General Assembly

FORTY-SIXTH SESSION

Official Records

SIXTH COMMITTEE
41st meeting
held on
Wednesday, 20 November 1991
at 3 p.m.
New York

SUMMARY RECORD OF THE 41st MEETING

Chairman: Mr. AFONSO (Mozambique)

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91-57553 5379S (E)

Distr. GENERAL
A/C.6/46/SR.41
29 November 1991

ORIGINAL: ENGLISH

The meeting was called to order at 3.10 p.m.

AGENDA ITEM 133: ADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION ON CONSULAR RELATIONS (A/46/348 and Add.1)

1. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the Secretary-General's report (A/46/348 and Add.1), recalled that the item had been included in the Committee's agenda at the forty-fifth session of the General Assembly following a proposal by the representatives of Austria and Czechoslovakia contained in document A/45/141. The two delegations had noted that although the Vienna Convention on Consular Relations of 24 April 1963 had proven its great value, it concentrated on consular privileges and immunities and lacked precise rules regarding consular functions. That lacuna had been filled over the years by a large number of bilateral consular agreements regulating those functions in greater detail but, useful as they were, those agreements, in the view of the delegations of Austria and Czechoslovakia, could not be a substitute for a universal convention. To remedy that shortcoming and standardize the law on the subject, the two delegations had felt it desirable to formulate an additional protocol to the Convention and they had submitted detailed provisions which could serve as a basis for the formulation of such a protocol.

2. The General Assembly had adopted resolution 45/47 in which, noting that one of its functions in promoting international cooperation consisted in initiating studies and making recommedations for the purpose of encouraging the progressive development of international law and its codification, it had taken note with interest of the proposal concerning the elaboration of an additional protocol on consular functions to the Vienna Convention on Consular Relations and had requested the Secretary-General to seek the views of Member States and of other States parties to the Convention on the proposal and on the procedure to be followed in considering the question, and to submit a report thereon to the General Assembly at its forty-sixth session. In accordance with that resolution, the Secretary-General had sent a note dated 21 February 1991 to all Member States and to other States parties to the Convention. In response to that note the Secretary-General had received replies from 15 States: Austria, Bolivia, Ecuador, Jamaica, Luxembourg, Mexico, Mongolia, Norway (on behalf of the Nordic countries), the Philippines, Romania, Switzerland, Ukraine, the Soviet Union, Uruguay and Zimbabwe. Those replies appeared in the report of the Secretary-General.

3. As could be noted, the views of States varied as to substance. Although some States supported the proposal to elaborate an additional protocol, others drew attention to difficulties in the formulation at the world level of rules concerning consular functions.

4. Mr. TOMKA (Czechoslovakia), speaking on behalf of the delegations of Austria and Czechoslovakia, said that the Vienna Convention on Consular Relations was one of the first international instruments prepared by the International Law Commission. It had been well received by the international

(Mr. Tomka, Czechoslovakia)

community and, as of 1 October 1991, 132 States had become parties to it. However, it concentrated primarily on the establishment of consular relations and on consular privileges and immunities; consular functions and their exercise were regulated in only a brief manner in a single article, article 5. That had led some States to conclude bilateral consular conventions and over 200 such conventions, most of which were concerned mainly with questions of consular functions as such, had been concluded since 1963. Those agreements were fairly common between developed countries or between such countries and certain developing countries, but were rare between developing countries. Bilateral regulation, while offering to two States the possibility of taking into account specific aspects of their mutual relations, also had objective limits; that method required considerable effort not only on the part of the negotiators but also on the part of those who had to approve the results achieved; moreover, no State could in practice regulate consular functions at the bilateral level with all members of the international community. In that situation, it would seem appropriate to fill the lacuna by means of a multilateral legal instrument.

5. In 1990 his delegation and the delegation of Austria had submitted draft articles for such an instrument in an annex to document A/45/141; that draft did not aim to be exhaustive or definitive but to serve as a possible basis for future work. The General Assembly, in resolution 45/47, had taken note with interest of the proposal and had requested the Secretary-General to seek views on the subject. The report of the Secretary-General (A/46/348 and Add.1) reproduced in extenso the replies received from 14 Member States and from one State party to the Convention. An analysis of the replies revealed that the initiative had met with a generally favourable response although some States had said that the advantages and feasibility of concluding an additional protocol should be considered carefully.

6. The two delegations stressed that the proposed instrument should be without prejudice to other international agreements in force and should not prevent States from concluding international agreements; it should be residual in nature. The following consular functions were defined in the draft: issuance of travel documents, acting as notary and civil registrar and similar functions, safeguarding the rights of minors and other persons under guardianship, and exercising rights of supervision and inspection of ships and aircraft. He suggested that a working group of the Committee should be set up at the forty-seventh session of the General Assembly to study the draft in more detail, taking into account the views expressed by States.

7. Mr. VAN DE VELDE (Netherlands), speaking on behalf of the 12 States members of the European Community, said that the proposal concerning the elaboration of an additional protocol aimed at supplementing and clarifying the provisions of the Vienna Convention on Consular Relations. The non-exhaustive enumeration of the most important consular functions in article 5 of the Vienna Convention had been considered at the time to be a compromise, characterized by a certain lack of precision. It must be

(Mr. Van De Velde, Netherlands)

determined whether there was a need to maintain that compromise. It had to be assumed that a number of States would not favour too precise a specification and would, if the need for an explicit definition of consular tasks in the relationship between two countries arose, favour regulating those consular functions in a bilateral agreement.

8. The delegation of Luxembourg had responded to the Secretary-General's request for comments on behalf of the 12 States members of the European Community (A/46/348). In their reply the Twelve noted that many States parties to the Vienna Convention had concluded bilateral consular agreements and might have no need for a new multilateral instrument on consular functions. However, not every State party to the Convention had such a network of bilateral consular agreements and some States might see advantages in an additional protocol. The advantages of uniformity would have to be weighed against a possible limitation on the freedom to negotiate with other States on a bilateral basis. In the light of article 16 of the draft additional protocol, the key legal consequence of becoming a party to the protocol appeared to be that of being precluded from agreeing that consuls could perform a lesser number of functions in their relations with another specific State party than those listed in the additional protocol. Even if article 16 were to be deleted, the listing of consular functions in the additional protocol would assume a "residual character", thus giving a definite advantage, in bilateral negotiations, to States which opposed a reduction of the consular functions.

9. The Twelve submitted that careful consideration of the advantages to be reaped from an additional protocol and of the possibilities of success in negotiating it was called for, taking into account the problems of harmonization of domestic legislation. The advantages of progressive development of international law and of concluding further multilateral instruments in the field of consular relations should be assessed against the possible disadvantages of a limitation on States wishing to negotiate consular treaties, tailored to specific circumstances, on a bilateral basis. Before deciding on the best approach to deal with the issue in the future, a sufficient number of replies to the Secretary-General's request for views should be awaited.

10. Mr. SHESTAKOV (Union of Soviet Socialist Republics) said that the Vienna Convention on Consular Relations was an important legal instrument for regulating the complex field of consular law which had facilitated the effective solution of many problems connected with the activities of consular missions. The draft additional protocol was intended to promote the clarification and uniform interpretation of the consular functions defined in general terms in the 1963 Convention which in future, if appropriately completed, could facilitate the application of the articles of the Convention and the work of consular posts as a whole. His delegation considered it essential that the proposal should be carefully studied by the Committee and that its significance for the work of consular posts be determined.

(Mr. Shestakov, USSR)

11. He recalled that, during the discussion in the International Law Commission on the draft articles on consular relations and immunities, there had been differences of opinion as to how to draw up a list of cor lar functions and whether to include a general list or specific det in the end the view had prevailed that there should be a general list. ad been argued that it was unrealistic to try to list all the various problems which arose or could arise in future for consular officials; that most consular functions fell under the operation of the domestic law of the sending State and could not be regulated in detail by international law; that the Commission had already adopted the draft Convention on Diplomatic Relations in which the functions of a diplomatic mission were listed in general form; and that defining consular functions in general terms would provide the necessary flexibility. Thus it was possible that the draft protocol would create additional difficulties in carrying out everyday consular functions. In that connection consideration could be given to making the protocol optional or advisory in nature, in the form of a handbook or reference guide. That idea was not new; at the time of the discussion of the consular convention in the International Law Commission, it had first been proposed that there should be special commentaries to the text listing consular functions in detail. Such a document would assist States in their consideration of complex questions of consular activity without imposing international legal obligations on them that might be unacceptable because of established practice, domestic law or other factors. At the same time it would be possible to provide a list of precise rules for consular functions, as the authors of the draft protocol wished.

12. Article 1, paragraph 1, of the draft protocol needed to be clarified, since it virtually excluded honorary consuls from its sphere of application, although in the sense of the Vienna Convention they performed functions similar to those carried out by consular officials. His delegation had doubts about article 4, concerning the right of consular officials to draw up legal acts and contracts or authenticate them in notarial form. In addition to the difficulties that could arise in establishing the correspondence of such acts with the provisions of the Protocol, there was the question of the ability of consular officials to appreciate the nuances of legal acts or contracts as well as the question of responsibility for possible adverse consequences resulting from mistakes made by consular officials.

13. With regard to article 5, paragraph 1 (a), consular premises could hardly be turned into a warehouse for the storage of valuables and other articles belonging to nationals of the sending State; that could give rise to a range of problems, including damage as a result of fire or other natural causes. His delegation also had doubts about the need for consular officials to "accept" items from the authorities of the receiving State for return to their owners (para. 1 (b)); in such cases consular officials could only be expected to assist in the return of such articles, since in many cases consulates could not provide safer storage for valuables than the relevant State services. In general, the Committee needed to consider the advisability of attributing the

(Mr. Shestakov, USSR)

functions listed in article 5 to consular officials, since they could be diverted from performing their main task of protecting the interests of the sending State and its nationals (individuals and legal entities) in the receiving State within the limits allowed by international law.

14. His delegation agreed that article 14 should be studied further, taking into account existing legal norms and practice. The five-day period envisaged in article 15, paragraph 1, for notifying the consular post of the preventive detention, arrest or other restriction of the personal freedom of a national of the sending State was too long and could be reduced to three days on condition that the authorities had not been able to notify the consular office earlier, i.e. immediately after the detainment. The protocol should also include a provision on the obligation of the consul to issue visas within fixed or shorter time-limits and a maximum reasonable period for the issue of visas, not exceeding, for example, three weeks, could be recommended to a State; that step could regulate existing practice and exclude situations of excessive delay in the issuance of visas. In general, the draft protocol was a fairly good basis for future work and the discussions in the Committee should be directed towards mutually acceptable decisions.

15. Mr. REZAIAN (Islamic Republic of Iran) said that the 1963 Vienna Convention on Consular Relations was an important international instrument, resulting from the valuable work done by the International Law Commission. It had so far played a significant role in regulating consular relations between States and in promoting cooperation and understanding among them. Nevertheless, in view of the unprecedented expansion of political, economic and cultural relations which had taken place among States since the adoption of the Convention, it was necessary to initiate a study on the elaboration of an additional protocol on consular functions. Such a protocol could fill the existing lacuna in the definition of consular functions, which many States had tried to fill through bilateral agreements. Such bilateral agreements, however, did not create a uniform and generally acceptable practice in the field of consular relations and the preparation of an international instrument, particularly during the United Nations Decade of International Law, appeared necessary.

16. With regard to the appropriate framework for the consideration of the topic, his delegation supported the idea of establishing a working group within the Sixth Committee during the forty-seventh session of the General Assembly.

17. Mr. KORZACHENKO (Ukraine) said that at a time when it was actively engaged in establishing direct consular relations with neighbouring and other States on the basis of its Independence Act of 24 August 1991, Ukraine believed that the elaboration of an additional protocol represented a useful effort in the codification and progressive development of international law.

(Mr. Korzachenko, Ukraine)

18. The Vienna Convention on Consular Relations did not contain an exhaustive list of specific consular functions. Article 73 of the Convention provided for the possibility of filling that lacuna by means of bilateral consular agreements; however, it would seem advisable to consider the effectiveness of a universal method to regulate problems not encompassed by the Convention and to reduce recourse to customary law, which gave rise to complications. The additional protocol would also be useful for States which did not have diplomatic, consular or trade relations with each other.

19. It was commendable that the wording of the draft protocol took into account the provisions of agreements and practices which affected consular functions and that the authors had not undertaken to codify the entire range of international practice in the field of consular functions but affirmed that customary international law should continue to govern questions not expressly regulated in the articles.

20. Certain provisions in the additional protocol could enhance existing international practice. Article 15, paragraph 1, was more aptly formulated than article 35, paragraph 1 (b), of the Vienna Convention; it provided for notification of the arrest or other restriction of the personal freedom of a national if the person concerned did not object to it rather than in the event that such a national should require it; it also established a time-frame for the giving of notification. A period of, for example, four days should be set. The draft protocol should indicate the powers of a consul with regard to matters of inheritance; regulate in greater detail the question of the freedom of communication between a consul and the nationals of the State he represented, including the consul's right to a mandatory meeting with his nationals; and include a provision on his obligation to issue visas within fixed, preferably shorter, time-limits. The additional protocol should not contain any provisions which would be prejudicial to the rights and obligations deriving from agreements already concluded between States and should not impede the conclusion of new agreements under international law.

21. Ms. KOFLER (Austria) said that the authors of the draft additional protocol welcomed the view that efforts to supplement and specify the provisions of the Vienna Convention on Consular Relations of 1963 by an additional protocol thereto dealing with consular functions were a useful exercise and could fill a lacuna in that field. In the interest of the progressive development of international law, an internationally acceptable instrument should more specifically define the scope of consular functions, thereby contributing to the universal application of the relevant rules. While bilateral consular agreements provided a certain degree of flexibility in reflecting the specific needs of two countries, such an approach had objective limitations since no country could bilaterally regulate its relations with every other member of the international community. Austria and Czechoslovakia therefore believed that a multilateral approach in elaborating specific rules on consular functions would be useful to the international community.

(Ms. Kofler, Austria)

22. The representative of the Netherlands, speaking on behalf of the Twelve States members of the European Community, had stated that certain countries were opposed to a more precise specification of consular functions. The representative of the USSR, for his part, had pointed out that problems could arise if the rules were too detailed. The intention of the authors, however, was not to attempt to regulate all the details since customary international law would continue to govern questions that were not expressly dealt with by the proposed new instrument. The authors, nevertheless, agreed with the view expressed by the representative of the USSR that the matter should be considered in the Sixth Committee before a final conclusion was reached. Careful study of the subject was required before a community of views could emerge and an acceptable solution found. An appropriate forum for such consideration could be a working group set up during the forty-seventh session of the General Assembly to study the questions of substance raised in the joint Austrian-Czechoslovak proposal as well as in the different comments and suggestions that had been made during the debate or submitted in written form. The working group would also need to consider the question of the legal nature of the proposed instrument. Its objective should be to submit to the General Assembly concrete proposals which would be acceptable to all segments of the international community. The authors hoped that the idea of establishing such a forum would find general support within the Committee.

AGENDA ITEM 129: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-FOURTH SESSION (continued) (A/C.6/45/L.11)

23. Ms. KOFLER (Austria), introducing draft resolution A/C.6/46/L.11, said that the sponsors had been joined by Canada, Cyprus, Denmark, Germany, Guinea, Hungary, India, Kenya, Myanmar, the Netherlands, the Sudan, Sweden, Thailand, Uruguay and Yemen.

24. In part A of the draft resolution, the General Assembly acknowledged the valuable contribution to be rendered by the United Nations Commission on International Trade Law within the framework of the United Nations Decade of International Law, particularly with regard to the dissemination of international trade law. It also commended the Commission on its decision to organize, as a first step in the preparation of its programme of activities for the Decade, a Congress on International Trade Law during the twenty-fifth session of the Commission. The General Assembly also took note of the successful conclusion of the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade, which had resulted in the adoption of the United Nations Convention on such liability.

25. It was the conviction of the sponsors of the draft resolution that UNCITRAL had a vital role to play in providing training and assistance in the field of international trade law, particularly to the developing countries. The draft resolution accordingly expressed appreciation to the Commission for organizing the symposium on international trade law, held in conjunction with its twenty fourth session, and the regional seminar on international trade law, held in Cameroon in January 1991.

(Ms. Kofler, Austria)

26. Part B of the draft resolution took note of the report of the Secretary-General on possible ways of assisting developing countries to attend meetings of the United Nations Commission on International Trade Law. It also requested the Fifth Committee to consider, in order to ensure full participation by all Member States, granting travel assistance, within existing resources, to the least developed countries that were members of the Commission, as well as, on an exceptional basis, to other developing countries members of the Commission. As an additional measure, the draft resolution recommended that the Commission rationalize the organization of its work and consider, in particular, the holding of consecutive meetings of its working group.

27. Two changes should be made in the draft: the words "The General Assembly" should be inserted at the beginning of part B, and the word "group" at the end of part B, paragraph 3, of the English version should be replaced by "groups" in order to bring that text into line with the other language versions.

28. The pragmatic approach of the Commission had been an important element of its success and that pragmatic spirit was reflected in the draft text before the Committee. She therefore hoped that the draft resolution would be adopted by the Committee without a vote.

29. Mr. NTSAMA (Cameroon), speaking in explanation of his delegation's position, said that, with reference to part B, paragraph 2, of the draft resolution, he was unclear as to whether the General Assembly would request one of its subsidiary organs to consider the implementation of its decision. Secondly, with reference to the same paragraph, he wondered why it was necessary to include any reference to the Fifth Committee since the travel assistance in question would be granted from within existing resources.

30. The CHAIRMAN said that, while the General Assembly did instruct the organs under its authority to implement its decisions, the consensus on the draft resolution had been achieved with considerable difficulty and it had been decided to accept the text in its current form. He wished to point out, however, that in part B, paragraph 4, the General Assembly requested the Secretary-General to submit a report on the implementation of the resolution at its forty-seventh session.

31. Mr. CHATURVEDI (India) said that his delegation supported the draft resolution as well as the work of UNCITRAL, in whose deliberations it had always participated. The Commission had performed a useful task in elaborating a number of international conventions and in organizing seminars in various parts of the world. His delegation supported the provisions in part B of the draft resolution aimed at providing assistance to enable the developing countries to participate in the work of the Commission.

32. Mr. NYAMIKEH (Ghana) said that, while his delegation supported the draft resolution, it shared the concern of the representative of Cameroon regarding the reference to the Fifth Committee in part B, paragraph 2, of the draft resolution. The General Assembly oversaw all of its subsidiary bodies and its request to the Fifth Committee was therefore an inexplicable precedent.

33. The CHAIRMAN said that the request in part B, paragraph 2, should not be construed as a precedent. The General Assembly alone adopted the rules and procedures that governed its work.

34. Draft resolution A/C.6/46/L.11, as orally revised, was adopted.

The meeting rose at 4.25 p.m.