

# **United Nations Conference on Consular Relations**

Vienna, Austria  
4 March – 22 April 1963

Document:-  
**A/CONF.25/SR.13**

**13<sup>th</sup> meeting of the Plenary**

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)*

delegations considered it desirable to reconsider the paragraph before a final vote was taken on article 36.

*The President's ruling was upheld by 48 votes to 18, with 12 abstentions.*

53. The PRESIDENT invited the Conference to vote on article 36, as amended.

54. Mr. AVILOV (Union of Soviet Socialist Republics), explaining his delegation's vote, in accordance with rule 39 of the rules of procedure, said that, since the USSR amendment to article 36 had been rejected, he would vote against the text as it stood.

55. Mr. BOUZIRI (Tunisia) said that, as a result of the deletion of paragraphs 1 (b) and 1 (c), article 36 was now totally devoid of substance. The Tunisian delegation would vote against the article in the belief that its complete omission would be preferable to the inclusion of such a distorted text. The Conference should reflect on that serious situation; it might decide either to reconsider the article, or to omit it altogether and allow the whole question of communication and contact with nationals of the sending State to be governed by customary international law, in accordance with the sixth paragraph of the preamble.

56. Mr. KEVIN (Australia) moved the adjournment of the meeting.

*The motion for adjournment was carried by 50 votes to 11, with 6 abstentions.*

The meeting rose at 6.55 p.m.

### THIRTEENTH PLENARY MEETING

*Wednesday, 17 April 1963, at 8.40 p.m.*

*President: Mr. VEROSTA (Austria)*

#### Consideration of the question of consular relations in accordance with resolution 1685 (XVI) adopted by the General Assembly on 18 December 1961 (*continued*)

[Agenda item 10]

#### DRAFT CONVENTION

*Article 36 (Communication and contact with nationals of the sending State) (continued)*

1 The PRESIDENT recalled that at its preceding meeting the Conference had decided to delete sub-paragraphs (b) and (c) of article 36, paragraph 1. Before putting the remainder of the article to the vote, representatives could take the opportunity of explaining their vote on the article as a whole.

2. Mr. RUEGGER (Switzerland) regretted that the substance of article 36 had been appreciably reduced; even in its curtailed form, however, it contained some part of the International Law Commission's ideas and was of value. He would vote for the article, but pointed out that account must be taken in every case of the

customary rules of international law, mentioned in the preamble to the convention, a text that would help to clarify the meaning of article 36. It must also be clearly understood that the application of those provisions depended on the freely expressed wishes of the persons concerned.

3. Mr. KRISHNA RAO (India) said that what was left of article 36 had little meaning and he would therefore be obliged to vote against the article.

4. Mr. KEVIN (Australia) asked whether it would be possible to put the remainder of article 36 to the vote. If it were adopted, then in order to meet the desires of some delegations, sub-paragraph (b) might be reintroduced into the convention in the form of a new article, some such phrase as "provided the national in question does not oppose such action" being added after the word "liberty".

5. Mrs. VILLGRATTNER (Austria) said that, although her delegation was not satisfied with the amended text of article 36, she believed that the article stated rights that must be recognized. She would vote for article 36, as amended, and in so doing agreed with the remarks made by the Swiss representative on the enduring validity of the rules of customary international law.

6. Mr. DADZIE (Ghana) regretted that the draft so carefully prepared by the International Law Commission had been heavily truncated. His delegation did not believe that what remained of article 36 was worth lingering over, and would vote against it. It reserved its position on the Australian suggestion, which should be considered at a later stage.

7. Mr. NESHO (Albania) said that article 36 was not acceptable to his delegation, which preferred the International Law Commission's draft.

8. Mr. EVANS (United Kingdom) regretted the deletion of sub-paragraphs (b) and (c). Nevertheless, the remainder of the article had a certain value and he would vote for it. Sub-paragraph (b) was of great importance, and his delegation would consider sympathetically the Australian proposal for its inclusion in the convention in another form.

9. Mr. CAMERON (United States of America) said that his delegation would vote for article 36, as amended, and was in favour of the insertion in the convention of a new article based on sub-paragraph (b), which the Conference had decided to delete.

10. Mr. LEE (Canada) said that he would vote for the remaining provisions of article 36, which seemed to him to serve a useful purpose, since the complete elimination of the article concerning communication with nationals of the sending State would deprive other articles of the convention of all meaning.

11. Mr. SHARP (New Zealand) said that in his opinion there was a tendency to exaggerate the importance of sub-paragraphs (b) and (c), whereas the most important sub-paragraph was sub-paragraph (a), which had been adopted. He would vote for article 36.

12. Mr. PETRŽELKA (Czechoslovakia) recalled that he had already explained the reasons why his delegation could not accept article 36. He confirmed that he would vote against the article.

13. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that his delegation would vote for article 36 on the understanding in connexion with sub-paragraph (a) of paragraph 1 that consular officers would not have freedom of communication with nationals of the sending State who had left their country of origin to take refuge in the receiving State.

14. Mr. VAZ PINTO (Portugal) regretted that article 36 had been shorn of sub-paragraph (b), one of its most important sub-paragraphs. What remained of the article however, seemed useful. He shared the opinion of the Swiss representative and regretted that the proposal made at the previous meeting by the Netherlands delegation had not been considered. He was ready to accept the Australian proposal and he would therefore vote for article 36, as amended, in the hope that it would be supplemented later.

15. Mr. WESTRUP (Sweden) shared the view expressed by the Tunisian representative at the previous meeting, but said that he could not follow him as far as his conclusions. His delegation would support any proposal for the reintroduction of the International Law Commission's draft. He would, however, vote for article 36 since rather than see the article deleted he preferred a truncated text.

16. Mr. WALDRON (Ireland) agreed with the Swiss representative and was in favour of retaining article 36 as amended. He would therefore vote for the article but hoped that a solution in line with the proposals made by several representatives would shortly be found.

17. Mr. MARESCA (Italy) considered that the deletion of sub-paragraph (b) had seriously weakened the effectiveness of article 36. Nevertheless, the remaining provisions still constituted an article of substance and should be adopted. His delegation would vote for article 36, as amended, in the hope that the Conference would reconsider sub-paragraph (b) in another form.

18. Mr. de MENTHON (France) said that he would vote in favour of article 36 although as a result of numerous deletions it had become quite inadequate. It seemed inconceivable that in such a comprehensive convention there should be no provision for the protection of nationals committed to prison, who were the very persons most in need of assistance.

19. Mr. BARTOŠ (Yugoslavia) found it regrettable that it had been impossible to preserve the International Law Commission text, and still more regrettable that the Second Committee's text had been subjected to such extensive deletions. The remainder of the text, however, was worth consideration and his delegation would vote for its retention, while remaining ready to consider proposals for the reinstatement of sub-paragraph (b) in another form.

20. Mr. SPYRIDAKIS (Greece) also regretted the deletions from the article, but said that he would vote

for the maintenance of the remaining provisions. His delegation was ready to support any proposal for the restoration of certain parts of the original text.

21. Mr. MARAMBIO (Chile) associated himself with those representatives who intended to vote for article 36 as amended, and hoped that consideration would be given to the Australian suggestion.

22. Mr. KONSTANTINOV (Bulgaria) said that he would vote against article 36; in his delegation's view, its suppression would leave no gap, since in any event the question of consular functions was amply covered in article 5.

23. Mr. SHIN (Republic of Korea) regretted that the most important part of article 36 had been deleted. He would, however, vote in favour of the remaining provisions, which were still of value. He would support any proposal to restore sub-paragraphs (b) and (c) of paragraph 1.

24. Mr. VRANKEN (Belgium) said that he would vote in favour of article 36, as amended, and would accept any proposal for a new draft of sub-paragraphs (b) and (c) of paragraph 1.

25. Mr. TILAKARATNA (Ceylon) said that he recognized the importance of article 36 but could not accept it after the deletions which had been made. He hoped that consideration would be given to the Australian proposal.

26. Mr. DEJANY (Saudi Arabia) said that the remaining provisions of article 36 dealt with several important matters which would provide ample material for one or even two articles; it would therefore be unwise to vote against it. He regretted that some representatives had insisted on adding to sub-paragraph (b) elements so controversial as to render it unacceptable to many delegations. He urged representatives to reconsider their positions and not to vote against the remainder of the article as it was uncertain whether a satisfactory substitute for it would be reintroduced and adopted.

27. Mr. ZEILINGER (Costa Rica) agreed with the views of the representatives of the Federal Republic of Germany, Australia and Ceylon. He would vote in favour of article 36, as amended, but hoped that a new text would be drafted on the basis of the provisions of sub-paragraph (b).

28. The PRESIDENT invited the Conference to vote on article 36, as amended.

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

*Cuba, having been drawn by lot by the President, was called upon to vote first.*

*In favour:* Denmark, Dominican Republic, Finland, France, Federal Republic of Germany, Greece, Holy See, Indonesia, Ireland, Israel, Italy, Republic of Korea, Lebanon, Libya, Liechtenstein, Mexico, Morocco, Netherlands, New Zealand, Norway, Panama, Portugal, San Marino, Saudi Arabia, South Africa, Spain, Sweden, Switzerland, Syria, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America,

Uruguay, Venezuela, Republic of Viet-Nam, Yugoslavia, Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, Chili, China, Colombia, Costa Rica.

*Against*: Cuba, Czechoslovakia, Federation of Malaya, Ghana, Guinea, Hungary, India, Japan, Liberia, Mali, Mongolia, Pakistan, Poland, Romania, Sierra Leone, Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Albania, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Congo (Leopoldville).

*Abstaining*: Iran, Peru, Upper Volta, Congo (Brazzaville).

*The result of the vote was 47 in favour and 24 against, with 4 abstentions.*

*Article 36 was not adopted, having failed to obtain the required two-thirds majority.<sup>1</sup>*

*Article 37 (Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents) (resumed from the 10th meeting and concluded)*

29. The PRESIDENT said that two motions for a division of the article had been submitted at the 10th meeting: one, by the United States delegation, for a separate vote on the words "and, as soon as possible, to transmit to it a certificate of death" at the end of subparagraph (a); and the other, by the delegation of Thailand, for separate votes on subparagraphs (a) and (b).

30. Mr. SALLEH bin ABAS (Federation of Malaya) said that since article 36 had not been adopted his delegation was in favour of separate votes on subparagraphs (a) and (b) for the reasons it had already given. He would, however, stress that the purpose of the Conference was not to produce a theoretical and ideal text for use as a model, but to draft a convention which would be applicable in practice and acceptable to all. In the interests of such universality, it would be desirable to take into account the special situation of certain States, particularly those which had recently attained independence. In many cases, the obligations laid down in subparagraphs (a) and (b) might impose too great a burden on the receiving States, particularly as the purely formal restriction contained in the introductory phrase would have no effect, because registers of births, deaths and marriages existed in almost every country. The obligations involved would force some States to set up costly administrative machinery when the funds necessary to operate it might be more usefully employed for economic development. The Federation of Malaya would find itself in that position in view of the many foreign permanent residents among its population.

31. Mr. WALDRON (Ireland) urged the Conference to adopt article 37 as drafted and to reject the motion for a separate vote by division on subparagraphs (a) and (b). If the two subparagraphs were rejected the article would no longer be necessary and would not be worth keeping in the convention. The International Law Commission's original draft had provided for an absolute obligation. The text had been modified by the

Second Committee to take account of difficulties which some States might encounter. The text before the Conference constituted a satisfactory compromise. He would abstain from voting on the United States motion for a separate vote on the last words of paragraph (a) as it raised no question of principle; but if the motion were adopted he would vote for the retention of the words.

32. Mr. PETRŽELKA (Czechoslovakia) said that he would vote against the motions for division. He thought that the Conference should adopt article 37 as drafted.

33. Mr. DADZIE (Ghana) said that it was inconceivable that any State should claim that it did not possess the information referred to in article 37. The condition in the introductory sentence had therefore no real value, and the "if" really meant "since". It might be advisable to ask the drafting committee to examine the point, and he hoped that his suggestion would be borne in mind.

*The motion for a separate vote submitted by the United States of America was carried by 33 votes to 24, with 13 abstentions.*

34. Mr. DADZIE (Ghana), supported by Mr. KONSTANTINOV (Bulgaria) and Mr. EL KOHEN (Morocco), said that the Conference should vote, not on the words on which the United States had asked for a separate vote, but on the deletion of the words.

35. Mr. BARTOŠ (Yugoslavia), supported by Mr. BARNES (Liberia), Mr. KRISHNA RAO (India) and Mr. GIBSON BARBOZA (Brazil), said that there was no question of voting on a motion for the deletion of a text, but of voting on the text itself, which had to be adopted by a two-thirds majority, like the rest of the convention.

36. Mr. WESTRUP (Sweden) shared that opinion and found it surprising that a procedure which had been followed on numerous occasions and which had led to the mutilation of article 36 should be called in question.

37. The PRESIDENT put to the vote the words "and, as soon as possible, to transmit to it a certificate of death".

*The result of the vote was 35 in favour and 30 against, with 11 abstentions.*

*The words were not adopted, having failed to obtain the required two-thirds majority.*

*The motion for a separate vote on subparagraphs (a) and (b) submitted by Thailand was defeated by 51 votes to 16, with 7 abstentions.*

*Article 37 as a whole, as amended was adopted by 67 votes to 3, with 6 abstentions.*

38. Mr. KEVIN (Australia) explained that his delegation had abstained in the vote on article 37 because it considered that the obligation imposed by subparagraph (a) should arise only when the whereabouts of the next of kin were not known.

39. Mr. SALLEH bin ABAS (Federation of Malaya) said that his delegation had abstained in the vote on article 37 on the same grounds as the Australian delegation.

<sup>1</sup> Article 36 was reconsidered at the twentieth plenary meeting.

40. Mr. SRESHTHAPUTRA (Thailand) said that, when introducing the joint amendment to paragraph 1 (b) of article 36, his delegation had stated that the obligations imposed by sub-paragraphs (a) and (b) of article 37 were also excessive. His delegation's request for a separate vote on the sub-paragraphs had been rejected and he had therefore voted against the article.

*Article 38 (Communication with the authorities of the receiving State)*

*Article 38 was adopted unanimously.*

*Article 39 (Consular fees and charges)*

*Article 39 was adopted unanimously.*

*Article 40 (Protection of consular officers)*

41. Mr. PETRŽELKA (Czechoslovakia) stated that the purpose of the amendment (A/CONF.25/L.21) which his delegation was submitting jointly with the delegation of the Ukrainian SSR was to restore the International Law Commission's draft of the article. The Second Committee had nullified the effect of the text by deleting reference to the obligations incumbent on the receiving State by reason of the official position of consular officers. A consular officer must enjoy greater respect and protection than an ordinary alien. The text before the Conference ignored that necessity and failed to give the consular officer the special protection due to him.

42. Mr. CAMERON (United States of America) recalled that the text of article 40 adopted by the Second Committee had been proposed by his delegation (A/CONF.25/C.2/L.5). That text was, moreover, in conformity with article 29 of the 1961 Convention; a measure granting to consular officers greater special protection than to diplomatic agents was not justifiable.

43. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) thought that article 40 had been drafted in such general terms that it was of no practical value. It was obvious that every State would respect consular officers as they respected all foreigners, but that could not be regarded as a rule of international law. The Conference should lay down legal rules and not adopt mere declarations which imposed no obligations. In effect, article 40 as drafted merely repeated article 6 of the Universal Declaration of Human Rights. His delegation wished to see a definite obligation imposed on the receiving State giving the consular official special protection by reason of his official position.

*The joint amendment by Czechoslovakia and the Ukrainian Soviet Socialist Republic (A/CONF.25/L.21) was rejected by 45 votes to 23, with 8 abstentions.*

*Article 40 was adopted by 63 votes to none, with 13 abstentions.*

The meeting rose at 10.50 p.m.

## FOURTEENTH PLENARY MEETING

*Thursday, 18 April 1963, at 9.30 a.m.*

*President: Mr. VEROSTA (Austria)*

**Consideration of the question of consular relations in accordance with resolution 1685 (XVI) adopted by the General Assembly on 18 December 1961 (continued)**

[Agenda item 10]

### DRAFT CONVENTION

*Article 30 (Inviolability of the consular premises) (resumed from the 9th meeting and concluded)*

1. The PRESIDENT invited the Conference to resume its debate on article 30 in the text prepared by the drafting committee (A/CONF.25/L.11). In addition to the amendment by the Ukrainian Soviet Socialist Republic to paragraph 4 (A/CONF.25/L.13), an amendment to paragraph 2 (A/CONF.25/L.36) had been submitted jointly by Ceylon, the Federal Republic of Germany, France, Greece, Guinea, Italy, Japan, Liberia, Mali, Nigeria, Saudi Arabia, Tunisia, the United Kingdom and the United States.

2. Mr. MARESCA (Italy), introducing the fourteen-power amendment (A/CONF.25/L.36), said that its object was to reconcile the two different opinions concerning the subject: that of the International Law Commission, which thought that consular premises should enjoy the same inviolability as diplomatic missions, and the view that the inviolability accorded to consular premises might be qualified. The proposed amendment, making entry into consular premises subject to a warrant or a judicial decision and to the authorization of the Minister for Foreign Affairs of the receiving State, offered safeguards which should be sufficient to allay all anxieties.

3. Mr. BARTOŠ (Yugoslavia) said that it was necessary to guarantee the absolute inviolability of consular premises in order to ensure the proper functioning of consulates; no compromise was possible. Moreover, so far as terminology was concerned, comparative lawyers knew that there were all kinds of warrants, not all of which were necessarily issued by the judicial authorities. The safeguard seemed therefore somewhat illusory. He entirely approved the Indian representative's statement at the eighth meeting and would vote against the amendment.

4. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the amendment was not new: it had been submitted before in the same terms in the Second Committee, as a comparison between its text and that of documents A/CONF.25/C.2/L.29 and L.71 would show, and it had been rejected there by 31 votes to 22, with 14 abstentions.

5. Article 30 laid down the principle of the inviolability of consular premises while admitting that in exceptional cases calling for immediate action, the police could enter those premises. But the amendment did not speak of