive, and it might be left to the drafting committee to solve any drafting difficulty.

16. Mr. HEUMAN (France) said that the question was not as simple as some seemed to believe. The position of honorary consuls raised a specific problem, in no way relevant to the 1961 Convention. Besides, if permanent residents were to be debarred from privileges and immunities, the whole of chapter III might well be regarded as unnecessary, for, with very rare exceptions, honorary consuls were nearly always permanent residents. Article 69 was a general provision, and there was no difference between the 1961 Convention and the present convention so far as career consuls and members of the consulate were concerned. Consequently, apart from the provisions concerning honorary consuls, the position resulting from the adoption of the joint amendmend would be identical to that covered by the 1961 Convention. He was accordingly inclined to support the joint amendment. For the benefit of countries for which the question of honorary consuls was of great importance, he suggested that a separate clause might be added relating to that category of consul.

17. So far as the members of the families of consular officials were concerned, the joint amendment had the further advantage of endorsing an idea reflected in an amendment submitted by Japan to another article, which had drawn a distinction between the position of a woman married to a consular official who enjoyed privileges and immunities and that of a man who was married to a female consular official. That distinction was undoubtedly necessary.

18. While he had no objection to the Norwegian proposal, he did not fully understand the point of quoting words from another article when a reference to that article would have sufficed.

19. Mr. SALLEH bin ABAS (Federation of Malaya) said that he was in favour of the joint amendment to paragraph 1, since no distinction should be drawn between permanent residents and nationals of the receiving State. Despite some doubts expressed on the subject, he considered that the amendment to paragraph 2 represented a useful clarification without making any change of substance. He suggested that the expression " consular officials " in article 69, paragraph 1, should be amplified by the addition of the words " whether career or honorary officials ".

20. Mr. LEVI (Yugoslavia) said that he approved of the joint amendment to paragraph 1 and also of the re-draft proposed for paragraph 2, provided that a clearer form of words were used. In his opinion, the second sentence should constitute a separate paragraph.

21. Mr. RUSSELL (United Kingdom) said that his delegation was strongly in favour of the insertion of the words " or permanently resident in ". It would not be acceptable to extend the various privileges and immunities accorded to consular personnel in the draft articles to those who were either permanent residents of the receiving State or nationals of that State. He recognized that, as the French representative had pointed

out, the introduction of those qualifications would make chapter III more or less superfluous; that conclusion confirmed the aptness of the proposal that had been made by the Japanese delegation (L.89/Rev.1) for the replacement of the entire chapter by a single article.

22. Mr. VILLGRATTNER (Austria) said that it was amongst persons " permanently resident in the receiving State " that the sending State would find the persons best qualified to perform consular functions, by reason of their knowledge of the laws and usage of the receiving State. The Committee might perhaps accept a compromise wording and, instead of the phrase " permanently resident in " refer to " nationals of the receiving State or stateless persons resident in the territory of the receiving State " in paragraph 1. The Austrian delegation hoped that the sponsors of the joint amendment would be able to amend their proposal in that way, in which case she would be prepared to vote for it. She also hoped that the Norwegian amendment would be adopted and that the exemptions granted to consular posts would not be made dependent on whether the head of post was an honorary consular official or a career consul.

23. Mr. SRESHTHAPUTRA (Thailand) said that his delegation's position with regard to the question of permanent residents of the receiving State had already been explained to the Committee when he had introduced his amendment to article 48, paragraph 2. He would therefore say only that he fully agreed with the point of view of the United States and Canadian representatives and that he would vote for the joint amendment.

24. Mr. SHARP (New Zealand) said that the joint amendment was likewise acceptable to his delegation. New Zealand received large numbers of immigrants who could apply for naturalization after five years and were encouraged to do so. Some declined to make application, for reasons which had to be respected, but others sometimes questioned the practical advantages to be gained by becoming naturalized. If they were honorary consuls, the Government could not grant them more privileged conditions than those enjoyed by New Zealand nationals. The Norwegian amendment was acceptable, and his delegation would also endorse the amendments proposed by the representative of Norway during the meeting.

25. Mr. JESTAEDT (Federal Republic of Germany) said that honorary consuls who were nationals of the sending State or of a third State should enjoy privileges and immunities. The formula proposed by the Austrian delegation was a welcome compromise solution. The Committee might also decide to add a separate clause concerning honorary consular officials who were nationals of the receiving State.

26. Mr. AMLIE (Norway) said that there was a considerable difference between an honorary consul who was a national of the receiving State and an honorary consul who was merely a permanent resident of that State. The difference consisted in the fact that the second category comprised honorary consuls who were nationals of the sending State. There was no reason so far to place the latter consuls in a better position than consuls who were nationals of the receiving State. The reason why such persons had not become nationals of the receiving State was either that they did not wish to acquire such nationality, or that they were not allowed by the receiving State to acquire its nationality. Consequently they were not to such a degree as nationals of the receiving State affiliated with the latter State. They should therefore be placed in a better position, so far as privileges and immunities were concerned, than consuls who were nationals of the receiving State. He would especially warn the representatives of small countries against the joint amendment, which he considered an attack on the very institution of honorary consuls.

27. Mr. MARESCA (Italy) said that the Vienna Conference of 1961 had set limits to the extension of privileges and immunities to all members of diplomatic missions. The diplomatic status carried much broader privileges than did consular status. Article 69 did not apply to career consuls, who were always nationals of the sending State. For persons permanently resident in the receiving State, however, special conditions should be laid down in paragraph 1 of article 69.

28. Mr. SPYRIDAKIS (Greece) said that his delegation would vote for the Norwegian amendment. Although the joint amendment might be held to improve the draft article, it was not acceptable to his delegation, which would abstain in the vote on that amendment.

29. Mr. VRANKEN (Belgium) expressed the hope that the Conference would draft a convention acceptable to all countries. Article 69 raised an important problem, which might be solved if, after the inclusion of the words " or permanently resident in ", the phrase " who are not nationals of the sending State " were added.

30. Mr. TILAKARATNA (Ceylon) said that in sponsoring the joint amendment his delegation had in no way intended to prejudice the institution of honorary consuls. He had welcomed the Austrian proposal and thought that a compromise solution could be found, although the expression " stateless person " was not very suitable, since the expression was differently interpreted in different countries.

31. Mr. MOLITOR (Luxembourg), comparing the status of consular officials who were nationals of the receiving State with that of honorary consuls under the provisions drafted by the Committee, said that all the articles concerning consulates headed by an honorary consul, as well as articles 42, 43 and 44, paragraph 3, were applicable to both categories. The real distinction between them was drawn in articles 62 and 63, which did not apply to honorary consuls who were nationals of the receiving State. Hence the differences of status were not very important. For the reasons given by the Norwegian representative, he would oppose the inclusion of the term " or permanently resident in " in article 69.

32. Mr. REBSAMEN (Switzerland) said that he shared the opinions of the representatives of Norway and Luxembourg. Switzerland appointed as honorary consular officials only persons having Swiss nationality, and he could see no justification in applying discriminatory conditions to that category of consular official. His

delegation would support a compromise solution such as that proposed by the Belgian representative, but it would oppose the inclusion of the words " or permanently resident in " in the article.

33. Mr. DE CASTRO (Philippines) said that the article as drafted by the International Law Commission was acceptable to his delegation.

34. Mr. HEUMAN (France) explained that he had not made any formal proposal for a separate clause concerning honorary consuls. If other delegations were to put forward a proposal along those lines, the French delegation would raise no objections. Nevertheless, if such a course were adopted, the result might be that a more favourable status would be granted to the members of their families than to the consular officials themselves. If the Committee were to accept the inclusion cast of the words " or permanently resident in ", the votes at the previous meeting should perhaps be reconsidered.

35. Mr. SCHRØDER (Denmark) said that honorary consuls generally carried on a gainful occupation and hence did not qualify for most of the exemptions granted. As the Luxembourg representative had said, there was no great difference in status between the two categories of consular official.

36. Miss LAGERS (Netherlands) expressed the view that honorary consuls who were permanently resident in the receiving State should not enjoy more favourable conditions than the nationals of that State.

37. Mr. KHOSLA (India) said that if, by virtue of article 57, privileges and immunities were granted to honorary consuls who were permanently resident in the receiving State, they would in effect form a privileged class in that State; for that reason the words " or permanently resident in " should be included in paragraph 1 of article 69.

The meeting rose at 6 p.m.

## FORTY-FOURTH MEETING

*Thursday, 4 April 1963, at 10.15 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 69* (Members of the consulate, members of their families and members of the private staff who are nationals of the receiving State (*continued*)

1. The CHAIRMAN invited the Committee to continue its consideration of article 69 and the amendments to it.[1]

2. Mr. WALDRON (Ireland) said that he supported the joint amendment (L.229). The reasons had been fully explained during the discussion of article 69 and more particularly of the other articles involved. Nevertheless, he did not consider that the implications of the amendment really justified the strong views expressed at the previous meeting. The amendment was not concerned with the question of the greater and the lesser powers.

3. Mr. ENDEMANN (South Africa) said he was grateful to the representative of France for his lucid statement at the previous meeting, and particularly for pointing out that article 69 applied to career consular officials as well as to honorary consular officials. The article was not part of chapter III, dealing with honorary consular officials; the International Law Commission had placed it in chapter IV (General provisions) because it was a general provision applicable to both categories. Moreover, it applied only to persons and did not affect the privileges and immunities given for the consular post and the consular premises. He also thanked the representative of Luxembourg for putting the matter in its true perspective.

4. The effect of article 69 would be seen by examining the articles applicable to honorary consular officials and consulates set out in article 57. Articles 28 (Use of the national flag and of the state coat-of-arms), 29 (Accommodation), 33 (Facilities for the work of the consulate), 34 (Freedom of movement), 35 (Freedom of communication), 36 (Communication and contact with nationals of the sending State), 37 (Obligations of the receiving State), 38 (Communication with the authorities of the receiving State) and 39 (Levying of fees and charges) would not be affected. The provisions of article 41, paragraph 3 (Personal inviolability) would be safeguarded if the Norwegian amendment (L.228), which he supported, were adopted. The provisions of article 42 (Duty to notify in the event of arrest, detention or pending trial or the institution of criminal proceedings) were safeguarded by reference in article 69; so too were the provisions of article 43 (Immunity from jurisdiction), which were quoted, and of article 44 (Liability to give evidence) which was referred to. Article 45 (Waiver of immunities) was a negative article and therefore had little relevance. Article 49, sub-paragraph 1 (*a*), would stand, as it applied to articles for the official use of the consulate. Articles 58, 59 and 60 would also stand, as they did not apply to persons. Article 67 (Optional character of the institution of honorary consular officials) was not relevant.

5. The articles which would no longer apply were: article 53 (Beginning and end of consular privileges and immunities) which was functional and did not itself confer privileges; article 61 (Special protection) which was less important than protection for the consulate; article 62 (Exemption from obligations in the matter of registration of aliens and residence permits) which was of no real significance because there already was an exception in the case of private gainful occupation, article 63 (Exemption from taxation) in which the concessions were limited because salaries and emoluments

[1] For the list of the amendments originally submitted to this article, see the summary record of the forty-third meeting, footnote to para. 4. The amendments submitted by Brazil, Canada, India, Japan and the Netherlands had been withdrawn in favour of a joint amendment (A/CONF.25/C.2/L.229) which was also sponsored by Ceylon and South Africa. The text of the amendment by Norway (A/CONF.25/C.2/L.228) had been revised by its sponsor at the forty-third meeting.