

# **United Nations Conference on Consular Relations**

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**32<sup>nd</sup> meeting of the Second Committee**

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*the First and Second Committees)*

34. The CHAIRMAN invited the Committee to vote on the French amendment to paragraph 1 (b) which, as revised, would read: "(b) Dues or taxes on private immovable property situated in the territory of the receiving State, subject, however, to the application of the provisions of article 31."

*The French amendment to paragraph 1 (b) (A/CONF.25/C.2/L.195), as revised, was adopted by 49 votes to 2, with 11 abstentions.*

*The Canadian amendment to paragraph 1 (c) (A/CONF.25/C.2/L.193) was rejected by 19 votes to 12, with 31 abstentions.*

*Paragraph 1 (c) of the International Law Commission's text was adopted unanimously.*

35. The CHAIRMAN said that as no amendments had been submitted to sub-paragraphs (d), (e) and (f) of paragraph 1 it would be unnecessary to take separate votes on them. He would therefore put to the vote paragraph 1, as amended.

*Paragraph 1 as a whole, as amended, was adopted by 60 votes to none, with 3 abstentions.*

36. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) withdrew his amendment to paragraph 2 (L.142) since it had been related to his delegation's amendment to paragraph 1, which had been rejected by the Committee.

*The Japanese amendment to paragraph 2 (A/CONF.25/C.2/L.84/Rev.1) was rejected by 31 votes to 17, with 12 abstentions.*

37. The CHAIRMAN invited the Committee to vote on the amendment submitted by Thailand which, as revised, would mean the insertion after the words "Members of the service staff and members of the private staff who are" of the words "not nationals of the receiving State nor permanent residents thereof but are..."

*The amendment submitted by Thailand to paragraph 2 (A/CONF.25/C.2/L.67), as revised, was adopted by 31 votes to 9, with 22 abstentions.*

*The Australian amendment to paragraph 2 (A/CONF.25/C.2/L.197) was rejected by 22 votes to 6, with 32 abstentions.*

38. The CHAIRMAN invited the Committee to vote on the Netherlands proposal to add a new paragraph to article 48.

*The Netherlands proposal (A/CONF.25/C.2/L.110) for the addition of a new paragraph was adopted by 26 votes to 8, with 27 abstentions.*

*Article 48, as a whole, as amended, was adopted by 60 votes to none, with 3 abstentions.*

39. Mr. SPACIL (Czechoslovakia) noted that the amendment to paragraph 2 submitted by Thailand, as sub-amended and approved by the Committee, referred to members of the service staff and members of the private staff who were not "permanent residents" of the receiving State. His delegation wished it to be understood that it should be the receiving State which should determine whether or not such persons were permanent residents.

40. Mr. VRANKEN (Belgium) said that his delegation had abstained from voting on the text of article 48 as approved by the Committee because his government could not agree that members of the families of consular officials or members of a consulate who were carrying on a gainful private occupation should enjoy the exemptions granted in paragraph 1 of the article.

The meeting rose at 6 p.m.

### THIRTY-SECOND MEETING

Wednesday, 27 March 1963, at 10.50 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 46 (Exemption from obligations in the matter of registration of aliens and residence and work permits) (continued)*<sup>1</sup>

1. The CHAIRMAN drew attention to the Chinese amendment (L.124) for the insertion of a new paragraph in article 46.

2. Mr. SHU (China) said that as he had introduced his amendment at the 28th meeting he only wished to add that he would accept the amendment proposed by the representative of France to replace the list at the beginning of his text by the words "The persons referred to in paragraph 1".

*The Chinese amendment (A/CONF.25/C.2/L.124) was rejected by 18 votes to 17, with 23 abstentions.*

#### *Article 46 A (Exemption from obligations in the matter of work permits)*

3. The CHAIRMAN recalled that, at its 30th meeting, the Committee had decided that paragraph 2 of article 46 of the International Law Commission's draft should become article 46 A, to read provisionally as follows:

"Members of the consulate, members of their families forming part of their households and their private staff shall be exempt from all obligations under the laws and regulations of the receiving State in regard to work permits imposed either on employers or on employees by the laws and regulations of the receiving State concerning the employment of foreign labour."

4. He drew attention to the six amendments to that text which had been submitted.<sup>2</sup>

5. Mr. HART (United Kingdom) said that if the joint amendment submitted by Greece, New Zealand

<sup>1</sup> Resumed from the thirtieth meeting.

<sup>2</sup> The following amendments had been submitted: Netherlands, A/CONF.25/C.2/L.198; France, A/CONF.25/C.2/L.199; Finland, A/CONF.25/C.2/L.203; Switzerland, A/CONF.25/C.2/L.204; Belgium, A/CONF.25/C.2/L.205; Greece, New Zealand and the United Kingdom, A/CONF.25/C.2/L.206.

and the United Kingdom (L.206) were adopted, the members of the consulate would be exempt from obligations in the matter of work permits "with respect to their employment in the consulate", but would have to comply with the regulations of the receiving State with respect to any private gainful occupation outside the consulate. That exemption would apply neither to members of their families nor to their private staff.

6. As the purpose of the article was to protect the interests of the sending State, there was no need to make provision as regards activities carried on outside the consulate by members of the consulate or members of their families. The position was admittedly different in the case of the private staff, but article 37 of the 1961 Convention did not include such a provision. The United Kingdom amendment (L.136) to the original draft of article 46 accordingly made no mention of work permits. In view of what had been said in the debate and of the opinion expressed by the International Law Commission in its commentary, his delegation thought it advisable to make explicit mention of the matter in the new amendment submitted to the Committee (L.206) under the heading of article 46 A.

7. Mr. von NUMERS (Finland) said that his delegation had thought it advisable to specify in its amendment (L.203) that the reference was to employment in the consulate "as such". If the members of the consulate wished to engage in other activities they would have to comply with the regulations of the receiving State. As article 46 had been divided into two separate texts, thus departing from the method adopted for the 1961 Convention, there was no reason not to continue to do so.

In answer to a question from the CHAIRMAN concerning the drafting of his amendment, the representative of Finland said that it mentioned only "members of the private staff" because the words "members of the consulate [and] members of their families forming part of their households" in the provisional text of article 46 A applied only to persons already covered by article 19 of the Convention.

8. Mr. REBSAMEN (Switzerland) said that he approved the division of article 46 into two parts, which would afford a solution for the Committee. He would support the joint amendment (L.206); if it were not adopted, he would ask for a vote on the Swiss amendment (L.204).

9. Mr. VRANKEN (Belgium) said that if the joint amendment (L.206) was adopted he would withdraw the Belgian amendment (L.205). The text of his amendment was incomplete and required the addition of the words "outside the consulate" after the words "gainful occupation".

10. Baron von BOETZELAER (Netherlands) did not think it necessary to explain the Netherlands amendment (L.198); he would withdraw it if the joint amendment (L.206) were adopted.

11. Mr. HEUMAN (France) said there were three distinct trends concerning the exemption to be granted

to "private staff" in the matter of work permits. Some representatives, notably those of Greece, New Zealand and Switzerland, were in favour of refusing any form of exemption to that staff. His delegation did not consider that attitude justified. Although the Committee had decided in article 46 not to exempt the private staff from holding residence permits, it was not bound to adopt the same attitude in the case of work permits. Besides, by dividing article 46 into two parts, the Committee had wished to draw a distinction. He would vote against the Swiss amendment (L.204) and also against the joint amendment (L.206).

12. Other representatives held the opposite view and favoured the granting of exemption to all the private staff. That was the wider solution contemplated by the International Law Commission and by the Finnish delegation (L.203). The French delegation saw no objection to that completely liberal attitude; but it proposed a third solution as a compromise which with regard to private staff would consist in drawing a distinction between consular officials and consular employees responsible for administrative and technical functions, whose private staff would be granted the exemption, and service staff, whose private staff would not be granted the exemption. The French delegation had submitted an amendment to that effect (L.199) and would have no objection to its being divided up to facilitate voting.

13. If the French amendment were adopted, he would support the Belgian amendment (L.205) but would suggest the insertion as a drafting amendment of the word "other" before the words "private gainful occupation".

14. Mr. SHARP (New Zealand) said he had sponsored the joint amendment (L.206) for the reasons already explained by the United Kingdom representative. The term "members of the consulate" had a wide scope and the proposed amendment was therefore not so limitative as might at first appear.

15. Mr. SALLEH bin ABAS (Federation of Malaya) said he would vote for article 46 A as read out by the Chairman. He would have been willing to accept the compromise proposal made by the French representative in view of the human element in the relationship between employer and employee, but he realized the possibility of abuse and would therefore support the Belgian and Netherlands amendments.

16. Mr. KHOSLA (India) said he would accept the text of article 46 A and would also support the Belgian and Netherlands amendments, which would fill a gap. If the Committee did not adopt that text, he would agree to the solution proposed by the French representative.

17. Mr. MARESCA (Italy) said that an article restricting exemption with regard to work permits to members of the consulate would not satisfy his delegation. So far as members of their families were concerned, it was undoubtedly advisable to state that exemption could not be granted to persons engaged in gainful occupation outside the consulate. "Private staff" was a

time-honoured expression admitted in practice, and such staff should therefore be exempt to a reasonable extent from obligations in the matter of work permits.

18. Mr. JESTAEDT (Federal Republic of Germany) said that the joint amendment stated an obvious principle which need not be embodied in the article. He subscribed to that principle, but thought its proper place was in article 56. He supported the Finnish amendment (L.203) and the French amendment (L.199), but considered the former more liberal.

19. Mr. SPACIL (Czechoslovakia) said that the term "members of the consulate" should be accepted in its widest sense and that private staff should also be exempt under article 46 A. A consul should be able to take his private staff to the country to which he was appointed without having to bother with formalities in relation to work permits. The joint amendment (L.206) was too strict in that respect and did not define the term "members of the consulate", so that it tended to exclude the private staff from the exemption. The Belgian amendment (L.205) and the Netherlands amendment (L.198) gave more precise details and he would support them both. The French amendment (L.199) was a judicious addition to the International Law Commission's draft because it excluded from the exemption the private staff of consular employees who did not perform administrative and technical functions. The situation was nevertheless slightly ambiguous, because sub-paragraph (e) of article 1 defined the consular employee as any person entrusted with administrative or technical tasks in a consulate, or belonging to its service staff. The service staff itself might thus be considered as forming part of the category of consular employees. The text of the Finnish amendment (L.203) appeared to be incomplete, for it did not expressly mention the members of the consulate and members of their families belonging to their households.

20. Mr. HARASZTI (Hungary) said that the private staff depended upon the consular officials and employees and it was not for the receiving State to interfere by issuing or refusing to issue work permits. The French amendment (L.199) restricted the application of the article in a very reasonable way and he would vote for it.

21. Mr. SRESHTHAPUTRA (Thailand) said he would support the Belgian amendment together with the words "outside the consulate" added by the sponsor. He likewise supported the Netherlands amendment (L.198). His delegation considered that those amendments were midway between the two extremes.

22. Mr. NALL (Israel) said that the joint amendment (L.206) was acceptable to his delegation. It was clear from the text that a member of the consulate carrying on an activity outside the consulate should not enjoy exemption in the matter of a work permit. It should perhaps be specified that in such a case the member of the consulate should expressly renounce all privileges attached to his function. His delegation would endorse the French amendment, but urged that consular employees who performed administrative and technical functions should be clearly distinguished from private staff.

23. Mr. BOUZIRI (Tunisia) said that exemption in the matter of work permits should not raise any great practical difficulties. His delegation would vote for any of the amendments submitted because in fact the receiving State never made any difficulties in that respect. The Finnish amendment (L.203) was not very clear, but the amendments submitted by Belgium (L.205) and the Netherlands (L.198) were quite acceptable.

24. Mr. von NUMERS (Finland) requested that Mr. Žourek, the Special Rapporteur of the International Law Commission, should be invited to explain paragraph 5 of the commentary on article 46.

25. Mr. ŽOUREK (Expert), speaking at the invitation of the Chairman, said that from the point of view of the International Law Commission the occupation of the consular staff was governed by article 19. The receiving State could always declare that a member of the consulate was not acceptable. In the original paragraph 2 of article 46 the Commission had had in mind the exemption of the private staff brought with them by the members of the consulate and it had wished to avoid any difficulties for them with regard to work permits. Nationals of the receiving State were excluded from exemption; their case was dealt with in draft article 69. Article 46 therefore applied only to nationals of the sending State or, in exceptional cases, nationals of a third State.

26. Mr. MARESCA (Italy) asked why the International Law Commission had used in paragraph 2 of article 46 the expression "The persons referred to in paragraph 1", if the persons concerned were members of the private staff.

27. Mr. ŽOUREK (Expert) said that the Commission had considered that the members of the family of an official or a consular employee might occasionally work in the consulate without having, properly speaking, the position of employees or consular officials and that provision should be made for their exemption.

28. Mr. PAPAS (Greece) observed that if the amendment (L.206) which he had submitted jointly with two other delegations were adopted, the receiving State, by virtue of the provisions of article 33, should not raise any difficulties over the issue of work permits. In practice, difficulties hardly ever occurred.

29. Mr. ADDAI (Ghana) said that his delegation was satisfied with the International Law Commission's text. The reasons given in paragraph 7 of the commentary explained why a similar provision had not been included in the 1961 Vienna Convention. His delegation would support the draft article, but it would also endorse the Netherlands amendment (L.198) as it clarified the text.

30. Mr. von NUMERS (Finland) said that article 19 did not apply to the members of the private staff and that his delegation would maintain its amendment. "Members of the family" was not covered by the amendment unless they were working in or for the consulate.

31. Mr. HEUMAN (France) said that article 1 (e) gave a definition of "consular employee" which included

persons of two categories: those performing administrative and technical functions and those belonging to the service staff of the consulate. That definition was perhaps not sufficiently clear, and he would be prepared to amend his proposal to read "the private staff of consular officials and of those consular employees who perform administrative and technical functions".

32. Mr. HART (United Kingdom) observed that draft article 46 A dealt with work permits and not with the case of a member of a consulate who was accompanied by staff in his service; the staff would have no right of admission under article 46 A, even in the International Law Commission's text. Article 46, as amended by the Committee, granted exemption in the matter of residence permits only to consular officials and consular employees, with certain exceptions. It would be logical therefore to adopt a similar solution in respect of work permits. Moreover, the 1961 Vienna Convention did not provide any such exemption for private staff. The argument in paragraph 7 of the commentary was fallacious. It was highly probable that the receiving State would not raise any difficulty over the issue of work permits.

33. The CHAIRMAN put the joint amendment (L.206) to the vote.

*At the request of the United Kingdom representative, a vote was taken by roll-call.*

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

*In favour:* Greece, Iran, Israel, Japan, Kuwait, Morocco, Netherlands, New Zealand, Pakistan, Portugal, Saudi Arabia, Sierra Leone, South Africa, Switzerland, Syria, Tunisia, Turkey, United Arab Republic, United Kingdom of Great Britain and Northern Ireland, Venezuela, Australia, Austria, Chile.

*Against:* Czechoslovakia, Denmark, Finland, France, Federal Republic of Germany, Ghana, Holy See, Hungary, Indonesia, Mexico, Mongolia, Norway, Poland, Romania, Sweden, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, Yugoslavia, Argentina, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, China, Congo (Leopoldville), Cuba.

*Abstaining:* Federation of Malaya, Guinea, India, Ireland, Italy, Republic of Korea, Liberia, Libya, Liechtenstein, Luxembourg, Nigeria, Philippines, San Marino, Spain, United States of America, Republic of Viet-Nam, Algeria, Belgium, Brazil, Canada, Ceylon, Costa Rica.

*The joint amendment (A/CONF.25/C.2/L.206) was rejected by 26 votes to 23, with 22 abstentions.*

*The Finnish amendment (A/CONF.25/C.2/L.203) was rejected by 31 votes to 12, with 29 abstentions.*

*The Swiss amendment (A/CONF.25/C.2/L.204) was rejected by 28 votes to 21, with 22 abstentions.*

34. Mr. TÔN THẬT ÂN (Republic of Viet-Nam) requested that the French amendment (L.199) should be put to the vote in two parts, the first consisting of the words "the private staff of consular officials".

35. Mr. KHOSLA (India) and Mr. SPACIL (Czechoslovakia) opposed a separate vote on the amendment.

36. Mr. MARESCA (Italy) and Mr. DRAKE (South Africa) supported the motion for a separate vote.

37. The CHAIRMAN put to the vote the motion for a separate vote proposed by the representative of the Republic of Viet-Nam.

*The motion was rejected by 34 votes to 13, with 22 abstentions.*

*The French amendment (A/CONF.25/C.2/L.199), as orally revised by the sponsor, was adopted by 38 votes to 9, with 23 abstentions.*

38. The CHAIRMAN put to the vote the amendment of Belgium (A/CONF.25/C.2/L.205), the text of which, as amended by its sponsor and the French representative, would read: "if they do not exercise any other private gainful occupation outside the consulate".

*The amendment was adopted by 66 votes to none, with 5 abstentions.*

39. Baron van BOETZELAER (Netherlands) said that if the provisions of the amendment (L.205) applied also to the "members of their families", he would withdraw his own amendment (L.198).

40. The CHAIRMAN said that if the text of draft article 46 A, as amended, were to be approved, that amendment would automatically apply to the "members of their families".

*Article 46 A, as amended, was approved by 61 votes to 2, with 7 abstentions.*

The meeting rose at 1.15 p.m.

### THIRTY-THIRD MEETING

Wednesday, 27 March 1963, at 4.50 p.m.

*In the absence of the Chairman, Mr Kamel (United Arab Republic), Vice-Chairman, took the Chair.*

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

##### Article 49 (Exemption from customs duties)

1. The CHAIRMAN invited the Committee to consider article 49 and the amendments thereto.<sup>1</sup>

2. Mr. KHOSLA (India) said that, in the absence of any uniform state practice with regard to the extent of the exemption from customs duties granted to consular officials, the Conference was faced with the task of establishing a minimum provision which would be acceptable to all States. The International Law Commission draft of article 49 was satisfactory to the extent that it

<sup>1</sup> The following amendments had been submitted: Poland, A/CONF.25/C.2/L.119; Nigeria, A/CONF.25/C.2/L.120; Australia, A/CONF.25/C.2/L.153; United Kingdom, A/CONF.25/C.2/L.171; Spain, A/CONF.25/C.2/L.173; India, A/CONF.25/C.2/L.178; Ukrainian Soviet Socialist Republic, A/CONF.25/C.2/L.185; South Africa, A/CONF.25/C.2/L.191.