United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.2/SR.44

44th 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)

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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]

[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.

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

of honorary consuls were usually small and their exemption from taxation would not be acceptable to tax authorities in respect of nationals or permanent residents; and article 64 (Exemption from personal services and contributions) which was of no importance because no doubt in most countries, like his own, only nationals were called up for military service.

6. It was therefore clear that, as contrary to what the Norwegian representative had maintained at the previous meeting, article 69 was not directed against honorary consular officials. If anything, it was directed against career consular officials, for it reproduced the provisions of article 38 of the Convention on Diplomatic Relations. Despite the suggestion during the discussion at the preceding meeting that there were nowhere career consular officials who were permanent residents of the receiving State, he could call to mind four cases of career consular officials who were nationals of the sending State but permanent residents of the receiving State. It would be unreasonable to expect the receiving State to cease regarding such persons as no longer permanent residents and thus freed from their obligations. That was the reason for the clause in the Convention on Diplomatic Relations and the reason why a similar provision was needed in the consular convention.

7. The country he represented was not a great power; it received and appointed honorary consuls who might be its own nationals or nationals of the receiving State or of a third State. In jointly sponsoring the amendment in L.229, he was not attacking the system of honorary consuls. With regard to the joint amendment itself, the second sentence of paragraph 2 was intended to cover the case where the members of the family of a consular official were nationals of or permanent residents in the receiving State, while the official himself was not; and the members of the family should not share the benefits to which the official was entitled.

8. Mr. SMITH (Canada) said that after the South African representative's comprehensive review he would merely comment on questions raised in the discussion. The First Committee was examining, in connexion with article 1, the term " consular official " which had caused the Malayan representative some difficulty. If the matter were not settled by the First Committee he suggested that the drafting committee should take the Malayan representative's comments into consideration. The two suggestions by the representative of Yugoslavia were sensible and could also be dealt with by the drafting committee. With regard to the suggestions by the representatives of Austria, Belgium and the Federal Republic of Germany, he had consulted most of the other sponsors of the joint amendment (L.229) and regretted that the suggestions were not acceptable because they would constitute a considerable derogation from the purpose of the amendment. If they were adopted, over half the persons concerned would receive privileges to which they were not entitled. The essential purpose of the amendment was to secure equal treatment for ordinary citizens and residents of the receiving State.

9. The sponsors of the joint amendment were not against the interests of the smaller States, as some representatives had suggested; they merely wished to protect nationals and other permanent residents of the receiving State. If the amendment were adopted there would be little loss to countries using honorary consuls; but much would be lost if the amendment were rejected.

10. Mr. BLANKINSHIP (United States of America) said he had little to add to the excellent statements by the representatives of the Netherlands, Ceylon, South Africa, Canada and other countries, except some interesting facts to refute the argument that the inclusion of permanent residents would destroy the system of honorary consuls. There were twenty-one honorary consular officals in Vienna, of which seventeen or eighteen were of Austrian nationality. In Amsterdam, where he himself was posted, there were about twenty honorary consuls or consuls-general, of whom all but one were nationals of the Netherlands. Countries which had honorary consuls there of very long standing included Norway, Austria, Sweden, Denmark, Finland and Gerece; and the first of the newly independent countries to appoint an honorary consul-general, Sierra Leone, was also appointing a national of the Netherlands. Similar information could be quoted for his own country. It was clear therefore that many countries were using permanent residents of receiving States and the inclusion of that category of persons in the convention could not be an attack on the system of honorary consuls. It was a practice to be encouraged and developed, and provision for it in the convention was a logical consequence of its wide development in practice.

11. It had also been suggested that the term " permanent residents " was too vague, but it was no vaguer than the term " nationals " used in article 69.

12. When it came to the vote, his delegation would support the joint amendment, but if it should be rejected he wished the United States amendment to be put to the vote.

13. Mr. LEVI (Yugoslavia) drew attention to a redundancy in paragraph 2 of the joint amendment. The second sentence referred to all categories of members of families and thus covered the particular category referred to in the first sentence.

14. Mr. CONRON (Australia) said that the Australian amendment (L.192), though not identical with the joint amendment, was essentially the same. The discussion at the previous meeting had turned mainly on honorary consuls; but in making provision for honorary consuls the Conference was concerned with a much wider group of persons, and the amendments introducing permanent residents were concerned with consular representation as a whole and not merely with honorary consuls. They were designed to ensure that persons who were permanent residents in but not nationals of receiving States were not treated more favourably than nationals — which was a matter of great importance to governments and finance departments and might well affect the willingness of governments to accept the convention. The amendment in question would not take much away from honorary consuls. They would keep their immunity from jurisdic-

tion and their personal inviolability in respect of official acts. If they were permanent residents they would lose only the privileges given by articles 62, 63 and 64, the most important of which was the tax concession. But that, too, should amount to very little for an honorary consul should draw little or no income: otherwise he would not be honorary. The Committee should also bear in mind that by trying to give permanent residents who were not nationals of the receiving State more privileges than governments were normally able to extend, it might not improve their position; the result might be to discourage governments of receiving countries from accepting such permanent residents as honorary consuls.

15. A serious practical consideration was that if permanent residents were excluded from article 69 much of the Second Committee's work would have to be done again in plenary meeting; if that was not successful, some countries would find it difficult to ratify the convention. It should also be remembered that some articles had already been amended to exclude permanent residents from the benefits of the convention; for example, by the adoption of the amendment by Belgium and Chile (L.146) to article 50 and Australia's amendment (L.156) to article 64.

16. Mr. AMLIE (Norway), in reply to a question by the representative of France at the previous meeting, said that he had revised his amendment (L.228) because of a technical flaw in the presentation.

17. Mr. MARESCA (Italy) said that the word " unduly " in the penultimate line of paragraph 2 of the joint amendment was superfluous and potentially dangerous. As applied to families it did not make sense, for they did not perform consular functions; as applied to consular employees it conflicted with the purpose of consular immunities — namely, that the exercise of consular functions should not be hampered. He proposed that the word should be voted on separately.

18. The CHAIRMAN invited the Committee to proceed to a vote on paragraph 1 of the joint amendment (A/CONF.25/C.2/L.229).

At the request of the United States representative, a vote was taken by roll-call.

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

In favour: Cambodia, Canada, Chile, Ecuador, Federation of Malaya, France, Ghana, India, Indonesia, Ireland, Israel, Japan, Republic of Korea, Liberia, Libya, Mexico, Netherlands, New Zealand, Nigeria, Pakistan, Saudi Arabia, Sierra Leone, South Africa, Spain, Syria, Thailand, Tunisia, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela, Republic of Viet-Nam, Yugoslavia, Algeria, Argentina, Australia, Brazil.

Against: Cuba, Luxembourg, Norway, Portugal, San Marino, Switzerland, Austria, Belgium.

Abstaining: Bulgaria, Byelorussian Soviet Socialist Republic, China, Congo (Leopoldville), Costa Rica, Czechoslovakia, Denmark, Finland, Federal Republic of Germany, Greece, Hungary, Iran, Italy, Liechtenstein, Mongolia, Philippines, Romania, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics.

Paragraph 1 of the joint amendment was adopted by 38 votes to 8, with 20 abstentions.

19. The CHAIRMAN invited the Committee to vote on the Norwegian amendment (A/CONF.25/C.2/L.228) as orally revised by its sponsor to add the following to the last sentence of paragraph 1: " If criminal proceedings are initiated 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."

The amendment was adopted by 50 votes to none, with 18 abstentions.

20. The CHAIRMAN invited the Committee to vote on paragraph 1 of article 69 as amended by the joint amendment and with the additional wording proposed in the Norwegian amendment.

Paragraph 1, as amended, was adopted by 48 votes to 5, with 16 abstentions.

21. The CHAIRMAN invited the Committee to vote on the word " unduly " in paragraph 2 of the joint amendment.

The Committee decided by 28 votes to 15, with 25 abstentions, that the word " unduly " should be retained.

Paragraph 2 of the joint amendment was adopted by 48 votes to 5, with 16 abstentions.

Article 69 as a whole, as amended, was adopted by 46 votes to 5, with 17 abstentions.

22. Mr. SILVEIRA-BARRIOS (Venezuela) said that his delegation had voted for the joint amendment in accordance with its general policy with regard to the privileges and immunities which should be accorded to honorary consular officials.

23. Mr. ALVARADO GARAICOA (Ecuador) explained that his delegation had supported the joint amendment because it made satisfactory provision concerning the extent to which privileges and immunities should be accorded to honorary consular officials. It was very important that the receiving State should be allowed to exercise its jurisdiction over its nationals or permanent residents.

24. Mr. JESTAEDT (Federal Republic of Germany) said that his delegation had voted against paragraph 2 of article 69 because, as adopted, it granted no immunity from the jurisdiction of the receiving State to other members of the consulate.

25. Mr. REBSAMEN (Switzerland) said that, in accordance with the instructions of his government, he had voted against the inclusion in paragraph 1 of the words " or permanently resident in " and against the draft of paragraph 2 as proposed in the joint amendment. His government held that it was essential to do every-

thing possible to maintain and safeguard the institution of honorary consuls, who should as far as possible be placed on the same footing as career consuls and not treated as private persons. Under paragraph 2 as adopted by the Committee, a consular employee who was a national of the sending State was not given wider protection with regard to his consular activities than that to which he was entitled as a permanent resident of the receiving State or as a national of that State. His delegation understood the motives of those sponsoring the amendment and had, therefore, abstained from the final vote. It was possible that at the plenary meeting, it might receive different instructions. Article 69 as adopted by the Second Committee should not, however, prevent his government from accepting the convention as a whole.

26. Mr. MARESCA (Italy) said that his delegation had been unable to support paragraph 2 in view of the inclusion of permanent residents, which would deprive important consular employees of the legal status to which they were entitled.

27. Mr. VRANKEN (Belgium) endorsed the views expressed by the representative of Switzerland, but added that his government might be unable to accept the convention as a whole if article 69 remained as approved by the Second Committee.

Proposed new article (Members of the consulate, members of their families and members of the private staff who carry on a private gainful occupation)

28. The CHAIRMAN invited the Committee to consider the proposal by Belgium and France to add a new article (A/CONF.25/C.2/L.230).

29. Mr. HEUMAN (France) said that, in the view of the sponsors, it was necessary to exclude two categories of persons from enjoyment of the privileges and immunities granted in chapter II of the draft convention: nationals, or permanent residents, of the receiving State; and those carrying on a private gainful occupation in the receiving State, in cases where it was not expressly permitted in chapter II. The Committee had approved article 69 which, as amended, dealt comprehensively with the persons in the first category and governed all the other provisions of the Convention: it dealt both with consular officials, in paragraph 1, and with members of the consulate and members of their families, as well as members of the families of consular officials, in paragraph 2.

30. Article 56 also governed the remaining articles of the convention, but was not so comprehensive as article 69, since it dealt only with consular officials and members of their families: it did not apply to consular employees or members of their families who carried on a private gainful occupation in the receiving State and who were therefore not excluded from enjoyment of the privileges and immunities under chapter II. The proposed addition to the convention was not, in fact, intended to be a supplement to article 69, although it had been headed article 69 A; it was intended to form the second part of article 56. Since it was intended to add to, and not repeat the provisions of article 56, the text of paragraph 2 (*b*) of the proposed new article should be revised to refer to members of the family of a " consular employee " instead of " a member of the consulate ", a term which included consular officials who were already dealt with in article 56.

31. Mr. HARASZTI (Hungary) supported the principle embodied in the proposed text, but pointed out that the First Committee had approved in article 1, paragraph 1 (*e*), a definition of the term " consular employee " which excluded service staff. It would, however, seem to be the intention of the sponsors to include such staff under the provisions of paragraph 2 (*b*) of their proposal.

32. Mr. HEUMAN (France) confirmed that the intention was to include service staff. In view of the definitions approved by the First Committee, which contained nothing corresponding to the definition of " consular employee " in the International Law Commission draft of article 1, paragraph 1 (*e*), it would be necessary to add the words " and members of the service staff " after the words " consular employees " each time that expression was used in the joint proposal.

33. Mr. SALLEH bin ABAS (Federation of Malaya) said that the effect of sub-paragraph (*a*) and sub-paragraph (*b*) of paragraph 2, as drafted, would appear to be the same. Sub-paragraph (*a*) referred to members of the family of a consular employee " coming within the scope of paragraph 1 " who would therefore be carrying on a private gainful occupation, while sub-paragraph (*b*) referred to members of the family of a consular employee " who carry on a private gainful occupation ".

34. Mr. LEVI (Yugoslavia) endorsed that view and suggested that to make the intention clear, the words " not coming within the scope of paragraph 1 of this article " should be added in sub-paragraph (*b*).

35. Mr. SMITH (Canada) suggested that sub-paragraph (*b*) might be amended to read " to members of the family of a consular employee who themselves carry on a private gainful occupation in the receiving State."

36. Mr. MOLITOR (Luxembourg) said that the intention of paragraph 1 was not clear. The reference to article 69 seemed redundant in view of the text of that article as approved by the Committee. It would also seem impossible to extend to all consular employees who carried on a private gainful occupation in the receiving State the provisions of chapter III, which concerned the facilities, privileges and immunities of honorary consular officials.

37. Mr. MARESCA (Italy) endorsed that view and suggested that the phrase " to the extent permitted by the context " should be added in paragraph 1 of the proposed text.

38. Mr. HEUMAN (France) agreed that the reference to article 69 had become redundant and should be

deleted. He also accepted the formula proposed by the representative of Italy.

39. Mr. ANGHEL (Romania) said that when the definitions in article 1 were finally drafted the expression " consular employees " might include members of the service staff so that separate reference to them in sub-paragraph (*b*) would be unnecessary.

40. Mr. HEUMAN (France) said that the Romanian representative was correct in one sense and mistaken in another. In the new draft of the definitions in article 1 (A/CONF.25/C.1/L.166), the expression " members of a consulate " had disappeared. In its place were " members of the consular post ", in sub-paragraph (*g*) and " members of the consular staff " in sub-paragraph (*h*), but both of those referred to consular officers and were therefore covered by paragraph 2 of article 69. If he had used those phrases he would therefore have been encroaching on article 69. He thought that his text provided the only possible solution which both respected article 69 and covered service staff.

41. Mr. RUSSELL (United Kingdom) said that there was one aspect of the proposal which he did not fully understand; the effect of the present structure of the draft articles was to place consular employees who carried on a private gainful occupation in the same position for certain purposes as honorary consular officials. He wished to know what was the position of consular employees who did not carry on a private gainful occupation, who were therefore full-time consular employees. Article 43, as adopted, related only to career consular officials; but the effect of article 57 was to extend the same immunities to honorary consular officials, and the effect of the new article would be to extend the same immunities to consular employees who carried on a private gainful occupation, and consular employees who did not do so were apparently excluded. He asked if that were the intention of the sponsors of the proposal.

42. Mr. HEUMAN (France) said that the United Kingdom representative had apparently overlooked the proposal of the Italian representative which the sponsors had accepted and which consisted of adding to paragraph 1 of the proposal the words " to the extend permitted by the context." The point raised by the United Kingdom representative had therefore been answered by the Italian proposal, which avoided the absurdity to which he had drawn attention, and by the Luxembourg representative's statement.

43. Mr. RUSSELL (United Kingdom) said that he was aware of the statements made by the Luxembourg and Italian representatives. However, the Italian proposal did not cure the absurdity. An expression such as " to the extent permitted by the context " was far too loose.

44. Mr. ENDEMANN (South Africa) said that paragraph 1 of the proposal was not clear, for chapter III did not deal with employees to any extent.

45. Mr. LEVI (Yugoslavia) asked for a suspension of the meeting to enable sponsors to reconsider the text of their amendment in the light of the comments made.

The meeting was suspended at 12.10 p.m. and resumed at 12.50 p.m.

46. The CHAIRMAN announced that the text of the proposal had been revised to read:

Consular employees, members of the service staff and members of their families who carry on a private gainful occupation and members of their private staff

Privileges and immunities provided in chapter II of the present convention shall not be accorded:

(*a*) To a consular employee or to a member of the service staff who carries on a private gainful occupation in the receiving State;

(*b*) To members of the family of a person referred to in sub-paragraph (*a*) or to his private staff;

(*c*) To members of the family of a consular employee or a member of the service staff who themselves carry on a private gainful occupation in the receiving State.

47. Mr. KANEMATSU (Japan) inquired whether it was the intention that the privileges and immunities of chapter II should be denied to the persons mentioned in the title in so far as they were not specifically accorded in the articles under section II.

48. Mr. VRANKEN (Belgium) said that the supposition of the Japanese representative was correct: the persons enumerated in the title of the new article would not benefit from the provisions of chapter II.

49. Mr. MARESCA (Italy) said that the new article denied certain privileges and immunities to certain categories of persons, but it did not say anything about the status of those persons. Not only the new article, but the text of the convention as a whole, passed over the status of employees in consulates headed by honorary consuls in complete silence, and in that instance, silence might be dangerous.

50. Mr. SMITH (Canada) said that the question raised by the Japanese representative had also occurred to him and he did not know if it had been answered.

The amendment by Belgium and France, as revised, was adopted by 60 votes to 1, with 9 abstentions.

51. The CHAIRMAN said that the drafting committee would decide on the number and place to be given to the new article.

52. Mr. DE CASTRO (Philippines) said that he had voted against the proposal because it discriminated against subordinate employees and members of their families who were not adequately paid for their work in consulates. It said nothing about consular officials who carried on a private gainful occupation, but was unduly harsh against members of the service staff and their families. In his country there were no restrictions on subsidiary employment for consular employees and members of the service staff of consulates. He thought

that the new proposal was a mortal blow to the institution of honorary consular employees.

53. Mr. KANEMATSU (Japan) said that as no answer had been given to the important question raised by the Italian representative, he would revert to the matter in plenary meeting.

Completion of the Committee's work

54. After the customary congratulations and expressions of thanks, the CHAIRMAN declared that the Committee had completed its work.

The meeting rose at 1.45 p.m.