

United Nations Conference on Consular Relations

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19th meeting of the Plenary

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the First and Second Committees)

Present and not voting: Saudi Arabia, Tunisia.

The motion for a separate vote was defeated by 35 votes to 21, with 19 abstentions.

47. Mr. WESTRUP (Sweden) said that the rules of procedure were not inappropriate. The rejection of the Swiss amendment to paragraph 3 meant that part of the convention had been retained by a minority vote, which was not equitable. The attempt to rectify the situation by a motion for division of the vote on paragraph 3 had unfortunately failed, but the procedure had been quite correct.

48. Mr. BOUZIRI (Tunisia) explained that he had not participated in the vote on the motion for division of the text because he had not considered that the vote should be taken, a view which appeared to be confirmed by the result of the vote.

49. Mr. SPACIL (Czechoslovakia) said that his delegation's vote against the motion should not be interpreted as disagreement with the President's ruling. In the view of his delegation, any representative had the right at any time to request a separate vote.

50. Mr. VAZ PINTO (Portugal) said that the Conference had been hampered from the outset by the inadequacy of the rules of procedure, and in particular by the fact that, although a two-thirds majority was required for the adoption of a proposal, only a simple majority was required under rule 40. It would be of great importance for future conferences to ensure that the rules of procedure were revised, and he would request the President to draw attention to the matter.

51. Mr. Kamel (United Arab Republic) and Mr. HE-NAO-HEANO (Colombia) agreed that the Conference had been frustrated by its rules of procedure.

52. The PRESIDENT said that he intended to submit his personal recommendations in regard to the rules of procedure at the end of the Conference.

53. Mr. STAVROPOULOS (Representative of the Secretary-General) agreed that rule 40 proved troublesome at the present Conference. It was not a new rule, however, since it reproduced rule 91 of the rules of procedure of the United Nations General Assembly, and a similar rule had worked perfectly at three previous codification conferences. There was a certain wisdom in the fact that it gave a right to the minority to seek a decision by a simple instead of a two-thirds majority.

54. Mr. KRISHNA RAO (India) suggested that consideration might also be given to the procedural difficulties which arose when the drafting committee decided to make a separate article of a provision passed to it by a committee.

55. The PRESIDENT put to the vote article 57, as amended.

Article 57, as amended, was adopted by 68 votes to none, with 10 abstentions.

The meeting rose at 10.45 p.m.

NINETEENTH PLENARY MEETING

Saturday, 20 April 1963, at 10.35 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

1. The PRESIDENT invited the Conference to continue its consideration of the draft convention.

Article 58 (Protection of the consular premises)

Article 58 was adopted unanimously.

Article 59

(Exemption from taxation of consular premises)

Article 59 was adopted unanimously.

Article 60

(Inviolability of consular archives and documents)

Article 60 was adopted unanimously.

Article 60 A

(Exemption from customs duties)

2. Mr. MOLITOR (Luxembourg) said that it would be necessary to delete the words "and export" in order to take into account the decision made by the Conference with respect to article 49.

It was so agreed.

Article 60 A was adopted unanimously.

Article 60 B (Criminal proceedings)

Article 60 B was adopted unanimously.

Article 61

(Protection of honorary consular officers)

Article 61 was adopted unanimously.

Article 62 (Exemption from registration of aliens, and residence permits)

Article 62 was adopted unanimously.

Article 63 (Exemption from taxation)

Article 63 was adopted unanimously.

Article 64 (Exemption from personal services and contributions)

3. Mr. KEVIN (Australia) pointed out that the text prepared by the drafting committee did not specify, as had been done in the text adopted by the Second Committee, that in order to benefit by the exemption, honorary consular officers should be neither nationals nor permanent residents of the receiving State. In view of the fact that article 69 contained provisions concerning those

two categories of consular officers, he proposed that the vote on article 64 should be postponed until a decision had been taken on article 69, thus enabling a request to be made, if necessary, for the re-insertion in article 64 of the words which had been omitted.

It was so decided.

Article 67 (Optional character of the institution of honorary consular officers)

Article 67 was adopted unanimously.

Article 67 A

(Consular agents who are not heads of consular posts)

Article 67 A was adopted unanimously.

Article 68 (Exercise of consular functions by diplomatic missions)

4. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said that the draft proposed by the International Law Commission embodied one of the essential principles of international law which had been omitted from the drafting committee's text. Article 68 had been modified in the First Committee by the adoption of an amendment of the United Kingdom (A/CONF.25/C.1/L.153). The delegations that supported that amendment had asserted that it was necessary to bring the text into harmony with article 38. He considered that the analogy they had tried to establish between the two articles was misleading. It was not a question of consular officials but of members of a diplomatic mission whose official business was governed by paragraph 2 of article 41 of the 1961 Convention in so far as their relations with the receiving State were concerned. It was therefore inadmissible that the future convention on consular relations should contain provisions incompatible with those of the 1961 Convention. Moreover, the attitude adopted by the United Kingdom delegation appeared to differ widely from the practice followed by the government of that country.

5. Generally speaking, the laws of the receiving State should be respected, allowing, however, for the possibility of finding a more flexible formula for each case, with the consent of that State. That was the purpose of the amendment (A/CONF.25/L.22) to article 68 submitted by his delegation.

6. Mr. MUÑOZ MORATORIO (Uruguay) said that the intention of his delegation's amendment (A/CONF.25/L.45) was to make it quite clear that the consent of the receiving State was necessary. Paragraph 2 of article 68 only mentioned that the names of members of a diplomatic mission assigned to the consular section should be notified to the receiving State. He was of the opinion that the consent of the receiving State was implicitly necessary even if his delegation's amendment was not adopted. In Uruguay, for example, the authorization must be given by the executive authority. Further, the members of a diplomatic mission who performed consular functions were not covered by article 9 concerning classes of heads of consular posts. There was therefore an omission, all the more since a wide difference

was made between the functions of a diplomatic mission and those of the consular section of that mission. It was inadmissible that the head of that section should be able to perform his functions without the express consent of the receiving State.

7. Mr. MARESCA (Italy) thought that the original draft of article 68 had been improved in committee, since paragraph 1 referred to the whole of the convention and not only to certain articles. The new text made it absolutely clear that the consular section of a diplomatic mission was a consular post for all purposes. Accordingly, the rules relating to the establishment of a consular post, and in particular the rule requiring the prior consent of the receiving State, applied in such a case. He was of the opinion that the officers of the consular section of a diplomatic mission should not be allowed to perform those functions without the consent of the receiving State, and he would accordingly support the Uruguayan amendment.

8. Mr. KOCMAN (Czechoslovakia) pointed out that the original draft prepared by the International Law Commission conformed in every way with international law and contemporary practice. In particular, it allowed relations between consular officers and local authorities to continue to be governed by bilateral agreements. The drafting committee's text did not permit that latitude and might therefore conflict with national laws. For that reason he would support the amendment of the Ukrainian Soviet Socialist Republic.

9. With regard to the Uruguayan amendment (L.45) he did not see why the consent of the receiving State should be required when members of a diplomatic mission were assigned to consular functions, since those members had already been accredited by the government concerned. He would therefore vote against that amendment.

10. Mr. EVANS (United Kingdom) pointed out that the provisions of the 1961 Convention to which the representative of the Ukrainian Soviet Socialist Republic had alluded were not intended to apply to the exercise of consular functions by a diplomatic mission. That was clear from article 3, paragraph 2, of the 1961 Convention. But it was necessary that members of a diplomatic mission, when exercising consular functions, should enjoy the same facilities as consular officers attached to a consular post which did not form part of a diplomatic mission. The purpose of paragraph 3 of article 68 was precisely to grant them those facilities. For that reason the drafting committee's text should be retained and the Ukrainian amendment rejected. He supported the Uruguayan amendment.

11. With regard to the Ukrainian representative's remarks about the consistency of the United Kingdom delegation's attitude with the previously expressed views of the United Kingdom Government, his delegation denied that there was any such inconsistency. Furthermore, it wished to emphasize the fact that a delegation at an international conference must be permitted to interpret the positions of principle previously adopted by its government.

12. Mr. de ERICE y O'SHEA (Spain) said that he supported the Uruguayan amendment. It might well be that the consent of the receiving State was implicit in the drafting committee's text, but there would be no harm in inserting an express reminder. With regard to the Ukrainian amendment, he pointed out that nearly all diplomatic missions included a consular section. The adoption of that amendment would have the result of denying to officers belonging to the consular section the possibility of addressing the local authorities, whereas the head of a consular post, whether career or honorary, was able to do so. The 1961 Convention enabled members of diplomatic missions to perform consular functions and it would seem that the least that could be done would be to grant them facilities similar to those conferred on consular officers, properly so called. For all those reasons the Spanish representative considered that the Ukrainian delegation should withdraw its amendment.

13. Mr. FUJIYAMA (Japan) said that there was no reason why a diplomatic mission, when performing consular functions, should have to comply with certain conditions in order to address the local authorities. His delegation was therefore unable to support the Ukrainian amendment but would support the Uruguayan amendment.

14. Mr. BARUNI (Libya) said that the Ukrainian amendment was drafted in such terms as to make it acceptable to all countries and he would therefore support it. The Uruguayan amendment, on the other hand, could not give satisfaction to the smaller countries and he would be unable to accept it.

15. Mr. CRISTESCU (Romania) said that his delegation attached great importance to article 68. Paragraph 3 of that article was not in accordance with the practice followed by many countries with respect to the performance of consular functions by a diplomatic mission. Furthermore, it contradicted the clauses of the Vienna Convention on Diplomatic Relations which governed all the activities of diplomatic missions; consular functions were among the functions entrusted to such missions. When drafting paragraph 3 of article 68 the International Law Commission had based itself on the provisions of that convention. The text of paragraph 3 as drawn up by the drafting committee contradicted every practice followed in that connexion and was not acceptable to the Romanian delegation. The Ukrainian amendment was a compromise between the two points of view. It had been said that paragraph 3 of article 68 should be adapted to the text of article 38 adopted by the Second Committee. Article 38 confirmed the practice followed by consulates of addressing local authorities, whereas article 68 as adopted by the First Committee was not in accord with usual practice and introduced a new rule which was in contradiction with the provisions of the 1961 Convention. The Ukrainian amendment took the practical side of the question into account and offered a better solution. The Romanian delegation would therefore vote in favour of that amendment. If it were not adopted it would ask for a separate vote on sub-paragraph (a) of paragraph 3. The adoption of

article 68, paragraph 3, as it stood might give rise to a large number of reservations when the convention was signed.

16. Mr. PAPAS (Greece) supported the Uruguayan amendment, which added a necessary clause to paragraph 2 since in the existing state of affairs the exequatur was not required for the performance of consular functions by a member of a diplomatic mission. On the other hand, his delegation would not be able to vote for the Ukrainian amendment.

17. Mr. CAMERON (United States of America) said that he would vote for the Uruguayan amendment. It had been said that it was contrary to international law to require the approval of the receiving State for the performance of consular functions. There was no such principle; if there was any principle at all on the subject, it was to the contrary, namely that approval to perform consular functions was required. That was particularly true when the functions were performed by a diplomatic mission. The United States delegation would vote against the Ukrainian amendment for the reasons given by the representatives of Japan and the United Kingdom.

18. Mr. ABDELMAGID (United Arab Republic) supported the Uruguayan amendment, which added an essential element to paragraph 2 of article 68. The Ukrainian amendment filled a gap without preventing diplomatic missions in the exercise of consular functions from addressing local authorities as they were already in the habit of doing, and his delegation would support it.

19. Mr. CONTRERAS CHAVEZ (El Salvador) said that he would vote in favour of the Uruguayan amendment and against the Ukrainian amendment.

20. Mr. KHLESTOV (Union of Soviet Socialist Republics) pointed out that the text of article 38 had been transferred mechanically to paragraph 3 of article 68. It would be illogical to say that when performing consular functions the diplomatic mission should not address the central authorities of the receiving State unless permitted under the laws and regulations of that State or under an international agreement, since article 41, paragraph 2, of the Vienna Convention on Diplomatic Relations made it obligatory for the mission to address those authorities. The Ukrainian amendment offered a more flexible formula than the drafting committee's text and provided a neat way out of the difficulty.

21. Under article 3 of the 1961 Convention, nothing in that convention could be construed as preventing the performance of consular functions by a diplomatic mission. It was therefore difficult to understand that the performance of those functions should depend on the consent of the receiving State, as laid down in the Uruguayan amendment.

22. Mr. BARTOŠ (Yugoslavia) said that he was unable to accept the Uruguayan amendment, which was contrary to the principle stated in article 15 and would cause difficulties to the smaller countries in the exercise of consular functions.

23. Mr. MUÑOZ MORATORIO (Uruguay), replying to the criticisms made against the Uruguayan amendment (L.45), said that that amendment was not contrary to international law, as claimed by certain delegations, nor to general practice. The representative of Czechoslovakia had stated that a member of the diplomatic mission did not need an exequatur from the receiving State in order to perform consular functions. The Uruguayan amendment did not mention the word exequatur but merely "the consent of the receiving State"; such consent could be given by an exequatur or by some other means, according to the practice in force in the receiving State. The representative of Libya had stated that the Uruguayan amendment was hardly acceptable to the smaller countries. Uruguay was a small country, but it did not believe that the obligation incumbent upon members of a diplomatic mission assigned to consular work to obtain the consent of the receiving State could cause any difficulty to smaller countries. In reply to the representative of the Soviet Union, he pointed out that the principle laid down in the Vienna Convention on Diplomatic Relations was not in contradiction with the Uruguayan proposal. The Yugoslav representative's argument was based on an article which dealt with the temporary exercise of consular functions.

24. The PRESIDENT put to the vote the amendment submitted by Uruguay to paragraph 2 of article 68 (A/CONF.25/L.45).

The result of the vote was 39 in favour and 29 against, with 9 abstentions.

The amendment was not adopted, having failed to obtain the required two-thirds majority.

25. The PRESIDENT put to the vote the amendment of the Ukrainian Soviet Socialist Republic to paragraph 3 of article 68 (A/CONF.25/L.22).

The amendment was rejected by 42 votes to 23, with 13 abstentions.

26. The PRESIDENT asked the Conference to decide on the Romanian motion for a separate vote on subparagraph (a) of paragraph 3.

27. Mr. MEYER LINDENBERG (Federal Republic of Germany) opposed the Romanian motion since under international law and the bilateral conventions to which the Federal Republic of Germany was a party the consular section of a diplomatic mission had the right to address the local authorities of the consular district.

28. Mr. PUREVJAL (Mongolia) and Mr. EL KOHEN (Morocco) supported the motion.

29. Mr. EVANS (United Kingdom) opposed the motion.

30. The PRESIDENT put to the vote the motion for a separate vote on subparagraph (a) of paragraph 3.

The motion was defeated by 49 votes to 19, with 12 abstentions.

31. Mr. KHLESTOV (Union of Soviet Socialist Republics) said that paragraph 3 was illogical and asked for a separate vote on that paragraph.

32. Mr. CAMERON (United States of America) opposed a separate vote because, in his opinion, the rights and obligations of States should be defined and it was necessary to maintain paragraph 3 of article 68.

33. Mr. KONSTANTINOV (Bulgaria) supported the motion: paragraph 3 was incompatible with the corresponding provisions of the Vienna Convention of 1961 and the deletion of the paragraph would not in the least diminish the effective value of the future convention.

34. Mr. SPACIL (Czechoslovakia) also supported the motion for a separate vote, which would give delegations an opportunity to decide whether to maintain paragraph 3. The matter could be settled by means of bilateral agreements such as that which the Soviet Union had concluded with the Federal Republic of Germany.

The motion for a separate vote on paragraph 3 was defeated by 54 votes to 15, with 12 abstentions.

Article 68 was adopted by 67 votes to 2, with 12 abstentions.

35. Mr. DADZIE (Ghana) said that he had voted against the Uruguayan amendment, which did not appear to him to improve the text of the article. He had supported the Ukrainian amendment because no diplomatic mission could infringe the laws and regulations of the receiving State. His delegation had voted in favour of article 68 as a whole because it thought that a diplomatic mission could address local authorities or central authorities if it obtained the consent of the receiving State.

36. Mr. SILVEIRA-BARRIOS (Venezuela) said that he had voted against article 68 because it was contrary to the public law of Venezuela.

37. Mr. SPACIL (Czechoslovakia) said that he had abstained from voting on article 68. Paragraph 3 as drafted did not appear acceptable and he would reserve his government's position when signing the convention.

38. Mr. KHLESTOV (Union of Soviet Socialist Republics) explained that he had abstained from the vote on article 68 because paragraph 3 was contrary to the provisions of the 1961 Vienna Convention. That paragraph did not take into account the laws and practice of States and it was regrettable that the text proposed by the International Law Commission had not been maintained.

39. Mr. MUÑOZ MORATORIO (Uruguay) said that he had voted for article 68 because he was of the opinion that paragraph 2 of that article did not imply that the consent of the receiving State was unnecessary to enable a member of a diplomatic mission to perform consular functions.

40. Mr. CRISTESCU (Romania) said that he had voted in favour of the Ukrainian amendment. Paragraph 3 of article 68 appeared to be contrary to international practice and incompatible with the provisions adopted in Vienna in 1961. His government would reserve its position on the matter.

41. Mr. AVAKOV (Byelorussian Soviet Socialist Republic) made the same reservation with respect to paragraph 3 and regretted that the International Law Commission's text had not been retained.

42. Mr. NESHO (Albania) made a statement to the same effect.

43. Mr. BARUNI (Libya) said that he had voted against the adoption of article 68 because it did not take the interests of the receiving State sufficiently into account.

Article 69 (Nationals or permanent residents of the receiving State)

44. The PRESIDENT drew attention to the amendments to article 69 submitted by Australia (A/CONF.25/L.43) and Greece (A/CONF.25/L.51).

45. Mr. KEVIN (Australia) said that he had submitted his amendment to insert the word "facilities" before the words "privileges and immunities" in paragraphs 1 and 2 in order to bring the text into line with the other provisions of the convention.

46. Mr. PAPAS (Greece) said that article 69 contained no provision concerning consular posts headed by nationals of the receiving State and his amendment was intended to fill that gap. The receiving State could not allow an honorary consul who was a national of that State to communicate with the sending State by consular courier. The privileges granted to consular officers differed according to whether they were honorary or career officers. The adoption of article 69 as drafted might encourage certain States not to allow consular posts to be headed by their own nationals.

47. Mr. KEVIN (Australia) approved the Greek amendment (L.51) but proposed the addition of the words "or permanent residents of the receiving State".

48. Mr. PAPAS (Greece) agreed to incorporate in his amendment the words suggested by the Australian representative.

49. Mr. BARNES (Liberia) reminded the Conference that it had adopted article 57 under which article 35 would apply to a consular post headed by an honorary consular officer. If the Conference were to change article 69 as suggested by the Greek representative it would then have to take up article 57 once again.

50. Mr. DONATO (Lebanon) supported the Greek amendment (L.51).

51. Mr. RUEGGER (Switzerland) said that, while he agreed with the principle underlying the Greek amendment, he thought that it could be re-drafted so as to take article 57 into account.

52. Mrs. VILLGRATTNER (Austria) regretted that she was unable to support the Greek amendment: it was impossible to prevent a consular post headed by an honorary consul from using consular couriers for the purpose of communicating with the sending State.

53. Mr. AMLIE (Norway) said that even when they were nationals of the receiving State honorary consuls were still consular officers. In order to perform their functions as defined in article 5 they should be able to communicate with the sending State by means of consular couriers. He considered that the Greek amendment seriously undermined the institution of honorary consuls.

54. Mr. ENDEMANN (South Africa) pointed out that honorary consuls who were not nationals or permanent residents of the receiving State were entitled to benefit by article 35.

55. Mr. EVANS (United Kingdom) said that he would vote against the Greek amendment. It was essential that the head of a consular post, whether a career consul or an honorary consul, should be able to communicate freely with the sending State.

The meeting rose at 12.55 p.m.

TWENTIETH PLENARY MEETING

Saturday, 20 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 69 (Nationals or permanent residents of the receiving State) (concluded)

1. The PRESIDENT invited the Conference to continue its consideration of article 69 and the amendments thereto by Australia (A/CONF.25/L.43) and Greece (A/CONF.25/L.51).

2. Mr. PAPAS (Greece) withdrew his delegation's amendment because the majority of the Conference did not seem to be in favour of it.

3. Mr. AMLIE (Norway) said he was grateful to the Greek representative for withdrawing his amendment.

4. Mr. ENGLANDER (Honduras) said he was glad that the Greek amendment had been withdrawn. That text expressed a wrong attitude to the institution of honorary consuls, since it reflected a certain mistrust of such persons. In actual fact, honorary consuls were usually respectable, well-to-do persons who would not be likely to risk their reputations for the sake of smuggling articles in a consular bag.

5. Mr. MARESCA (Italy) said that paragraph 2 of article 69 raised an important legal question. Under article 43 as adopted by the Conference, consular employees, who exercised technical and administrative functions and thus formed a part of the consulate, were immune from jurisdiction in the exercise of their functions, even if they were nationals of the receiving State. Paragraph 2 of article 69, however, derogated seriously from that principle in that it accorded those privileges and immunities only in so far as they were granted to consular employees by the receiving State. The Italian delegation considered it inadmissible to refuse immunities which were absolutely essential for the exercise of certain consular functions and therefore would be unable to vote for the article.