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SIXTEENTH PLENARY MEETING

Friday, 19 April 1963, at 9.45 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 44

(Liability to give evidence) (*concluded*)

1. The PRESIDENT invited the Conference to continue its consideration of the draft convention. He recalled that the United States delegation had asked for a separate vote on the last two sentences of article 44, paragraph 1.

2. Mr. AMLIE (Norway) contested the statement of the United States delegation that the impossibility of taking coercive measures against a consular officer who refused to testify might hinder the administration of justice in the receiving State. After all, if the receiving State should find that the consul's refusal to testify was unreasonable, it could submit the case to the sending State with a view to obtaining the waiver of his immunity. The matter would then be investigated by the authorities of the sending State, and, if they agreed with the authorities of the receiving State, the immunity would be waived. Thus the course of justice in the receiving State would not be jeopardized by the arbitrary decision of the consul himself.

3. There were situations in which it might be embarrassing or even dangerous for a consul to testify. Such situations should not be settled by the local chief of police.

4. Mr. TSHIMBALANGA (Congo) said that he would vote against the United States motion.

5. Mr. EVANS (United Kingdom) said he was in favour of the motion for a separate vote. He considered that the third sentence of paragraph 1 in particular embodied a mistaken principle, which was contrary to the interests of justice, and that it was, moreover, incompatible with the first sentence of the same paragraph, and with the provisions of paragraph 3. It was clearly stipulated that consuls could be called upon to give evidence and, at the same time, they were allowed to refuse with impunity. That contradiction introduced an element of confusion into the text, and might be harmful to the interests of innocent persons in matters that were not connected with the exercise of consular functions. Cases in which a person by giving evidence incurred a risk of physical injury by third parties were extremely rare, and there was no reason why a consular officer should enjoy in that connexion privileges refused to private persons. For all those reasons the United Kingdom delegation would vote against the last two sentences of paragraph 1.

6. Mr. PEREZ-CHIRIBOGA (Venezuela) said that he was in favour of the United States motion and reiterated his delegation's opinion that it was unacceptable to lay down an obligation and to provide for a refusal to comply with it with impunity in the following sentence. Contrary to the opinion expressed by the Norwegian representative, he did not see why consular officers should enjoy a privileged position with respect to the administration of justice. His delegation would accordingly vote against the two last sentences of paragraph 1.

7. Mr. HARASZTI (Hungary) said that he was against the United States motion, since it was essential that the right of consular officers to refuse to testify on matters relating to the exercise of their functions should be safeguarded by article 44. If the receiving State had the right to adopt measures of coercion or sanctions against a consular officer who refused to testify, the privilege envisaged in the article would be reduced to nothing. Admittedly, a consular officer should not refuse to testify, but the exemption provided in article 44 should be retained, and the individual concerned should not be made liable to coercive measures.

8. The PRESIDENT put to the vote the United States delegation's motion for a separate vote.

The motion was not adopted, 30 votes being cast in favour and 30 against, with 11 abstentions.

9. Mr. BOUZIRI (Tunisia) explained that he had voted for the United States motion, but reluctantly, since it went too far. His delegation would nevertheless like the last sentence of paragraph 1 to be eliminated, and he therefore asked for a separate vote on that sentence.

10. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that the Conference had just defeated a motion for a separate vote on the last two sentences of the paragraph. The motion proposed by the Tunisian representative should therefore be regarded as inadmissible, since it referred to one of those two sentences; it would be tantamount to reopening the question and that would require a two-thirds majority under rule 33 of the rules of procedure. In any case, his delegation would oppose the motion.

11. Mr. KONSTANTINOV (Bulgaria) endorsed the comments of the Soviet Union representative and said that the Conference could not proceed to a second vote on a question that had already been decided.

12. Mr. AMLIE (Norway) also opposed the Tunisian motion, because the question had already been decided by the vote just taken.

13. Mr. BOUZIRI (Tunisia) pointed out that to vote separately on two sentences regarded as a whole and on one of them alone were two quite different operations. The purpose of his motion was quite different from that of the United States proposal; he thought it perfectly admissible.

14. Mr. KRISHNA RAO (India) thought that the Tunisian delegation was quite in order in proposing a motion for a separate vote on the last sentence of the

paragraph. His delegation, however, would vote against the motion, since it considered that consular officers should not be subjected to coercive measures.

15. Mr. EL KOHEN (Morocco) said he could not share the opinion of the Soviet Union representative, which would be valid only if it was intended to take a further vote on a question of substance. In fact, the matter was one of procedure under rule 36 of the rules of procedure. The Tunisian delegation was therefore perfectly justified in proposing its motion for a separate vote and his delegation would endorse it.

16. Mr. CHIN (Republic of Korea) and Mr. BARUNI (Libya) also considered the Tunisian motion to be admissible.

17. The PRESIDENT said that the Tunisian delegation's motion was different from that of the United States and was therefore admissible.

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

Ethiopia, having been drawn by lot by the President, was called upon to vote first.

In favour: Ethiopia, Federation of Malaya, Finland, Iran, Ireland, Israel, Italy, Japan, Liberia, Libya, Liechtenstein, Luxembourg, Morocco, New Zealand, Pakistan, Philippines, San Marino, Sierra Leone, South Africa, Sweden, Switzerland, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Republic of Viet-Nam, Australia, Brazil, Canada, China, Denmark, El Salvador.

Against: France, Federal Republic of Germany, Ghana, Guinea, Hungary, India, Indonesia, Mexico, Mongolia, Netherlands, Nigeria, Norway, Panama, Poland, Portugal, Romania, Saudi Arabia, Spain, Syria, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Arab Republic, Upper Volta, Venezuela, Yugoslavia, Albania, Algeria, Austria, Bulgaria, Byelorussian Soviet Socialist Republic, Ceylon, Colombia, Congo (Brazzaville), Cuba, Czechoslovakia, Ecuador.

Abstaining: Greece, Holy See, Republic of Korea, Laos, Argentina, Belgium, Cambodia, Chile, Costa Rica, Dominican Republic.

The motion by the Tunisian delegation was defeated by 36 votes to 33, with 10 abstentions.

18. Mr. PEREZ-CHIRIBOGA (Venezuela) said that he had voted against the Tunisian motion for a separate vote because if the last sentence of paragraph 1 were deleted, the remainder of the text would then imply *a contrario* that a consular officer could refuse to give evidence.

19. Mr. de ERICE y O'SHEA (Spain) explained that he had voted against the Tunisian motion for the reasons given by the Venezuelan representative.

20. The PRESIDENT put to the vote article 44 as a whole.

Article 44 was adopted by 63 votes to 7, with 6 abstentions.

21. Mr. ENDEMANN (South Africa) said that he had voted against article 44 because under paragraph 1 a consular officer could refuse to give evidence and consequently impede the course of justice.

Article 45

(Waiver of privileges and immunities)

22. Mr. BOUZIRI (Tunisia) said that his delegation could not agree that after having waived immunity from jurisdiction in respect of acts performed in the exercise of their functions consular officers might invoke immunity from measures of execution resulting from the judicial decision. When a judgement was final it became enforceable and a plea of immunity could not be entered. His delegation would therefore vote against paragraph 4, if put to the vote separately; if it were not it would abstain on article 45 as a whole.

23. Mr. de ERICE y O'SHEA (Spain) said that he shared the point of view of the Tunisian representative. It would be inadmissible to allow a consular officer, who had waived immunity from jurisdiction, to invoke immunity from measures of execution. Should article 45 be put to the vote as a whole, however, his delegation would vote for it.

24. Mr. BARTOŠ (Yugoslavia) pointed out that in many countries a distinction was made between immunity from jurisdiction and immunity from measures of execution of the judgement. One could perfectly well take place without the other. If, moreover, the judgement was enforceable, a government would not fail to take the necessary steps to oblige the consular officer to accept execution of judgement. The Yugoslav delegation was accordingly opposed to the elimination of paragraph 4, which might result from a separate vote.

25. Mr. PEREZ-CHIRIBOGA (Venezuela) drew attention to the fact that paragraph 3 of article 45 contained a reference to article 43. The wording of the two articles should therefore be brought into line by making article 45 refer to "consular officers" and not to "members of the consular post".

26. The PRESIDENT said that the drafting committee would bring the two articles into line.

Article 45 was adopted by 71 votes to none, with 1 abstention.

Article 46 (Exemption from registration of aliens, and residence permits)

Article 46 was adopted by 74 votes to none, with 1 abstention.

Article 46 A (Exemption from work permits)

27. Mr. SPYRIDAKIS (Greece) requested a separate vote on article 46 A, paragraph 2. As had been stated in the Second Committee, the exemption granted by the paragraph to the private staff of consular officers went too far and it was evident that it might cause difficulties in the receiving State. Moreover, practice had proved that it was highly improbable that the authorities of the receiving State would deny the issue of work

permits for the private staff of a consular or diplomatic mission, though an exemption such as that stipulated in paragraph 2 of article 46 A did not as yet exist. Besides, the Convention on Diplomatic Relations did not provide for such an exemption in the case of the private staff of diplomatic missions.

28. For all those reasons the exemption given to the private staff of consulates under the provision in question seemed paradoxical and illogical; he could not see why the private staff of a consulate should be placed in a more favourable position than the private staff of diplomatic missions.

29. Mr. DEJANY (Saudi Arabia), Mr. KAMEL (United Arab Republic) and Mr. HART (United Kingdom) supported the Greek representative's motion for a separate vote.

30. Mr. KEVIN (Australia) also supported that motion. The Conference was showing a regrettable tendency to treat consular officers more favourably than diplomatists. That tendency should be resisted and the elimination of article 46 A, paragraph 2, would provide an opportunity.

31. Mr. HARASZTI (Hungary), Mr. KONSTANTINOV (Bulgaria) and Mr. KRISHNA RAO (India) opposed the motion for a separate vote.

The motion for a separate vote on article 46 A, paragraph 2, was defeated by 36 votes to 29, with 13 abstentions.

Article 46.A was adopted by 66 votes to 4, with 9 abstentions.

32. Mr. PEREZ-CHIRIBOGA (Venezuela) explained that he had abstained for the reasons stated by the Australian representative.

33. Mr. KEVIN (Australia) expressed doubts as regards article 46 A, which had just been adopted. The application of the provisions of that article to members of the private staff of consular officers might prove difficult.

Article 47 (Social security exemption)

Article 47 was adopted unanimously.

Article 48 (Exemption from taxation)

34. Mr. de ERICE y O'SHEA (Spain) said that his amendment to article 48 (A/CONF.25/L.28) was a matter of form. Many States drew a distinction between income and capital gains, which were not regarded as private income. Spain considered that capital gains having their source in the receiving State should be regarded as private income and subject to dues and taxes like private income.

35. Mr. VAZ PINTO (Portugal) supported the Spanish amendment.

36. Mr. STRUDWICK (United Kingdom) said he would vote for the Spanish amendment. His delegation accepted all the provisions of article 48 except that exempting members of the private staff in the employ of consular officers from dues and taxes on their wages. Members of the private staff in the receiving State who,

as nationals of or permanent residents in that State, enjoyed the privileges and immunities provided in article 69 would be entirely exempt from taxes and dues and would thus be more favourably placed than diplomatic agents or consular officers. His delegation would therefore move that a separate vote be taken on the phrase "and members of the private staff in the sole employ of members of the consular post", in paragraph 2 of article 48. If his motion for division was defeated his delegation would abstain from the vote on article 48 as a whole.

37. Mr. MEYER-LINDENBERG (Federal Republic of Germany) and Mr. ALVARADO GARAICOA (Ecuador) said that they would vote for the Spanish amendment and would support the United Kingdom motion for a separate vote.

38. Mr. HENAO-HENAO (Colombia) said that his delegation welcomed the Spanish amendment. The United Kingdom's motion for a separate vote might perhaps be avoided if the phrase concerned were deleted and if paragraph 2 were to begin with the words "Subject to the provisions of article 69 . . ."

39. Mr. GIBSON BARBOZA (Brazil), Mr. SPYRIDAKIS (Greece) and Mr. SICOTTE (Canada) supported the Spanish amendment.

The Spanish amendment (A/CONF.25/L.38) was adopted by 70 votes to none, with 7 abstentions.

40. M. ZABIGAILO (Ukrainian Soviet Socialist Republic) opposed the United Kingdom motion for a separate vote. He supported paragraph 2 as drafted by the International Law Commission.

41. Mr. KAMEL (United Arab Republic) and Mr. BANGOURA (Guinea) supported the United Kingdom motion for a separate vote.

42. The PRESIDENT put to the vote the United Kingdom motion for a separate vote on paragraph 2 of article 48.

The motion was carried by 53 votes to 14, with 9 abstentions.

43. The PRESIDENT asked the Conference to decide whether to retain the phrase "and members of the private staff in the sole employ of members of the consular post" in paragraph 2 of article 48.

It was decided, by 45 votes to 23, with 10 abstentions, to delete that phrase.

Article 48, as amended, was adopted by 78 votes to 1.

44. Mr. SILVEIRA-BARRIOS (Venezuela) said that he had voted against the adoption of article 48 because it granted members of the families of consular officers and employees an exemption from taxation that was not justified.

Article 49

(Exemption from customs duties and inspection)

45. Mr. KRISHNA RAO (India) pointed out that under article 49 of the International Law Commission's draft the receiving State, in accordance with such laws

and regulations as it might adopt, permitted entry of and granted exemption from all customs duties, taxes, and related charges on articles for the personal use of a consular official or members of his family, including articles intended for his establishment. Paragraph 2 of the same draft provided that consular employees, except those belonging to the service staff, should enjoy the same immunities in respect of articles imported at the time of first installation. The word "export" had been added to paragraph 1 by the Second Committee on the proposal of the Polish representative. The purpose of the Polish proposal was to enable the consular officer, when his mission came to an end, to take away the articles he had acquired in the receiving State during the period of his mission. The Second Committee had also added in paragraph 2 the words "or exported thereafter" and had asked the drafting committee to prepare the final version.

46. Some members of the drafting committee had pointed out that if it was desired to extend the exemption in respect of articles acquired in the receiving State to consular employees, it would be better to state expressly in paragraph 2 "or articles acquired during their mission and exported thereafter". The drafting committee had not thought it necessary to make that amendment, but he wished to call the Conference's attention to the point.

47. Mr. DADZIE (Ghana) said that consular employees could export only the articles they had imported at the time of first installation, as laid down in article 37 of the 1961 Vienna Convention in respect of administrative and technical staff. The word "export" in the English text of paragraph 1 of article 49 of the draft had a wider meaning than the word "entry", and the facilities granted were therefore greater than those enjoyed by the staff of diplomatic missions. He proposed that the Conference should vote separately on the words "and export" in paragraph 1 and on the words "or exported thereafter" in paragraph 2. His delegation would vote for their deletion.

48. Mr. DE CASTRO (Philippines) said that he was afraid that paragraph 3 might give rise to misunderstandings between the sending State and the receiving State. The draft did not set any limits to the number of entries and if the baggage arrived after the consular officer, the inspection which, also according to paragraph 3, should "be carried out in the presence of the consular officer or member of his family concerned" might occasion difficulties. The view might be taken that a consular officer arriving in the territory of the receiving State should not take offence if the customs authorities requested him to open his baggage. His delegation requested a separate vote on paragraph 3.

49. Mr. CAMERON (United States of America) agreed with the representative of Ghana. The text of article 49 granted wider facilities to consular officers and employees than to diplomatic agents and administrative and technical staff. The United States delegation supported the Philippine motion for a separate vote on paragraph 3.

50. Mr. TILAKARATNA (Ceylon) agreed with the United States representative. In his opinion, the word "exported" in paragraph 2 had a commercial connotation; the consular employee should be allowed to take away only the articles he had brought with him when he first arrived in the receiving State. That right was implicit and it would be difficult for the receiving State to contest it. Either the words should be deleted or the drafting committee should be asked to find a formula that would leave no room for doubt.

51. Mr. DEJANY (Saudi Arabia) said that his delegation could not approve of such extensive exemptions as those provided under article 49, especially in paragraph 1 (b), which went beyond established usage and were not necessary for the proper performance of their functions by consular officers. Consular employees could be entitled only to such exemptions as were granted to them by the laws and regulations of the receiving State. Paragraph 3 also granted to consular officers many more privileges than those recognized by international law, and his delegation could agree to the grant of those privileges only on one occasion — namely, at the time of first entry.

52. Mr. KEVIN (Australia) considered that the adoption of the words "or exported thereafter" was liable to raise difficulties for the administrative authorities of the receiving State. A consular employee might purchase certain articles, a motor-car for instance, and at the time of his departure, when he was exporting it, claim customs rebate. That would be an excessive privilege.

53. Mr. SILVEIRA-BARRIOS (Venezuela) requested a separate vote on paragraph 2.

54. Mr. RUEGGER (Switzerland) hoped that the Conference would avoid including in the convention provisions that might prevent some States signing or ratifying it. The instrument should be capable of receiving the accession of the largest possible number of States, and, it was to be hoped, would be of universal application. The Conference should carefully weight the consequences of adopting an article such as that under discussion and paragraph 3 in particular, under which excessive privileges were given to consular officers and members of their families.

55. Mr. WASZCZUK (Poland) recalled that draft article 49 had been modified in accordance with an amendment (A/CONF.25/C.2/L.119) submitted by his delegation and adopted by the Second Committee. The International Law Commission's draft did not go far enough and the Polish delegation had considered it necessary to provide specific safeguards for the exemption from all export dues or taxes of articles the consular officer or employee might have acquired during his tour of duty in the receiving State. The article was perhaps capable of improvement, and he asked for the addition in paragraph 2 of the words "and acquired in the receiving State" after the word "installation".

56. Mr. BARTOŠ (Yugoslavia) said that he would be prepared to support the Polish amendment, but it should be drafted more clearly.

57. Mr. ZABIGAILO (Ukrainian Soviet Socialist Republic) noted that paragraph 3 was based on the corresponding provisions of the 1961 Convention. To submit the personal luggage of consular officials to customs inspection was inconceivable and by eliminating that obligation, which implied a certain distrust of persons assuming official functions, the Conference would contribute to the development of international law. His delegation would vote against the motions for separate votes on article 49.

58. Mr. KEVIN (Australia) said that paragraph 2 caused him some concern. Should that paragraph be adopted consular employees would enjoy excessive privileges. The Polish proposition could give rise to abuse.

59. Mr. WASZCZUK (Poland) said that in his view the exemptions provided were not exceptional. The amendment he had submitted orally could be improved as suggested by the Yugoslav representative. He asked for an adjournment of the discussion to enable him to submit a more precise text at the next meeting.

The meeting rose at 1 p.m.

SEVENTEENTH PLENARY MEETING

Friday, 19 April 1963, at 3.15 p.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 49 (Exemption from customs duties and inspection) (concluded)

1. The PRESIDENT invited the Conference to resume its consideration of article 49 of the draft convention.

2. Mr. WASZCZUK (Poland) said that since the previous meeting his delegation had carefully considered the motion by Ghana for separate votes on the words "and export" in paragraph 1 and the words "or exported thereafter" in paragraph 2. It was clear that on returning to his country of origin, a consular officer or employee should be permitted to export, without difficulty, any articles he had imported for his establishment. Since the receiving State had agreed to the importation of those articles at the time of establishment, it should also permit their exportation on the departure of the person concerned. During the discussion in the Second Committee, the Polish delegation had submitted a written amendment to paragraph 1 and an oral amendment to paragraph 2; but the Committee had left the wording of the text to the drafting committee, which had been unable to settle the matter satisfactorily. In the circumstances, his delegation would not oppose the motion for a separate vote on the words "or exported thereafter" in paragraph 2

relating to consular employees, and would withdraw the oral amendment to paragraph 2 which it had submitted at the previous meeting. He could not support the motion for a separate vote on the words "and export" in paragraph 1: no obstacle should be placed in the way of re-export by a consular officer of the articles referred to in sub-paragraphs (a) and (b).

3. Mr. KRISHNA RAO (India), chairman of the drafting committee, said that that committee had naturally been unable to deal with the matter referred to by the Polish representative, since it was a point of substance. That was clearly indicated by the motion for a separate vote.

4. Mr. TILAKARATNA (Ceylon) said that his delegation had opposed the use of the words "import" and "export" in paragraph 1. It favoured a provision on the lines of article 36, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations, which provided that the receiving State should permit "entry" of the articles in question. The term "import" had a completely different connotation.

5. As to the re-export of the articles on the departure of the consular officer concerned, he could not conceive of any restriction being placed on it by a receiving State which had permitted their entry for the consular officer's establishment. In any event, the condition "in accordance with such laws and regulations as it [the receiving State] may adopt" would permit the receiving State to limit the quantity or value of the articles exported. In the circumstances, the words "and export" were quite unnecessary, and his delegation supported the motion for a separate vote on them.

6. The words "or exported thereafter", in paragraph 2, lacked clarity. The intention was that articles which had been brought into the country by a consular employee should be re-exportable when he finally left the country. It was obviously not intended that a consular employee should, for example, be able to take a car with him when going on holiday and sell it outside the receiving State. All delegations recognized the basic right of both consular officers and consular employees to re-export articles they had brought into the receiving State at the time of their establishment.

7. Mr. DADZIE (Ghana) thanked the Polish representative for his supporting his motion for a separate vote on the words "or exported thereafter" in paragraph 2, and regretted that he had been unable to adopt the same attitude regarding the words "and export" in paragraph 1. It would be undesirable for the convention on consular relations to be more liberal than the Convention on Diplomatic Relations. A diplomatic agent was entitled to exemption only in respect of the entry of the articles in question, whereas under article 49 a consular officer would be granted exemption in respect of both import and export. For those reasons, his delegation maintained its motion for a separate vote on the words "or export" in paragraph 1.

8. Mr. ENDEMANN (South Africa) endorsed the arguments of the representatives of Ghana and Ceylon. The terms "import" and "export" were normally used