

# **United Nations Conference on Consular Relations**

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

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*(Summary records of plenary meetings and of meetings of*  
*the First and Second Committees)*

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.*

*Article 20 (Size of the staff)*

7. The PRESIDENT noted that the Turkish amendment to article 20 (A/CONF.25/L.28) did not affect the English text.

8. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that, as he had already stated in the First Committee (21st meeting), the text of article 20 had been drafted by the International Law Commission in such a manner as to take into account the interests both of the sending and of the receiving States. In the course of the discussion in the First Committee, the delegations of Argentina, India and Nigeria had submitted a joint oral amendment to article 20, proposing the replacement of the International Law Commission's text of the article by a wording corresponding to that used in article 11, paragraph 1, of the Convention on Diplomatic Relations. That proposal had been supported by many delegations, particularly those of countries which had recently acquired their independence. The USSR delegation had carefully considered the arguments advanced by the Indian, Argentine and Nigerian representatives in support of their amendment. After taking due account of the views of other delegations, especially those of the newly independent countries of Africa and Asia, his delegation would vote in favour of the text as submitted for the consideration of the plenary conference.

9. Mr. TÜREL (Turkey) said that he had understood that the drafting committee had agreed to take note of the change — which was merely one of form — proposed by his delegation.

10. Mr. RABASA (Mexico) said that he found the Spanish text of article 20 as prepared by the drafting committee completely satisfactory, and he would vote for it.

*Article 20, the French version of which had been amended in accordance with the Turkish suggestion, was adopted unanimously.*

*Article 21 (Precedence as between consular officers of a consular post)*

11. The PRESIDENT drew the attention of the Conference to an amendment to article 21 submitted by Italy (A/CONF.25/L.27).

12. Mr. MARESCA (Italy) said that the Italian amendment to article 21 was to the same effect as the amendment submitted by his delegation at the previous meeting to paragraph 2 of article 15 — namely, to bring the notification procedure into line with the requirements of protocol. As in the case of the full name of the acting head of post, only the diplomatic mission of the sending State could notify directly the Ministry for Foreign Affairs of the receiving State of the order of precedence as between consular officers; the head of the consular post was entitled to do so only when the sending State had no diplomatic mission in the receiving State.

13. Mr. EVANS (United Kingdom) asked whether the Italian representative would agree to give his amend-

ment the same wording as that of the Italian amendment to article 15, paragraph 2, which had been adopted by the Conference at the previous meeting, and add the words "in the receiving State" after the words "no such mission".

14. Mr. MARESCA (Italy) accepted the United Kingdom representative's suggestion.

15. Mr. SILVEIRA-BARRIOS (Venezuela) said that he would vote in favour of the Italian amendment which provided for the same notification procedure as that followed by Venezuela.

*The Italian amendment (A/CONF.25/L.27) was adopted by 66 votes to none, with 10 abstentions.*

*Article 21, as amended, was adopted by 76 votes to none, with 1 abstention.*

*Article 22 (Appointment of nationals of the receiving State as consular officers)*

16. Mr. AMLIE (Norway) said that article 8 of the Vienna Convention on Diplomatic Relations contained a paragraph to the effect that members of the diplomatic staff of a mission should in principle be of the nationality of the sending State. The Norwegian delegation had supported that paragraph at the 1961 Conference because it had considered it natural that a diplomatic agent, who represented a country in the receiving State, should have the nationality of the State which he represented. His delegation had, however, been surprised to find a similar provision in the draft convention on consular relations, where it was quite inappropriate. A consular official did not represent the sending State in the receiving State. Moreover, the entire traditional institution of honorary consuls was based on the appointment of consuls having the nationality of the receiving State. The introduction into the convention of a provision such as that contained in article 22, paragraph 1, would cast suspicion on honorary consuls. Norway had therefore submitted an amendment to article 22 (A/CONF.25/L.15) proposing the deletion of paragraph 1, which was inappropriate in the draft convention; the removal of that paragraph would not prejudice the rights of the receiving State, for the convention contained a series of safeguards for the receiving State in respect of honorary consuls. The Norwegian delegation would not, however, insist that its amendment should be put to the vote. It would be satisfied if a separate vote was taken on paragraph 1 of article 22.

17. Mr. WESTRUP (Sweden) said that it was of great utility for some countries, in particular those countries that had recently acceded to independence, to be able to staff their consulates with nationals of the receiving State. Some delegations considered that the tradition should be continued for practical reasons and that consular officials should be allowed to have the nationality of the receiving State. Other delegations held that the principle had no valid foundation and that consular officials should have the nationality of the sending State. Other delegations again, which had no direct interest in the matter, were inclined to favour para-

graph 1 of article 22. Many States, like Sweden, 90 per cent of whose total consular strength consisted of honorary consuls, could not but oppose the adoption of article 22, paragraph 1. If that paragraph were adopted, the Swedish Government would have to consider whether it would not be necessary for it to make a reservation. That provision had possibly been interpreted too strictly, but there was still a danger of a refusal to accept the nationals of the receiving State as consular officials of the sending State. If the term "consular officers" were held to include honorary consuls, paragraph 1 would be entirely unacceptable to the Swedish delegation. Some delegations might maintain that the principle laid down in paragraph 1 represented the conclusion of an evolution in international law, but, in his opinion, that evolution was regrettable. The convention on consular relations should represent something durable that could not be subjected to periodic revision. Sweden, like many countries, did not believe that international law was evolving in the direction indicated in article 22, paragraph 1. Countries that had recently acceded to independence, in particular, would find difficulty in recruiting from among their own nationals a consular staff capable of carrying out its functions under acceptable conditions. If the convention was intended to codify customary international law and contribute to the progressive development of law, paragraph 1 of article 22 did not constitute a positive contribution, and the Swedish delegation would oppose its retention.

18. Mr. COLOT (Belgium) agreed with the representatives of Norway and Sweden. His country had some 600 consular agents, 400 of whom were nationals of the receiving State. Belgium could not possibly, either in fact or in law, accept paragraph 1 of article 22, and the Belgian delegation requested that the article should be put to the vote paragraph by paragraph.

19. Mr. KRISHNA RAO (India) considered that paragraph 1 constituted a useful complement to the other provisions of article 22 and that it was in accordance with international practice. It had been drafted with due regard to the interests both of the sending and of the receiving States. The deletion of paragraph 1 would encourage States to staff their consular services mainly with nationals of the receiving State. Paragraph 1 did not state an absolute rule, but merely a principle, and States would be able to continue to entrust the exercise of consular functions to nationals of the receiving State. The Indian delegation was not in favour of the existence in a State of a category of privileged citizens, and it would vote for the adoption of paragraph 1.

20. Mr. RUEGGER (Switzerland) said that he was unable to share the Indian representative's views. Switzerland appointed only persons of Swiss nationality as consular officials; but, for financial or other reasons, some countries might prefer to entrust such functions to nationals of the receiving State. The arguments put forward by the Swedish representative seemed to him to be extremely convincing, and the Swiss delegation would support the motion for the article to be put to the vote paragraph by paragraph and would itself vote for the deletion of paragraph 1.

21. Mr. DONATO (Lebanon) said that his delegation would also vote for the deletion of paragraph 1.

22. Mr. MARAMBIO (Chile) said that even if a consular official did not represent the sending State, he nevertheless performed official functions and, in principle, he should be a national of the sending State. Paragraph 1 of article 22 did not imply any distrust of nationals of the receiving State, and paragraphs 2 and 3 explicitly recognized that nationals of the receiving State or a third State enjoyed the right to exercise consular functions. His delegation thought that the Conference should adopt the text of article 22 as submitted by the drafting committee.

23. In reply to a question by the PRESIDENT, Mr. AMLIE (Norway) stated that he would not maintain his amendment and would be satisfied by a vote on each paragraph.

24. Mr. BOUZIRI (Tunisia) thought that the Conference should examine the matter thoroughly before making a decision on any motion for a separate vote, for the arguments advanced would help delegations to form an opinion.

25. Mr. COLOT (Belgium), Mr. KRISHNA RAO (India) and Mr. PETRŽELKA (Czechoslovakia) agreed with the representative of Tunisia.

26. Mr. BARTOŠ (Yugoslavia) considered that delegations that had expressed apprehensions should find themselves faced by a real danger before experiencing any genuine anxiety. Paragraph 1 in no way prohibited the exercise of consular functions by a national of the receiving State or of a third State. Nevertheless, account had to be taken of the evolution of international law which tended, as was indicated in the preamble to the draft convention, to extend the competence of consular officials.

27. In addition to their traditional commercial work, consuls should make a contribution not only to the development of economic relations, but also to that of friendly relations and cultural relations between States, and in those circumstances it was normal that, in principle, they should be nationals of the sending State. In an organized society in which nations continued to exercise sovereignty, each State had the right to expect from the consular officials representing it a standard of complete loyalty.

28. The Swedish representative had asked the newly independent countries practically to waive part of their sovereignty by appointing consular officials who were nationals of the receiving State or a third State. Although that solution might be justified financially, it was particularly important for those countries to safeguard their interests as effectively as possible by entrusting them to their own nationals, when practicable.

29. The International Law Commission text was a compromise, and his delegation considered that the Conference should adopt it.

30. Mr. TSHIMBALANGA (Congo, Leopoldville) asked whether, instead of proposing the deletion of

paragraph 1, the Norwegian delegation would agree to the addition before the words "consular officers" of the word "career". The text would thus shed its ambiguity and the formula might be acceptable to the opposing points of view in the Conference.

31. Mr. AMLIE (Norway) said that his amendment had been withdrawn; he would, however, welcome an amendment of the kind indicated by the representative of the Congo (Leopoldville).

32. Mr. QUINTANA (Argentina) said that he shared the objection of the Chilean representative to any proposal to amend the article.

33. Mr. DADZIE (Ghana) said that his delegation could not have accepted the Norwegian proposal. Paragraphs 2 and 3 of the article specified the conditions in which persons who were not nationals of the sending State could perform consular functions. By the deletion of paragraph 1, article 2 would lose all coherence. His delegation, like several others, would oppose any motion for division of the text and any amendment to article 22.

34. Mr. WOODBERRY (Australia) said that he well understood the position of countries like Norway, since Australia had often encountered similar difficulties. The convention should apply generally, however, and include all consuls whose functions had been extended to such a degree that they bordered on those of members of diplomatic missions. The time would come when consuls ceased to be merely the commercial agents of the sending State but would represent the interests of the sending State, including friendly and cultural relations. It was therefore desirable to stipulate forthwith that consular officials should, in principle, have the nationality of the sending State. The Australian delegation was accordingly opposed to the deletion of paragraph 1.

35. Mr. BOUZIRI (Tunisia) said that it would be preferable to supplement the title of the article by mentioning nationals of a third State, so as to take paragraph 3 of the article into account. He was opposed to the deletion of paragraph 1 since the article as drafted was a uniform whole and met the wishes of most delegations. If it were desired to make changes, it would be better to delete it entirely or to adopt a quite different approach. With regard to paragraph 3, he observed that, at a time when countries which had just acquired their independence were not yet masters of their destiny, their consuls were almost never their own nationals. For those reasons, his delegation would vote against the deletion of paragraph 1.

36. Mr. SILVEIRA-BARRIOS (Venezuela) agreed with the statements of the Chilean, Argentine and Ghanaian representatives and opposed the deletion of paragraph 1.

37. Mr. de MENTHON (France) said that he appreciated the misunderstandings to which paragraph 1 might give rise, all the more since article 22 applied both to career consuls and to honorary consuls. That situation should be borne in mind, as also the possible restrictive

interpretations of the paragraph that would run counter to the practice of a large number of countries. Moreover, the deletion of paragraph 1 would in no way affect the sovereignty of States; he would therefore vote against the paragraph.

38. Mr. RAHMAN (Malaya) said that article 22 was perfectly clear and not restrictive; he therefore found it difficult to understand why certain delegations wished to change it.

39. Mr. ALVARADO GARAICOA (Ecuador) said that he would vote in favour of article 22 as the words "in principle" left the sending State free to appoint as consul a national of the receiving State.

40. Mr. BARUNI (Libya) supported the retention of paragraph 1. Its deletion would be to the advantage only of those States with large maritime interests.

41. Mr. MOUSSAVI (Iran) said that he would vote for the retention of paragraph 1 for the reasons given by the Tunisian representative.

42. Mr. TSHIMBALANGA (Congo, Leopoldville) formally proposed, as a compromise, not to delete paragraph 1 but to add the word "career" before the words "consular officers".

43. Mr. KRISHNA RAO (India) said that he was opposed to the proposal of the representative of Congo (Leopoldville). He was also against article 22 being put to the vote paragraph by paragraph.

44. Mr. MARESCA (Italy) said that the Congolese amendment was not acceptable.

45. Mr. EVANS (United Kingdom) said that his delegation had no great interest in the deletion or retention of paragraph 1. But in view of the fact that the paragraph caused difficulties in connexion with honorary consuls, he thought that the Congolese proposal was a very reasonable compromise. The position of receiving States with regard to honorary consuls was sufficiently protected by the provisions of chapter III of the convention and by article 69.

46. Mr. KEVIN (Australia) considered that articles 5 and 22 should be balanced against each other by including a general principle in article 22.

47. Mr. KRISHNA RAO (India) pointed out that, if paragraph 1 specified that the provision concerned career consular officers, the two following paragraphs would have to be modified accordingly. The express consent of the receiving State was required for career consuls as well as honorary consuls.

48. Mr. RABASA (Mexico) said that he could not support the views of the United Kingdom representative and that he would vote against the proposal made by the representative of the Congo (Leopoldville).

49. Mr. ABDELMAGID (United Arab Republic) moved the closure of the debate.

50. Mr. SILVEIRA-BARRIOS (Venezuela) and Mr. LEVI (Yugoslavia) supported the motion.

The motion for the closure of the debate was carried by 77 votes to none, with 1 abstention.

The oral amendment by the Congo (Leopoldville) was rejected by 49 votes to 19, with 11 abstentions.

The Belgian motion for a separate vote on each paragraph was rejected by 44 votes to 26, with 10 abstentions.

Article 22 was adopted by 69 votes to 4, with 6 abstentions.<sup>1</sup>

Article 23 (Persons declared *non grata*)

Article 23 was adopted unanimously.

Article 24 (Notification to the receiving State of appointments, arrivals and departures)

51. Mr. PEREZ-CHIRIBOGA (Venezuela) said that he could accept the grant of privileges and immunities only to those members of the consulate who had consular status. His delegation had therefore voted in committee against sub-paragraphs (b), (c) and (d) of article 24, paragraph 1. In view, however, of the fact that paragraph 1 (a) and paragraph 2 were acceptable, he would confine himself to abstaining from the vote on the article as a whole.

Article 24 was adopted, with 1 abstention.

Article 25 (Termination of the functions of a member of a consular post)

52. Mr. MARAMBIO (Chile) expressed doubts concerning the drafting of article 25, paragraph 1, because, if read in the light of articles 1 and 11, the provision might be confusing. It might be taken to mean that the alternative of the withdrawal of the *exequatur* was applicable to members of the consular staff; yet, under article 11, only the head of consular post — who according to the definitions in article 1 was not a member of the consular staff — needed the *exequatur*. He suggested that article 25 should be reconsidered by the drafting committee.

53. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that the point would be considered by that committee.

54. The PRESIDENT said that the vote on article 25 would be postponed until the drafting committee had reported further to the Conference.<sup>2</sup>

Article 26 (Departure from the territory of the receiving State)

Article 26 was adopted unanimously.

Article 27 (Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances)

Article 27 was adopted unanimously.

The meeting rose at 6.5 p.m.

<sup>1</sup> The title of article 22 was referred to the drafting committee, which altered it to "Nationality of consular officers" (see the summary record of the ninth plenary meeting).

<sup>2</sup> See the summary record of the ninth plenary meeting.

## EIGHTH PLENARY MEETING

Thursday, 11 April 1963, at 10.50 a.m.

President: Mr. VEROSTA (Austria)

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

[Agenda item 10]

### DRAFT CONVENTION

Article 27 (Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances) (*concluded*)

1. Mr. VRANKEN (Belgium) said that, although he had voted in favour of article 27, he wished to draw the drafting committee's attention to two inconsistencies. First, the text of paragraph 1 (a) referred to "consular premises together with the property of the consular post" whereas paragraph 1 (b) referred to "the consular premises together with the property contained therein"; the wording should be made the same. Secondly, he thought that the arrangement of paragraph 2 should be brought into line with that of paragraph 1. It might be more satisfactory to place a colon after the words "In the event of the temporary or permanent closure of a consular post" and arrange the remaining matter as sub-paragraphs (a), (b) and (c).

2. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that the drafting committee would consider the Belgian representative's suggestions.<sup>1</sup>

### REPORT OF THE SECOND COMMITTEE

3. The PRESIDENT called upon the rapporteur of the Second Committee to introduce his report (A/CONF.25/L.16).

4. Mr. KONSTANTINOV (Bulgaria), rapporteur of the Second Committee, said that the report was a brief record of the proceedings of the Committee, which had held 44 meetings during the period from 5 March to 4 April 1963, and had considered 230 written amendments. The articles it had adopted were annexed to the report. The Committee had originally been allocated articles 28 to 67 and article 69, but owing to a number of difficult legal and technical problems, the Conference had decided to transfer articles 52 to 55 to the First Committee.

5. A high degree of mutual understanding and respect had been shown by delegations, which had devoted the most careful attention both to individual problems and to the coherence of the convention as a whole. Throughout the proceedings there had been a spirit of co-

<sup>1</sup> These suggestions were not adopted by the drafting committee.