

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/SR.5

5th 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)

4. The PRESIDENT thanked delegations for their co-operation and expressed his appreciation of the work they had done under the able guidance of the two committee chairmen.

The meeting rose at 10.15 a.m.

FOURTH PLENARY MEETING

Tuesday, 2 April 1963, at 10 a.m.

President: Mr. VEROSTA (Austria)

Reallocation of articles to committees: second report of the general committee (A/CONF.25/10)

1. The PRESIDENT drew attention to the second report of the general committee (A/CONF.25/10), which recommended that the text of article 1 prepared by the drafting committee be referred to the First Committee. It had originally been intended that the drafting committee should report direct to the Conference on that article, but the general committee had taken the view that the procedure proposed in document A/CONF.25/10 would save time. There could be a broad exchange of views in the First Committee, which would be sure to expedite subsequent consideration of the article in plenary.

2. The First Committee had finished examining the articles allocated to it and could therefore take up article 1 immediately, while the Second Committee went on with its own programme of work, which should be completed by the end of the week or the beginning of the following week.

3. In the absence of any objection, he would take it that the Conference approved the general committee's recommendation.

The recommendation of the general committee was approved.

The meeting rose at 10.10 a.m.

FIFTH PLENARY MEETING

Monday, 8 April 1963, at 3.10 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

[Agenda item 10]

REPORT OF THE FIRST COMMITTEE

1. The PRESIDENT invited the Conference to consider the draft convention on consular relations, as prepared by the drafting committee in accordance with the decisions of the two committees (A/CONF.25/L.11). The Conference also had before it the report of the First Committee (A/CONF.25/L.10), which he would invite the rapporteur of that committee to introduce.

2. Mr. WESTRUP (Sweden), rapporteur of the First Committee, said that the Committee's report comprised a brief record of the work of the Committee carried out in accordance with the terms of reference as set out by the Conference and an outline of the decisions taken by the Committee on each of the articles that it had been called upon to consider. The text of the articles adopted by the Committee was annexed to the report.

DRAFT CONVENTION

3. The PRESIDENT invited the chairman of the drafting committee to introduce the text prepared by the committee for the title, the preamble and articles 1-27 of the draft convention (A/CONF.25/L.11).

4. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that, departing from the precedent of the 1961 Vienna Convention on Diplomatic Relations, the drafting committee had kept the titles and sub-titles of the International Law Commission's draft articles, considering that they would make for easier reference to the articles and, consequently, facilitate consultation of the convention. The text submitted to the Conference had been adopted unanimously by the drafting committee with the exception of one or two points of slight importance. A small change had been made in the third paragraph of the preamble in order to indicate that the date mentioned was that on which the 1961 Convention had been opened for signature. The drafting committee had had before it also an amendment to article 1 referred to it by the First Committee.

Title

The title of the convention was adopted unanimously.

5. Mr. KIRCHSCHLAEGER (Austria) thanked the Conference for the honour done to his country by associating the name of Vienna with the title of the Convention.

Preamble

The text of the preamble was adopted unanimously.

Article 1 (Definitions)

6. The PRESIDENT drew attention to the amendments to article 1 submitted by Ghana and Spain (E/CONF.25/L.12).

7. Mr. de ERICE y O'SHEA (Spain) recalled that after a long discussion, which had resulted in 29 votes in favour, 29 against and 6 abstentions, the First Committee had failed to adopt the proposal of the Federal Republic of Germany, Japan and Nigeria to include the residence of a head of consular post in the definition of consular premises. In view of that equal vote, the Spanish delegation, which had voted in favour of the proposal, thought that an attempt should be made to reconcile the opposing points of view and had therefore resubmitted, jointly with the Ghanaian delegation, an amendment to sub-paragraph (i) of paragraph 1 of

article 1. The amendment, which constituted a concession to the supporters of the principle of the inviolability of a head of post's residence, specified that the residence should only be regarded as forming part of the consular premises when it was established in the same building. That was in accordance with the practice of nearly all States. The Second Committee had granted the head of consular post the right to place the national flag and coat-of-arms of the sending State on his residence, thus according to the residence the same privilege as was enjoyed by consular premises. The adoption of the joint amendment would have the advantage of avoiding any dispute as to the demarcation in a consulate of that part of the premises to be regarded as being used for the purposes of the consular post and that part used as a residence by the head of post. He hoped that the concession made by his delegation would enable the Conference to reach a unanimous decision.

8. Mr. MAMELI (Italy) supported the amendment by Ghana and Spain.

9. Mr. DADZIE (Ghana) recalled that, in the First Committee, his delegation had supported the proposal of Germany, Japan and Nigeria, which had been rejected by the Committee after an equal vote. Since then, many delegations had reconsidered that proposal and had realized that, to protect the head of a consular post, it was necessary to include his residence in the definition of "consular premises", thus rendering it inviolable. The Spanish and Ghanaian delegations had thought that the time had come to correct the anomalous situation resulting from the First Committee's decision and had therefore submitted their amendment as a compromise to enable the delegations that had been opposed to the three-power amendment to accept the principle at issue more easily.

10. Mr. KRISHNA RAO (India) thought that the text of the joint amendment, as drafted, was illogical, since it set out an acceptable principle, but made its application depend on the geographical situation of the head of post's residence, on the local housing conditions and on the head of post's tastes and preferences. His delegation could have accepted the more logical version that had originally been proposed whereby the expression "consular premises" covered the head of post's residence wherever it might be. It would have to abstain in the vote on the joint amendment.

11. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he approved of the convincing arguments advanced by the representatives of Ghana and Spain. Admittedly his delegation, like that of India, would have preferred the other formula proposed, which was better; but, failing that, it would vote for the joint amendment.

12. Mr. HENAO-HENAO (Colombia) and Mr. ALVARADO GARAICOA (Ecuador) said that they would vote for the amendment.

13. Mr. EVANS (United Kingdom) said that, in the First Committee, he had voted against the extension of inviolability to the residences of consular officials.

He recognized, however, that where the residence of the head of post was integrated with the consular premises, and only then, there were practical reasons why inviolability should be extended to the residence. The United Kingdom delegation, therefore, would vote for the amendment.

14. Mr. BOUZIRI (Tunisia) considered that the joint amendment would raise difficulties if it were adopted. Either the part of the premises which was used for private purposes would be indistinguishable from the head of the post's office, and it would then be covered by the definition of "consular premises" in article 1 and would enjoy the same inviolability; or else the private apartment would be separate, in which case it would not form part of the consular premises, and hence could not qualify for the benefit of inviolability; besides, article 55, paragraph 3, laid down that offices not used for the exercise of consular functions were not deemed to form part of the consular premises. Thirdly, it would not be logical to make the rules applicable to the head of post's residence depend on where that residence was situated.

15. Mr. ABDELMAGID (United Arab Republic) pointed out that the joint amendment raised a matter of principle. Inviolability was recognized as applicable to premises used exclusively for the exercise of consular functions. If a new principle were introduced, it would constitute a serious derogation from the rules of international law. His delegation would vote against the amendment.

16. Mr. CAMERON (United States of America) said that, in the First Committee, he had opposed the extension of the privilege of inviolability to the residence of consular officials. The amendment could be interpreted in various ways and he was not at all certain that it could be interpreted as narrowly as had been indicated. For that reason the United States delegation would vote against its adoption.

17. Mr. KEVIN (Australia) was also of the opinion that the amendment would give rise to complications. Moreover, only a very limited category of consular officials was concerned. The Australian delegation would therefore vote against the proposal.

18. Mr. NYONG (Nigeria) considered that the amendment constituted an acceptable compromise. Its sponsors had paid considerable attention to the views of the various delegations, and the Conference should adopt the text. For a number of countries consular officials were at least as important as diplomatic agents and their residences should be granted complete inviolability.

19. Mr. CHIN (Republic of Korea) said that, if the residence of the head of post and the offices were situated in the same building, they formed a whole and should be subject to the same treatment. His delegation would support the amendment.

20. Mr. TSHIMBALANGA (Congo, Leopoldville) asked for a separate vote on the words "when established in the same building".

21. Mr. LEVI (Yugoslavia) supported that motion.

22. Mr. MAMELI (Italy) pointed out that the joint amendment conformed to international practice. The amendment could not be divided into two parts, and the Italian delegation would therefore oppose the motion.

23. Mr. de ERICE y O'SHEA (Spain) said that the whole meaning of the amendment depended on the last phrase. He therefore opposed the motion.

24. Mr. KEVIN (Australia) pointed out that if the Conference agreed to vote separately on each phrase, it would in fact have a new amendment before it, since, if it adopted the phrase "including the residence of the career head of a consular post", it would be reverting to a proposal which had already been made in the First Committee.

The motion for a separate vote was defeated by 45 votes to 12, with 11 abstentions.

25. The PRESIDENT put to the vote the amendment submitted by the delegations of Ghana and Spain (A/CONF.25/L.12).

The result of the vote was 41 in favour and 21 against, with 14 abstentions.

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

Article 1 was adopted by 72 votes to none, with 1 abstention.¹

26. Mr. DADZIE (Ghana) said that, though he had refrained from voting against the article, in order not to prejudice the work of the Conference, he had abstained in the belief that the total absence of protection for the residence of the head of consular post was a serious omission, especially as article 28 allowed the use of the national flag and the state coat of arms at the consul's residence.

Article 2

(Establishment of consular relations)

Article 2 was adopted unanimously.

27. Mr. MARESCA (Italy) proposed that article 2 should be reconsidered as his delegation wished to comment on paragraph 2 of that article.

28. The PRESIDENT put the Italian representative's proposal to the vote.

The result of the vote was 34 in favour and 21 against, with 18 abstentions.

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

Article 3

(Exercise of consular functions)

29. Mr. KHLESTOV (Union of Soviet Socialist Republics) asked for a separate vote on the words "in

¹ The drafting committee subsequently decided to reintroduce in part in article 1, with some drafting changes, the text of paragraphs 2 and 3 of article 1 of the International Law Commission's draft (see the summary record of the twenty-second plenary meeting).

accordance with the provisions of the present convention". Those superfluous words introduced an element of confusion, since a similar clause already appeared in article 68, paragraph 1. Moreover, the position of diplomatic missions was fully regulated by the 1961 Convention, and there was no need to refer to it again in the convention under discussion.

30. Mr. KEVIN (Australia) thought that, on the contrary, the words in question were important, since they ensured some control over the exercise of consular functions by diplomatic missions; if they were deleted, there would be no such control.

31. Mr. DADZIE (Ghana) fully agreed with the USSR representative. Since diplomatic missions were already covered by the 1961 Convention, it was unnecessary to complicate matters by including provisions concerning them in the convention on consular relations.

32. Mr. EVANS (United Kingdom) opposed the division of article 3. The second sentence of the article expressed a complete idea, reflecting article 68, paragraph 1, and it would be a mistake to vote separately on part of that sentence. Moreover, he thought it undesirable, generally speaking, to take separate votes on parts of a text, since that might impair the coherence of the work of the two committees and of the drafting committee. He warned the Conference against abuse of the rule permitting requests for separate votes.

33. Mr. BARTOŠ (Yugoslavia) said that he had been in favour of including the phrase in question before the new version of article 68, paragraph 1, had been adopted. Since then, however, the phrase had not only become superfluous, but was in contradiction with article 68, paragraph 1, in which the provision concerned was qualified by the phrase "so far as the context permits".

34. Mr. KRISHNA RAO (India) said that, in his opinion, there was no contradiction between the two articles; he fully shared the views of the United Kingdom representative. In so far as a diplomatic mission exercised consular functions, it undoubtedly came within the scope of the convention under discussion.

The motion for a separate vote was rejected by 50 votes to 14, with 12 abstentions.

Article 3 was adopted by 71 votes to 1, with 1 abstention.

35. Mr. SILVEIRA-BARRIOS (Venezuela) said he had voted against article 3, as he had already done in committee, because the exercise of consular functions by diplomatic missions was contrary to the principles of Venezuelan public law. His delegation would enter appropriate reservations in due course.

Article 4

(Establishment of a consular post)

Article 4 was adopted unanimously.

Article 5

(Consular functions)

36. Mr. KIRCHSCHLAEGGER (Austria), introducing his delegation's amendment (A/CONF.25/L.19), ex-

plained that it was the same in substance as that already submitted by his delegation in committee (A/CONF.25/C.1/L.26); the only difference was that it took into account the views expressed during the discussion by various delegations which seemed to prefer a negative to a positive statement. His delegation accordingly suggested adding the words "and save in criminal matters" after the words "in the absence of such conventions" in sub-paragraph (j) of article 5. The clause was in accordance with practice, and its inclusion would not rule out the possibility of judicial assistance when it was called for by the international instruments in force.

37. Mr. de ERICE Y O'SHEA (Spain) supported the amendment, which brought sub-paragraph (j) into line with other provisions of the convention, in particular the provision withdrawing consular immunity in the case of a grave crime.

38. Mr. PAPAS (Greece) also supported the amendment.

39. The PRESIDENT put the Austrian amendment to the vote.

The result of the vote was 28 in favour and 15 against, with 29 abstentions.

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

Article 5 was adopted by 73 votes to none, with one abstention.

40. Mr. de ERICE y O'SHEA (Spain) explained that in his delegation's view the "conditions and developments in the commercial, economic, cultural and scientific life of the receiving State", referred to in article 5, sub-paragraph (c), included labour conditions; similarly, the help and assistance referred to in sub-paragraph (e) included social security and protection of labour.

Article 5 A

(Exercise of consular functions outside the consular district)

Article 5 A was adopted unanimously.

Article 6

(Exercise of consular functions in a third State)

Article 6 was adopted unanimously.

Article 7

(Exercise of consular functions on behalf of a third State)

Article 7 was adopted unanimously.

Article 8

(Classes of heads of consular posts)

41. Mr. TORROBA (Spain) pointed out that a number of Spanish-speaking delegations in the drafting committee had considered that the word "clase" in Spanish referred to the status of honorary or career consul, whereas the word "categoría" applied to the different ranks set out in article 8, paragraph 1. He asked that the secretariat should take that distinction into account in drawing up the final text.

Article 8 was adopted unanimously.

Article 9

(Appointment and admission of heads of consular posts)

Article 9 was adopted unanimously.

Article 10

(The consular commission or notification of appointment)

Article 10 was adopted unanimously.

Article 11 (The exequatur)

Article 11 was adopted unanimously.

Article 13

(Provisional admission of heads of consular posts)²

Article 13 was adopted unanimously.

Article 14

(Notification to the authorities of the consular district)

Article 14 was adopted unanimously.

42. Mr. VRANKEN (Belgium) said he wished to explain certain affirmative votes cast by his delegation. The Belgian delegation understood that under the terms of article 5, sub-paragraph (m), consular officers could exercise any function incumbent upon them under customary international law, in accordance with the sixth paragraph of the preamble. Furthermore, the Belgian delegation understood that article 8, paragraph 2, required the consent of both the States concerned to the designation of consular officers other than heads of consular post.

43. The drafting committee should be asked to revise the text of article 7 so as to specify that it was the consulate of the sending State, not the sending State itself, which could exercise consular functions in the receiving State on behalf of a third State.³

The meeting rose at 6 p.m.

SIXTH PLENARY MEETING

Tuesday, 9 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]

Article 15 (Temporary exercise of the functions of head of a consular post)

1. The PRESIDENT invited the Conference to continue its debate on the draft convention (A/CONF.25/L.11). Amendments to article 15 had been submitted

² The former article 12 had become paragraph 2 of article 9.

³ This suggestion was adopted by the drafting committee (see the summary record of the ninth plenary meeting).