

United Nations Conference on Consular Relations

Vienna, Austria
4 March – 22 April 1963

Document:-
A/CONF.25/C.2/SR.12

12th meeting of the Second 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)

The first sentence of the United Kingdom amendment was adopted by 60 votes to none, with 4 abstentions.

60. The CHAIRMAN invited the Committee to vote on the second sentence of the United Kingdom amendment, on the understanding that if adopted it would be reviewed by the drafting committee.

The second sentence of the amendment was rejected by 22 votes to 21, with 19 abstentions.

61. Mr NALL (Israel) said he had voted for the amendment on the assumption that the definition of consular archives in article 1 would be deleted, but that if it were retained, the drafting committee would make the necessary corrections to the text.

62. The CHAIRMAN said that the Committee had thus adopted article 32 as amended by the first sentence of the United Kingdom proposal.

Article 33 (Facilities for the work of the consulate)

63. The CHAIRMAN invited the Committee to consider article 33 and pointed out that there were no amendments.

64. Mr. UNAT (Turkey) drew attention to a discrepancy between the title and the text of the article.

65. Mr. HEUMAN (France) remarked that there was no substance to the article: the International Law Commission itself, in paragraph 2 of its commentary, had said that it was difficult to define the facilities which the article had in view. He proposed that the article should be deleted and replaced by a reference to the title of chapter II. When the Committee came to discuss the title of chapter II, it could then consider whether "facilities" had any meaning and whether the word should be retained.

66. Mr. SHITTA-BEY (Nigeria) suggested that since the First Committee was discussing consular functions under article 5, the following words should be inserted at the end of article 33: "in so far as such functions are permissible under article 5."

The meeting rose at 6.5 p.m.

TWELFTH MEETING

Wednesday, 13 March 1963, at 10.40 a.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

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

Article 33 (Facilities for the work of the consulate) (continued)

1. The CHAIRMAN invited the Committee to resume consideration of article 33 and the two oral amendments submitted by the French and Nigerian delegations.¹

¹ See the summary record of the eleventh meeting, paras. 65 and 66.

2. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) said that he did not think that article 33 had no practical value; a similar clause was included in several bilateral agreements. Article 15 of the Harvard draft also established that the receiving State should accord to a consul within its territory respect and protection adequate for the exercise of his consular functions.² The Nigerian amendment contributed nothing new, merely referring to article 5, which had not yet been adopted by the First Committee. If it were maintained, his delegation would ask for separate votes on the International Law Commission's text and on the Nigerian amendment. He would, however, propose a drafting amendment to replace in the title the words "Facilities for the work of the consulate" by "Assistance in the work of the consulate".

3. Mr. ALVARADO GARAYCOA (Ecuador) proposed in an oral amendment that article 33 should read: "The receiving State shall accord all indispensable facilities for the installation of the consulate and the performance of its functions." There were two distinct factors: the installation, namely, the acquisition of premises, for example, and the consular functions which implied inviolability of the premises.

4. Mr. LEVI (Yugoslavia) thought that article 33 should be retained with a few drafting amendments, including the replacement of the words "full facilities" by the words "all indispensable facilities", as proposed by the representative of Ecuador.

5. Mr. NWOGU (Nigeria) pointed out that paragraph 2 of the commentary emphasized the difficulty of defining the term "facilities"; hence the reference in his delegation's amendment to article 5.

6. Mr. HARASZTI (Hungary) remarked that article 25 of the 1961 Vienna Convention on Diplomatic Relations contained a provision similar to that of article 33. It might be deduced from its deletion from the consular convention that the receiving State could adopt a different attitude with respect to consulates and embassies, and he would therefore prefer the retention of the text submitted by the International Law Commission.

7. Mr. SPACIL (Czechoslovakia) said the deletion of article 33 was unacceptable to his delegation, which regarded it as necessary. The draft convention could quite appropriately include provisions both of a general and a specific nature. Moreover, in that matter there should be no difference between the text as it stood and that of the 1961 Convention which, in article 25, made a similar provision.

8. Mr. JESTAEDT (Federal Republic of Germany) said that he agreed with the Hungarian representative that the International Law Commission's text should be adopted. Nevertheless, the question arose whether article 33 would not be better placed earlier in the same section, or even after article 5. That might be left to the drafting committee.

² Harvard Law School. *Research in International Law, II. The Legal Position and Functions of Consuls* (Cambridge, Mass., 1932).

9. Mr. PEREZ HERNANDEZ (Spain) said that he shared the point of view of the representative of the Federal Republic of Germany both in endorsing the International Law Commission's draft and in asking that the article be given a more suitable place.

10. Mr. HEUMAN (France) said that, in view of the lack of support for his proposal to delete the article, he would withdraw it.

11. Of the amendments submitted, the Byelorussian proposal to introduce the idea of assistance seemed admirable. The Nigerian proposal, however, was dangerous, because article 5 contained a list of consular functions that was inevitably incomplete. Article 5 in the International Law Commission's text contained the words "more especially", which obviated the danger. The adoption of the Nigerian amendment might paralyse the work of a consulate, and his delegation could neither support it nor even abstain from voting on it. As to the suggestion by the representative of the Federal Republic of Germany regarding the best place for article 33, his view was that it should be included in chapter II relating to facilities, privileges and immunities.

12. Mr. NWOGU (Nigeria) said that, in view of the fact that consideration of article 5 had not been completed, he would withdraw his amendment.

13. Mr. MARESCA (Italy) said that it was not a matter of tolerating the presence of consuls, but of assisting them as much as possible; the article should therefore be retained as drafted by the International Law Commission in order to avoid any limitation.

14. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) explained that his proposal to replace "facilities" by "assistance" referred to the title of the article. In order to facilitate the Committee's work, he would be willing to withdraw it.

15. Mr. KHLESTOV (Union of Soviet Socialist Republics), supported by Mr. BLANKINSHIP (United States of America), said that the titles were a matter for the drafting committee.

16. Mr. SPYRIDAKIS (Greece) said that he was in favour of article 33 as drafted.

The oral amendment of Ecuador was rejected by 30 votes to 14, with 21 abstentions.

Article 33 was adopted by 61 votes to 1, with 6 abstentions.

Article 34 (Freedom of movement)

17. The CHAIRMAN invited the Committee to consider article 34 and the amendments submitted by Australia (A/CONF.25/C.2/L.72) and Romania (A/CONF.25/C.2/L.99).

18. Mr. WOODBERRY (Australia) said that article 34 should safeguard the consulate from being impeded in its work and with that in mind his delegation had submitted its amendment. He thought it preferable to refer to freedom of movement in the consular district rather

than in the territory of the receiving State. Further, it was to be feared that the term "ensure" might impose undue obligations on the receiving State and he therefore proposed replacing it by the word "permit".

19. Mr. ANGHEL (Romania) said that the International Law Commission's text was acceptable to his delegation, which would vote for it provided that the term "ensure" was amended as proposed by the Australian representative. The use of the term might make the application of the text rather difficult, since it suggested some form of positive activity on the part of the receiving State, namely, an obligation to act. The receiving State, however, could undertake merely to grant freedom of movement, without ensuring the material possibility of exercising that right.

20. Mr. KONSTANTINOV (Bulgaria) supported the original draft as amended by the Romanian proposal and by part (a) of the Australian amendment. Part (b) of the Australian amendment, however, struck him as being superfluous.

21. Mr. KHOSLA (India) said that his delegation could accept the International Law Commission's text. He could not support the Romanian amendment, nor part (a) of the Australian amendment, but he had no objection to part (b) of that proposal.

22. Mr. JESTAEDT (Federal Republic of Germany) said that he could not share the Australian representative's opinion with regard to the consular district. A consul should in every circumstance enjoy the right to see his ambassador, who might well be outside his consular district, and he therefore preferred the retention of the International Law Commission's text.

23. Mr. LEVI (Yugoslavia) said he also preferred the text as it stood and would be unable to support either the Romanian or the Australian amendments.

24. Mr. BLANKINSHIP (United States of America) said that he shared the views expressed by the representative of the Federal Republic of Germany.

25. Mr. LEE (Canada) supported the views expressed by the representatives of India, the Federal Republic of Germany, the United States of America and Yugoslavia, and recalled that the International Law Commission, after consideration, had rejected the idea of including any restrictions in article 34.

26. Baron van BOETZELAER (Netherlands) proposed a sub-amendment to the Australian amendment (L.72) whereby the words "in their consular district" would be replaced by the words "in the performance of their consular functions".

27. Mr. SAYED MOHAMMED HOSNI (Kuwait) recalled that article 34 had already been discussed at length by the International Law Commission.³ He was not prepared to accept any restrictive provision in regard to it.

³ See *Yearbook of the International Law Commission, 1960*, vol. I (United Nations publication, Sales No. 60.V.1, vol. I), 531st, 532nd and 572nd meetings.

28. Mr. MARESCA (Italy) pointed out that a consul's freedom of movement should not be restricted to his district; he should be in a position to visit the capital in order to contact the head of his country's diplomatic mission, and also to visit neighbouring districts for discussions with other consuls. It was not a question of an authorization which the receiving State might grant to the consul, but of a right. His delegation was therefore in favour of article 34 as drafted by the International Law Commission.

29. Mr. HEUMAN (France) said that he was opposed to both the Romanian amendment (L.99) and the Australian amendment (L.72). On the other hand, the sub-amendment submitted by the Netherlands delegation to the Australian amendment seemed to him to be acceptable. As a simple matter of arrangement, article 34 would be better placed in section II of chapter II, but that was a matter for the drafting committee.

30. He considered that reference should be made during the discussion of article 34 to article 70 (Non-discrimination). Article 47, paragraph 2, of the 1961 Vienna Convention provided: "Discrimination shall not be regarded as taking place (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its mission in the sending State." When the time came, he would submit an amendment to the same effect *mutatis mutandis* to the convention on consular relations. If such a clause was not adopted, the French Government would interpret article 34 in the spirit of article 47, paragraph 2, sub-paragraph (a), of the Convention and reserve to itself the right, if a State restricted freedom of communication and movement, to apply the same treatment to the members of the consulates of that State. He wished his statement to be recorded in the summary record of the meeting. Subject to that reservation, his delegation would vote for draft article 34.

31. Mr. AJA ESPIL (Argentina) thought that the replacement of the word "ensure" by the word "permit", as proposed in the Australian amendment would whittle down a right to a mere option, which would depend on the goodwill of the receiving State. His delegation would vote against the proposed amendments to draft article 34.

32. Mr. WOODBERRY (Australia) accepted the sub-amendment to his amendment proposed by the Netherlands.

33. Mr. ADDAI (Ghana) agreed with the representative of the Federal Republic of Germany in considering that the word "ensure" conformed to the principle contained in article 33. His delegation could not accept the Australian amendment.

34. Mr. SPYRIDAKIS (Greece) considered that the members of a consulate should be guaranteed complete freedom of movement and travel, and said he would vote for the International Law Commission's text.

35. Mr. ZEILINGER (Costa Rica) also supported the draft article, but wished to know whether the words

"in its territory" referred to the territory of the receiving State.

36. The CHAIRMAN confirmed that the words applied to the territory of the receiving State.

37. Mr. RUSSELL (United Kingdom) considered that the word "ensure" might be interpreted as placing too specific an obligation on the receiving State, but the word "permit" would represent the actual meaning intended. The substitution of the word "permit" would not carry with it the implication that the consul was under an obligation to request permission to travel. With regard to the second amendment, the arguments put forward by the Australian representative seemed to him valid, in particular the argument that the article was concerned not with private travel but with travel for official consular purposes. He did not agree with the view that the proposed amendment would be inconsistent with the new article to be inserted between articles 4 and 5. The new article was an emergency measure providing for the performance of consular functions outside the consular district, in special cases and with the consent of the receiving State; the consent of the receiving State in such circumstances would automatically carry with it the right to travel. He was therefore in favour of the Australian amendment as modified by the Netherlands sub-amendment.

38. Mr. KHLESTOV (Union of Soviet Socialist Republics) noted that paragraph (a) of the Australian amendment and the Romanian amendment were identical. In the Russian version at all events, the word corresponding to "grant" expressed the principle more clearly. On the other hand, part (b) of the Australian amendment did not seem acceptable.

39. Mr. JESTAEDT (Federal Republic of Germany) referring to the French representative's statement, said that his delegation had deposited an amendment (A/CONF.25/C.1/L.44) to article 70 under which the wording of that article would be taken from article 47 of the 1961 Convention.

40. Mr. TOURE (Guinea) considered that the word "permit" would be clearer than the word "ensure"; he did not think that a consul would have to ask for a permit. He should, however, inform the Ministry of Foreign Affairs of his intention to travel to enable measures to be taken for his safety.

41. Mr. VRANKEN (Belgium) said that he was in favour of the Romanian amendment and of that of Australia, as modified by the Netherlands sub-amendment. He wished it to be recorded that he had made the same reservations as the French representative.

42. Mr. MOLITOR (Luxembourg) thought that the Netherlands sub-amendment provided a useful clarification.

43. Mr. LEVI (Yugoslavia) said that he did not consider that the Australian and Romanian amendments involved any very considerable changes. If the Committee approved of article 34, there was no reason to

believe that the receiving State would be required to provide the members of the consulate with means of transport.

44. Mr. SALLEH bin ABAS (Federation of Malaya) proposed a compromise wording for article 34 which would include neither "permit" nor "ensure". Under his proposal, the article would read "subject to the laws and regulations of the receiving State concerning zones entry into which is prohibited or regulated for reasons of national security, all members of the consulate shall have freedom of movement and travel in the performance of their consular functions".

45. Baron van BOETZELAER (Netherlands) and Mr. UNAT (Turkey) asked that it be noted in the summary record that their delegations made the same reservations as those of the representatives of France and Belgium.

46. Mr. Von NUMERS (Finland) said that the corresponding article of the 1961 Convention (article 26) contained the word "ensure"; he thought it undesirable that a different wording should be used in the convention on consular relations. He would accordingly vote for the article as it stood.

47. Mr. MORGAN (Liberia) also supported the article as drafted.

48. Mr. NWOGU (Nigeria) thought that the oral amendment by the delegation of the Federation of Malaya constituted a happy compromise solution and he would vote for it.

49. Mr. MARESCA (Italy) said that the Netherlands delegation's proposal would improve the article, but it would restrict its scope if the words "in its territory" were eliminated.

50. Mr. ANGHEL (Romania) agreed that his amendment should be referred to the drafting committee.

51. Mr. WOODBERRY (Australia) announced that his delegation had decided to withdraw its amendment (L.72) and to support the oral proposal made by the representative of the Federation of Malaya.

52. The CHAIRMAN pointed out that the Australian amendment could be withdrawn only if the Netherlands delegation did not maintain its sub-amendment.

53. Baron van BOETZELAER (Netherlands) said that, since the Australian delegation wished to withdraw its amendment, he was prepared to withdraw his sub-amendment.

54. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that he was opposed to the Federation of Malaya's proposal and in favour of maintaining the International Law Commission's text.

The oral amendment of the Federation of Malaya was rejected by 26 votes to 17, with 22 abstentions.

55. Mr. HEUMAN (France), on a point of order, said he was opposed to the drafting committee being given a choice between the words "grant" and "ensure", which bore on the very substance of the article.

56. The CHAIRMAN noted that the Romanian delegation had in fact withdrawn its amendment and that there was therefore only one text before the Committee — i.e., the article as drafted by the International Law Commission.

57. Mr. VRANKEN (Belgium) said that he wished to reintroduce the Romanian amendment and asked for it to be put to the vote.

The Romanian amendment (A/CONF.25/C.2/L.99), reintroduced by Belgium, was rejected by 26 votes to 21, with 19 abstentions.

Article 34 was adopted by 61 votes to none, with 6 abstentions.

The meeting rose at 12.55 p.m.

THIRTEENTH MEETING

Wednesday, 13 March 1963, at 3.15 p.m.

Chairman: Mr. GIBSON BARBOZA (Brazil)

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

Article 35 (Freedom of communication)

1. The CHAIRMAN suggested that the Committee should consider article 35 and the amendments thereto paragraph by paragraph.¹

Paragraph 1

2. The CHAIRMAN invited attention to the amendments submitted by Switzerland (L.42), Japan (L.55), South Africa (L.75) and Nigeria (L.108).

3. Mr. SERRA (Switzerland) explained that paragraph 1 of article 35 as drafted by the International Law Commission gave consulates the absolute right to make unrestricted use of the diplomatic or consular bag and the diplomatic or consular courier — a right which his government did not consider justified. The Swiss amendment (L.42) would subject freedom of communication to certain restrictions. Where the sending State had a diplomatic mission in the receiving State, the communications of the consular post with the government and with the diplomatic missions and consular posts of the sending State elsewhere than in the receiving State should be routed through that mission. That restriction on the use of the bag or courier (whether diplomatic or consular) was the best guarantee of their protection. If the sending State had no diplomatic representative in the receiving State, the consulate would be entitled to communicate directly as provided in paragraph 1.

¹ The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.15; Switzerland, A/CONF.25/C.2/L.42; Japan, A/CONF.25/C.2/L.55; Byelorussian Soviet Socialist Republic, A/CONF.25/C.2/L.70; Federal Republic of Germany, A/CONF.25/C.2/L.73; South Africa, A/CONF.25/C.2/L.75; Spain, A/CONF.25/C.2/L.91; Australia, A/CONF.25/C.2/L.92; Italy, A/CONF.25/C.2/L.102; Nigeria, A/CONF.25/C.2/L.108.