

United Nations Conference on Consular Relations

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(Summary records of plenary meetings and of meetings of
the First and Second Committees)

63. Mr. LEE (Canada) supported the views of the United States representative and his motion for a separate vote. He had opposed the amendment of the Second Committee because he thought the addition of the words in question would impose an impossible duty on the receiving State.

64. Mr. SALLEH bin ABAS (Federation of Malaya) said that he too had opposed the amendment because it would impose too heavy a burden on the receiving State. If it was difficult for the more developed countries like Canada and the United States of America to implement such a provision, it would be even more difficult for the less-developed countries like his own. He supported the motion for a separate vote on sub-paragraph (a).

65. Mr. JAYANAMA (Thailand) said he would have preferred article 36 to be discussed before article 37 as the two were related and he wished to speak on the amendment to article 36 of which his delegation was one of the sponsors. With regard to article 37, he supported the United States motion for a separate vote and the reasons given for it. For the same reasons he also requested a separate vote on sub-paragraph (b).

66. Mr. SILVEIRA-BARRIOS (Venezuela) supported the motion for a separate vote on sub-paragraph (a), and endorsed the comments made by the representatives of Canada, Thailand and the United States of America. He had opposed the International Law Commission's draft of sub-paragraph (a) in the Second Committee; the amendment adopted there had only increased the burden on the receiving State.

67. Mrs. VILLGRATTNER (Austria) said that the addition to sub-paragraph (a) had been based on an amendment submitted by her delegation. The reason for the amendment, as she had explained in the Second Committee, was that where information was available on the nationality of a deceased person, the furnishing of a death certificate to the consulate would be helpful to the sending State for administrative purposes, to the relatives in completing formalities, and to the consulate in protecting any property of the deceased in the receiving State. The difficulties mentioned by certain representatives should be met by the opening sentence of the article, which made the obligation conditional on the information being available.

68. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) appreciated the difficulties referred to by the United States representative but could not support his motion for division of the text. A death certificate was often of great importance to the relatives of a deceased person, particularly if they were living in another country. He would therefore prefer the provision to be retained.

69. Mr. KRISHNA RAO (India) agreed with the representatives of Thailand and the Federation of Malaya. The words in question implied an inflexible duty which his country was not equipped to fulfil; it would be better to delete them.

69. Mr. BARTOŠ (Yugoslavia) said he could not support the United States motion for division of the text. A well-organized State should know its inhabitants and

should show equal concern for nationals and aliens. He saw no reason why the receiving State should not provide a death certificate, particularly as the obligation was mitigated by the opening words of the article.

71. Mr. JAYANAMA (Thailand) moved the adjournment of the debate and proposed that article 36 should be considered first at the following meeting.

72. Mr. BLANKINSHIP (United States of America), exercising his right of reply, said that the wide support for his motion was evidence of the difficulty that would be caused by the words in question, even to the best organized States. His own country had the added difficulties of a federal State. The real objection, however, was that it was unwise to impose an obligation which many States could not fully implement; he urged that the provision be deleted from sub-paragraph (a).

73. The CHAIRMAN invited the Conference to vote on the motion for adjournment of the debate.

The motion was carried by 38 votes to 2, with 25 abstentions.

The meeting rose at 6.25 p.m.

ELEVENTH PLENARY MEETING

Wednesday, 17 April 1963, at 11.5 a.m.

President: Mr. VEROSTA (Austria)

Consideration of the question of consular relations in accordance with resolution 1685 (XVI) adopted by the General Assembly on 18 December 1961 (*continued*)

[Agenda item 10]

DRAFT CONVENTION

Article 36 (Communication and contact with nationals of the sending State)

1. The PRESIDENT stated that two amendments to article 36 were before the Conference: one submitted jointly by the Federation of Malaya, Japan, the Philippines, Thailand, the United Arab Republic and Venezuela (A/CONF.25/L.30) and the other by the Union of Soviet Socialist Republics (A/CONF.25/L.34).

2. Mr. TORROBA (Spain) pointed out that there was a mistake in the Spanish text of article 36. In the opening sentence of sub-paragraph (b) of paragraph 1 the words "Estado que envia" should read "Estado receptor".

3. Mr. JAYANAMA (Thailand), introducing the joint amendment in the name of all the sponsor countries, which had found difficulty in accepting some of the provisions of article 36, said that his country had often stressed the necessity of establishing uniform rules governing consular relations in order to facilitate the performance of consular functions. His delegation considered that consular privileges and immunities should not be the same as diplomatic privileges and immunities, although it recognized that consuls should be allowed some privileges to enable them to carry out their duties

smoothly. The formulation of uniform standards in a convention on consular relations involved the codification of existing rules. That was the task of the Conference, but it was complicated because the rules were derived from different sources: from usage, practice, and bilateral agreements. The success of the Conference's work therefore depended on the co-operation, understanding and conciliatory spirit of the representatives of States attending the Conference. It required that all States should be placed strictly on a level of sovereign equality and that the highly developed States should take account of the realities of international life and of the fact that States in course of development were reluctant to accept obligations which they could not fulfil and which, if imposed on them, would lead them to refuse to sign or ratify the Convention. That was precisely the case of the obligations to which articles 36 and 37 gave rise. In presenting their amendment to article 36, the sponsors did not intend to propose any sort of compromise, but simply to fix a limit to the obligations beyond which they could not go.

4. Mr. MARESCA (Italy) appreciated the sentiments expressed by the representative of Thailand. With regard to the technical matters raised by sub-paragraph (b) of paragraph 1 of article 36, the Italian delegation thought that the changes made by the Second Committee to that sub-paragraph had improved the International Law Commission's text. A consular post must know the reasons why a national of the sending State was deprived of his liberty. The joint amendment, which made collaboration between the authorities of the receiving State and the consular post depend on the will of a single individual, was not acceptable to the Italian delegation, which would vote for the text drawn up by the drafting committee.

5. Mr. LEVI (Yugoslavia) said that the Second Committee had rejected a joint amendment similar to the six-power amendment, and also a French amendment, though it had been drafted in even more conciliatory terms. It was indispensable that the consular post should in every case be notified without delay when a national of the sending State was arrested or imprisoned, and not only when that national requested it. The Yugoslav delegation would vote against the joint amendment.

6. Mr. DE CASTRO (Philippines) said that he had little to add to the arguments presented by the representative of Thailand. Paragraph 1 (b) of article 36 as prepared by the drafting committee imposed excessive obligations on the receiving State. Moreover, it favoured nationals of the sending State as compared to nationals of the receiving State. In the Second Committee it had been argued that nationals of the sending State who were arrested or imprisoned should be protected because they were often ignorant of the laws and regulations of the receiving State. That argument was not valid as no one was supposed to be ignorant of the law. For those reasons the delegation of the Philippines had joined the sponsor of the joint amendment which stated that, in the event of a national of the sending State being arrested or imprisoned, the receiving State was bound to notify the consular post of the sending State only in one specific case.

7. Mr. DADZIE (Ghana) questioned the utility of paragraph 2, which seemed to contradict paragraph 1, and might cause serious difficulties if applied. His delegation preferred the wording of paragraph 2 proposed by the Soviet Union, which was taken word for word from the original text of the International Law Commission, and it would vote in favour of that text.

8. His delegation thought that the joint amendment involved a risk: a national of the sending State who had been arrested or imprisoned might not know that his consulate should be notified, and might therefore fail to request notification. In such a case he might stay in prison a long time. His delegation would therefore vote against the joint amendment.

9. Mr. SHARP (New Zealand) said that the convention should not proclaim an ideal to be attained, but should lay down a body of practical rules which could be applied in all cases. It was therefore necessary to make sure that the laws and practice of the various countries were compatible with the standards laid down. He doubted whether there were many countries in a position to apply the provisions of sub-paragraph (b) of paragraph 1 of article 36 in every case. He could not give that assurance for his own country. The text went too far and did not take account of realities. The population of New Zealand included thousands of immigrants and it would be impossible to apply those provisions. The difficulty was probably even more serious for larger countries. The joint amendment, on the other hand, laid down an obligation which all States could assume, and he would therefore vote in favour of it. In order to remedy the defects mentioned, his delegation had proposed the inclusion of a clause requiring that the detention of a national of the sending State should be notified to the consul if the term exceeded one month. The sponsors of the amendment had not accepted that suggestion. On the other hand paragraph 1 (c) provided that a consul could request the competent authorities of the receiving State to furnish it periodically with a list of the nationals of the sending State who were detained within the district of his consular post.

10. Mr. KAMEL (United Arab Republic) agreed that article 36 as prepared by the drafting committee would place too heavy a burden on the authorities of the receiving State. The principle was understandable, but in practice it laid an impossible task on the receiving State, and particularly on those which received large numbers of immigrants and foreign tourists. The practical and reasonable solution would be to notify the consular post of the sending State of the imprisonment of a national of that State if he requested. If the person under detention was not in a position to make that request, it was certain that the authorities of the receiving State would automatically notify the consulate. In the case of imprisonment for a short term, the notification was useless and not even desirable. Consideration should also be given to cases in which the person concerned wished to break off all relations with the sending State. In his view, sub-paragraph (b) of paragraph 1 would merely give rise to misunderstandings and friction between States.

11. Mr. ISMAIL bin AMBIA (Federation of Malaya) hoped that sub-paragraph (b) of paragraph 1, which had

been debated at great length in the Second Committee, would be discussed again in plenary meeting. The sub-paragraph seemed to him to be inapplicable in a country with a high level of immigration, such as his own, where foreign nationals formed almost half the population. If the sub-paragraph was adopted, the Federation of Malaya would be compelled to make reservations, and it would certainly not be alone in doing so. Further, it had only been by a very small majority that the Second Committee had rejected an amendment similar to that now submitted by six countries including his own. He recognized that the amendment was not entirely satisfactory; yet it represented the widest possible degree of compromise, and he hoped, therefore, that delegations would find it more acceptable.

12. Mr. KONZHUKOV (Union of Soviet Socialist Republics) considered that, far from improving the original International Law Commission text of article 36, the amendments to it had only destroyed its balance. It was therefore understandable that some delegations should wish to improve the text of paragraph 1 (b). Unfortunately the authors of the joint amendment had not achieved their purpose.

13. In the First Committee some delegations had refused to recognize the consul's right to intervene on behalf of nationals of the sending State. Article 36 further restricted the consul's right to concern himself with nationals of his country. The proposal that the consul should be informed of the arrest of a national of the sending State only at the request of the person concerned could not withstand criticism. What guarantee was there that the person concerned had been informed of his right, that he had refused to request that his consulate should be informed, or that he had not been the victim of undue influence? How could a person who was deprived of liberty make use of his freedom? There were no doubt certain cases in which a person might request that his consul should not be informed, but a general rule could not be based on a particular case.

14. The proposed amendment conflicted with a very old rule of international law: the right of every State to protect its nationals. The delegation of the USSR would therefore vote against the joint amendment. Moreover, it felt bound to point out that the text adopted by the Second Committee was not an improvement on the original International Law Commission text. The word "undue" had been deleted from the text of sub-paragraph (b). The new wording seemed to imply an obligation to supply the information immediately, but when a national of the sending State was committed to prison because he had committed an offence the authorities of the receiving State must have time to collect the necessary documents with a view to informing the consul. The provision would be practically inapplicable in States where distances were great, where there were many foreign nationals, or in federal States. The fact that certain provisions of the convention were inapplicable would only give rise to dissatisfaction and friction between States. The USSR delegation considered that paragraph 1 (b) of article 36 was unacceptable as it stood.

15. Mr. PEREZ-CHIRIBOGA (Venezuela) said that his delegation's position had been fully explained in the Second Committee. Some representatives had just expressed the fear that if the joint amendment was adopted the nationals of the sending State would not be adequately protected; but adequate safeguards were provided by sub-paragraphs (a) and (c) of paragraph 1 and by paragraph 2. The proposed amendment was in no way intended to lessen those safeguards, but only to avoid placing an excessive burden on the receiving State, particularly on countries of immigration such as Venezuela.

16. Mr. VU-VAN-MAU (Republic of Viet-Nam) said that it was a matter of reconciling the interests of two equal sovereign States—the sending State and the receiving State—with respect for the rights of the detained person. He must not be deprived of his right to communicate with his consul, but his wishes must be respected if he did not want the consular authorities of his country to know of the action taken against him.

17. It was obviously consideration of the principle of respect for the wishes of the person concerned which constituted the motive of paragraph 1 (d), under which that person could object to any intervention by his consul on his behalf. The joint amendment took into account the equal rights of the two States as well as the wishes of the person concerned. It therefore constituted a well-balanced and necessary compromise.

18. He had also listened with great attention to the representatives of Thailand and of the Federation of Malaya who had referred to the need to take account of the special situation prevalent in certain countries in all parts of the world. In the progressive development of international law which had been achieved in the past few years every effort had been made to discover solutions that could be adapted to special situations. The Conference must also pursue that purpose.

19. Mr. BOUZIRI (Tunisia) regretted that the Conference should have before it a text almost identical with the oral amendment which had been rejected by the Second Committee. The reasons given by the sponsors of the joint amendment carried no conviction. Much emphasis had been placed on the fact that the obligation to inform the consular authorities would be too heavy a burden for the receiving State. Tunisia was not influenced by that argument although it, too, had many foreigners, either permanent residents or tourists, on its territory. A consul could not help the nationals of the sending State if he was not informed of their arrest.

20. The representative of the USSR had very justly remarked on a serious omission in the text of the joint amendment for it contained no safeguard. Freedom was one of the most valuable possessions of man, and must not be restricted unless the restriction was accompanied by the greatest possible safeguards. When a State assumed the responsibility of committing a foreign national to prison, it must be obliged to inform the competent consul. His delegation would vote against the joint amendment.

21. Mr. BLANKINSHIP (United States of America) supported the joint amendment and associated himself with the views expressed by its sponsors and by the representative of New Zealand. In its present form the draft of article 36 placed an excessive and useless burden on the receiving State by requiring that all arrests of nationals of the sending State should be notified to the competent consul and it did not recognize the freedom of action of the detained persons who might not wish their consulate to be informed.

22. His delegation would request a separate vote on paragraph 1 (c) because, in its view, the receiving State should not be required to furnish a consular post of the sending State periodically with a list of the nationals of that State who were detained within the consular district concerned. The provision was in fact a new rule and did not codify existing practice; sub-paragraph (c), which had been added by the Second Committee by a very small majority — 31 votes to 29 — in no way improved the International Law Commission's text.

23. Mr. UCHIDA (Japan) said that he had little to add to the explanations by the representative of Thailand and other sponsors of the joint amendment. He would simply stress that in certain countries it would be impossible, not for political but for practical reasons, to apply article 36 in its present form. The rule adopted must be acceptable for all countries; the joint amendment represented a very reasonable compromise solution which he would strongly urge the Conference to adopt.

24. Mr. de MENTHON (France) warmly supported the joint amendment both for reasons of principle and for practical considerations. With regard to the principle, the amendment affirmed one of the fundamental rights of man — the right to express his will freely. From the practical point of view the adoption of the amendment would remove the excessive obligation placed on the receiving State by the first sentence of paragraph 1 (b) which would cause serious difficulties in application. The French delegation would therefore vote for the joint amendment as well as for the amendment to paragraph 2 submitted by the Soviet Union whereby it was proposed to restore the International Law Commission text, which seemed preferable to that approved by the Second Committee.

25. Mr. ANGHEL (Romania) said that article 36 formed a very important part of the convention on consular relations, but, as worded, it would be difficult to adopt, and even more difficult to apply, owing to the clauses added by the Second Committee to the International Law Commission's original draft. Those clauses, the usefulness of which was doubtful, would oblige the receiving State to inform the consulate of the sending State of the reason for which the national of the sending State had been deprived of his liberty (sub-paragraph (b)) — which was unnecessary because the consulate had the right of communication with the national; and further would oblige the receiving State to furnish the consulate of the sending State periodically with a list of the nationals of that State who were in prison (sub-paragraph (c)) — which was superfluous because the consulate would be

informed of every specific case. Lastly, the last part of paragraph 1 (d) threw doubts on the protection the consulate could give its nationals.

26. The Romanian delegation considered that the rights granted by article 36, paragraph 1, should be subject to the laws and regulations of the receiving State. The aim of the convention was not to codify criminal law or criminal procedure, but international law as it affected consular relations. The provisions of the article could not possibly attempt to modify the criminal laws and regulations or the criminal procedure of the receiving State. Further, an alien could not be granted more favourable treatment than a national, for that would savour of the obsolete system of capitulations. That principle had been stressed by several delegations at the Conference.

27. His delegation could not accept either the joint amendment or the last part of paragraph 2 of the article because the text was confused and would give rise to widely varying interpretations. With regard to that paragraph, some speakers in the Second Committee had supported the view that international law should predominate over municipal law but fortunately that had not been approved and could not be invoked against the principle of the sovereignty of States. International law and municipal law were closely linked but there could be no question of one predominating over the other. The Romanian delegation much preferred the International Law Commission's draft and supported the Soviet Union amendment, which would reintroduce that text.

28. He asked the Chairman to put article 36 to the vote, sub-paragraph by sub-paragraph, and then paragraph by paragraph, and, furthermore, to take separate votes on the following: in sub-paragraph (b) of paragraph 1, the phrase "and shall state the reason why he is being deprived of his liberty"; in sub-paragraph (d) of paragraph 1, the sentence "Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action"; in paragraph 2 — if the Soviet Union amendment was not adopted — the phrase "subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended".

29. Mr. TSHIMBALANGA (Congo, Leopoldville) said that the Second Committee had rejected an oral amendment very similar to the six-power amendment. His delegation had voted against that amendment. If the joint amendment were adopted, it would open the way to abuse, since the authorities of the receiving State might abstain from informing the consulate of the sending State of the detention of one of its nationals on the pretext that the individual concerned had not asked for it. For that reason, his delegation would vote against the joint amendment.

30. After considering the Soviet Union amendment and comparing it with paragraph 2, as drafted by the Second Committee, the Congolese delegation had come to the conclusion that the wording of the amendment

was more flexible and took greater account of the possibilities of application. The Second Committee's draft implied the revision of certain laws or regulations, which it would be difficult to carry out in practice. Consequently, he would vote for the Soviet Union amendment.

31. Mr. DEJANY (Saudi Arabia) said that he supported the United States motion for a separate vote on paragraph 1, sub-paragraph (c). He considered that sub-paragraphs (b) and (c) of paragraph 1, apart from the fact that they laid too heavy a burden on the receiving State, would be absolutely impracticable in certain circumstances in his country. Hence, he supported the joint amendment and hoped that sub-paragraph (c) would be deleted. Should sub-paragraphs (b) and (c) be adopted, he would abstain from voting on the article as a whole. He supported the Soviet Union's proposal concerning paragraph 2.

32. Mr. SPYRIDAKIS (Greece) said that, as had been stated in the Second Committee, where article 36, paragraph 1 (b) had been adopted by a large majority, the purpose of the obligation imposed on the authorities of the receiving State to state the reasons for which a foreign national was being deprived of his liberty was to establish an additional safeguard for the rights of the individual and to reinforce the ideal of humanism. There was no doubt that in most countries the local authorities cooperated with the consulates but it happened sometimes that the police for various reasons of a purely domestic character arrested innocent foreigners and kept them in prison for a considerable time without making any effort to inform their consulates of the reason for their arrest. The inclusion of the guarantee in article 36 for the protection of aliens in the territory of the receiving State who were either permanent residents or temporary visitors there was intended precisely to avoid in future abuses and violations of international law by the authorities of the receiving State.

33. The Greek delegation well understood the position of those countries which would face administrative difficulties in complying with those obligations by reason of the fact that a great number of aliens lived in their territory, but it could not understand why those countries, although they accepted the principle of notifying the consulates and all the other important stipulations of article 36, should find it difficult to say a few words about the reason for the arrest at the time of notifying the consulate when an arrest took place. In opposing the joint amendment his delegation did not have in mind petty offences but much more serious cases where the duty to give the reason for the arrest would provide a very useful and necessary safeguard. If that obligation was laid down in the article, the Conference could be proud of having further strengthened human rights through the convention. In the Second Committee, as had been stated by the representative of Yugoslavia, amendments similar to the joint amendment had been rejected and the phrase in paragraph 1 (b) which had been submitted by Greece had been adopted by a large majority of 39 votes in favour, 13 against and 16 abstentions.

34. If the six Powers who sponsored the amendment deleting the phrase in question could not themselves

comply with such an obligation, they would be free to make a reservation either at the time of signing or at the time of ratifying the convention, but it was not right or fair that they should try to eliminate a noble principle merely because of the practical difficulties.

35. Greece, which firmly believed in the ideal of humanism and which was fully conscious of the importance of the convention for the promotion of international law and peaceful relations among nations, could not but oppose the joint amendment which would weaken a very important stipulation in article 36.

36. If the joint amendment should be approved, his delegation would reserve the right to reintroduce a proposal for the inclusion of the phrase "and shall state the reason why he is being deprived of his liberty" in article 36, paragraph 1.

37. Mr. KEVIN (Australia) drew attention to a contradiction in principle between sub-paragraphs (c) and (d) of paragraph 1 in the Second Committee's draft. The first of those sub-paragraphs did not mention the consent of the individual concerned, whereas the second did. For the reasons stated by previous speakers, the Australian delegation would vote for the joint amendment.

38. Mr. PETRŽELKA (Czechoslovakia) thought it would be difficult to find a wording for article 36 which would meet with the full approval of all States. The International Law Commission had tried to find an acceptable compromise and had prepared a draft to which the Czechoslovak delegation was prepared to agree. On the other hand, it could not accept the wording of article 36 adopted by the Second Committee, and it was also opposed to the joint amendment, the adoption of which would have the effect of depriving the sending State of one of its fundamental rights, that of protecting its nationals.

39. The Czechoslovak delegation would support any proposal for the re-establishment of the International Law Commission's text and it would therefore vote for the Soviet Union amendment.

40. The PRESIDENT put to the vote the joint amendment submitted by the Federation of Malaya, Japan, Philippines, Thailand, the United Arab Republic and Venezuela (A/CONF.25/L.30).

The joint amendment was rejected by 39 votes to 31, with 7 abstentions.

The meeting rose at 1.5 p.m.

TWELFTH PLENARY MEETING

Wednesday, 17 April 1963, at 3.25 p.m.

President: Mr. VEROSTA (Austria)

Third Report of the general committee (A/CONF.25/11)

1. The PRESIDENT drew the attention of the Conference to the third report of the general committee (A/CONF.25/11), which contained proposals for expediting the work of the Conference. He drew attention to