



Seventeenth session  
Agenda item 74

## CONSULAR RELATIONS

Report of the Sixth Committee

Rapporteur: Mr. José María Ruda (Argentina)

## I. INTRODUCTION

1. The General Assembly, at its 1129th plenary meeting on 24 September 1962, placed on the agenda of its seventeenth session an item entitled "Consular relations" and decided to allocate it to the Sixth Committee.
2. The Sixth Committee examined this agenda item at its 771st to 775th meetings, from 3 to 6 December 1962.
3. The item entitled "Consular relations" had been included in the provisional agenda of the seventeenth session under operative paragraph 11 of General Assembly resolution 1685 (XVI), dated 18 December 1961, concerning the convening of an international conference of plenipotentiaries on consular relations at Vienna at the beginning of March 1963. The decision to include the item was taken "to allow further expressions and exchanges of views concerning the draft articles on consular relations" which were set forth in chapter II of the report of the International Law Commission covering the work of its thirteenth session<sup>1/</sup> and which were referred to the future Conference of plenipotentiaries at Vienna as the basis for its work.

<sup>1/</sup> Official Records of the General Assembly, Sixteenth Session, Supplement No. 9 (A/4843), paras. 8 to 37.

4. The General Assembly also requested Member States, in operative paragraph 2 of the aforesaid resolution 1685 (XVI), "to submit to the Secretary-General written comments concerning the draft articles" on consular relations prepared by the International Law Commission "by 1 July 1962, in order that they may be circulated to Governments prior to the beginning of the seventeenth session of the General Assembly". The Secretary-General, in a note verbale of 21 February 1962, asked Governments for their written comments. The Governments of twenty-two Member States and the Government of one non-member State invited to participate in the future Vienna Conference sent in such written comments, which appear in document A/5171 and Add.1 and 2.
5. The Secretary-General submitted a note (A/5191) reviewing the background of the item entitled "Consular relations".

## II. PROPOSAL

6. The United Kingdom of Great Britain and Northern Ireland submitted a draft resolution (A/C.6/L.515) under which the General Assembly would (1) request the Secretary-General to transmit to the Conference on consular relations the summary records and documentation relating to the consideration of this item at the seventeenth session; and (2) Invite States which intended to participate in the Conference to submit to the Secretary-General as soon as possible, and in any event not later than 10 February 1963, for circulation to Governments any amendments which they might wish to propose in advance of the Conference to the draft articles prepared by the International Law Commission.

## III. DISCUSSION

- (a) Draft articles on consular relations prepared by the International Law Commission and referred to the Vienna Conference of 1963
7. The representatives who spoke in the discussion on this item congratulated the International Law Commission on its work on consular relations and said that it would be desirable and useful to codify the rules of international law which were applicable or capable of application in that connexion.

8. It was also stated that the conclusion of a general multilateral convention on a subject in which international custom had not so far presented the characteristics of uniformity and generality observable in other cases - such as that of diplomatic relations - would be a great step forward in the codification and progressive development of international law and would at the same time strengthen friendly relations among States and peoples in political, commercial, economic, cultural and scientific matters, irrespective of their differing constitutional and social systems.

9. Most of the representatives who took part in the discussion referred to the observations made by their delegations at the General Assembly's sixteenth session on the draft articles prepared by the International Law Commission, and to the comments on the draft articles sent in by Governments in reply to the Secretary-General's note verbale (see para. 4 above). A number of representatives, however, without prejudice to their Governments' position at the future Vienna Conference, advanced new or additional general considerations with regard to the principles on which the draft articles were or should be based and to specific provisions thereof.

10. These representatives considered the draft articles as a whole to be an excellent basis of work for the Conference to be held at Vienna at the beginning of March 1963. Many of them expressed, at the same time, approval of the basic principles embodied in the draft articles. It was emphasized that the draft articles formed a balanced whole which would unquestionably be of great assistance to the future Conference in adopting a general multilateral convention on consular relations which would satisfy all or most of the interests there represented.

11. Several representatives said that the draft articles reflected, in broad outline, the modern development of international law on the subject. Some expressed satisfaction that the Commission had based its work on the principle of respect and mutual consent in consular relations, thus eliminating all traces of the system of capitulations which was historically bound up with consulates in certain parts of the world. It was also noted with approval that the draft articles sought to place consular relations on a footing of equality, taking into account the interests of all States, large and small, and were based on the latest bilateral conventions and practice.

12. Other aspects of the draft articles, in particular those concerning consular privileges and immunities, were more controversial. Some representatives laid stress on the similarities between consular and diplomatic relations. Others, on the contrary, pointed out that such similarities did not mean that the two kinds of functions were identical, for whereas persons exercising diplomatic functions were in essence political representatives, those exercising consular functions were really economic and commercial representatives. The Committee members holding the latter view did not think that consular representatives should be accorded the same treatment as diplomatic representatives, and they stressed that the future convention should clearly indicate the basic distinction between consular and diplomatic functions. They also considered that this distinction was the real source of the difference in legal status as between consular and diplomatic representatives, since in modern international law the legal status of both was ultimately justified by the need to safeguard and protect in an effective manner the exercise of their respective functions and the respect to which the dignity of their office entitled them, and not, as in the past, by the more or less representative character of diplomatic and consular functions or by the legal fiction of the extraterritoriality of embassies and consulates. The view was also expressed that an excessive broadening of consular privileges and immunities, which were not justified by the requirements of the consular function, was prejudicial to the interests of the smaller countries, particularly those which had just constituted themselves into independent States.

13. It was pointed out in this connexion that one of the most difficult problems which the future Vienna Conference would have to solve was precisely the problem of the present or eventual duality of diplomatic and consular status vesting in the same person as a result of the introduction of a single diplomatic and consular service in most States and the exercise by the members of that service of diplomatic or consular functions on the sole basis of the post to which they were assigned. Difficulties are apt to arise in practice in the determination of the privileges and immunities which apply to or may be claimed by such persons.

14. Some representatives stated that the future Vienna Conference should also devote considerable attention to the nature of the rules applicable to consular relations. A reasonable balance must be struck between, on the one hand, the existing rules of international law, whether derived from customary law or based on conventions, and, on the other hand, the relevant internal regulations. Every provision embodied in the future general multilateral convention will have to reflect this balance so that the changes in the domestic regulations which the conclusion of such a convention may necessitate can be accepted without opposition by the public and the parliaments of the States which might become parties to the convention.

15. The views expressed during the discussion which related to specific provisions of the draft articles were considered mainly with the articles governing "consular relations in general" and "facilities, privileges and immunities of consular officials and employees".

16. Among those articles concerning "consular relations in general" which were referred to in the discussion, article 5, dealing with consular functions, was the principal object of attention on the part of the representatives who spoke. While some speakers favoured a non-exhaustive enumeration of consular functions in accordance with the procedure followed in the draft articles, others expressed a preference for a general definition of those functions. With regard to the question which functions should be expressly mentioned in article 5 of the draft articles, some representatives thought that the function of furthering the development of relations between the sending State and the receiving State should be included, for they felt that consular functions in the world of today were no longer limited to the traditional one of protecting in the receiving State the interests of the sending State and of its nationals. The view was also expressed that the functions enumerated in article 5 should include the function of arbitrator or conciliator ad hoc in any disputes which nationals of the sending State submitted to a consul, provided that this was not incompatible with the laws and regulations of the receiving State. Other representatives stated that a distinction should be made between the functions proper to a consul and other functions, with a view to including in the future convention an express provision

that the latter functions would be subject to the laws and regulations of the receiving State. Some representatives similarly believed that those aspects of a consul's or consular official's functions which required him to act as notary or civil registrar should be subordinated to the legislation or agreement of the receiving State. Lastly, it was emphasized that the question of defining consular functions was difficult and complex and that, in consequence, any attempt to deal with that question in summary fashion at an international conference which would necessarily be pressed for time would do more harm than good.

17. The question was also raised of the consequences with regard to recognition where one of the most important consular functions, namely, the protection in the receiving State of the nationals of the sending State, was being exercised, but where there had been no previous recognition. The question, in other words, is whether the exercise of this function, or the granting of authorization for its exercise, does or does not imply that the State exercising the function recognizes the authorities of the territory in which the function is being exercised and vice versa.

18. The other articles dealing with "consular relations in general" were the subject of only isolated comments by a few representatives. The topics thus commented upon were the status of the head of a consular post (articles 8, 14, 17 and 18), the classes of heads of consular posts (article 9), the exequatur (article 11) and its withdrawal (article 23), the temporary exercise of the functions of head of a consular post (article 15), notification of the order of precedence as between the officials of a consulate (article 21), the appointment of nationals of the receiving State (article 22) and the right to leave the territory of the receiving State (article 26).

19. Thus it was considered desirable that the classes of heads of consular posts should be enumerated, but some concern was expressed at the apparent tendency of the draft articles to give to the head of a consular post a position comparable to that of the head of a diplomatic mission. It was indicated that the question of the admission of consular agents or agencies should be regulated by means of bilateral conventions. It was considered that the text of the convention should state explicitly that granting of the exequatur could be refused by the receiving State and that the latter was not obliged to give reasons either for its refusal

to grant the exequatur or for the latter's subsequent withdrawal, in accordance with the provisions, mutatis mutandis, of the Convention on Diplomatic Relations. With regard to the temporary exercise of the functions of head of a consular post by an acting head, it was represented, on the one hand, that the draft seemed unduly restrictive in the choice of the persons who might exercise those functions temporarily and, on the other hand, that it would be necessary to add, in the case of the choice falling upon a member of the administrative or technical staff, that the consent of the receiving State would be required and that the person in question would enjoy only the prerogatives essential to the exercise of those functions. It was also stated that the necessary communication of the name of the acting head, or communication of the order of precedence as between the officials of a consulate, should be made through the diplomatic mission to which the head of the consular post in question was subordinate. Furthermore, the wording of the article concerning the appointment of nationals of the receiving State was regarded as unnecessarily restrictive, since that State could refuse to grant the exequatur for reasons of nationality. Finally, with regard to the end of consular functions, it was stated that the right of members of the family to leave the territory of the receiving State should be subject to the provisions of the laws of the receiving State, since such members of the family might be nationals of that State, although the persons enjoying the consular privileges and immunities involved, on whom they are dependent, might not be nationals thereof.

20. The provisions of the draft articles concerning the "facilities, privileges and immunities of consular officials and employees" which were mentioned by some representatives during the discussion were those dealing with inviolability of the consular premises (article 30), freedom of communication (article 35), communication and contact with nationals of the sending State (article 36), obligations of the receiving State (article 37), personal inviolability of consular officials (article 41), immunity from jurisdiction (article 43), the exemption, from obligations in the matter of registration of aliens and residence and work permits, of career consular officials (article 46) and honorary consuls (article 62), the exemption from taxation, of career consular officials (article 48) and honorary consuls (article 63), the exemption, from customs duties,

of career consular officials (article 49) and honorary consuls (article 63), acquisition of the nationality of the receiving State (article 52), and inviolability of the consular archives and documents of a consulate headed by an honorary consul (article 60). Almost all who spoke on these articles advocated limiting their content or making their meaning clearer.

21. In the matter of the "facilities, privileges and immunities relating to a consulate", the provision for the inviolability of the consular premises was regarded, by some, as unduly liberal. Others considered that it provided for a right essential to the exercise of consular functions. It was added, however, that for reasons connected with security, fire or force majeure the agents of the receiving State should be authorized to enter the consular premises. It was considered that inviolability of the consulate's official correspondence should not apply to correspondence found in possession of nationals of the receiving State or of any other private individual. The protection extended by the draft articles to the consular bag was thought to be excessive. The right of nationals of the sending State to communicate with the consular officials of their country was stressed as essential to the exercise of consular functions, and it was represented that the right should be strengthened even more in the wording of the relevant provisions. On the other hand, it was thought that an exception should be made in the case in which the national himself clearly indicated that he did not desire to communicate with his country's consular officials, and that the right of visit by consular officials, in cases of detention or imprisonment, should be similar to that enjoyed by legal representatives under the criminal procedure laws. It was also suggested that among the obligations of the receiving State should have been included the obligation to inform the sending State of searches carried out in ships, boats or aircraft flying the flag or bearing the markings of the sending State or belonging to its nationals. Finally, it was also said that the articles dealing with communication and contact with nationals of the sending State and with the obligations of the receiving State seemed completely foreign to the main context of the draft articles, and that it would therefore be better to delete them.



22. Some of the articles dealing with the "facilities, privileges and immunities regarding consular officials and employees" were also the target of criticism which would limit their scope, particularly as regards the case of honorary consuls. It was stated that the wording of the provision on the personal inviolability of consular officials went too far, and that it ought not to cover serious offences. The immunity from jurisdiction provided for, it was said, seemed somewhat excessive and should be specified more clearly, being limited to the official exercise of consular functions. In connexion with immunity from jurisdiction, the problem was raised of compensation for the victims of traffic accidents caused by members of consulates. It was also suggested that exemption from obligations in the matter of registration of aliens and residence and work permits should be granted solely on a basis of reciprocity. The provisions concerning exemption from taxation and from customs duties seemed, to some representatives, to be too liberal. Lastly, it was stated that a clearer distinction should be drawn between the consular archives and documents in charge of an honorary consul, which enjoyed inviolability, and the other archives and documents in his possession, since the latter were not inviolable.

23. Some representatives stated that the provision relating to the acquisition of the nationality of the receiving State would raise constitutional problems in many countries and that it should therefore be the subject of a separate protocol, as was done at the 1961 Vienna Conference in the case of the corresponding provision of the draft articles on diplomatic relations.

24. It was also recalled that the question of the exercise of consular functions by diplomatic missions, mentioned in article 2, paragraph 2 and in articles 3 and 68 of the draft, had not been resolved at the Vienna Conference on Diplomatic Relations because it had been felt that it could be dealt with more appropriately in connexion with the codification of consular relations. Some representatives stated in that regard that the express consent of the receiving State should be required for such exercise.

25. Some representatives suggested that the Conference should include in the future convention provisions which did not appear in the draft articles. Thus, it was observed that the future convention should contain a preamble, stating that the privileges granted by the convention were accorded for the purpose of

guaranteeing the exercise of consular relations and not for the personal benefit of the officials concerned; a new article on the interruption of consular relations, such as had been included in the original draft of the Special Rapporteur; a federal clause; provisions regarding possible reservations to the convention; and final clauses modelled on articles 48 to 53 of the Vienna Convention on Diplomatic Relations. While some representatives favoured the inclusion of a clause stipulating that the privileges and immunities conferred by the future convention should be subject to the principle of reciprocity, others maintained that such a procedure would merely increase the present diversity of treatment and might result in inequality and discrimination. It was also added that the question of the settlement of any controversies with regard to the application or interpretation of the terms of the convention should be dealt with in a separate protocol, as had been done in the case of the Convention on Diplomatic Relations and the Conventions on the Law of the Sea.

26. Lastly, as regards form, it was stated that the future Conference should regroup some of the articles, but that the division into chapters and sections should be maintained, with appropriate sub-titles, as in the draft submitted by the International Law Commission.

(b) Submission of amendments to the draft articles prior to the opening of the 1963 Vienna Conference on Consular Relations

27. In the course of the debate on "consular relations", the procedural point was raised regarding the submission of amendments to the draft articles on consular relations prior to the opening of the Vienna Conference scheduled for the beginning of March 1963. It was suggested that, in order to facilitate initial negotiations and to save the future Conference's time, States which intended to participate in the Conference should be allowed to transmit to the Secretary-General for circulation to Governments any amendments which they might wish to propose to the draft articles, in advance of the Conference. In this way, Governments which wished to participate in the Conference, would be aware of each other's intentions and positions as regards the actual text of the draft articles and would therefore be prepared to act from the very first day of the Conference.

28. This practical suggestion was favourably received by the representatives who spoke on the subject and was given expression in operative paragraph 2 of the draft resolution (A/C.6/L.515) subsequently adopted by the Committee.

29. In the discussion preceding the adoption of the draft resolution (A/C.6/L.515) it was made clear that: (1) such preliminary amendments will be presented for information purposes and will not be formally before the Conference; (2) their nature, priority, and subsequent action upon them will depend on the rules of procedure adopted by the Conference; (3) the word "amendment" also includes new proposals; (4) the reason for the time-limit for submission - not later than 10 February 1963 - is to enable the Secretary-General to circulate the amendments to Governments in good time; (5) amendments received by the Secretary-General after that date will be communicated directly to the Conference; (6) the possibility of submitting such preliminary amendments in no way detracts from the right of the participating States to propose amendments during the Conference. Lastly, the suggestion was made that the Secretariat should group these amendments by articles and not by countries in transmitting them to Governments.

#### IV. VOTING

30. At its 775th meeting on 6 December 1961 the Sixth Committee adopted unanimously the draft resolution of the United Kingdom of Great Britain and Northern Ireland (A/C.6/L.515).

#### V. RECOMMENDATION OF THE SIXTH COMMITTEE

31. The Sixth Committee recommends the following draft resolution to the General Assembly for adoption:

International conference of plenipotentiaries on consular relations

The General Assembly,

Recalling that by its resolution 1685 (XVI) of 18 December 1961 it decided to convene an international conference of plenipotentiaries at Vienna at the beginning of March 1963 to consider the question of consular relations and referred to the conference Chapter II of the report of the International Law Commission covering the work of its thirteenth session,<sup>2/</sup> together with the records of the relevant debates in the General Assembly, as the basis for its consideration of the question,

Having considered the item entitled "Consular relations" at its seventeenth session,

Having heard the further expressions of opinion and exchanges of views on the draft articles on consular relations prepared by the International Law Commission,<sup>3/</sup>

Considering that the work of the Conference would be facilitated if States which intended to participate were to submit in advance of the Conference amendments which they might wish to propose to the draft articles prepared by the International Law Commission, and that their action in so doing would be without prejudice to their right to propose amendments in the course of the Conference.

1. Requests the Secretary-General to transmit to the Conference the summary records and documentation relating to the consideration of this item at the seventeenth session;

2. Invites States which intend to participate in the Conference to submit to the Secretary-General as soon as possible, and in any event not later than 10 February 1963, for circulation to Governments any amendments which they may wish to propose in advance of the Conference to the draft articles prepared by the International Law Commission.

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2/ Official Records of the General Assembly, Sixteenth Session, Supplement No. 9 (A/4843).

3/ Ibid., para. 37.