United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.1/SR.19

19th meeting of the First Committee

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)

zations should, when performing their consular functions, enjoy only the privileges and immunities of consular officials.

56. Mr. WESTRUP (Sweden) said that he would vote for the amendment of the Federal Republic of Germany for the deletion of paragraph 1 of article 17. The Swedish delegation had already expressed its government's concern at the Committee's tendency to assimilate diplomatic and consular functions and responsibilities. Like the delegation of the Federal Republic of Germany, the Swedish delegation thought that there were differences of substance which should be maintained. The fusion of the two services in the internal administration of a State should not entail the fusion of their functions. His delegation would also support the joint amendment by Canada and India.

The meeting rose at 1.10 p.m.

NINETEENTH MEETING

Monday, 18 March 1963, at 3.15 p.m.

Chairman: Mr. BARNES (Liberia)

Consideration of the draft articles on consular relations adopted by the International Law Commission at its thirteenth session (A/CONF.25/6) (*continued*)

Article 17 (Performance of diplomatic acts by the head of a consular post) (*continued*)

1. The CHAIRMAN invited the Committee to continue its discussion of article 17.[1] He recalled that the amendments submitted by Canada (L.109) and India (L.110) had been replaced by a joint amendment and that there was an oral amendment by Australia introducing the words " or acting head " after the word " head " in paragraph 1.

2. Mr. EL-SABAH EL-SALEM (Kuwait) supported the United Kingdom amendment (L.125) but suggested the insertion of the words " international or " before the words " intergovernmental organization ". Perhaps that suggestion could be referred to the drafting committee; its purpose was to repair an omission by the International Law Commission, which appeared to have considered that the term " intergovernmental organization " covered all international organizations of States.

3. Mr. KESSLER (Poland) opposed the proposals to delete article 17 in whole or in part. The provisions of that article were in keeping with customary international law and reflected the widespread practice of entrusting consuls with the performance of acts which normally formed part of the duties of diplomatic missions. That practice had been recognized in many bilateral conventions, as well as in the important multilateral convention regarding consular agents, signed at Havana on 20 February 1928. The provisions of article 17 would be particularly useful where consular relations constituted the only channel for intercourse between two States; they would be of great practical value to the smaller nations, which were unable to bear the heavy burden of maintaining a diplomatic mission in each capital city.

4. His delegation would support the joint amendment by Canada and India, if the word " consulate " could be substituted for " consular officials "; that proposal was in line with its support of the Japanese amendment (L.57). It whole-heartedly supported the United Kingdom amendment (L.125) which clarified and usefully supplemented the text.

5. Mr. KRISHNA RAO (India) said that the provisions of article 17 corresponded to an existing practice and filled a genuine need. He was thinking, in particular, of the case in which consular relations existed between two countries, but there was delay in establishing diplomatic relations.

6. From the point of view of legal theory, there appeared to be no valid objection to a consular official being authorized to perform diplomatic acts with the consent of the receiving State. The practice might not be universal, but there had not been any indication of a contrary practice. When the text of article 17 had been submitted to governments, there had been no real opposition to it; some governments had suggested its deletion, as being unnecessary; but they had not opposed the principle embodied in it.

7. The purpose of the Indian amendment, now combined with that of Canada, was to specify that a consul could perform diplomatic acts where the sending State was not diplomatically represented. Diplomatic representation could take two forms: the sending State could have its own diplomatic mission, or it could be represented by the diplomatic mission of a third State. In either of those two cases there was no need to empower a consular official to perform diplomatic acts. The amendment also incorporated in the text of the article the important statement contained in paragraph 6 of the commentary — namely, that the performance of diplomatic acts by a consular official did not confer upon him any right to diplomatic privileges and immunities.

8. Mr. SILVEIRA-BARRIOS (Venezuela), introducing his amendment (L.89) deleting article 17, said that Venezuela considered the exercise of diplomatic functions incompatible with that of consular functions. It therefore regarded the provisions of article 17 as contrary to international law. The same considerations applied to a consul's acting as representative of the sending State to an intergovernmental organization; that function would confer diplomatic privileges, to which a consul had no right.

9. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) supported the Japanese amendment (L.57) and the joint amendment proposed by Canada and India, which improved the text of paragraph 1. He had no objection to the Italian amendment (L.117), but thought that the idea of notifying the receiving State was covered by the requirement of that State's consent in paragraph 1.

[1] For list of amendments to article 17, see eighteenth meeting, footnote to para. 47.

His delegation was opposed to the deletion of any part of article 17; its provisions reflected a practice which was by no means uncommon, and would be particularly useful in places where the consul was the sole official representative of the sending State.

10. Mr. SHARP (New Zealand) said that he attached great importance to the provisions of article 17. New Zealand was a small nation with comparatively limited resources; in view of the emergence of so many new States it was anxious to increase its representation abroad, and the provisions of article 17 would prove very useful in that respect. His delegation was therefore opposed to the deletion of any part of the article. It supported the United Kingdom amendment to paragraph 2.

11. Mr. ABDELMAGID (United Arab Republic) thought it somewhat illogical to delete paragraph 1, as proposed in the amendment by the Federal Republic of Germany (L.78), without at the same time deleting paragraph 2, which expressed a very similar idea. The Venezuelan proposal to delete the whole article was more consistent. His delegation would nevertheless oppose both proposals.

12. He supported the joint amendment submitted by Canada and India and also the United Kingdom amendment, with the addition proposed by the representative of Kuwait. The Italian amendment was consistent with the generally accepted practice. At Geneva, for example, certain consuls were accredited as permanent representatives to the European Office of the United Nations; on being informed that they were so accredited, the United Nations duly notified the Swiss Government.

13. Mr. CAMERON (United States of America) said that he favoured the deletion of article 17; he accordingly supported the amendments submitted by the Federal Republic of Germany (L.78) and Venezuela (L.89). The United States Government had no objection to a consul being accredited to a diplomatic mission so long as he did not avail himself of his diplomatic immunities in connexion with his acts as a consul.

14. A similar problem could arise where a diplomat acted as consul. If, for example, a diplomat exercised the consular function of representing one of his nationals in estate or probate proceedings, it was important that he should subject himself to the jurisdiction of the competent courts of the receiving State.

15. In connexion with paragraph 2, he referred to the Headquarters Agreement between the United Nations and the United States of America, whereby his government had agreed to extend diplomatic privileges to the permanent representatives to the United Nations and their staff. A number of States with small delegations had found it necessary to accredit their consuls-general in New York to their permanent missions to the United Nations. In those cases, where hardship was involved, the United States Government had agreed to recognize a consul in a diplomatic capacity. Hence his delegation was not opposed in principle to the practice seemingly reflected in paragraph 2, but thought that the matter should be left entirely to the receiving State to decide.

16. If the proposals to delete paragraph 1 or the whole of article 17 were rejected, his delegation would vote in favour of the United Kingdom amendment, which expressed the generally accepted view regarding the extent to which the consular official concerned would be entitled to enjoy privileges and immunities.

17. Mr. SOLHEIM (Norway) said that he found the provisions of paragraph 1 useful both to the receiving State and to the sending State. They were consistent with a long and widespread practice and his delegation would therefore oppose their deletion. The interests of the receiving State were duly safeguarded by the proviso that its consent was required for the performance of diplomatic acts.

18. His delegation supported the joint proposal to broaden the scope of article 17 so as to include all consular officials and not merely heads of post. It also supported the United Kingdom amendment, which contained adequate regulations for the case envisaged in paragraph 2.

19. Mr. RUDA (Argentina) supported the Venezuelan proposal to delete article 17. That article dealt with the performance of diplomatic acts and was therefore out of place in a convention on consular relations.

20. As pointed out by the Brazilian representative at the sixteenth session of the General Assembly in 1961, the provisions of article 17 went further than the general practice; consuls should be permitted to perform diplomatic acts only in exceptional circumstances.[2] With regard to paragraph 2, although there had been a few cases of consuls acting as permanent representatives to international organizations, the status of a consular official was, in principle, incompatible with such representation.

21. If the Venezuelan amendment were rejected, his delegation would vote in favour of the greatest possible limitations on the possibility provided for in article 17.

22. Mr. PALIERAKIS (Greece) supported the Italian, United Kingdom and South African amendments, all of which would improve the text. His delegation was opposed to the deletion of the article 17, either in whole or in part. The provisions of paragraph 1, in particular, referred to an existing situation, concerning which it was necessary to lay down rules.

23. Mr. KIRSHSCHLAEGER (Austria) supported paragraph 1, as amended by India and Canada. Its provisions would be particularly valuable to small countries. Austria, for instance, had honorary consuls in a number of countries with which it maintained good relations, but in which it had no diplomatic mission.

24. His delegation had no strong views on paragraph 2, but considered that its contents concerned the law relating to international organizations, which the Conference was not called upon to codify. If it were decided to retain that paragraph, his delegation would support the United Kingdom amendment, but he sug-

[2] See *Official Records of the General Assembly, Sixteenth Session, Sixth Committee*, 702nd meeting, para. 33.

gested that the words " normally accorded " should be replaced by the words " accorded by customary international law or international agreement ". In most cases, the privileges and immunities of representatives to an international organization were laid down by the headquarters agreement signed between the organization concerned and the host State.

25. Mr. MUÑOZ MORATORIO (Uruguay) supported the proposal to delete article 17, the provisions of which were out of place in a convention on consular relations. His delegation agreed that it was desirable to formulate rules of international law on the performance of diplomatic acts by consuls, but the matter was not one for the present conference.

26. Mr. KOCMAN (Czechoslovakia) said that he fully shared the views of those delegations which had expressed themselves in favour of maintaining both paragraphs of article 17. The International Law Commissions had drawn attention, in paragraph 5 of its commentary, to the special position of a consul in a country where the sending State was not represented by a diplomatic mission and where he was the only official representative of his State.

27. He had not been convinced by the arguments put forward by the Federal Republic of Germany, to show that the provisions of paragraph 1 were superfluous. It was, of course, true that the sending State could establish a diplomatic mission in the receiving State, but in some cases it was more convient to use an existing consulate to perform diplomatic acts, and small countries often did so. He saw no reason for not incorporating that well-established practice in the convention. The provisions of article 17 in no way impaired the sovereign rights of the receiving State, since its consent was required before a consul could perform diplomatic acts.

28. With regard to the arguments put forward by the representative of Argentina, he pointed out that the International Law Commission, in drafting article 17, had taken the provisions of the 1961 Vienna Convention on Diplomatic Relations fully into account.

29. His delegation supported the various constructive proposals which had been made to improve the text. The Japanese proposal to refer to " a consulate " instead of " the head of consular post " was consistent with the form already adopted by the Committee for several articles of the draft. The second Japanese amendment and that submitted by South Africa could be referred to the drafting committee. His delegation supported the joint amendment, and the United Kingdom amendment to paragraph 2.

30. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said that he could see no valid reason for deleting any part of article 17; what it provided for, namely the right of a consul to perform diplomatic acts, was very important, particularly for the smaller countries, and his delegation was anxious that those provisions should be retained. He supported the Japanese proposal to replace the words " the head of consular post " by the words " a consulate ", and had no objection to referring the second Japanese amendment to the drafting committee. His delegation had no fundamental objection to the joint amendment.

31. Mr. D'ESTEFANO PISANI (Cuba) said that he was strongly in favour of retaining the provisions of article 17, which would facilitate the development of relations between peoples. Those provisions would be particularly useful to small States, without in any way injuring other States. Cuba could not afford to maintain diplomatic missions at the capitals of all the more than one hundred States with which it wished to maintain good relations in accordance with the principles of the United Nations Charter. Article 17 would make it possible to maintain friendly relations, including a limited measure of diplomatic relations, without establishing diplomatic missions; it would in no way impair the sovereignty of the receiving State, for the consent of that State would be required for a consul to be able to perform diplomatic acts.

32. His delegation considered that the United Kingdom amendment to paragraph 2 was useful.

33. Mr. DJOKOTO (Ghana) supported the joint amendment to paragraph 1 and the United Kingdom amendment to paragraph 2; both those proposals made for clarity and precision.

34. He saw no objection to making provision for special circumstances in which consular officials would be able to perform diplomatic functions within clearly defined limits. The deletion of paragraph 1 would be detrimental to the progressive development of international law and to the interests of small nations which did not have a wide choice of staff available for their foreign service.

35. Mr. EL KOHEN (Morocco) supported the joint amendment and the United Kingdom amendment, both of which improved the text. The provisions of the article reflected a contemporary development of consular relations; many small nations found it necessary to confer a dual capacity on their foreign-service officers.

36. Mr. TSHIMBALANGA (Congo, Leopoldville) said that he was in favour of retaining article 17, with the joint amendment and the United Kingdom amendment. The provisions of the article took into account the situation of the newly independent countries which faced a shortage of trained staff and financial difficulties in their representation abroad.

37. Mr. KRISHNA RAO (India) said that the sponsors of the joint amendment had no objection in principle to replacing the term " consular official " by " consulate". From the point of view of drafting, however, that change was difficult to make because their amendment referred to the status of the official concerned. He therefore suggested that the amendment should be put to the vote in the form in which it had been submitted, on the understanding that the drafting committee would consider the question of introducing the term " consulate ".

38. Another point which should be left to the drafting committee was the choice between the words " or " and " and " before the words " where the sending State is not represented by a diplomatic mission of a third State ". There was no disagreement as to the meaning

of the passage; its purpose was to make clear that article 17 would not apply in two cases: firstly, where the sending State had a diplomatic mission; and secondly, where the sending State was represented by the diplomatic mission of a third State.

39. Mr. CRISTESCU (Romania) opposed the proposals to delete article 17, either in whole or in part. Romania did not at the moment entrust its consulates with the performance of diplomatic acts, but he nevertheless supported the provisions of the article, which would be useful to a great many States, particularly newly independent States.

40. His delegation supported the first Japanese amendment, the joint amendment and the United Kingdom amendment.

41. Mr. N'DIAYE (Mali) opposed the proposals to delete article 17, which was necessary to countries not in a position to maintain both diplomatic missions and consulates in all capitals. The provisions of the article reflected a long-standing practice and were consistent with the current tendency in many countries to make the diplomatic and consular services interchangeable.

42. His delegation supported the joint amendment to paragraph 1 and the United Kingdom amendment to paragraph 2.

43. Mr. BANGOURA (Guinea) said he was also in favour of retaining article 17, with the joint amendment and the United Kingdom amendment.

44. Mr. VON HAEFTEN (Federal Republic of Germany) thanked those delegations which had supported his proposal to delete paragraph 1. He wished to emphasize the fact that the provisions of that paragraph were inconsistent with article 2 of the Vienna Convention on Diplomatic Relations, which laid down that the establishment of diplomatic relations between States took place by mutual consent. In the case envisaged in article 17, paragraph 1, the sending State could without difficulty appoint its consul as chargé d'affaires, once it had agreed with the receiving State on the establishment of diplomatic relations. Alternatively, it could arrange to be represented by its diplomatic mission in a neighbouring country. Many small States were represented in Bonn, but there was not a single case of a consul being entrusted with the performance of diplomatic acts.

45. He drew attention to paragraph 1 of the commentary on article 38, which stated that it was a well-established principle of international law that consular officials could address only the local authorities; that meant that a consular official could not address the central government in the case envisaged in article 17, paragraph 1. If the provisions of that paragraph were included in the future convention, his government might be unable to sign it.

46. The CHAIRMAN said that, if there were no objection, he would consider that the Committee agreed to refer the South African amendment (L.128) to the drafting committee.

It was so agreed.

47. Mr. KEVIN (Australia) withdrew the oral amendment he had proposed at the previous meeting, in view of the general support for the joint amendment by Canada and India.

48. The CHAIRMAN said that he would put to the vote the Venezuelan amendment in so far as it applied to paragraph 1. The proposal to delete paragraph 2 would be voted on later.

The Venezuelan proposal (A/CONF.25/C.1/L.89) to delete paragraph 1 was rejected by 46 votes to 11, with 9 abstentions.

49. The CHAIRMAN put to the vote the joint oral amendment by Canada and India, subject to the drafting points mentioned earlier by the Indian representative.

The joint amendment was adopted by 56 votes to 1, with 10 abstentions.

50. Mr. FUJIYAMA (Japan) said that, since the Committee had decided to leave it to the drafting committee to choose between the words " consular official " and the word " consulate ", his delegation would not press its amendment (L.57).

51. Mr. HEPPEL (United Kingdom) said he had voted in favour of the joint amendment on the understanding that the words used would be " consular official " and not " consulate ". The amendment related to the occasional performance of diplomatic acts by a specific person; to speak of the performance of such acts by a consulate would be tantamount to turning consulates into diplomatic missions. That could not be the Committee's intention.

Paragraph 1, as amended, was adopted by 56 votes to 2, with 6 abstentions.

The Venezuelan amendment (A/CONF.25/C.1/L.89) to delete paragraph 2 was rejected by 54 votes to 7 with 3 abstentions.

The Italian amendment (A/CONF.25/C.1/L.117) was adopted by 27 votes to 16, with 23 abstentions.

52. The CHAIRMAN observed that the oral sub-amendment by Kuwait to the United Kingdom amendment, inserting the words " international or " before the words " intergovernmental organizations ", seemed to be unnecessary, unless the delegation of Kuwait considered that paragraph 2 should also apply to non-governmental organizations. The general term " international organizations " comprised two categories: intergovernmental and non-governmental organizations.

53. Mr. HEPPEL (United Kingdom) said he would accept the Kuwait sub-amendment, since the use of the term " intergovernmental " alone might not be comprehensive enough to cover organizations, particularly the United Nations itself, whose membership consisted of States rather than governments. His delegation could also accept the insertion suggested by the Austrian representative, but thought that the phrase in question should read ". . . any privileges or immunities agreed by customary international law or by international agreement . . ."

54. Mr. KRISHNA RAO (India), while agreeing with the Chairman, asked for a separate vote on the words " international or ". He felt that the amendment would be confusing; the term " intergovernmental " would express what was intended.

55. Mr. BARTOŠ (Yugoslavia) supported the Indian representative's request. The International Law Commission had taken the same view as the Chairman; there were no international organizations properly so-called, but only intergovernmental and non-governmental organizations.

56. Mr. EL-SABAH EL-SALEM (Kuwait) objected to a separate vote being taken on his delegation's sub-amendment, because it had been accepted by the United Kingdom delegation. The text of the United Kingdom amendment should be voted on as a whole.

57. The CHAIRMAN said that, since the United Kingdom amendment was merely an addition to paragraph 2, the Kuwait amendment might be regarded either as a sub-amendment to the United Kingdom text or as an amendment to the Commission's draft. Under rule 40 of the rules of procedure, two representatives might speak in favour of the Indian request for a separate vote, and two against.

58. Mr. EL-SABAH EL-SALEM (Kuwait) said that his delegation had not intended the words " international or " to render the paragraph applicable to non-governmental organizations. Since the United Kingdom delegation had accepted the sub-amendment, there was no need to take a separate vote on it.

59. Mr. CAMERON (United States of America) said that he was in favour of a separate vote on the Kuwait sub-amendment, because it would introduce uncertainty as to the meaning of the term " intergovernmental organizations ". The Yugoslav representative had drawn attention to the Commission's view on the matter. Moreover, the United States delegation had always understood the term " intergovernmental " to mean organizations, such as the United Nations, on which governments were represented.

60. Mr. ABDELMAGID (United Arab Republic) thought that no serious difficulty of substance was involved, since the terms " international organizations " and " intergovernmental organizations " meant much the same. The representative of Kuwait might now concur with the Chairman's interpretation.

61. Mr. WESTRUP (Sweden) thought that a separate vote should be taken on the Kuwait sub-amendment, because some delegations which had intended to vote for the United Kingdom amendment would be unable to do so if the words " international or " were added.

62. Mr. EL-SABAH EL-SALEM (Kuwait) said he would not press his objection. His delegation had had no intention of altering the substance of the United Kingdom amendment, but had merely been anxious to improve the text.

63. Mr. HEPPEL (United Kingdom) said his delegation had accepted the Kuwait sub-amendment because it had not been certain of the scope of the term " intergovernmental organizations "; it might be advisable to refer the sub-amendment by Kuwait to the drafting committee.

64. The CHAIRMAN said that as the representative of Kuwait had withdrawn his objection he would put the words " international or " to the vote separately as requested by the Indian delegation.

The sub-amendment by Kuwait was rejected by 38 votes to 5, with 22 abstentions.

The United Kingdom amendment (A/CONF.25/C.1/L.125), as orally amended by the Austrian delegation, was adopted by 62 votes to 1, with 7 abstentions.

Paragraph 2, as amended, was adopted by 62 votes to none, with 7 abstentions.

Article 17, as a whole, as amended, was adopted by 63 votes to 1, with 4 abstentions.

65. Mr. MIRANDA e SILVA (Brazil) said he had abstained from voting on the article as a whole because, as his delegation had stated at the sixteenth session of the General Assembly, the wording of article 17 narrowed the limits of general practice in the matter of the performance of diplomatic acts by consular officials. Furthermore, the Brazilian member of the International Law Commission had stated that view during the debates on the draft article.[3]

66. Mr. BINDSCHEDLER (Switzerland) said he had voted against the United Kingdom amendment because the sentence that had been added to paragraph 2 was not applicable in practice. Even if it were applicable, it would cause great confusion by allowing the same individual to act both as a diplomatic agent and as a consular official.

Article 18 (Appointment of the same person by two or more States as head of a consular post)

67. The CHAIRMAN drew attention to the amendments to article 18 submitted by the delegations of Italy (A/CONF.25/C.1/L.118) and the United Kingdom (A/CONF.25/C.1/L.126).

68. Mr. MAMELI (Italy), introducing his delegation's amendment, said that, since the possibility envisaged in the article was a complete innovation in consular law, it would be advisable to take the precaution of making it subject to the explicit consent of the receiving State.

69. Mr. HEPPEL (United Kingdom) said that the object of his delegation's amendment was to provide for cases in which the head of a consular post whom two or more States wished to act on their behalf was absent, ill or not available for any other reason. The whole purpose of the article would be better secured if its applicability were not confined to the head of a consular post.

[3] See *Yearbook of the International Law Commission, 1961*, vol. I (United Nations publication, Sales No. 61.V.1, vol. I), p. 67.

70. Mr. KONZHUKOV (Union of Soviet Socialist Republics) said he could not support the United Kingdom amendment, which made it appear that the head of one consular post had a subordinate official acting in another. That could not be regarded as logical and, since similar amendments submitted by the United Kingdom to earlier articles had already been rejected by the Committee, the USSR delegation would vote against the United Kingdom amendment to article 18.

71. His delegation could not support the Italian amendment either, since it would impair the Commission's draft.

72. Mr. HEPPEL (United Kingdom), replying to the USSR representative, said that there was no connexion between his delegation's amendment to article 18 and the similar amendments it had submitted to earlier articles. The sole purpose of the United Kingdom amendment to article 18 was to widen the scope of the provision, since there might be consular officials other than the head of post whom two States might wish to act on their behalf.

The Italian amendment (A/CONF.25/C.1/L.118) was adopted by 33 votes to 14, with 15 abstentions.

The United Kingdom amendment (A/CONF.25/C.1/L.126) was adopted by 27 votes to 20, with 17 abstentions.

73. The CHAIRMAN observed that the adoption of the United Kingdom amendment would entail a drafting change in the title of the article.

Article 18, as amended, was adopted by 45 votes to none, with 19 abstentions.

Article 19 (Appointment of the consular staff)

74. The CHAIRMAN drew attention to the amendments to article 19, the first three of which called for the deletion of paragraph 2.[4]

75. Mr. OSIECKI (Poland), introducing the amendment which his delegation had submitted jointly with that of Hungary, drew attention to paragraph 7 of the commentary on article 19, which stated that the whole structure of the draft was based on the principle that only the head of a consular post needed an exequatur or a provisional admission to enter upon his functions. The commentary went on to say that consent to the establishment of a consulate and the exequatur granted to the head of a consular post covered the consular activities of all the members of the consular staff, as was explained in the commentary on article 11.

76. The Committee had confirmed that principle by adopting articles 8, 11 and 13, and his delegation did not believe that the exception provided for in article 19, paragraph 2, was necessary. Indeed, the disadvantages of adopting such a paragraph might be considerably greater than the advantages. In the first place, it would cast doubt on the whole modern conception of the grant of the exequatur; secondly, such an exception was contrary to the law of most States; and thirdly, there was no reason to grant an exequatur which was not required by the receiving State. Moreover, even if the paragraph were regarded as *lex perfecta* it would not be desirable, since it would destroy the formal equality of status of the consuls of different sending States in the same receiving State. Considerable confusion might arise in procedure before the competent authorities, because some consular officials would have an exequatur while others would not, though they were acting in similar matters. To avoid those doubts and difficulties, it would be better to delete paragraph 2.

77. Mr. TORROBA (Spain) said he would withdraw his delegation's amendment (L.131) in favour of the amendment submitted by the Federal Republic of Germany (L.130), which fully met the Spanish delegation's purpose. It was only right for the receiving State to be informed in advance of the full name, category and quality of a prospective member of the consulate. His delegation also supported the reference to article 23, paragraph 3.

78. On the other hand, his delegation was against the deletion of paragraph 2 of article 19, because it believed that States which followed the practice of requesting an exequatur for consular officials should be able to continue to do so.

79. Mr. von HAEFTEN (Federal Republic of Germany) said that the purpose of his delegation's amendment was to ensure that the receiving State was informed well in advance of the appointment of consular officials other than heads of post. While it might be unnecessary to request an exequatur in every case, the receiving State should have an opportunity of refusing to accept such officials. It was particularly desirable to submit the necessary information well in advance, so that the receiving State could inform the sending State of its refusal before the official in question arrived and took up his functions; at that stage the refusal could be communicated confidentially, and the sending State could appoint another official without embarrassment or difficulty.

80. It might be argued that the amendment was covered by articles 23 and 24, but those articles did not in fact provide for advance notification or for communication of the full name, category and class of all consular officials.

81. Mr. CAMERON (United States of America) said he did not consider that paragraph 2 imposed an unreasonable burden on the authorities of the receiving State by providing that some form of recognition, described in paragraph 2 as the exequatur, should be given to consular officials. He could not agree that paragraph 2 should be deleted.

82. His delegation fully supported the amendment submitted by the Federal Republic of Germany, because it was convinced that every right entailed a corresponding duty. Since under article 23, paragraph 3, the receiving State might declare a person unacceptable before he

[4] The following amendments had been submitted: Switzerland, A/CONF.25/C.1/L.17; Japan, A/CONF.25/C.1/L.58; Hungary and Poland, A/CONF.25/C.1/L.96; Italy, A/CONF.25/C.1/L.119; Federal Republic of Germany, A/CONF.25/C.1/L.130/; Spain, A/CONF.25/C.1/L.131.

arrived in its territory, the sending State was under an obligation to give the receiving State the necessary information for it to form its judgement on the acceptability of consular officials.

83. Mr. WU (China) supported the amendment submitted by the delegation of the Federal Republic of Germany, which reflected a universally accepted practice. It was important to provide that the information in question should be submitted in good time and the reference to article 23 was particularly apposite.

84. His delegation was in favour of deleting paragraph 2 because under Chinese law an exequatur was granted only to heads of post and not to subordinate officials.

85. Mr. MAMELI (Italy), introducing his delegation's amendment, said that, although the article, as drafted, was fairly satisfactory, it did not seem to go far enough. If the sending State could request the grant of an exequatur to a consular official, the receiving State should also, if its law so required, be able to stipulate admission to the exercise of consular functions by exequatur. Without such a provision, the sovereignty of the receiving State would be impaired. Italian law provided that all consular officials should be granted an exequatur, and the law of a number of other countries contained similar provisions. It might be possible to introduce that idea into the Commission's text; perhaps the question could be referred to the drafting committee. He would vote for the amendment submitted by the Federal Republic of Germany.

86. Mr. ALVARADO GARAICOA (Ecuador) said he would support the German amendment, because it was essential for the receiving State to be informed in advance of the appointment of all consular officials, in order to avoid subsequent disputes between the two States.

87. Mr. DEGEFU (Ethiopia) said his delegation could not support the proposals to delete paragraph 2 or the Italian amendment. He would, however, vote in favour of the amendment submitted by the Federal Republic of Germany.

88. Mr. RAHMAN (Federation of Malaya) said his delegation thought it important that the interests of small nations should not be overlooked or sacrificed in connexion with article 19. In the economic, political and ideological conflicts between the great powers in the modern world, the small nations tended to be victimized because they lacked the advantages, not only of technical knowledge, but of a state apparatus which could prevent them from being used to serve outside interests. The amendment submitted by the Federal Republic of Germany would provide a useful safeguard.

89. It was obvious that the interests of the receiving State could be protected in a capital city through well-established relations with a diplomatic mission, but consulates in outlying districts might be used to the disadvantage of the receiving State unless adequate safeguards were provided. Even though it might be assumed that no State would be likely to take action prejudicial to friendly relations with other States, prevention was better than cure. He would therefore vote in favour of the German amendment.

90. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) said that his delegation would also support the amendment by the Federal Republic of Germany, which would satisfactorily complement the provision in article 23, paragraph 3. Although his delegation was not altogether satisfied with paragraph 2 of article 19, it saw no objection to retaining that paragraph.

91. Mr. JAYANAMA (Thailand) also supported the amendment by the Federal Republic of Germany. Since all the countries represented at the Conference both appointed and received consuls, delegations should take the interests of both sending State and receiving State equally into account. Two basic rules of the law of nations were particularly applicable in the case of article 19. First, a sovereign nation was entitled to exercise exclusive jurisdiction in its own territory. Secondly, the laws or desiderata of one State had no force within the territorial limits of another. Those were incontestable principles of international law, which the amendment would serve to clarify in the article. Another important practical reason for supporting that amendment was that it would help to promote friendly relations among States, irrespective of their constitutions and social systems.

92. Mr. FUJIYAMA (Japan) said that the reason why his delegation had submitted its amendment deleting paragraph 2 was that, although it realized that the law of some countries provided for the grant of an exequatur to consular officials other than heads of post, Japanese authorities were not permitted to issue an exequatur to such officials. If the article in question referred to some other form of authorization, his delegation could accept the idea. His delegation, however, believed it was best to leave the question to the law of the receiving State.

93. Mr. BINDSCHEDLER (Switzerland) said that his delegation had submitted its amendment deleting paragraph 2 for three reasons. First, the paragraph seemed to be unnecessary, as it was generally agreed that the exequatur granted to the head of post covered all functions exercised by consular officials. Secondly, the paragraph would complicate the procedure of appointment, and could militate against the interests of sending States requesting the grant of an exequatur for consular officials, since on the occasion of every request the receiving State would have an opportunity to refuse. Thirdly, as the Chinese and Japanese representatives had pointed out, the law of some States prohibited the grant of an exequatur to consular officials other than heads of post. While Swiss law did not go so far as that, the exequatur had to be granted through a formal decision of the Federal Council after consulting the cantonal government concerned. If the document were issued to all consular officials, the same decision would have to be taken in each case.

The meeting rose at 6.15 p.m.