

United Nations Conference on Consular Relations

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6th meeting of the Plenary

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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).

by the Byelorussian Soviet Socialist Republic and Czechoslovakia (A/CONF.25/L.20 and Italy (A/CONF.25/L.25).

2. Mr. MARESCA (Italy) explained that his delegation's amendment met a requirement of diplomatic method and practice. It was not customary for heads of post to communicate direct with the Ministry for Foreign Affairs of the receiving State. That was a prerogative of the diplomatic mission of the sending State, which should not normally be infringed, except in the absence of such a mission.

3. Mr. EVANS (United Kingdom) supported the Italian amendment because it introduced a most useful clarification of the drafting committee's text, which followed article 19 of the 1961 Convention too closely. It should be clearly stated that, if a diplomatic mission existed, all communications from a consulate should reach the Ministry for Foreign Affairs through the mission.

4. Mr. RUEGGER (Switzerland) also supported the Italian amendment, which corresponded to international practice. The convention under discussion should not introduce any unnecessary innovations. It was important that all communications between a consulate and the Ministry for Foreign Affairs of the receiving State should pass through the diplomatic mission.

5. Miss LAGERS (Netherlands) said she would vote for the Italian amendment because it was in accordance with international usage.

6. Mr. de ERICE y O'SHEA (Spain) supported the Italian amendment, which preserved the uniformity and hierarchy of diplomatic relations. The joint amendment by the Byelorussian SSR and Czechoslovakia was unquestionably logical: if the Conference did not adopt it, the acting head of post might enjoy a more favourable status than the titular consular official. He would therefore also vote in favour of that amendment.

7. Mr. DONATO (Lebanon) said he would vote for the Italian amendment, which was perfectly clear and pertinent.

8. Mr. PAPAS (Greece) said he would support the Italian amendment for the reasons given by other representatives and also because it accorded with the Greek delegation's view on the question of heads of consular posts. He would also vote for the joint amendment.

9. Mr. de MENTHON (France) said that he fully approved of the Italian amendment, which faithfully reflected international practice in the matter. He also supported the joint amendment, which specified that the member of the diplomatic staff must belong to the diplomatic mission of the sending State in the receiving State, and would continue to enjoy his privileges and immunities if the receiving State did not object.

10. Mr. OSIECKI (Poland) requested that article 15 be put to the vote paragraph by paragraph. Since his delegation was opposed to the last sentence of paragraph 3, he would also like that sentence to be voted on separately. The object of article 15 was to ensure continuity of the normal activity of a consular post in dif-

ficult circumstances, and it was clear that for that purpose the receiving State should grant the same facilities to acting heads of a post as to titular heads of post. Furthermore, the difficulties of certain States in staffing their foreign missions should be taken into account. Finally, it was inadmissible, generally speaking, that the exercise of identical functions should be protected by the customary privileges and immunities in some cases and not in others.

11. Mr. MEYER-LINDENBERG (Federal Republic of Germany) said he would vote for the Italian amendment, as it was fully in accordance with international law and practice.

The Italian amendment (A/CONF.25/L.25) was adopted by 64 votes to none, with 11 abstentions.

12. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) explained that the purpose of the amendment which his delegation had submitted jointly with the Czechoslovak delegation was to specify that the member of the diplomatic staff designated as acting head of a consular post while the titular head of post was ill, on leave or on mission must belong to the diplomatic mission of the sending State already in the receiving State. The situation created by the absence of a head of consular post was dealt with in paragraph 8 of the International Law Commission's commentary, but the text proposed for paragraph 4 of article 15 was too vague.

13. He requested that a separate vote be taken on the words "if the receiving State does not object thereto" in paragraph 4; for if the member of the diplomatic staff belonged to the diplomatic mission of the sending State in the receiving State, he would naturally enjoy the privileges and immunities appertaining to his position, and there was no reason for him to be deprived of them. Moreover, the words in question were not compatible with the provisions of article 68: privileges and immunities were not mere advantages, but were rights essential to the exercise of diplomatic and consular functions.

14. Mr. PETRŽELKA (Czechoslovakia) said that the Czechoslovak and Byelorussian delegations had submitted the joint amendment because paragraph 4 of article 15 was not satisfactory as it stood, since it contained an ambiguity. Members of the diplomatic staff temporarily exercising consular functions might, indeed, be deprived of their privileges and immunities, which would be contrary to customary international law, to the 1961 Vienna Convention and to the future convention on consular relations, in particular article 68, paragraph 4. That paragraph merely codified current usage, according to which diplomatic status could not be impaired on the pretext that the person enjoying it had temporarily assumed consular functions. The Czechoslovak delegation accordingly supported the Byelorussian motion that a separate vote be taken on the words "if the receiving State does not object thereto" in paragraph 4.

15. Mr. DADZIE (Ghana) said that he could not support the joint amendment since, if it were adopted, States which found it necessary to fill a consular post by appointing a member of one of their diplomatic missions

accredited to a third State would be prevented from doing so, without any justification for such a restriction. On the other hand, his delegation supported the motion for a separate vote on paragraph 4.

16. Mr. DONATO (Lebanon) thought that the joint amendment introduced a valuable clarification; he would vote in favour of it for the reasons given by the Czechoslovak representative. He was also in favour of a separate vote on the words "if the receiving State does not object thereto" in paragraph 4; he would vote against them as he thought it unjust that a diplomatic official could be deprived of his privileges and immunities on assuming temporary consular functions.

17. Mr. BARTOŠ (Yugoslavia) thought that the proposal to specify that the acting head of post must be a member of the diplomatic mission already in the receiving State was reasonable. Since the acting head of post must be approved, he might as well be chosen from among persons who already had been approved. His delegation was also in favour of a separate vote.

18. Mr. ALVARADO GARAI COA (Ecuador) pointed out that the privileges and immunities referred to in paragraph 4 were those of the diplomatic staff and were inherent in their diplomatic status; hence he could not vote for the joint amendment.

19. Mr. BOUZIRI (Tunisia) opposed the joint amendment, because he shared the misgivings of the representative of Ghana. The amendment would prove most embarrassing, particularly for small countries. He was not convinced by the arguments advanced in support of the proposal and he saw no major objection to calling in a member of the diplomatic staff of a mission other than that established in the receiving State.

20. Mr. MUÑOZ MORATORIO (Uruguay) said he would vote for the joint amendment, which introduced a necessary condition concerning the diplomatic staff who might be appointed acting head of a consular post.

21. Mr. TSHIMBALANGA (Congo, Leopoldville) said he could not support the joint amendment. He thought it would be harmful to countries which had recently gained their independence and to small countries which might not have the necessary financial resources or qualified staff to keep their diplomatic missions and consular posts up to the desired strength. Those countries should even be able to call on the diplomatic or consular missions of friendly countries to protect their interests.

22. Mr. BANGOURA (Guinea) thought the joint amendment was useful, because it was important that the receiving State should have its say concerning diplomatic agents of the sending State who were designated as acting heads of consular posts. It was therefore preferable that the sending State should first call upon those who were on the spot, before requesting privileges and immunities for members of its diplomatic staff who were in third States.

The joint amendment submitted by the Byelorussian Soviet Socialist Republic and Czechoslovakia (A/CONF.25/L.20) was adopted by 50 votes to 13, with 16 abstentions.

23. Mr. EVANS (United Kingdom) said his delegation believed that, at that stage of the work, the Conference should be very chary of voting on separate parts of the articles proposed by the main committees and the drafting committee, except, of course, in the case of new amendments to those articles. All the provisions of article 15 concerned the case in which it was necessary to appoint an acting head of post because the permanent head of post was unable to carry out his functions; consequently, all those provisions were closely inter-related, and the United Kingdom delegation thought that they should be voted on as a whole. It was therefore opposed to the Polish motion that the last sentence of paragraph 3 should be voted on separately. That sentence added a necessary clarification of the provision contained in the preceding sentence and ensured that the provisions of articles 56 and 69, laying down the conditions under which titular heads of post enjoyed consular privileges and immunities, would apply to the acting head of post.

24. With regard to the motion by the representative of the Byelorussian SSR relating to paragraph 4, he did not think that the words in question conflicted with the provisions of article 68, as had been claimed, for they dealt with different cases. Paragraph 4 as drafted was consistent with the principle that a diplomatic agent should have diplomatic status and a consular officer consular status. There were cases in which the receiving State would have good reasons for not allowing a member of the diplomatic staff to continue to enjoy diplomatic privileges and immunities while temporarily acting in a consular capacity, particularly as article 15 imposed no limit on the duration of the temporary appointment. He would therefore vote against the motion for division of paragraph 4.

25. Mr. de ERICE y O'SHEA (Spain) observed that since the joint amendment had been adopted, the representative of the Byelorussian Soviet Socialist Republic might withdraw his motion for a separate vote on the words "if the receiving State does not object thereto"

26. Mr. RASSOLKO (Byelorussian Soviet Socialist Republic) replied that he maintained his motion.

27. Mr. TSYBA (Ukrainian Soviet Socialist Republic) supported the Polish motion for separate votes. He would vote against the retention of the words "if the receiving State does not object thereto" in paragraph 4 because the acting head of post performed the same functions as the titular head of post and should enjoy the same privileges and immunities. The acting head of post had to assume heavy responsibilities, and there could therefore be no limitation of his privileges. The privileges and immunities must be accorded to him as long as he was acting as the head of post, which might be for a considerable time.

28. Mr. KHLESTOV (Union of Soviet Socialist Republics) observed that the United Kingdom representative had opposed the very principle of divided votes. Under rule 40 of the rules of procedure, however, a proposal might be divided, and the articles submitted

to the Conference were proposals by the drafting committee. The United Kingdom position was therefore contrary to the rules of procedure and to United Nations practice. If the United Kingdom delegation considered that the Conference should consider all the proposals as a whole it could propose an amendment to the rules of procedure. He would support the motion for division of article 15, and the motions concerning the votes on paragraphs 3 and 4.

29. Mr. CAMERON (United States of America) said that he was opposed to extreme solutions in either direction. It would not be appropriate to vote on separate phrases, which would mean destroying the work done by the two committees and the drafting committee; but it would be dangerous to come to the conclusion that separate votes were wrong. The Conference should be able to vote on each paragraph of an article if it wished. With regard to the requests for separate votes, his delegation was opposed to separate votes on parts of paragraphs 3 and 4. If the Conference should decide otherwise, he thought that, in the case of paragraph 4, a vote should first be taken on the words "if the receiving State does not object thereto". He would vote against the deletion of any sentence or part of a sentence in paragraph 3 or paragraph 4.

30. Mr. DEJANY (Saudi Arabia) considered that as a matter of principle and according to established United Nations practice delegations were entitled to request separate votes on different paragraphs of the same article without being subject to rule 40 of the rules of procedure. Rule 40 applied to requests for division of a paragraph, a sentence or an amendment, but certainly not to an article containing several independent ideas in separate paragraphs. It was desirable that delegations should indicate their positions on those different ideas when they thought it necessary. The Polish delegation was entitled to ask for a vote paragraph by paragraph and that request, unlike the second one for a separate vote on the last sentence in paragraph 3, was not subject to discussion under rule 40 of the rules of procedure.

31. Mr. STAVROPOULOS (Representative of the Secretary-General) pointed out that according to rule 40, "A representative may move that parts of a proposal or of an amendment shall be voted on separately." Article 15 might be considered as a proposal by the drafting committee and any delegation might request that there should be a separate vote on parts of that proposal.

32. Mr. BOUZIRI (Tunisia) said that he would not support the motions for division which he did not consider advisable. There was no doubt that the motions were admissible in accordance with the rules of procedure, but article 15 was a well-presented, balanced text and the various elements should not be separated. The article dealt with a question of an exceptional character and the deletions proposed by the representative of Poland and the Byelorussian Soviet Socialist Republic would nullify its effect.

33. The PRESIDENT put to the vote the first motion

by the Polish representative, that the article should be voted on paragraph by paragraph.

The motion was rejected by 41 votes to 24, with 10 abstentions.

34. Mr. DADZIE (Ghana) considered that a diplomatic agent who was instructed to fill the position of acting chief of a consular post should enjoy the same privileges and immunities as his colleagues. If the Conference deleted the words "if the receiving State does not object thereto" from paragraph 4 it would make it more difficult for a diplomatic agent to carry out the functions of a head of consular post. The delegation of Ghana would therefore vote against the second motion by Poland.

35. The PRESIDENT put to the vote the second motion for division by the Polish representative, for a separate vote on the last sentence of paragraph 3 of article 15.

The motion was rejected by 53 votes to 15, with 10 abstentions.

36. The PRESIDENT put to the vote the motion by the representative of the Byelorussian Soviet Socialist Republic for a separate vote on the words "if the receiving State does not object thereto" in paragraph 4 of article 15.

The motion was rejected by 41 votes to 27, with 11 abstentions.

37. The PRESIDENT put to the vote article 15, as amended by the joint amendment submitted by the Byelorussian Soviet Socialist Republic and Czechoslovakia (A/CONF.25/L.20) and by the Italian amendment (A/CONF.25/L.25).

Article 15, as amended, was adopted by 64 votes to none, with 12 abstentions.

Article 16

(Precedence as between heads of consular posts)

Article 16 was adopted unanimously.

Article 17

(Performance of diplomatic acts by consular officers)

38. Mr. SILVEIRA-BARRIOS (Venezuela) said that his country remained faithful to the principle of international law according to which diplomatic functions could not be performed by consular officers. The Venezuelan delegation would consequently vote against article 17, which derogated from that principle.

39. Mr. MEYER-LINDENBERG (Federal Republic of Germany) recalled that his delegation had submitted an amendment (A/CONF.25/C.1/L.78) to the First Committee to delete paragraph 1 of article 17. The Federal Republic of Germany was opposed to the performance of diplomatic acts by consular officers and he thought that the diplomatic and consular functions should remain completely separate. In any case, paragraph 1 of article 17 fell within the scope of *ad hoc* diplomacy, a subject under study by the International

Law Commission, and the Conference should not encroach upon the decisions of another United Nations body engaged upon the codification of international law. He therefore requested that paragraphs 1 and 2 of article 17 should be voted on separately.

40. Mr. CHIN (Republic of Korea) and Mr. MONACO (Italy) supported the motion for separate votes for the reasons given by the representative of the Federal Republic of Germany.

41. Mr. KHLESTOV (Union of Soviet Socialist Republics), supported by Mr. PETRŽELKA (Czechoslovakia), opposed the motion for division; there was no reason to split article 17, to which the International Law Commission had given the most careful consideration.

The motion for division was adopted by 26 votes to 25, with 24 abstentions.

42. Mr. MONACO (Italy) observed that article 17, paragraph 2, raised a legal question. It was laid down in that paragraph that a consular officer acting as representative of the sending State to an intergovernmental organization was entitled to enjoy all the privileges and immunities accorded by customary international law; but any reference to customary international law was out of order as there was no custom in the matter. Though he did not call for a new discussion of article 17, he thought that a statement to that effect should be made. He further suggested that the Conference should invite the drafting committee to examine the possibility of deleting the word "customary" in the text of article 17, paragraph 2.

43. Mr. BARTOŠ (Yugoslavia) said he could not agree with the Italian representative, whose opinion should not be regarded as that of the Conference. In his (Mr. Bartoš's) view there existed in international practice a customary international law relating to the legal status of the representatives of States to international organizations. Custom — generally the analogy with the customary rules of diplomatic law — had undoubtedly provided the basis for the functioning of the United Nations and the specialized agencies, in particular so far as the legal status of the representatives of States was concerned. Custom relating to international organizations had gradually grown up during the past fifteen years, and the International Law Commission had instructed a special rapporteur on relations between States and intergovernmental organizations to consider also the custom applicable to the legal status of the representatives of States to such bodies, inasmuch as their status was only partly governed by rules of conventional origin.

Article 17, paragraph 1, was adopted by 50 votes to 15, with 10 abstentions.

Article 17, paragraph 2, was adopted by 68 votes to 1, with 3 abstentions.

Article 17 as a whole was adopted by 66 votes to 7, with 1 abstention.

The meeting rose at 6 p.m.

SEVENTH PLENARY MEETING

Wednesday, 10 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

1. The PRESIDENT invited the Conference to continue its consideration of the draft convention (A/CONF.25/L.11).

Article 18

(Appointment of the same person by two or more States as a consular officer)

Article 18 was adopted unanimously.

Article 19

(Appointment of members of consular staff)

2. The PRESIDENT drew the attention of the Conference to the amendment to article 19 submitted by Italy (A/CONF.25/L.26).

3. Mr. MARESCA (Italy) explained his delegation's amendment and said that in general article 19 was based on the procedures prescribed in article 24. Article 24 should therefore be added to the articles mentioned in paragraph 1 of article 19. The Italian proposal was not properly speaking an amendment, but rather a recommendation to the drafting committee; his delegation would therefore not insist that its proposal should be put to the vote. It would be enough if the Conference invited the drafting committee to take it into account.

4. Mr. BARTOŠ (Yugoslavia) said that he was opposed to the Italian proposal, which was based on a wrong interpretation of the articles in question. The articles mentioned in article 19, paragraph 1, laid down the conditions which should govern the appointment of members of consular staff, whereas article 24 dealt with the notification of appointments — in other words, with a subsequent procedure for obtaining approval of the appointment. It would be irrelevant to mention article 24 in article 19, paragraph 1. In any case, if the Italian proposal were sent to the drafting committee, it would require very careful examination.

5. Mr. KRISHNA RAO (India) said that, as chairman of the drafting committee, he found himself somewhat embarrassed by the Italian amendment. Some delegations might think that the proposal affected the substance of the question and in that case it would be for the Conference to discuss it.

6. Mr. MARESCA (Italy) said that he did not wish to waste the Conference's time; he merely hoped that the drafting committee would take note of his delegation's proposal, which was only a suggestion. If it did not wish to do so, he would not insist on the amendment.

Article 19 was adopted by 17 votes to none, with 1 abstention.