

# **United Nations Conference on Consular Relations**

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**34<sup>th</sup> 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)*

19. Mr. SALLEH bin ABAS (Federation of Malaya) supported the idea implied in the amendments of India, Spain, South Africa and Nigeria, that paragraph 1 of article 49 as drafted by the International Law Commission restricted the receiving State's power to impose conditions on the entry of goods. He doubted, however, whether the amendments were necessary because the International Law Commission had explained in paragraph 3 of its commentary that the words "in accordance with such laws and regulations as it may adopt" in paragraph 1 of the draft left the receiving State free to decide whether it wished to impose conditions or not. The matter might perhaps be referred to the drafting committee.

20. He would abstain from voting on the United Kingdom amendment because, although he appreciated the desire to avoid any possible conflict with paragraph 1 (a) of article 48, the comments of the Brazilian representative had made him doubt the value of the amendment. He supported the amendments of Poland to paragraph 1 and of Australia and South Africa to paragraph 2; he also supported the new paragraph proposed by the Ukrainian SSR which would be a valuable contribution to consular law. In the main, he approved of the International Law Commission's text and he did not wish to see it drastically changed.

#### *Reallocation of articles*

21. The CHAIRMAN announced that the General Committee, at its first meeting, had noted that the workload of the Second Committee had been exceptionally heavy and that it was very important, for a number of reasons, that the Conference should close on time. After considerable discussion it had decided, in order to expedite the work and in the interests of the Conference as a whole, to recommend to the plenary meeting that four articles should, in the first instance, be reallocated to the First Committee: articles 52, 53, 54 and 55. Those articles concerned matters of principle and there was no reason therefore why they should not be assigned to the First Committee.

22. It had not been considered appropriate to recommend the assignment of article 69 to the First Committee since its subject was so closely linked with the matters already discussed, and the articles yet to be considered, by the Second Committee.

23. The General Committee had taken the view that article 56 could be appropriately reallocated to the First Committee together with articles 65, 66 and 67. It had, however, been impossible to recommend the immediate reallocation of those articles because the delegation of Japan had submitted a proposal (A/CONF.25/C.2/L.89) to replace articles 56-67 of the International Law Commission draft by a single article. The General Committee had reached the conclusion that the best way to deal with the matter would be for the Second Committee, when it came to consider article 56, to take the Japanese proposal before any of the other amendments submitted to that article.

24. It would appear that the Japanese proposal was in fact a new proposal under rule 42 of the rules of

procedure and not an amendment under rule 41, and could not according to those rules be considered earlier. The practical advantage of taking a decision first on the Japanese proposal was so apparent, however, that the General Committee had expressed the hope, which he personally shared, that the Second Committee could agree to consider the Japanese proposal first when it reached article 56. He would of course abide entirely by the decision of the Committee in the matter.<sup>2</sup>

*It was so agreed.*

The meeting rose at 6.45 p.m.

<sup>2</sup> The Japanese proposal was rejected at the thirty-seventh meeting, but the General Committee did not maintain its recommendation that articles 56, 65, 66 and 67 should be re-allocated to the First Committee.

### THIRTY-FOURTH MEETING

*Thursday, 28 March 1963, at 10.30 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 49*

##### *(Exemption from customs duties) (continued)*

1. The CHAIRMAN invited the Committee to continue its discussion of article 49 and the amendments relating to it.<sup>1</sup>

2. Mr. JESTAED (Federal Republic of Germany) considered that article 49 was one of the most important of the whole draft convention. His delegation regretted that, as was apparent from paragraph 2, that article did not apply to "service staff"; that was equivalent to a renunciation of the principle that one State could not levy taxes on another State. His delegation supported the Ukrainian Soviet Socialist Republic's amendment, but considered that the valuable suggestions in the Spanish and Indian amendments were already contained in the first sentence of paragraph 1. He was unable to accept the United Kingdom amendment for the reasons already stated by the Brazilian representative.

3. Mr. SAYED MOHAMMED HOSNI (Kuwait) observed that restrictive measures were advocated in a number of amendments, and that such a tendency was in the interests of the developing countries. Nevertheless, his delegation was of the opinion that the maximum amount of privilege should be granted although it realized that some amendments were aimed at avoiding possible abuses. It would not oppose the Ukrainian amendment but considered that it should be the subject of a separate article.

4. The CHAIRMAN thought that it might be left to the drafting committee to take a decision in the matter.

<sup>1</sup> For the list of the amendments to article 49, see the summary record of the thirty-third meeting, footnote to para. 1.

5. Mr. BLANKINSHIP (United States of America) said that he was in agreement with the statements made at the preceding meeting by the representatives of Brazil and Ceylon. Nevertheless, he considered the International Law Commission's original wording to be satisfactory, since paragraph 1 was taken from article 36 of the Convention on Diplomatic Relations and paragraph 2 from article 37, paragraph 2. In practice, the United States had always been very liberal in the matter of giving the same treatment to consular and diplomatic officials. He wished to point out, however, that it was his country's intention to restrict the privileges in such a way as to exclude nationals of the receiving State and persons residing permanently in that State.

6. He understood the misgivings of the Indian representative, who thought it necessary to restrict exemption from customs duties in the interests of the developing countries, but he did not think his fears were justified. All the amendments submitted were alike in showing a desire to avoid possible abuse; but it would not be reasonable to overload the convention with rules that were too detailed. The United States delegation did not share the views of the South African representative and believed, on the contrary, that consuls, like diplomats, exercised representative functions that required the free entry of some articles of consumption, always, of course, on a basis of reciprocity. The Australian amendment seemed to be a matter for the drafting committee. Lastly, the validity of the amendment of the Ukrainian SSR had not been established.

7. Mr. VRANKEN (Belgium) said that he was in favour of the amendment by the Ukrainian SSR which reproduced the wording of article 36, paragraph 2, of the 1961 Convention.

8. Mr. LEVI (Yugoslavia) said that there were three distinct categories of amendments: those that followed the corresponding clause of the 1961 Convention as closely as possible, as for instance the amendment of the Ukrainian Soviet Socialist Republic for which his delegation would vote; those which aimed at clarifying article 49, like the Indian and Spanish amendments, which his delegation would not oppose although they did not appear necessary in the light of paragraph 3 of the International Law Commission's commentary; and lastly those aimed at restricting customs exemption privileges, as, for instance, those submitted by Nigeria, the United Kingdom and South Africa. The Yugoslav delegation would vote against those amendments.

9. Mr. HEUMAN (France) said that he had no objection to the principle of the amendments of Spain, South Africa and India for the restriction of exemption from customs duties. He believed, however, that they were unnecessary, since they duplicated the introductory sentence to article 49, as drafted by the International Law Commission, which provided safeguards against possible abuses. He would accordingly abstain from voting on those three amendments.

10. He noted, as the Brazilian representative had done, that the Committee was to some extent bound by the wording of the 1961 Vienna Convention, since it was under the necessity of avoiding mistakes in interpreta-

tion, which might result in a divergence between the two documents. He regretted therefore that he would be unable to vote for the United Kingdom amendment. He suggested a re-drafting of paragraph 1 (a), where he would prefer the words "strictly administrative" to be substituted for the word "official". He also believed that the word "export" proposed by Poland in its amendment had too commercial a meaning and should, therefore, be replaced by some such term as "exit", as the antithesis of the term "entry" used in paragraph 1. On the other hand, since a divergence between the wording of the present convention and that of 1961 was undesirable, the Ukrainian amendment might be adopted. The French delegation also supported the drafting amendment proposed by the Australian representative.

11. The French delegation considered the Nigerian amendment to be the most important of all and it would give that amendment its warm and unconditional support, since its effect would be to eliminate all distinction between consular officials and consular employees who, should the amendment be adopted, would both be entitled to exemption from customs duties only at the time of first installation. That would involve a rearrangement of article 49, since paragraph 2 would necessarily have to be dropped.

12. Mr. HARASZTI (Hungary) also considered that, with respect to exemption from customs duties, the position of consular officials should be assimilated to that of diplomatic agents. His delegation was prepared to accept the International Law Commission's draft of article 49 and would vote for the amendment by Spain, sub-paragraphs (b) and (c) of the Indian amendment, the Polish amendment and that of the Ukrainian Soviet Socialist Republic; but it could not support the amendments of the United Kingdom, Nigeria or South Africa, which would have the effect of introducing restrictive features.

13. Mr. KONSTANTINOV (Bulgaria) said that he would support the original text of article 49 with the amendments by Poland, the Ukrainian Soviet Socialist Republic, India and Spain, which all helped to clarify the text. He could not, however, accept the United Kingdom and Nigerian amendments, which were unnecessarily restrictive.

14. Mr. MOUSSAVI (Iran) said that he understood the purpose of the amendments by India, Spain, the United Kingdom and Nigeria, but he would abstain from voting on the amendment by the Ukrainian SSR since the customs authorities of the receiving State should have the right to inspect the luggage of consular officials without being called upon to give their reasons.

15. Mr. REBSAMEN (Switzerland) said that the Ukrainian amendment did not reproduce word for word article 36, paragraph 2, of the 1961 Convention, but should the sponsor confirm that such was his intention, he was ready to give the amendment his support.

16. Mr. WASZCZUK (Poland) said that he could not accept the Nigerian amendment or the proposal put forward by the United Kingdom or Australia, which unduly restricted the rights of consular officials. His

delegation would vote for sub-paragraphs (b) and (c) of the Indian amendment; sub-paragraph (a) of that amendment should be altered to fit in with the Spanish proposal. His delegation could not support the South African amendment, the second sentence of which did not seem to him sufficiently clear. On the other hand, it would vote for the amendments by Spain and by the Ukrainian Soviet Socialist Republic, which seemed to him to be convincing.

17. Mr. MARESCA (Italy) said that, with regard to exemption from customs duties, a distinction should be made between the consulate as such and consular officials. The International Law Commission had combined in a single article those two aspects of the matter, which were generally considered apart. In practice, there was a certain amount of uniformity in bilateral agreements, which observed the principle of reciprocity. His delegation was therefore of the opinion that the International Law Commission's draft should be adopted, since it went into sufficient detail. The Spanish amendment seemed to him acceptable. So far as the Australian amendment was concerned, he thought that the word "immunities" should be retained and not be replaced by the word "exemptions".

18. Mr. KOCMAN (Czechoslovakia) said that, while the Spanish amendment was acceptable to his delegation, the restrictions proposed in the Nigerian and South African amendments were unduly severe. The United Kingdom amendment, which was not very clearly drafted, was not an improvement on the International Law Commission's text. The Polish amendment was well conceived, as was that of the Ukrainian Soviet Socialist Republic, which followed the text of article 36 of the 1961 Convention but with greater detail, and was entirely in accordance with the evolution of contemporary law.

19. Mr. SMITH (Canada) said that most of the amendments submitted, in particular those of Nigeria, the United Kingdom, South Africa, Spain and India were of doubtful utility since paragraph 1 of draft article 49 was couched in broad terms and could deal with all possible cases. He would point out that the English equivalent of the French word "installation" was sometimes "installation" and sometimes "establishment", which did not have the same meaning, which indicated that the French text might be confusing. In the Australian amendment, the word "privileges" would be preferable to the word "exemptions" because it was more comprehensive and was the same as that used in the corresponding article of the Convention on Diplomatic Relations. Although the Ukrainian amendment has a good deal of merit in the opinion of his delegation because, subject to reciprocity, the customs authorities of his country did not examine the personal luggage of consuls-general, his delegation believed such a concession should be made by the decision of individual countries rather than by the Conference. As to the Polish amendment, there was no reference in the sub-paragraphs of article 48 to any export duties and the proposal, so far as tax exemption was concerned, was superfluous. The article should also contain a formal provision, as suggested by the United States representative, that permanent residents of the

receiving State should not enjoy exemption. Although paragraph 1 (a) was acceptable in the case of consular posts headed by a career consul, its scope was too wide so far as consular posts headed by honorary consuls were concerned, and it should be restricted when chapter III was being considered.

20. Mr. SHARP (New Zealand) said that his delegation could not support any amendments to the International Law Commission's text. He had the same reservations regarding permanent residents in the receiving State as the representatives of the United States and Canada.

21. Mr. PETRENKO (Union of Soviet Socialist Republics) said that at first sight there seemed to be a lack of logic in the text proposed by the International Law Commission; paragraph 1 of article 49 began by setting out restrictive conditions and then provided for exemption from all customs duties. Although laws and regulations laid down certain reservations in customs matters, special favoured treatment was generally granted to the staffs of diplomatic missions and consulates, and the text did not therefore raise any practical difficulties. In paragraph 1, the reference to "charges for storage" did not seem to have much point.

22. The amendments of Spain, Poland and the Ukrainian Soviet Socialist Republic contained useful supplementary provisions and made the text of the draft article more clear. He had some reservations with regard to the amendments of the United Kingdom, Nigeria and South Africa because they unduly restricted the scope of exemption from customs duties. The Indian amendment was not concise, but if the text were modified his delegation might support it. Taken as a whole, the draft of article 49 was acceptable.

23. Mr. KANEMATSU (Japan) said he could endorse the draft article, but would accept the Polish amendment because some countries imposed export taxes and that eventuality should be provided for in the draft convention. If the amendments of India and Spain were put to the vote, his delegation would abstain, on the ground that the first part of paragraph 1 provided ample safeguards for the receiving State.

24. Mr. DEJANY (Saudi Arabia) thought that the draft article provided undue exemption, in particular in paragraph 1 (b). The granting of such exemptions to consular officials went beyond existing international practice. The Nigerian delegation had made a reasonable proposal (L.120) in providing that exemption from customs duties should be applied only to articles imported at the time of first installation. In the case of consular employees, exemption should be granted only with the consent of the receiving State. Paragraph 2 might give rise to difficulties, and his delegation could not support it. The amendments by India and South Africa duplicated the first part of paragraph 1 and his delegation would abstain in the vote on those proposals; the amendment of the Ukrainian Soviet Socialist Republic, which was not in accordance with international practice, was also unacceptable.

25. Mr. JAMAN (Indonesia) said that the sending State should enjoy exemption from customs duties on any articles that it considered necessary for the equipment of its consulates. In the case of articles for the personal use of the members of the consulate, his country granted the same treatment as to diplomatic agents. The Indian amendment was unduly restrictive and unacceptable to his delegation. The receiving State should not impose restrictions upon the entry of articles for use in consulates, although in the case of articles for the personal use of consular officials a time-limit was perfectly admissible.

26. Mr. KHOSLA (India) said that the object of his delegation's amendment was to provide that the receiving State would have the right to lay down the conditions governing the resale of goods imported duty free and governing the import of goods so far as quantity and period of time were concerned. That was of particular importance for the under-developed countries. He welcomed the sympathy and support shown for the Indian amendment by several representatives and noted in particular that, in the view of a majority of delegations, the reservation in the opening sentence of the article would in fact cover the conditions and was intended to do so, and that it would thus cover the proposals in his amendment. That understanding was confirmed both by paragraphs 2 and 3 of the International Law Commission's commentary and by the practice of those States which, as mentioned by some delegations, did in fact impose such controls.

27. In the light of that understanding and in deference to the appeal made by the representative of Ceylon, he would withdraw his amendment and would join that representative in requesting other delegations which had submitted amendments specifying conditions governing imports to do likewise.

28. Mr. DRAKE (South Africa), referring to the remarks made by the United States representative, explained that his delegation's amendment (L.191) to paragraph 2 applied only to consular employees; they did not perform representational functions. It seemed to him that the phrase "in accordance with such laws and regulations as it may adopt," as interpreted by paragraph 3 of the commentary, was concerned essentially with the conditions and procedures which the receiving State could apply in respect of articles imported under customs duty exemption, and did not relate directly to the actual granting of such exemptions. If that interpretation was correct, paragraph 2 of the draft article would not seem to give the receiving State the right to levy customs duties at the time of first installation. His delegation regretted its inability to comply with the wish of the Indian representative and must maintain its amendment. With regard to permanent residents and nationals of the receiving State, he would express the same reservations as the United States representative.

29. Mr. CROSS (United Kingdom) regretted that he could not accept the French representative's suggestion to modify sub-paragraph (a) of his delegation's amendment (L.171), for that, he feared, involved a logically different point. Some delegations had urged that the

substance of the amendment was already covered by the text and that there should be no departure from the text of the 1961 Convention; the privileges and immunities of consular staff, however, were not the same as those granted to diplomatic agents, and the Committee need not feel bound by the wording of the Convention on Diplomatic Relations. Article 49 of the text under discussion was concerned with the importation of goods from abroad and was not meant to deal with taxes in the receiving State on its own goods; the adoption of the United Kingdom amendment would remove any possibility of doubt on that point.

30. Mr. NWOGU (Nigeria) explained that in submitting his amendment (L.120) he had wished to take account of the practice of many countries. The text of the draft convention should include minimal obligations without precluding States from granting more extensive facilities. The aim was to define a principle, leaving exceptions to the discretion of States.

31. Mr. WASZCZUK (Poland) said his delegation would accept the French representative's proposal to replace in its amendment (L.119) the word "export" by the word "exit".

32. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) thought that consular officials should be trusted: if they were granted exemption from taxation on first installation, there was no reason to refuse them that privilege on subsequent tours of duty. The suggestion by the representative of Kuwait, that the Ukrainian amendment should constitute a new article, could be referred to the drafting committee. The Swiss representative had said that the text of the Ukrainian amendment departed from article 36 of the 1961 Vienna Convention. He would willingly accept a different formula, provided that the substance was maintained and that it was clearly indicated that it referred to personal luggage accompanying consular officials and not packages addressed to them.

33. Mr. GARAYALDE (Spain) said that his amendment (L.173) laid down an objective criterion which clarified the meaning of paragraph 1.

*The Polish amendment to the introductory phrase of paragraph 1 (A/CONF.25/C.2/L.119), as amended, was adopted by 25 votes to 19, with 21 abstentions.*

*The introductory clause of the United Kingdom amendment (A/CONF.25/C.2/L.171) was rejected by 32 votes to 11, with 20 abstentions.*

*Paragraph 1(a) was adopted.*

34. The CHAIRMAN invited the Committee to vote on the Nigerian amendment (L.120).

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

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

*In favour:* Syria, Thailand, Tunisia, Guinea, France, Indonesia, Iran, Liberia, Morocco, Nigeria, Saudi Arabia, Sierra Leone.

*Against:* South Africa, Sweden, Switzerland, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Re-

publics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia, Argentina, Belgium, Brazil, Bulgaria, Byelorussian Soviet Socialist Republic, Cambodia, Canada, Chile, Czechoslovakia, Denmark, Finland, Federal Republic of Germany, Ghana, Hungary, India, Ireland, Italy, Libya, Luxembourg, Mongolia, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, San Marino.

*Abstaining:* Spain, Turkey, United Arab Republic, Republic of Viet-Nam, Australia, Austria, Ceylon, China, Congo (Leopoldville), Cuba, Federation of Malaya, Israel, Japan, Republic of Korea, Kuwait, Laos, Mexico, Pakistan, Philippines.

*The Nigerian amendment to paragraph 1 (b) (A/CONF.25/C.2/L.120) was rejected by 35 votes to 12, with 19 abstentions.*

*The Spanish amendment to paragraph 1 (b) (A/CONF.25/C.2/L.173) was adopted by 34 votes to 8, with 24 abstentions.*

*Paragraph 1 as a whole, as amended, was adopted by 62 votes to 2, with 3 abstentions.*

*The South African amendment to paragraph 2 (A/CONF.25/C.2/L.191) was rejected by 33 votes to 10, with 22 abstentions.*

*The Australian amendment to paragraph 2 (A/CONF.25/C.2/L.153) was adopted by 40 votes to 10, with 14 abstentions.*

35. The CHAIRMAN stated that the Polish amendment which the Committee had approved for paragraph 1 could also apply to paragraph 2 by the addition of the words "or thereafter exported", and he asked the Committee to vote on that point.

*The modification of paragraph 1 as a result of the adoption of the Polish amendment (A/CONF.25/C.2/L.119) was extended to paragraph 2 by 19 votes to 14, with 32 abstentions.*

*In paragraph 2, as amended, it was decided by 43 votes to 5, with 13 abstentions, to retain the words "except those belonging to the service staff".*

*Paragraph 2 as a whole, as amended, was approved by 60 votes to 2, with 3 abstentions.*

*The proposal by the Ukrainian Soviet Socialist Republic for the addition of a new paragraph (A/CONF.25/C.2/L.185) was adopted by 36 votes to 14, with 15 abstentions.*

36. Mr. SAYED MOHAMMED HOSNI (Kuwait) asked if the last vote did not prejudice the question of whether the additional text might be inserted in the form of a new article.

37. The CHAIRMAN replied that the sponsor of the amendment had agreed that the drafting committee should decide that point.

*Article 49 as a whole, as amended, was adopted by 58 votes to none, with 7 abstentions.*

38. Mr. BLANKINSHIP (United States of America) said he had abstained from voting on the article as a whole because the question whether the Ukrainian amendment would be included in article 49 or become a separate article had been left open. If the amendment

were included as paragraph 3 of article 49, personal luggage accompanying consular officials and members of their families would be governed by the first part of paragraph 1 of the article: "the receiving State shall in accordance with such laws and regulations as it may adopt..." Subject to further consideration and to the instructions of his government, he might in that case find the amendment acceptable.

The meeting rose at 1.30 p.m.

### THIRTY-FIFTH MEETING

Thursday, 28 March 1963, at 3.20 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 50 (Estate of a member of the consulate or of a member of his family)*

1. The CHAIRMAN suggested that article 50 with amendments should be discussed as a whole but voted on in three parts: the opening sentence, sub-paragraph (a) and sub-paragraph (b).<sup>1</sup> He proposed that only the amendment to sub-paragraph (b) in the United States amendment should be put to the vote, since the remainder only affected the drafting. As the amendments of Belgium and Chile were similar, he inquired if the sponsors would be willing to combine them.

2. Mr. BLANKINSHIP (United States of America) accepted the Chairman's suggestion.

3. Mr. VRANKEN (Belgium) and Mr. LEA-PLAZA (Chile) said that they would jointly sponsor the amendment in document L.146.

4. Mr. SMITH (Canada) said that his amendment (L.194) was submitted so that article 50 should conform to article 48 (exemption from taxation). Paragraph 1 (c) of article 48 as adopted contained the words "and duties on transfers": the word "including" in his amendment to article 50 should therefore be replaced by the word "and". During the discussion on article 48 he had pointed out that the phrase "duties on transfers" was too general and could be interpreted to permit the imposition of duties not intended by the International Law Commission; but his suggestion had not been accepted. If the Committee thought that inclusion of the phrase in article 50 might also be misleading, he would be willing for his amendment to be reviewed by the drafting committee. He merely wished it to be clear that the transfer duties in question were only those

<sup>1</sup> The following amendments had been submitted to article 50: Japan, A/CONF.25/C.2/L.85; Belgium, A/CONF.25/C.2/L.146; United Kingdom, A/CONF.25/C.2/L.172; Spain, A/CONF.25/C.2/L.176; United States of America, A/CONF.25/C.2/L.181; Canada, A/CONF.25/C.2/L.194; Chile, A/CONF.25/C.2/L.196.