United Nations Conference on Consular Relations

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57. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) noted that paragraph 3 was based on the corresponding provisions of the 1961 Convention. To submit the personal luggage of consular officials to customs inspection was inconceivable and by eliminating that obligation, which implied a certain distrust of persons assuming official functions, the Conference would contribute to the development of international law. His delegation would vote against the motions for separate votes on article 49.

58. Mr. KEVIN (Australia) said that paragraph 2 caused him some concern. Should that paragraph be adopted consular employees would enjoy excessive privileges. The Polish proposition could give rise to abuse.

59. Mr. WASZCZUK (Poland) said that in his view the exemptions provided were not exceptional. The amendment he had submitted orally could be improved as suggested by the Yugoslav representative. He asked for an adjournment of the discussion to enable him to submit a more precise text at the next meeting.

The meeting rose at 1 p.m.

SEVENTEENTH PLENARY MEETING

Friday, 19 April 1963, at 3.15 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 49 (Exemption from customs duties and inspection) (*concluded*)

1. The PRESIDENT invited the Conference to resume its consideration of article 49 of the draft convention.

2. Mr. WASZCZUK (Poland) said that since the previous meeting his delegation had carefully considered the motion by Ghana for separate votes on the words " and export " in paragraph 1 and the words " or exported thereafter " in paragraph 2. It was clear that on returning to his country of origin, a consular officer or employee should be permitted to export, without difficulty, any articles he had imported for his establishment. Since the receiving State had agreed to the importation of those articles at the time of establishment, it should also permit their exportation on the departure of the person concerned. During the discussion in the Second Committee, the Polish delegation had submitted a written amendment to paragraph 1 and an oral amendment to paragraph 2; but the Committee had left the wording of the text to the drafting committee, which had been unable to settle the matter satisfactorily. In the circumstances, his delegation would not oppose the motion for a separate vote on the words " or exported thereafter " in paragraph 2 relating to consular employees, and would withdraw the oral amendment to paragraph 2 which it had submitted at the previous meeting. He could not support the motion for a separate vote on the words " and export " in paragraph 1: no obstacle should be placed in the way of re-export by a consular officer of the articles referred to in sub-paragraphs (*a*) and (*b*).

3. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that that committee had naturally been unable to deal with the matter referred to by the Polish representative, since it was a point of substance. That was clearly indicated by the motion for a separate vote.

4. Mr. TILAKARATNA (Ceylon) said that his delegation had opposed the use of the words " import " and " export " in paragraph 1. It favoured a provision on the lines of article 36, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations, which provided that the receiving State should permit " entry " of the articles in question. The term " import " had a completely different connotation.

5. As to the re-export of the articles on the departure of the consular officer concerned, he could not conceive of any restriction being placed on it by a receiving State which had permitted their entry for the consular officer's establishment. In any event, the condition " in accordance with such laws and regulations as it [the receiving State] may adopt " would permit the receiving State to limit the quantity or value of the articles exported. In the circumstances, the words " and export " were quite unnecessary, and his delegation supported the motion for a separate vote on them.

6. The words " or exported thereafter ", in paragraph 2, lacked clarity. The intention was that articles which had been brought into the country by a consular employee should be re-exportable when he finally left the country. It was obviously not intended that a consular employee should, for example, be able to take a car with him when going on holiday and sell it outside the receiving State. All delegations recognized the basic right of both consular officers and consular employees to re-export articles they had brought into the receiving State at the time of their establishment.

7. Mr. DADZIE (Ghana) thanked the Polish representative for his supporting his motion for a separate vote on the words " or exported thereafter " in paragraph 2, and regretted that he had been unable to adopt the same attitude regarding the words " and export " in paragraph 1. It would be undesirable for the convention on consular relations to be more liberal than the Convention on Diplomatic Relations. A diplomatic agent was entitled to exemption only in respect of the entry of the articles in question, whereas under article 49 a consular officer would be granted exemption in respect of both import and export. For those reasons, his delegation maintained its motion for a separate vote on the words " or export " in paragraph 1.

8. Mr. ENDEMANN (South Africa) endorsed the arguments of the representatives of Ghana and Ceylon. The terms " import " and " export " were normally used

in English in connexion with business transactions. The words " permit import and export " in paragraph 1 could therefore be construed as giving a consul the exemption for a private import and export business. It was for that reason that the Convention on Diplomatic Relations merely referred to the " entry " of the articles in question. There was of course no intention of preventing the person concerned from taking his belongings back to his country. The purpose of those who supported the motion for a separate vote was to avoid the use of terms that could be misinterpreted.

9. Mr. MARESCA (Italy) observed that the provisions of article 49 introduced an innovation. Existing international law granted a consul exemption from customs duties and inspection only in respect of articles intended for his establishment. The provisions of article 49 went much further and, for his part, he would welcome a liberalization of the existing rules. There should, however, be a limit to such liberalization. The articles covered by the exemption should be those necessary for the daily life of the consular officer and his family; they should be consumed in the receiving State or taken back to his country on his repatriation. There would be no justification for authorizing a consul to export articles free of duty at any time during his period of residence in the receiving State. Among other objections, the export of works of art, for instance, was prohibited in many countries. If a consul happened to be a wealthy man and could purchase works of art, it would be quite inadmissible that he should be able to export them in defiance of a general prohibition. For those reasons, his delegation would vote in favour of the motion for separate votes and against the words " and export " in paragraph 1 and " or exported thereafter " in paragraph 2.

10. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he could not understand the concern expressed by some delegations regarding the use of the words " and export " in paragraph 1. Those words must be understood in the context of sub-paragraphs (*a*) and (*b*) which followed. Sub-paragraph (*a*) referred to articles for the official use of the consular post. He could see no harm in such objects as flags and coats-of-arms being freely exported. Sub-paragraph (*b*) referred to articles for the personal use of a consular officer or members of his family, and specified that articles intended for consumption must not exceed the quantities necessary for direct utilization by the persons concerned. It was therefore obvious that the provisions in question could not possibly be used as a cover for business transactions. His delegation accordingly opposed the motion for a separate vote on the words " and export " in paragraph 1. It did not, however, object to a separate vote on the words " or exported thereafter " in paragraph 2.

11. Mr. ALVARADO GARAICOA (Ecuador) supported the motion for division of the text. Such terms as " import " and " export " were entirely inappropriate. The appropriate words in Spanish were " entrada " and " salida ".

12. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that there appeared to be some slight difference in meaning between the words used in the various languages. The word used for " export " in Russian did not imply a business operation.

13. Mr. de ERICE y O'SHEA (Spain) opposed the motion for division of the text. If the reference to " export " were to be deleted, obstacles might well be placed in the way of a consul taking his furniture and effects back to his own country.

14. Mr. DADZIE (Ghana) urged that decisions should be taken on his delegation's two motions for separate votes. If, as he hoped, the words " and export " were deleted from paragraph 1, the Conference could then consider replacing the word " import " by the word " entry ", which was used in article 36 of the Convention on Diplomatic Relations.

15. Mr. WESTRUP (Sweden), Mr. KRISHNA RAO (India), Mr. GIBSON BARBOZA (Brazil) and Mr. ALVARADO GARAICOA (Eduador) supported that suggestion.

16. The PRESIDENT put to the vote the motion for a separate vote on the words " and export " in paragraph 1.

The motion was carried by 48 votes to 20, with 9 abstentions.

The words " and export " were rejected by 46 votes to 23, with 11 abstentions.

17. Mr. GIBSON BARBOZA (Brazil) proposed that the word " import " in paragraph 1 should be replaced by " entry " in the English text, " entrée " in the French text and " entrada " in the Spanish text.

18. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that there appeared to be no difficulty with the Russian text, but he proposed that the matter should be referred to the drafting committee.

19. The PRESIDENT said that, if there were no objection, he would consider that the Conference agreed to the proposals made by the representatives of Brazil and the Union of Soviet Socialist Republics.

It was so agreed.

20. The PRESIDENT said that, in the absence of any objection, he would consider that the Conference agreed to the proposal by the representative of Ghana that a separate vote be taken on the words " or exported thereafter " in paragraph 2.

It was so agreed.

The words " or exported thereafter " were rejected by 68 votes to 2, with 9 abstentions.

21. The PRESIDENT drew attention to the Venezuelan motion for a separate vote on paragraph 2 as a whole, which had been submitted at the previous meeting.

22. Mr. SILVEIRA-BARRIOS (Venezuela) said that, even after the deletion of the words " or exported thereafter ", he maintained his motion for a separate vote.

23. Mr. HEPPEL (United Kingdom) and Mr. KRISHNA RAO (India) opposed the motion.

24. Mr. DEJANY (Saudi Arabia) supported the motion.

The motion for a separate vote on paragraph 2 was defeated by 60 votes to 9, with 8 abstentions.

25. The PRESIDENT recalled that, as the previous meeting, the representative of the Philippines had moved that a separate vote be taken on paragraph 3.

26. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) and Mr. ALVARADO GARAICOA (Ecuador) opposed the motion.

27. Mr. TÜREL (Turkey) supported the motion.

The motion for a separate vote on paragraph 3 was defeated by 40 votes to 26, with 13 abstentions.

Article 49 as a whole, as amended, was adopted by 76 votes to 2, with 4 abstentions.

28. Mr. TILAKARATNA (Ceylon) said that he had voted against the words " and export of " in paragraph 1 and against the words " or exported thereafter " in paragraph 2. The deletion of those words would not deprive consular officials and employees of the right to take away articles imported for their personal use when they left the receiving State.

29. Mr. DE CASTRO (Philippines) said that he had abstained from voting for the reasons he had given when proposing a separate vote on paragraph 3.

30. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted against article 49 as a whole because he did not consider that consular employees should be granted exemption from customs duties. His views had been fully explained in the Second Committee.

31. Mr. TÜREL (Turkey) said he had voted against article 49 because the exemption provided by paragraph 2 was too wide. His government would find it unacceptable and would not apply it.

Article 50 (Estate of a member of the consular post or of a member of his family)

Article 50 was adopted unanimously.

32. Mr. ALVARADO GARAICOA (Ecuador) suggested that article 50 should be referred to the drafting committee as it contained the word " export " which had been deleted from article 49.

33. Mr. de ERICE y O'SHEA (Spain) pointed out that articles 49 and 50 dealt with entirely different situations. In article 49 the word " export " had referred to articles taken out of the country by a consular official and his family on leaving his post. Article 50 dealt with the removal of property on the death of a member of the consular post or of a member of his family; it would be only fitting to allow the family to take away such property.

34. Mr. GIBSON BARBOZA (Brazil) agreed with the representative of Spain.

35. Mr. KRISHNA RAO (India) thought it would be advisable to refer the article to the drafting committee. The 1960 draft of the convention had used the word " withdrawal " and the word " export " had been introduced because it appeared in article 49.

36. Mr. ALVARADO GARAICOA (Ecuador) agreed that the word " export " was acceptable in the text of article 50 and withdrew his suggestion.

37. Mr. DADZIE (Ghana), supported by Mr. CAMARA (Guinea), said that the Indian representative had made a useful comment and that nothing would be lost by referring the article to the drafting committee.

It was so agreed.

Article 51
(Exemption from personal services and contributions)

Article 51 was adopted unanimously.

Article 53 (Beginning and end of consular privileges and immunities)

38. The PRESIDENT noted that article 52 had been deleted [1] and invited the Conference to consider article 53.

39. Mr. EVANS (United Kingdom) proposed that, in paragraph 1, the words " from the moment when his appointment is notified to the Ministry for Foreign Affairs or to the authority designated by that Ministry " should be replaced by the words " from the moment when he enters on his duties with the consular post ". Article 53 should be considered in conjunction with article 23, paragraph 3, which provided that a person appointed as a member of a consular post could be declared unacceptable " before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post ", and also with article 19, paragraph 2, which provided that " the full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of article 23 ". It followed that the date from which the consular officer was entitled to enjoy privileges and immunities was not the date of notification under article 19, but the date of entering on his duties referred to in article 23.

40. Mr. VAN HEERSWIJNGHELS (Belgium) suggested that the words " or from the date of their entry into the territory of the receiving State " in paragraph 2 were rendered unnecessary by the reference to paragraph 1.

41. Mr. BARTOŠ (Yugoslavia) suggested that the United Kingdom representative be invited to submit his amendment in writing. He did not oppose the Belgian amendment, which was a drafting matter.

42. Mr. KRISHNA RAO (India) was in favour of deferring the discussion as he had not fully understood the United Kingdom representative's reasoning. He could not support the Belgian proposal because, whereas paragraph 2 referred only to the entry of members of the

[1] The First Committee had decided at its thirty-first meeting to delete article 52, and to request the drafting committee to prepare an optional protocol concerning acquisition of nationality.

family, in paragraph 1 the entry of the member of the consular post was linked with other considerations.

43. Mr. DADZIE (Ghana) said that the United Kingdom representative had raised an important point which needed careful consideration. He would have no objection to deferring the discussion of article 53.

44. Mr. KHLESTOV (Union of Soviet Socialist Republics) thought that the Belgian amendment should also be submitted in writing.

45. The PRESIDENT suggested that the discussion of article 53 should be deferred so that the amendments submitted by the United Kingdom and Belgium could be submitted in writing.

It was so agreed.

Article 54 (Obligations of third States)

46. Mr. ENDEMANN (South Africa) moved that a separate vote be taken on the words " or making other official journeys " in paragraph 1. The Polish amendment (A/CONF.25/C.2/L.141) discussed in the First Committee had included the qualifying words " to the sending State ", but the Committee had adopted the shorter phrase appearing in the article. " Other official journeys ", unless they were made in connexion with consular functions or on returning to the sending State, did not come within the scope of the convention. When the amendment had been submitted in the First Committee, it had been pointed out, by way of example, that many consular officers had come to the present conference direct from a consular post. In fact, however, they had come not in their consular capacity, but as delegates to an international conference. As the representative of Canada had said in the First Committee (thirty-third meeting), the International Law Commission would be studying the question of *ad hoc* official journeys, and the inclusion of the words in question would go beyond the purpose of a convention on consular relations.

47. Mr. PAPAS (Greece) said that, in the First Committee, his delegation had opposed the grant of immunities to the consular officers of a third country while in transit. The practice of a few States could not be invoked to justify such a course. Moreover, even in the case of diplomatic agents in transit, the question whether they should enjoy certain immunities was a controversial one. Article 54 introduced a completely new rule, which went beyond the limits of codification, and his delegation would accordingly abstain from voting on that article.

48. Mr. LEE (Canada) opposed the inclusion of the phrase, as his delegation had done in the First Committee: he considered it unnecessary and unacceptable. A consular officer received by a third State in that capacity would be accorded the privileges and immunities provided by the preceding articles of the convention. If he went to a third State on a special mission, he would be accorded the privileges and immunities customary in international practice for special missions. Whether he were a diplomatic or a consular agent the mission would still be *ad hoc* and he should not be granted the rights and privileges provided by the consular convention. The International Law Commission would be reconsidering the question with a view to codification, but it was not within the competence of the present conference. He therefore supported the motion for a separate vote and would vote against the words in question.

49. Mr. NALL (Israel) said that, during the debate on article 54 at the 33rd meeting of the First Committee, his delegation had expressed its satisfaction at the adoption by the Second Committee of the provision on *ad hoc* couriers appearing in article 35, paragraph 6. It had drawn attention to the desirability of co-ordinating that provision with article 54, paragraph 3, and had stated that as the matter could be treated as a consequential amendment, it would not make a formal proposal. The Chairman of the First Committee had said that if article 54, paragraph 3, were adopted, the drafting committee could take the Second Committee's decision into account and his delegation had accepted that statement.

50. He pointed out that article 1 contained no definition of the term " consular courier ", although article 35, paragraph 1, stated that " in communicating with the government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers . . ." Those words referred to career consular couriers as distinct from the *ad hoc* or occasional couriers referred to in paragraph 6 of the same article.

51. There was no mention of *ad hoc* couriers in article 54. That omission was particularly regrettable because the term " consular couriers " could only be interpreted with reference to article 35, paragraph 1, which referred to career consular couriers. It could not be assumed that article 54 should be extended to include the *ad hoc* couriers specifically referred to in article 35, paragraph 6. The Second Committee had attached the greatest importance to protecting *ad hoc* couriers, as was clear from the fact that article 35, paragraph 6, had been adopted as an amendment to the International Law Commission's draft. If the omission was due to a consensus of opinion in the drafting committee that the term " consular courier " in article 54 should be understood to include *ad hoc* couriers, he would be grateful if the chairman of the drafting committee would confirm the fact.

52. Mr. KRISHNA RAO (India), chairman of the drafting committee, confirmed that that committee had considered the question raised by the representative of Israel and had agreed that the term " consular courier " included *ad hoc* consular couriers.

53. Speaking as the representative of India, and referring to the words " or making other official journeys ", he said that very few international agreements dealt with that question, because consular immunities, unlike diplomatic immunities, were usually regulated by bilateral conventions which were not concerned with third States. The convention should therefore provide for other official journeys if they were made in the course of official duty. The International Law Commission, in

paragraph 2 of its commentary on article 54, listed the kinds of journey for which third States should grant immunities. He supported the motion for a separate vote on the words " or making other official journeys ".

54. Mr. HEPPEL (United Kingdom) said that in the First Committee the United Kingdom delegation had opposed the inclusion of the words " or making other official journeys "; he agreed with other speakers that such journeys were not made in a consular capacity and were in any case difficult to define. The journeys which should be covered by the article were those between the sending State and the consular officer's post. As he recalled it, the reason for the Polish amendment referred to by the South African representative was that the preceding words " when returning to the sending State " were too limited and appeared to cover only the return home at the end of a mission. But since the First Committee had voted to delete the words " to the sending State " from the Polish amendment, it no longer served its original purpose. The words " or making other official journeys " were an unnecessary extension of the corresponding provision in the diplomatic convention and the intention of article 54 would be clear without them. He therefore supported the motion for a separate vote on these words.

55. Mr. MARESCA (Italy) said that article 54 was one of the most important in the convention, since the other provisions might be covered by bilateral agreements, but the obligations of third States could only be dealt with in a multilateral convention. Nevertheless, the solution of the problem must be kept within the framework of consular relations. A consular officer was entitled to protection under the convention by a third State only when he was exercising consular functions; a convention on consular relations could not establish rules for travel on other missions. The Italian delegation was therefore in favour of deleting the words " or making other official journeys ".

56. Mr. ABDELMAGID (United Arab Republic) agreed that the official journey on which consular officers were entitled to claim protection from a third State should only be those relating to consular functions. He would therefore support the proposal for a separate vote on the words in question.

57. His delegation had abstained from voting on article 54, paragraph 4, in the First Committee. It would not, however, ask for a separate vote on that paragraph.

58. Mr. DADZIE (Ghana) said he could not agree that the obligations of a third State under article 54 related only to consular officers passing through its territory or in its territory while proceeding to take up or return to their posts, or to return to their own country. The Conference itself provided a good example of a case in which a number of consular officers had made official journeys to a third State in order to represent their countries. Moreover, article 17, paragraph 2, referred to other official journeys on which a consular officer was entitled to claim protection from a third State. His delegation was therefore opposed to a separate vote.

59. Mr. WASZCZUK (Poland) also opposed the South African motion. The words in question made good an omission from the International Law Commission's draft, since consular officers might be obliged to make official journeys other than those specified in paragraph 2 of the commentary on article 54. For instance, they might be recalled to their capital for consultation with the Minister for Foreign Affairs; some countries arranged meetings of consular officers to exchange experience of consular work; and conferences in various countries were sometimes attended by consular officers. It was essential to guarantee the necessary privileges and immunities for those officers; the present conference clearly showed that need.

60. Mr. KIRCHSCHLAEGER (Austria) said that his delegation was strongly in favour of retaining the reference to " other official journeys ". The consular officers of his country were often obliged to pass through third States when travelling from their posts to consult a superior residing in another country, or even when travelling from one post to another in the same consular district. They should be accorded the same protection during such journeys as they received when travelling to and from the sending State.

61. Mr. WESTRUP (Sweden) supported the addition of the phrase in question to the original text. Although there was no corresponding provision in the Convention on Diplomatic Relations, the purpose of the Conference was not only to codify existing rules, but also to contribute to the progressive development of international law; in his delegation's opinion, the phrase in question was a contribution to that development.

62. Mr. CAMERON (United States of America) said he would vote against the phrase. While consular officers travelling through third States should enjoy some privileges and immunities, provision for official journeys other than those already specified should be made by special agreement. In the case of the present conference, for example, two consuls-general serving elsewhere in Europe were members of the United States delegation, but neither of them were acting under a consular commission or in a consular capacity; the United States delegation did not consider that the privileges and immunities extended to them should be those laid down in a general multilateral convention on consular relations.

63. Mr. TORROBA (Spain) reiterated the view advanced by his delegation in the First Committee that the words " or making other official journeys " should be retained, since they would benefit all consular officers.

64. Mr. USTOR (Hungary) considered those words a useful addition and clarification. He would vote against the South African motion and, if it were carried, in favour of retaining the reference to " other official journeys ".

The South African motion for a separate vote was carried by 34 votes to 30, with 12 abstentions.

65. The PRESIDENT put to the vote the words " or making other official journeys " in paragraph 1.

The result of the vote was 34 in favour and 31 against, with 13 abstentions.

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

Article 54, as a whole, as amended, was adopted by 72 votes to none, with 4 abstentions.

66. Mr. DE CASTRO (Philippines) explained that he had abstained from voting on the article because paragraph 3 accorded special inviolability to consular couriers. In connexion with article 35, his delegation had explained that, under Philippine law, that inviolability was limited exclusively to the exercise of the courier's functions, and could not be extended to a courier who committed unlawful acts. The chairman of the drafting committee had reinforced his delegation's views on the matter by stating that the term " consular couriers " should be understood to include *ad hoc* consular couriers.

Article 55 (Respect for the laws and regulations of the receiving State)

Article 55 was adopted unanimously.

Article 55 A
(Insurance against third party risks) [2]

Article 55 A was adopted unanimously.

Article 56 (Special provisions concerning private gainful occupation) [3]

Article 56 was adopted unanimously.

Report of the credentials committee

67. The PRESIDENT invited the Conference to consider the report of the credentials committee (A/CONF.25/L.37).

68. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that his delegation felt obliged to restate the position of the Soviet Union with regard to the credentials of the Chiang Kai-shek group. The only valid credentials for representatives of China were those issued by the Government of the People's Republic of China. Although his delegation was in favour of approving the report of the credentials committee, it wished to stress its view that the participation of members of the Chiang Kai-shek group at the Conference was illegal.

69. Mr. PUREVJAL (Mongolia) said that, although he, too, was in favour of approving the report of the credentials committee, he felt obliged to state that his country could not recognize the credentials of the Chiang Kai-shek group, which was participating in the Conference on an illegal basis. The only legitimate representatives of China were those authorized by the Government of the People's Republic of China.

70. Mr. CHIN (Republic of Korea) considered that the remarks of the preceding speakers, questioning the credentials of the delegation of China, were out of order. Since those credentials had been issued by the competent authorities of the Republic of China in accordance with rules 3 and 4 of the rules of procedure, their authenticity was unquestionable.

71. Mr. HOANG XUAN KHÔI (Republic of Viet-Nam) said that his delegation was in favour of approving the report of the credentials committee and, in particular, the credentials of the delegation of China. From the purely legal point of view, that delegation had been duly vested full powers by its government, which had been invited to participate in the Conference under General Assembly resolution 1685 (XVI). Moreover, the Republic of China was a real democracy, and its government was legitimate, since it corresponded to the aspirations of the great Chinese people ; that people was traditionally peace-loving, and could be represented only by the government which was a founder Member of the United Nations, not by authorities which showed their contempt for peaceful co-existence by perpetrating acts of aggression against a neighbouring country. In view of China's spiritual heritage, of which all Asia should be proud, its people could not freely agree to be governed by a clique imposing a foreign ideology diametrically opposed to their own.

72. Mr. CAMERON (United States of America) was in favour of approving the report of the credentials committee. His delegation considered that the action taken by the committee with regard to the representation of China was entirely correct, for the question of participation in the Conference had been settled by General Assembly resolution 1685 (XVI), under which all States Members of the United Nations and the specialized agencies and States parties to the Statute of the International Court of Justice had been invited to participate. The Republic of China was a Member of the United Nations and the specialized agencies, its government represented China in all international organizations, and it alone was entitled to represent China at the Conference.

73. Mr. DE CASTRO (Philippines) expressed the view that the Republic of China alone was entitled to represent the Chinese people at the Conference. He was in favour of approving the report of the credentials committee.

74. Mr. WU (China) expressed his gratification at the report of the credentials committee, which had acted wisely in resisting attempts to question the legality of his delegation's credentials. While he was glad that the report as a whole would probably be approved unanimously, he regretted that the delegations of certain countries had again taken the opportunity of using the Conference as a political forum for their propaganda. The suggestion that his delegation's credentials were not in order because they were not issued by the communist regime in China was absurd; his government had been invited to attend the Conference under a General Assembly resolution, and his delegation had full powers issued by the President and the Minister for Foreign Affairs. Such suggestions were, in fact, a challenge to the General Assembly resolution, which constituted the terms of reference of the Conference itself, and were illegal and

[2] Formerly paragraph 3 of article 43.

[3] The drafting committee had decided to merge the additional article adopted by the Second Committee at its forty-fourth meeting with article 56.

out of order. It had also been asserted that his government and delegation did not represent the Chinese people. He was glad that that question had been raised; conditions on the Hong Kong border, the fact that over 14,000 Chinese communist soldiers had chosen to settle in Taiwan in 1954 and the continuous stream of political refugees fleeing from the mainland of China to Taiwan offered ample proof of who really represented the Chinese people. He had made his statement in exercise of his right of reply, and hoped that the dignity of the Conference would be upheld during the remainder of the debate.

75. Mr. NESHO (Albania) pointed out that his delegation had stressed, at the first plenary meeting, that a conference engaged in preparing an international instrument must include all the sovereign States in the world which supported its humanitarian purposes. The Albanian delegation had then proposed that the Conference should immediately decide to exclude the representatives of the Chiang Kai-shek group and admit the representatives of the People's Republic of China, who were alone qualified to represent the Chinese people. It had also urged the admission of the German Democratic Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam to participation in the Conference. To deny participation to the representatives of one-quarter of the world's population was a violation of the most elementary rules of international law; the Albanian delegation therefore considered the credentials of the Chiang Kai-shek group to be unacceptable.

76. Mr. ROSZAK (Poland) said his delegation would vote for approval of the report of the credentials committee in order to maintain the harmony that had hitherto prevailed at the Conference; but it reserved its position with regard to the credentials of the private persons from Taiwan who were usurping the rightful place of the representatives of the People's Republic of China, the only legitimate representatives of the great Chinese people. Most of the countries represented at the Conference maintained diplomatic relations with the People's Republic of China, and only that State was qualified to undertake international obligations on behalf of the Chinese people.

77. Mr. SRESHTHAPUTRA (Thailand) said there was no reason to object to the presence at the Conference of the representatives of the Republic of China, which was a Member of the United Nations and had been invited to attend the Conference under General Assembly resolution 1685 (XVI). It was also clear from the report of the credentials committee that the credentials of the Republic of China had been issued in accordance with rule 3 of the rules of procedure, and were in proper order.

78. Mr. SILVEIRA-BARRIOS (Venezuela) said he was in favour of approving the report of the credentials committee.

79. Mr. HEPPEL (United Kingdom) said that his delegation was in favour of approving the report of the credentials committee, but wished to put it on record that his delegation would vote for it solely on the ground that the credentials concerned were, considered as documents, in order. Approval did not therefore necessarily imply recognition of the issuing authorities.

80. With regard to paragraph 7 of the report, he reserved his government's position on the credentials of the Hungarian delegation.

81. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said the fact that the People's Republic of China had been debarred from participating in international conferences and organizations was contrary to the United Nations Charter and to the principles of equal rights and state sovereignty. Under international law, the Government of the People's Republic of China was alone entitled to represent China at the Conference, since it was the only government which legally and effectively controlled the country with the support of the people. Although the Ukrainian delegation was in favour of approval of the report of the credentials committee, it could not recognize the credentials of the Chiang Kai-shek group.

82. Mr. ALVARADO GARAICOA (Ecuador) said his delegation was in favour of approving the report of the credentials committee as submitted to the Conference.

83. Mr. PETRŽELKA (Czechoslovakia) observed that only representatives of the People's Republic of China could legitimately sign international treaties on behalf of that great country. That government had issued no credentials to any representative to the Conference, and the Czechoslovak delegation could not recognize the credentials of a group of private persons surrounding Chiang Kai-shek. None of the calumnies that had been uttered against the People's Republic of China could alter the fact that the Chinese people were not represented at the Conference. His delegation's approval of the report of the credentials committee must be interpreted in the light of that statement.

84. Mr. CRISTESCU (Romania) said his delegation could not recognize the credentials of persons who, while claiming to represent China, actually belonged to a bankrupt clique rejected by the Chinese people. The fact that the legal representatives of that people — those authorized by the Government of the People's Republic of China — had been prevented from attending the Conference, could only detract from the importance of both the Conference and the instrument resulting from it.

85. Mr. USTOR (Hungary) said that his delegation had noted and appreciated the fact that the United States delegation had departed from its earlier untenable practice of not recognizing the credentials of the Hungarian delegation. He wished, however, to register a strong objection to the reservation made in paragraph 7 of the report and the one made orally by the United Kingdom representative.

86. His delegation's approval of the report of the credentials committee should not be interpreted as an endorsement of the right of Taiwan to represent China; only the People's Republic of China was entitled to do so.

87. Mr. WU (China), exercising his right of reply, observed that references to the " Chiang Kai-shek group " showed complete ignorance of conditions in his country. President Chiang Kai-shek was not only the legal president of China, but a national leader enjoying the support of millions of Chinese all over the world, including the 600 million groaning under the yoke of communist oppression on the mainland. Although the Chinese people were proud of their leader, the representatives of China could not be described as his clique or group.

The report of the credentials committee was adopted unanimously.

The meeting rose at 6.15 p.m.

EIGHTEENTH PLENARY MEETING

Friday, 19 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 53 (Beginning and end of consular privileges and immunities) (*concluded*)

1. The PRESIDENT invited the Conference to continue its consideration of article 53 to which amendments had now been submitted in writing by the delegations of Belgium (A/CONF.25/L.47) and the United Kingdom (A/CONF.25/L.48).

2. Mr. EVANS (United Kingdom) drew attention to the explanatory note annexed to his amendment.

3. Mr. MARESCA (Italy) said that the United Kingdom proposal was logically and legally correct. A consul could only be a consul in the legal sense if he had been admitted by the receiving State; the fact of admission conferred on him his status as a consul. In the light of the provisions of article 53, read together with article 19, paragraph 2, and article 23, paragraph 1, the sending State was under a duty to notify the receiving State of the appointment of a consular officer other than the head of post before his arrival in the territory of the receiving State, and sufficiently in advance to enable the receiving State to declare him, possibly, *persona non grata*. If the consular officer appointed was already residing in the State, notification of his appointment before his arrival was obviously impossible. In that case it was necessary to state in the text of article 53 that a consul's status should begin with his entry into his consular functions. He fully supported the United Kingdom proposal.

4. Mr. BARTOŠ (Yugoslavia) said that he was grateful that the United Kingdom amendment had been issued in writing but, after studying it, he was all the more convinced that it lacked logic. The rules concerning the appointment of a consul required prior notification before a consul could enter on his duties. The United Kingdom amendment made no mention of that notification. It left open the possibility that a consul could be arrested before he could enter on his duties. The receiving State would be free, if it felt so inclined, without declaring him unacceptable or *persona non grata*, to resort to police measures to prevent him from taking up his duties. That was contrary to articles 19 to 23, and in particular article 24, according to which notification by the sending State was necessary before a consul could enter on his duties. That was why the 1961 Convention on Diplomatic Relations had not adopted the approach used in the United Kingdom amendment, as was admitted in the explanatory note attached to the amendment. He was convinced that it was a question not of a small drafting change but of a substantial change in the sense of the article and therefore could not support the United Kingdom amendment.

5. Mr. SPACIL (Czechoslovakia) said that he preferred the text prepared by the drafting committee and approved by the First Committee. He agreed with the argument of the Yugoslav representative as to the principle. But there was also the practical side and he would like the United Kingdom representative to explain the expression " enters on his duties ": did it mean the moment the consul entered the consular premises, the moment when he started work, or some other moment ? He found it difficult to accept a proposal that was less specific than the provisions of article 53 as drafted.

6. It might perhaps be argued that to state the time when a consular officer entered on his duties corresponded to the provisions of paragraph 3 of article 23; but the amendment did not mention whether the officer had been accepted by the receiving State, and it made no reference to notification. His delegation could not accept the United Kingdom amendment.

7. Mr. DE CASTRO (Philippines) said that the draft reversed the proper order with respect to the time from when a consular officer should enjoy privileges and immunities; that was remedied by the United Kingdom amendment. The expression " from the moment when he enters on his duties " meant the moment when he was granted provisional recognition or the exequatur.

8. Mr. ALVARADO GARAICOA (Ecuador) said that he found difficulty in understanding the United Kingdom amendment. To say that the consular official should enjoy privileges and immunities from the moment when he entered on his duties was equivalent to saying that this would be from the moment when he received the exequatur, since until he received it he could not enter on his duties.

9. The explanatory note referred to article 23. His interpretation of article 13 was that it referred to the notification that had to be made by the sending State in order to receive the acceptance of the receiving State. If a consular officer were to receive privileges and immunities from the time of that notification, which would be before the grant of the exequatur, he would be placed in a better position than the head of a diplomatic mission.