

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/SR.18

18th 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)

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.

Pending a satisfactory explanation of that important point his delegation could not support the United Kingdom amendment.

10. Mr. BINDSCHIEDLER (Switzerland) said that his delegation could not support the United Kingdom amendment for the reasons given by the Yugoslav representative. It was indispensable that a consular officer should enjoy certain privileges and immunities from the moment he entered the territory of the receiving State, and not from the moment he entered on his duties. The latter provision left a gap which would enable the receiving State to make difficulties at the time when he entered on his duties.

11. The drafting committee's text, which referred to the moment of the notification of an officer's appointment to the competent authorities of the receiving State, did not mean that he could enjoy privileges if his appointment were not accepted by the receiving State: he could not enjoy privileges unless the *exequatur* had been granted. There was no reason why the existing text should be changed for one which was contradictory and inapplicable.

12. Mr. CRISTESCU (Romania) said that he opposed the United Kingdom amendment because some of the privileges and immunities provided in chapter II were necessary for the consular officer from the moment he entered the territory of the receiving State; for example, exemption from customs duties and inspection. The case of a consular officer being declared *persona non grata* was too rare to justify the postponement of the time when a consular officer would receive privileges and immunities as under the United Kingdom amendment.

13. Mr. CAMERON (United States of America) said that he had received the impression that certain delegations had misinterpreted the import of the United Kingdom proposal. Two possibilities were referred to in paragraph 1 of article 53. In the case of a person appointed to the consular post when he was outside the territory of the receiving State, his privileges and immunities would begin from the moment he entered the receiving State to take up his duties. The United Kingdom amendment did not refer to such persons. It applied only to persons who were already in the receiving State but who had not yet taken up their duties. It was inconceivable that an individual already in the receiving State should receive the privileges and immunities accorded by the convention before entering on his duties. He would therefore support the United Kingdom proposal.

14. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said that he fully supported the United Kingdom amendment for the reasons given in the explanatory note attached to it.

15. Mr. ENDEMANN (South Africa) also expressed his full support for the United Kingdom amendment. One of the main functions of the plenary meetings was to reconcile the provisions of various articles which had been passed by the committees, and in which it was sometimes possible to find contradictions and discrepancies. That was the purpose of the United Kingdom amendment. He agreed with the United States repre-

sentative that some delegations seemed to have misunderstood the amendment, which was only concerned with those consular officers who were already on the territory of the receiving State. Such persons might be consular officers from another post, or members of the diplomatic staff, or again other officials who already in their various capacities enjoyed certain privileges and immunities sufficient for their needs until they assumed their new position. It was therefore essential that, in their case, consular privileges and immunities should only begin with the assumption of consular duties. The United Kingdom amendment was logical and if it were not adopted an important element would be missing from the convention.

16. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that he could not support the United Kingdom amendment for two reasons. Firstly, because it did not state who would decide when a consular officer entered on his duties — the consular officer himself or the receiving State; as the Czechoslovak representative had pointed out, the term "entering on his duties" was vague. Secondly, because the amendment was in contradiction with the preceding text. He was not convinced by the arguments of the United States and South African representatives. Every member of a consular post should enjoy consular privileges from the moment of entering the receiving State or from the moment of his appointment. He interpreted the text as drafted to mean that a member of the consular staff should enjoy privileges from the moment of his entry into the territory of the receiving State, which implied that he had already assumed his functions and had received acceptance from the receiving State. The United Kingdom amendment contradicted the text which had been adopted by the First Committee, and he would therefore vote against it.

17. Mr. USTOR (Hungary) said that he failed to see the merits of the amendment. The explanatory note did not state what dangers the United Kingdom amendment hoped to avoid. There might be a danger that a person, appointed by the sending State as a consular officer, a consular employee or a member of the service staff, of whose appointment the receiving State had been duly notified, should enjoy privileges and immunities before the receiving State had had time to signify its approval. Yet that did not seem to be a catastrophe justifying a departure from the text previously adopted or from the provisions of the Convention on Diplomatic Relations. To depart from the text of that convention meant demanding greater guarantees for the receiving State in the case of the appointment of a consular officer than in the case of the appointment of a diplomatic officer. He saw no need to discriminate in that respect between diplomatic and consular officers. The amendment should not be adopted and he would vote against it.

18. Mr. EVANS (United Kingdom) said that the objections of the Swiss, Romanian and Byelorussian representatives were quite misconceived. The amendment did not refer to persons entering the territory of the receiving State, but only to persons who were already in the receiving State. It in no way affected the first part of paragraph 1 of article 53.

19. The point made by the Yugoslav representative, that paragraph 3 of article 23 provided that a member of a consular post must be accepted by the receiving State before entering on his duties, was the very point the United Kingdom delegation had had in mind, and which seemed to make the amendment necessary. The existing draft of article 53 meant that a person already on the territory of the receiving State should receive privileges and immunities even before being accepted by the receiving State. That seemed to be quite wrong in principle and inconsistent with the provisions of articles 19 and 23.

20. The Hungarian representative had asked what danger there was in the existing text. To give an example, it should be noted that, under paragraph 3 of article 53, consular privileges and immunities ceased only when the person concerned left the territory of the receiving State or on the expiry of a reasonable period in which to do so. If a case arose in which the appointment as a member of the consular staff of a person already living in the receiving State was not accepted by the receiving State, that person would, according to the existing draft of paragraph 1, enjoy consular privileges and immunities from the date of the notification of his appointment and, notwithstanding the fact that he had been declared unacceptable by the receiving State, he would continue to enjoy them until he left the receiving State. That was a situation very much open to abuse.

21. Mr. de ERICE y O'SHEA (Spain) said that the United Kingdom amendment in no way prejudiced the consular privileges and immunities which it had been the concern of the Spanish delegation to defend throughout the Conference, and he therefore supported it. Moreover, the amendment gave a guarantee to the receiving State that might require a certain lapse of time between the notification of the appointment of a consular officer and the grant of its acceptance of that appointment, with the privileges and immunities entailed. In the case of a person who was outside the receiving State that period was the time necessary for him to arrive in the receiving State, but in the case of a person already in the receiving State there was, according to the provisions of the existing draft of paragraph 1, no such margin. The appointment of the officer and his enjoyment of privileges and immunities were simultaneous, which led to a paradoxical situation. The absurd position might arise that a government which was greatly interested in protecting a certain citizen who had committed a crime and against whom legal proceedings were pending in the receiving State, would paralyse those legal proceedings by simply appointing the person concerned as a member of a consular post.

22. The receiving State should have a certain margin of time in which to decide whether a given appointment was desirable. That margin existed in the case of a person coming from abroad; in the case of a person already in the receiving State, it should be the time between his appointment and the moment he entered on his duties.

23. Mr. BARUNI (Libya) moved the closure of the debate.

It was so decided.

The United Kingdom amendment (A/CONF.25/L.48) was adopted by 52 votes to 17, with 5 abstentions.

24. The PRESIDENT put to the vote the Belgian amendment (A/CONF.25/L.47).

The result of the vote was 25 in favour and 16 against, with 31 abstentions.

The amendment was not adopted, having failed to obtain the required two-thirds majority.

Article 53, as emended, was adopted by 72 votes to none, with 3 abstentions.

Article 57 (General provisions relating to facilities, privileges and immunities)

25. The PRESIDENT invited the Conference to consider chapter III (Regime relating to honorary consular officers and consular posts headed by such officers), beginning with article 57, to which two amendments (A/CONF.25/L.42 and A/CONF.25/L.44) had been submitted by Switzerland.

26. Mr. REBSAMEN (Switzerland) referred to the statement made by his delegation when paragraph 3 of article 57 was approved by the Second Committee. In his delegation's view, the text of that paragraph did not correspond to the practice of many States or to the practical requirements of the consular service. His delegation had therefore proposed (A/CONF.25/L.42) the deletion of the words "or of a consular employee employed at a consular post headed by an honorary consular officer" at the end of paragraph 3 which, as it stood, discriminated between the families of consular employees and those of service staff, and more important, treated the families of career consular officers differently according to whether the head of the family was employed at a consular post headed by an honorary consular officer or by a career consular officer. His delegation would, however, reserve the right to withdraw its amendment and to ask for a separate vote on the words which it wished to delete.

27. Mr. PAPAS (Greece) said that he could not support the Swiss amendment, which would have the effect of depriving the family of an honorary consular general, for example, of privileges and immunities which would be granted to the family of a subordinate employee.

28. Mr. MARESCA (Italy) regretted that his delegation could not support the Swiss amendment to paragraph 3, or the proposal to add a new paragraph to article 57 (A/CONF.25/L.44). There seemed no reason for granting to members of the family of a consular employee the privileges and immunities which were refused to members of the family of an honorary consul. In regard to the proposal for a new paragraph, there seemed no reason why two honorary consular officers should not be allowed to exchange consular bags.

29. Mr. VAZ PINTO (Portugal) supported the Swiss amendment (A/CONF.25/L.42), which had a sound and equitable basis.

30. Mrs. VILLGRATTNER (Austria) and Mr. MEYER-LINDENBERG (Federal Republic of Germany) endorsed that view.

31. The PRESIDENT invited the Conference to vote on the Swiss amendment to article 57, paragraph 3 (A/CONF.25/L.42).

The result of the vote was 31 in favour and 26 against, with 18 abstentions.

The amendment was not adopted, having failed to obtain the required two-thirds majority.

32. Mr. REBSAMEN (Switzerland) said that, although it was appropriate that the exchange of consular bags should be permitted between consular posts headed by honorary consular officers or by career consular officers, it would be unjustifiable to make general provision for the exchange of consular bags between consular posts headed by honorary consular officers. It must be borne in mind that the latter were private persons carrying on private activities, to whom article 35 applied. His delegation had therefore proposed the addition of a fourth paragraph in article 57 (A/CONF.25/L.44) to provide that the exchange of consular bags between two consular posts headed by honorary consular officers should not be allowed without the consent of the two receiving States concerned, which would decide in the light of local circumstances known only to the competent authorities in those States.

33. In reply to a question by Mr. BARTOŠ (Yugoslavia), he explained that the additional paragraph was intended to refer to consular posts in two different States.

34. Mr. CHIN (Republic of Korea), Mr. PAPAS (Greece), Mr. DONATO (Lebanon) and Mr. SILVEIRA-BARRIOS (Venezuela) supported the Swiss proposal.

The Swiss proposal (A/CONF.25/L.44) for the addition of a fourth paragraph in article 57 was adopted by 37 votes to 12, with 21 abstentions.

35. The PRESIDENT invited the Committee to vote on article 57 as amended.

36. Mr. KIRCHSCHLAEGER (Austria) moved that a separate vote should be taken on the words "or of a consular employee employed at a consular post headed by an honorary consular officer" at the end of paragraph 3.

37. Mr. EL KOHEN (Morocco) objected that the motion for division of the text was the same as the Swiss proposal for the deletion of the words concerned, which had already been rejected. The Conference could not revert to a matter with which it had already dealt.

38. Mr. DEJANY (Saudi Arabia) and Mr. MAHOUATA (Congo, Brazzaville) endorsed that view.

39. Mr. KIRCHSCHLAEGER (Austria) drew attention to rule 40 of the rules of procedure which accorded representatives the unconditional right to move that parts of a proposal should be voted on separately, irrespective of the result of any previous vote.

40. Mr. VAZ PINTO (Portugal) and Mr. CAMERON (United States of America) agreed.

41. Mr. ZEMANEK (Holy See) requested the President to put the motion for division of the text to the vote in accordance with rule 40.

42. Mr. DEJANY (Saudi Arabia) said that the Conference was not yet considering the motion itself, but whether it was appropriate to move that a part of a proposal which the Conference had already decided should not be deleted, should again be voted on separately in order to effect its deletion. He wished to stress the fact that his delegation had voted in support of the Swiss amendment for deletion; naturally, therefore, it ought to favour another attempt to bring about the deletion, but that was not the right and proper course for the Conference to adopt. It was obvious that the purpose of the motion for a separate vote was to delete the very same words as the amendment sought to delete. Since the Conference had just decided not to delete that part of paragraph 3, it could not now cast a second vote by resorting to rule 40 of the rules of procedure, unless a two-thirds majority was in favour of such a reconsideration.

43. The PRESIDENT ruled that the Austrian motion for division of the vote was in accordance with the rules of procedure.

44. Mr. EL KOHEN (Morocco) and Mr. BOUZIRI (Tunisia) challenged that ruling.

45. Mr. AMLIE (Norway) and Mr. van SANTEN (Netherlands) supported the President's ruling.

46. The PRESIDENT invited the Conference to vote on the Austrian motion for a separate vote on the words "or of a consular employee employed at a consular post headed by an honorary consular officer" in paragraph 3 of article 57.

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

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

In favour: Liechtenstein, Luxembourg, Norway, Panama, Portugal, Sierra Leone, South Africa, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Australia, Austria, Belgium, Colombia, Dominican Republic, Finland, Federal Republic of Germany, Ghana, Holy See, Honduras.

Against: Liberia, Libya, Mali, Mexico, Morocco, Netherlands, New Zealand, Pakistan, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Uruguay, Venezuela, Yugoslavia, Algeria, Argentina, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Canada, Chile, Congo (Brazzaville), Congo (Leopoldville), Czechoslovakia, Ecuador, France, Greece, Guinea, Hungary, India, Indonesia, Italy, Japan.

Abstaining: Mongolia, Philippines, Poland, Romania, San Marino, Spain, Syria, Republic of Viet-Nam, Albania, Cambodia, Ceylon, China, Costa Rica, Denmark, Federation of Malaya, Iran, Ireland, Republic of Korea, Lebanon.

Present and not voting: Saudi Arabia, Tunisia.

The motion for a separate vote was defeated by 35 votes to 21, with 19 abstentions.

47. Mr. WESTRUP (Sweden) said that the rules of procedure were not inappropriate. The rejection of the Swiss amendment to paragraph 3 meant that part of the convention had been retained by a minority vote, which was not equitable. The attempt to rectify the situation by a motion for division of the vote on paragraph 3 had unfortunately failed, but the procedure had been quite correct.

48. Mr. BOUZIRI (Tunisia) explained that he had not participated in the vote on the motion for division of the text because he had not considered that the vote should be taken, a view which appeared to be confirmed by the result of the vote.

49. Mr. SPACIL (Czechoslovakia) said that his delegation's vote against the motion should not be interpreted as disagreement with the President's ruling. In the view of his delegation, any representative had the right at any time to request a separate vote.

50. Mr. VAZ PINTO (Portugal) said that the Conference had been hampered from the outset by the inadequacy of the rules of procedure, and in particular by the fact that, although a two-thirds majority was required for the adoption of a proposal, only a simple majority was required under rule 40. It would be of great importance for future conferences to ensure that the rules of procedure were revised, and he would request the President to draw attention to the matter.

51. Mr. Kamel (United Arab Republic) and Mr. HE-NAO-HEANO (Colombia) agreed that the Conference had been frustrated by its rules of procedure.

52. The PRESIDENT said that he intended to submit his personal recommendations in regard to the rules of procedure at the end of the Conference.

53. Mr. STAVROPOULOS (Representative of the Secretary-General) agreed that rule 40 proved troublesome at the present Conference. It was not a new rule, however, since it reproduced rule 91 of the rules of procedure of the United Nations General Assembly, and a similar rule had worked perfectly at three previous codification conferences. There was a certain wisdom in the fact that it gave a right to the minority to seek a decision by a simple instead of a two-thirds majority.

54. Mr. KRISHNA RAO (India) suggested that consideration might also be given to the procedural difficulties which arose when the drafting committee decided to make a separate article of a provision passed to it by a committee.

55. The PRESIDENT put to the vote article 57, as amended.

Article 57, as amended, was adopted by 68 votes to none, with 10 abstentions.

The meeting rose at 10.45 p.m.

NINETEENTH PLENARY MEETING

Saturday, 20 April 1963, at 10.35 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

1. The PRESIDENT invited the Conference to continue its consideration of the draft convention.

Article 58 (Protection of the consular premises)

Article 58 was adopted unanimously.

Article 59

(Exemption from taxation of consular premises)

Article 59 was adopted unanimously.

Article 60

(Inviolability of consular archives and documents)

Article 60 was adopted unanimously.

Article 60 A

(Exemption from customs duties)

2. Mr. MOLITOR (Luxembourg) said that it would be necessary to delete the words "and export" in order to take into account the decision made by the Conference with respect to article 49.

It was so agreed.

Article 60 A was adopted unanimously.

Article 60 B (Criminal proceedings)

Article 60 B was adopted unanimously.

Article 61

(Protection of honorary consular officers)

Article 61 was adopted unanimously.

Article 62 (Exemption from registration of aliens, and residence permits)

Article 62 was adopted unanimously.

Article 63 (Exemption from taxation)

Article 63 was adopted unanimously.

Article 64 (Exemption from personal services and contributions)

3. Mr. KEVIN (Australia) pointed out that the text prepared by the drafting committee did not specify, as had been done in the text adopted by the Second Committee, that in order to benefit by the exemption, honorary consular officers should be neither nationals nor permanent residents of the receiving State. In view of the fact that article 69 contained provisions concerning those