

# **United Nations Conference on Consular Relations**

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**21<sup>st</sup> meeting of the Second Committee**

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for transfer and in that respect he agreed with the Tunisian representative's objections. If the words "in the currency chosen by the sending State" were deleted the amendment would represent a fair compromise between the interests of the sending and the receiving State. He accordingly requested a separate vote on those words.

50. Mr. LEVI (Yugoslavia) said he would vote against the joint amendment because it should not come under the draft convention. Such matters were usually dealt with in bilateral agreements because they were dependent on many circumstances such as the receiving State's foreign currency position, commercial relations between the receiving and the sending State and questions of hard and soft currency. The matter was entirely outside the competence of the present conference.

51. Mr. JAMAN (Indonesia) also opposed the joint amendment. Such transfers might not be permissible or feasible under the laws of the sending State. Experience showed that consular levies could normally be used in the receiving State and the possibility of consular accounts being subject to inspection by the receiving State's auditors was a violation of the accepted principle of secrecy.

52. Mr. MOUSSAVI (Iran) endorsed the views of the representative of Tunisia. The International Law Commission's draft was entirely satisfactory and he could not support the joint amendment.

53. Mr. MARESCA (Italy) did not agree with the view that the question of transfer was outside the Committee's competence. It was a logical consequence of the right to levy a fee recognized in article 39 and he would accept the amendment as a necessary complement to paragraph 2.

54. Mr. SPYRIDAKIS (Greece) said that he appreciated the fact that the free transfer of consular revenues to the sending State would cause difficulty to many receiving States. It should be remembered, however, that in the case of many countries, like his own, with large communities and merchant fleets, considerable sums of money were collected in consular fees. In countries where there was no exchange control, consulates were already freely making transfers to their countries of origin under bilateral agreements. In countries with strict exchange control, considerable sums were "frozen". The sending State could not spend them, because they were far larger than the expenditure of its diplomatic and consular missions in the receiving State. The strong opposition of the representative of Tunisia to the joint amendment concerned the functions of the consul and was hardly warranted. He agreed that the question of transfer of consular fees to the sending State was a logical consequence of the right to levy fees recognized in article 39, and was therefore a matter to be decided by the Committee. He supported the Portuguese proposal for a separate vote on the words "in the currency chosen by the sending State".

55. Mr. EVANS (United Kingdom) said he had listened with great interest to the comments of the other representatives and agreed with those representatives who were concerned at the unusually wide scope of the

joint amendment. He could not recollect any other international agreement having a provision requiring the receiving State to allow the sending State not only to convert sums received into any currency but also to transfer them without restriction. In practice, the amounts involved would probably not be very large and the adoption of the amendment was unlikely to cause his own country any difficulty. Nevertheless, in view of its unusually wide scope and the difficulties that many countries would face, it would be wise not to adopt it as drafted. The most he considered the Committee should accept would be an amendment providing that sums collected from fees and charges should be freely convertible into the currency of, and transferable to, the sending State. It might, however, be wiser to maintain the International Law Commission's draft.

56. Mr. KANEMATSU (Japan) remarked that the fees and charges collected by consuls were normally used to meet the consulate's expenses. He saw no reason why the convention should provide for the transfer and conversion of such funds. Moreover, in the matter of foreign exchange regulations most countries treated consuls as non-residents, so that there should be no difficulty in dealing with the relatively small sums concerned. In his opinion, the matter should be dealt with under the currency regulations of the receiving State and should not have a place in the convention.

The meeting rose at 1.5 p.m.

#### TWENTY-FIRST MEETING

Tuesday, 19 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 39 (Levy of fees and charges and exemption of such fees and charges from dues and taxes) (continued)*

1. The CHAIRMAN invited the Committee to continue its consideration of article 39 and of the joint amendment thereto by Argentina, Belgium, Brazil, the Netherlands and Venezuela (L.130).

2. Mr. SRESHTHAPUTRA (Thailand) said that his delegation maintained its view that the general rules of law which could command if not universal at least broad acceptance by States, should contain only general rules. He thought that in formulating such rules regard should be had to the different conditions prevailing in different States. It was therefore not advisable to make express provision for all conceivable circumstances in the proposed convention. He warned the Committee that if it went too far in one direction or the other, then, although it might be able to adopt a convention, such a convention would never attract States to become parties to it. He did not think that the proposed consular

convention should contain provisions relating to exchange control, for the transfer of funds depended on the economic and financial conditions prevailing in the particular State. He would therefore vote against the amendment and for the International Law Commission's draft.

3. Mr. KAMEL (United Arab Republic) said he shared the views expressed earlier by the representatives of Tunisia and Yugoslavia. The proposed amendment was entirely unacceptable to his government, for if the sending State were free to choose the currency into which the proceeds of fees and charges could be converted difficulties might arise. Such a clause had no place in a convention on consular relations. Furthermore, the accounts of consulates could not be checked by the receiving State by reason of the inviolability of the consular archives.

4. Mr. HEUMAN (France) said that his delegation could not accept either the convertibility or the transferability of the proceeds of fees and charges.

5. Mr. HABIBUR RAHMAN (Pakistan) said that article 39 was an important provision. He would vote against the joint amendment and for the article as drafted by the International Law Commission.

6. Mr. MUÑOZ MORATORIO (Uruguay) said he would vote for the amendment, for the reasons explained by its sponsors. The change proposed was compatible with the principle accepted by the International Law Commission concerning the levying of fees and charges. The possibility of funds being blocked in the receiving State should be avoided. Besides, the fees and charges in question related mainly to commerce and navigation, and were charged to the buyer of the goods; hence, in effect, purely balancing items or refunds were involved.

7. Mr. SERRA (Switzerland) said that in his country money was freely transferable. The proposed amendment would make it easier for Swiss consulates abroad to transfer the funds at their disposal. Nevertheless, he would abstain from voting on the amendment, as he preferred the International Law Commission's text.

8. Mr. CAMPORA (Argentina) said that, as one of the sponsors of the joint amendment, he had been surprised by some of the arguments put forward against it. The amendment was said by some of its critics to produce consequences which, in his opinion, could hardly be anticipated. The International Law Commission's text applied only to a part of the process of levying fees. In fact, there were two distinct stages: first, the actual levying of the fees in question, and then the possible transfer of the sums levied by the consul. The sponsors of the amendment had therefore proposed that the International Law Commission's text should be supplemented by a provision dealing with the second stage. In their view the term "transfer" supplemented the term "levy".

9. Mr. DAS GUPTA (India) said that no distinction could be drawn in practice between transferability and convertibility, for if consulates asked for the transfer of the proceeds of fees levied in the currency of the receiving State, the banks had to take the necessary action for conversion. For some countries, such as

India, which were experiencing balance-of-payment difficulties, the adoption of the amendment would aggravate the situation. That probably also applied to many Asian and African countries. If funds accumulated in the receiving State and if it should not be possible to transfer them, the sending State could at all events use them for such purposes as the payment of the salaries of consular staff in the receiving State. Furthermore, owing to the inviolability of the archives the consular accounts could not be inspected by the receiving State. The Indian delegation would accordingly vote against the joint amendment.

10. Mr. VRANKEN (Belgium) said he realized that exchange control regulations varied so greatly from country to country that some delegations could not accept the amendment. In deference to their views, the sponsors of the joint amendment would agree to a proposal by the representatives of Greece and Portugal for the deletion of the phrase "in the currency chosen by the sending State."

11. Mr. BOUZIRI (Tunisia), supported by Mr. LEVI (Yugoslavia), said that delegations which had submitted amendments should not introduce changes at the last minute, for then representatives who did not approve the modified amendment would not be able to comment.

12. The CHAIRMAN said that he would ask the Committee to decide by a vote whether a discussion should take place on the changes made by the sponsors.

*The Committee decided in the negative by 30 votes to 16, with 21 abstentions.*

13. The CHAIRMAN put to the vote the joint amendment, as amended by its sponsors.

*At the request of the representative of Yugoslavia, a vote taken by roll-call.*

*Ghana, having been drawn by lot by the Chairman, was called to vote first.*

*In favour:* Greece, Ireland, Italy, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands, Peru, Portugal, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Argentina, Austria, Belgium, Brazil, Canada, Costa Rica, Federal Republic of Germany.

*Against:* Guinea, Hungary, India, Indonesia, Iran, Japan, Republic of Korea, Kuwait, Libya, Mongolia, Morocco, Nigeria, Pakistan, Poland, Romania, Sweden, Thailand, Tunisia, Turkey, Republic of Viet-Nam, Yugoslavia, Albania, Australia, Cuba, Czechoslovakia, Denmark, Federation of Malaya, France.

*Abstaining:* Ghana, Israel, Laos, New Zealand, Norway, Saudi Arabia, Sierra Leone, South Africa, Spain, Switzerland, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, United States of America, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, China, Congo (Leopoldville), Ecuador, Finland.

*The joint amendment (A/CONF.25/C.2/L.130) was rejected by 28 votes to 20, with 22 abstentions.*

14. Mr. DEJANY (Saudi Arabia) said that, as some delegations might vote differently on the two paragraphs

and then on the article as a whole, he proposed that article 39 be put to the vote paragraph by paragraph.

*It was so agreed.*

*Paragraph 1 was adopted by 69 votes to none, with 1 abstention.*

15. Mr. BLANKINSHIP (United States of America) said that paragraph 2 did not specify the status of the consular staff concerned. Paragraph 2 of the commentary on article 57 stated that special attention should be drawn to article 69 of the draft, which was also applicable to honorary consuls; if they were nationals of the receiving State, honorary consuls did not, under article 69, enjoy immunity other than immunity from jurisdiction in respect of official acts performed in the exercise of their functions. In his opinion, honorary consuls who were nationals of the receiving State did not qualify for the benefit of the exemption provided for in article 39, paragraph 2, and it was on that understanding that he would vote for the paragraph.

16. Mr. SHITTA-BEY (Nigeria) said that the United States representative had raised a very important point. Under article 57 honorary consuls would apparently be eligible for the benefit of the exemption accorded by article 39. The point should be elucidated before the vote.

17. Mr. SALLEH bin ABAS (Federation of Malaya), supported by Mr. DAS GUPTA (India), took the view that the exemption was granted in respect of the sums levied by the consulate, and not by reason of the persons levying them.

18. Mr. AMLIE (Norway), supported by Mr. MARESCA (Italy) and Mr. NASCIMENTO e SILVA (Brazil), suggested that discussion on that particular point should be deferred and the question decided when article 57 came up for consideration.

19. Mr. HEUMAN (France) said that such a procedure would be dangerous; it would be difficult to include in substantive articles certain provisions which might be unacceptable to some delegations and to rely on a later and problematical decision on article 57 which might well confirm undesirable clauses.

20. The CHAIRMAN invited the Committee to decide whether it wished to take an immediate vote on paragraph 2.

*By 62 votes to none, with 4 abstentions, it was decided to take an immediate vote on paragraph 2.*

*Paragraph 2 was adopted unanimously.*

*Article 39 as a whole was adopted unanimously.*

21. Mr. NALL (Israel) said that in his delegation's opinion consulates should not provide services for documents subject to stamp duty in the territory of the receiving State unless such duties had been paid.

22. Mr. SPACIL (Czechoslovakia) explained that his delegation had voted against the joint amendment because it considered that the sums levied by consulates should be paid in the currency of the receiving State. The object of the consular function was to assist

the nationals of the sending State, and those nationals should therefore be granted the most favourable conditions, namely, the possibility of paying the fees and charges referred to in the article in the most easily obtainable currency, that of the receiving State.

23. Mr. VRANKEN (Belgium) said that he supported the viewpoint of the representative of Israel.

*New articles to be inserted after article 39*

24. Mr. HEUMAN (France), speaking on a point of order, asked whether the Netherlands delegation would agree to the postponement of debate on its proposal (A/CONF.25/C.2/L.109) for the insertion of two new articles after article 39. Both the articles proposed therein would be out of place in chapter II of the draft convention because in effect they qualified the facilities, privileges and immunities of consular officials. The question could hardly be dealt with before the consideration of articles 47 and 48.

25. Baron van BOETZELAER (Netherlands) said that he had no objection to his delegation's proposal being discussed at the same time as articles 47 and 48.<sup>1</sup>

*Article 40 (Special protection  
and respect due to consular officials)*

26. The CHAIRMAN drew attention to the amendments to article 40 submitted by the United States of America (A/CONF.25/C.2/L.5), Japan (A/CONF.25/C.2/L.58) and Greece (A/CONF.25/C.2/L.95).

27. Mr. KANEMATSU (Japan) said that, since the Committee had approved article 30, his delegation would withdraw its amendment.

28. Mr. BLANKINSHIP (United States of America), introducing his delegation's amendment (L.5), said that its purpose was to bring the draft article into line with article 29 of the Vienna Convention on Diplomatic Relations. It would be going too far to accord "special protection" to consular officials. For example, if a consular official experienced personal difficulties in the matter of housing, he could hardly be entitled to special protection. The amendment proposed by his delegation would be sufficient to provide effective protection for consular officials.

29. Mr. SPACIL (Czechoslovakia) said that the article as drafted was perfectly satisfactory; it confirmed the consul's official position and extended to him enjoyment of a special consideration in keeping with his status. The privilege thereby recognized was necessary for the proper exercise of his functions. The omission of any reference to "special protection" in the United States amendment would place the consul on a par with an ordinary citizen. While every citizen had, of course, the right to be treated with respect, consular officials should enjoy additional safeguards.

30. Mr. SPYRIDAKIS (Greece) said that the purpose of his delegation's amendment (L.95) was to enhance

<sup>1</sup> The first new article in the Netherlands proposal was later withdrawn; the second was considered at the thirtieth meeting.

the protection that should be enjoyed by consular officials. There was no question of granting to consulates the same inviolability as that accorded to the diplomatic mission, but the protection due to consular officials should not be qualified in any way.

31. Mr. WOODBERRY (Australia), Mr. MOUSSAVI (Iran), Mr. TOURE (Guinea), Mr. RUSSELL (United Kingdom), Mr. BOUZIRI (Tunisia) and Mr. VRANKEN (Belgium) expressed support for the United States amendment, which had been supported by sound arguments.

32. Mr. DAS GUPTA (India) said that he had listened with interest to the Czechoslovak representative's statement, but he had doubts about the scope of "special protection"; the provisions of the Vienna Convention of 1961 had no relevance in the case under consideration. There was a risk that honorary consuls might also claim the enjoyment of that special protection.

33. Mr. ALVARADO GARAYCOA (Ecuador) said that the article as drafted was perfectly clear. "Special protection" was granted to consular officials by reason purely of their official position, and that sufficed to limit the field of application.

34. Baron van BOETZELAER (Netherlands) said that he would vote for the United States amendment but suggested that in the French text the word "appropriées" should be substituted for the word "raisonnables" as in the 1961 Vienna Convention. He added that, in some cases, for example during a press campaign, the receiving State had no means of assuring the protection of consular officials.

35. Mr. HEUMAN (France) said that article 29 of the 1961 Vienna Convention spoke only of the "respect" due to the diplomatic agent, but at the same time under that convention the diplomatic agent enjoyed absolute inviolability, which was not the case with consular officials. In reply to the Indian representative, he said that article 57 contained no reference to article 40 and that an honorary consul did not therefore come within its scope. His delegation could not support the United States amendment, because it did not guarantee special protection for consular officials.

36. Mr. WASZCZUK (Poland) said that the United States amendment unduly narrowed the scope of the article. His delegation would support the article as drafted by the International Law Commission.

37. Mr. MARESCA (Italy) said that under the Vienna Convention the inviolability of the diplomatic agent was guaranteed in absolute terms. The consul, however, since he had partial inviolability, should be entitled, in addition to the respect normally due to him, to special protection in the performance of his functions.

38. The CHAIRMAN put to the vote the United States amendment; the words "raisonnables" would be replaced by the word "appropriées" in the French text.

*The United States amendment (A/CONF.25/C.2/L.5) was adopted by 37 votes to 22, with 11 abstentions.*

39. The CHAIRMAN said that the decision just taken made it unnecessary to vote on the Greek amendment (L.95) or on the article as drafted by the International Law Commission.

40. He suggested that the Committee should proceed to discuss article 42, since article 41 had given rise to many amendments, whose sponsors might with advantage confer with a view to facilitating debate.

*It was so agreed.*

*Article 42 (Duty to notify in the event of arrest, detention pending trial or the institution of criminal proceedings)*

41. Mr. PEREZ-CHIRIBOGA (Venezuela) said that the phrase "a member of the consular staff" was extremely vague. It might be taken to mean any person employed in the consulate, which would be going too far. The obligation provided in the article could not be extended to nationals of the receiving State, whatever their consular rank might be. His delegation would vote for the draft article on that understanding.

*Article 42 was adopted unanimously.*

The meeting rose at 5.20 p.m.

## TWENTY-SECOND MEETING

*Wednesday, 20 March 1963, at 10.45 a.m.*

*Chairman:* Mr. KAMEL (United Arab Republic)

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

*Article 41 (Personal inviolability of consular officials)*

1. The CHAIRMAN invited the Committee to consider draft article 41 together with the amendments thereto.<sup>1</sup>

2. Mr. SERRA (Switzerland) withdrew his amendment (L.105) which had been submitted to effect uniformity between the terminology of the International Law Commission's text and that of his government's penal legislation. He hoped that representatives who had submitted amendments for similar reasons would also respond to the Chairman's appeal. He now fully supported the International Law Commission's draft. It

<sup>1</sup> The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.16; Indonesia, A/CONF.25/C.2/L.61; Federal Republic of Germany, A/CONF.25/C.2/L.62/Rev.1; Brazil, A/CONF.25/C.2/L.64; Byelorussian Soviet Socialist Republic, A/CONF.25/C.2/L.104/Rev.1; Switzerland, A/CONF.25/C.2/L.105; Hungary, A/CONF.25/C.2/L.115 and L.143; Yugoslavia, A/CONF.25/C.2/L.116; Italy, A/CONF.25/C.2/L.117; Cambodia, A/CONF.25/C.2/L.126; United Kingdom, A/CONF.25/C.2/L.134; South Africa, A/CONF.25/C.2/L.148; Romania, A/CONF.25/C.2/L.149; Spain, A/CONF.25/C.2/L.150.