Document:-
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Summary record of the 506th meeting

Topic:
Consular intercourse and immunities

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59. The CHAIRMAN shared the Special Rapporteur's view that the agreement referred to in the original paragraph 2 must be subject to the reservation of certain powers exercisable by the State of residence. The sentence to be added to the original paragraph 2 might be drafted along the following lines: "In exceptional cases, the State of residence may, after consultation and for urgent reasons, make unilateral changes in the consular district or seat."

60. Mr. TUNKIN endorsed the Special Rapporteur's suggestion.

61. Mr. FRANÇOIS thought that the Drafting Committee should be extremely cautious in drafting the suggested additional clause. In his opinion, it was impossible for the State of residence to fix a consular district or seat. That State could not impose its will on the sending State, but could at most propose a change; if the proposal was not accepted, there would be no agreement and the consular district or seat could not be established. He therefore thought that it would be unsatisfactory merely to say that the State of residence could change a consular district or seat in exceptional cases.

62. The CHAIRMAN agreed with Mr. François that the State of residence could not impose its will on the sending State; in the case of inability to reach agreement, however, consular relations would come to an end in respect of the district or seat concerned.

63. On that understanding, he suggested that the Drafting Committee should be requested to prepare the provision in question.

It was so agreed.

The meeting rose at 6 p.m.

506th MEETING

Tuesday, 2 June 1959, at 9.55 a.m.

Chairman: Sir Gerald FITZMAURICE

Consular intercourse and immunities (A/CN.4/108, A/CN.4/L.79, A/CN.4/L.80, A/CN.4/L.82) (*continued*)

[Agenda item 2]

DRAFT PROVISIONAL ARTICLES ON CONSULAR INTERCOURSE AND IMMUNITIES (A/CN.4/108, PART II) (*continued*)

ARTICLE 2 (*continued*)

1. The CHAIRMAN noted that agreement had been reached on the substance of paragraphs 1 to 3 of the redraft of article 2 (see 505th meeting, para. 10). Paragraph 4 was consequential on paragraph 3 and not controversial. He therefore suggested that paragraphs 1 to 4 should be referred to the Drafting Committee.

It was so agreed.

2. Mr. SANDSTRÖM thought that the Drafting Committee should be recommended to insert a reference to a consul, as well as to consulate, in paragraph 5.

3. The CHAIRMAN agreed with Mr. Sandström. He asked Mr. Edmonds whether he wished to maintain his proposal for a most-favoured-nation clause in article 2 (see 498th meeting, para. 14 (ii)).

4. Mr. EDMONDS though that the clause would be useful. However, since some members had pointed out that the question of most-favoured-nation treatment arose in connexion with other articles of the draft, he would have no objection to including the clause elsewhere.

5. The CHAIRMAN suggested that article 2 as a whole should be referred to the Drafting Committee, on the understanding that the Special Rapporteur would draft a paragraph, or perhaps a new article, on the right of consulates to acquire premises and would also draft a definition of consular districts and seats.

It was so agreed.

ARTICLE 3

6. The CHAIRMAN invited the Special Rapporteur to introduce article 3 of his draft.

7. He drew attention to the following amendment submitted by Mr. Sandström:

"(i) Replace the first sentence of paragraph 2 by the following.

'Heads of consulates shall take precedence in their respective classes in the order of the date of the granting of the exequatur.'

"(ii) Place the amended paragraph as a new article after article 8."

8. Mr. ZOUREK, Special Rapporteur, introducing article 3, said that the main purpose of the article was to codify the existing practice of classifying consular officers who were heads of posts. The intention was to draw up a codification relating to consuls which would be similar to that established for diplomatists more than 140 years previously by the Congresses of Vienna and Aix-la-Chapelle. He referred to his commentary on article 3. The four classes mentioned were enumerated in the legislation of many countries and in many international conventions, both old and recent. In particular, as would be seen from paragraph 6 of the commentary, many recent consular conventions specified those four classes of heads of consular offices. While the legislation of some countries did not include all the four classes, the proposed codification would probably meet with general approval. The codification would not mean that all States would be obliged to introduce four classes into their consular practice. For example, those States whose laws did not mention consular agents would not be obliged to introduce legislation referring to them.

9. He stressed that the four classes related only to "heads of consular offices" and that those words should replace "consular representatives" at the beginning of paragraph 1. He referred to the discussion of terminology in chapter VI of part I of his report. As explained there, the term "consular agents" had been used in the past in a generic sense to mean all consular officers; in article 3 it had a technical sense (see commentary, para. 7). He could not accept the suggestion that consular agents should form the subject of a separate article. It was true that consular agents were sometimes appointed by consuls-general or consuls and that they held full powers which were not known as commissions but as *"patentes"*, *"licences"* or *"brevets"*, as the case might be. But it was equally true that, in the case of many States, consular agents were appointed by the central government in the same way as heads of posts belonging to the other categories of consul. He conceded that, under the laws of some countries, consular agents had more limited powers than did consuls-general or consuls, for example. But that was

an internal matter for the States concerned and it could not be said to affect the legal status of such a consular official. The argument that the legal status of consular agents might be affected by the fact that they were appointed in a different way was difficult to sustain, once it was admitted that that was a question which each State had the exclusive right to decide. It was equally difficult to maintain that any limitations placed on the activities of a consular agent by the internal legislation of the sending State could be used as an argument against including such consular officials in the proposed classification, since that same classification was also to apply to honorary consuls, whose powers were almost always more limited than those of career consuls. Moreover, the same objection might be made with regard to those vice-consuls who, under the laws of some countries, were appointed by consuls-general or consuls and had more limited powers than those appointing them; yet no one had challenged the right of such vice-consuls to be included in the proposed classification. Accordingly, consular agents should continue to be mentioned in the article dealing with the heads of consular posts, and they should, at any rate provisionally, be placed on the same footing as other heads of posts. It was nevertheless desirable to draw the attention of Governments to the existence of heads of posts in that category and to ask them for detailed information; that would enable the Commission to have a solid basis for its final decision on the point when the time came to take it.

10. Furthermore, article 3 referred only to titular heads of posts; there was no intention of restricting the power of each State to decide what rank should be given to consular officials and employees attached to the head of the post and working under his orders and responsibility.

11. He could accept Mr. Sandström's amendments to paragraph 2, which dealt with questions of precedence. Mr. Sandström's proposal that the paragraph should constitute a separate article seemed to be reasonable. In any case, he thought that the Commission's debate should concentrate on the question whether codification of the four classes was desirable and whether all four classes should be maintained. Matters of detail could be left to the Drafting Committee.

12. The CHAIRMAN thought that, in addition, some general questions should also be discussed in connexion with article 3. With regard to the use of the term "consular representatives", the Special Rapporteur had explained in chapter VI of his report the reasons why he had felt it inadvisable to use the words "consul" and "consular agent"; he had not, however, given any reasons for not using the term "consular officer". The earlier discussion had shown that the admissibility of the words "consular representative" depended on the view taken of the nature of consular relations.

13. In chapter IV of his report the Special Rapporteur explained his reasons for omitting reference to honorary consuls from chapter I. The Commission would have to decide whether so important and widespread an institution could be altogether neglected in the draft.

14. Finally, he pointed out that the exequatur was mentioned for the first time in paragraph 2. It might be advisable to include a brief definition of the exequatur in article 2. However, that might be merely a drafting point.

15. Mr. ZOUREK, Special Rapporteur, said that some members had considered the term "consular representatives" unduly pretentious and had pointed out that the word "representative" had not been used in the draft articles on diplomatic intercourse and immunities. Although he believed that the term "representative" would be the most accurate term in both drafts, he was prepared to meet the objections raised by using the word "consul" in the generic sense and explaining in the commentary that it referred to the four classes enumerated in paragraph 1. The word was commonly used in that sense and authority for its use with that meaning was contained in a large number of international conventions as well as in textbooks.

16. He pointed out that, in his draft, honorary consuls were referred to under chapter III of part II; the privileges and status of honoray consuls formed the subject of draft articles 35, 36 and 37. He had had to bear in mind the fact that States which granted certain privileges and immunities to career consuls were not prepared to extend them to honorary consuls. Honorary consuls had a hierarchy similar to that of career consuls, but belonged to a different *category* and did not form a class of consul. The institution of honorary consuls was very important to some States and should accordingly have a place in the draft; nevertheless, it would be better not to discuss the matter in connexion with article 3, since all the provisions relating to honorary consuls had been brought together in chapter III of the draft articles and would be discussed when the Commission came to consider that chapter.

17. Mr. VERDROSS proposed that the class of consular agents should be omitted; he had made that proposal (A/CN.4/L.79) because no such class was included in Austrian legislation. However, in view of the Special Rapporteur's statement that the codification would not affect domestic legislation, he was prepared to withdraw his amendment, if the majority of the Commission wished to retain the reference to consular agents.

18. He agreed with the Special Rapporteur's view that honorary consuls could in fact belong to any of the classes mentioned and that no reference to them should be inserted in article 3.

19. Mr. GARCIA AMADOR said he doubted whether it was appropriate to introduce such a rigid classification into article 3. The Special Rapporteur had drawn an analogy between that classification and the enumeration in article 13 of the draft articles on diplomatic intercourse and immunities; there was a great difference between the two, however, and very few multilateral treaties on consular matters attempted to make a complete classification. The reason was that countries had to modify their domestic legislation to conform with the provisions of such treaties; that difficulty always arose when categories were established. His doubts had been further increased by the Special Rapporteur's assertion that States accepting the classification would not be committed to adhering to the system. In that case, the classification seemed to be useless. He would make no concrete proposal on the subject, but wished to draw attention to article 2 of the Havana Convention of 20 February 1928 regarding consular agents[1], which provided that the form and requirements for appointment, the classes and the rank of consuls should be regulated by the domestic laws of the respective States. That implied that codification was valid only if domestic law was not at variance with it. The Commission should

[1] See *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities*, United Nations Legislative Series, vol. VII (United Nations publication, Sales No.: 58.V.3), pp. 422 *et seq.*

ponder the usefulness of establishing uniform rules. It might be better to draft a flexible text, in order to enable all States to use the code to the best advantage.

20. Mr. LIANG, Secretary to the Commission, endorsed Mr. García Amador's remarks. He thought an effort should be made to achieve correspondence with the classification of diplomatic agents. Article 1 of the draft on diplomatic intercourse and immunities defined the term "diplomatic agent" as the head of the mission or a member of the diplomatic staff of the mission; the juxtaposition of the two drafts would show a striking difference in that the term "diplomatic agents" was used in a generic sense, while "consular agent" would be used to denote a specific class of official. In that connexion, he drew attention to paragraph 7 of the commentary on article 3.

21. In many conventions, particularly in bilateral conventions, provision was made for consular agents, but there was a tendency in some of those instruments and in the writings of jurists not to observe the distinction between the generic and the technical use of the term. In practice, it might be said that the first three classes represented a frequent phenomenon of consular accreditation, while the system of appointing consular agents was becoming obsolete. The term was sometimes also used to describe honorary consuls or to mean commercial agents, as in article 4 of the 1928 Havana Convention which referred to a commercial agent appointed by the respective consul. Furthermore, the Convention of Friendship and Consular Relations between Denmark and Paraguay, signed at Paris on 18 July 1903,[2] provided in article VII that provisional consular agents might be appointed by consuls-general or consuls. He doubted, therefore, whether the existing practice justified placing consular agents in the technical sense in one of the four classes. The best course might be to ask Governments to furnish information on whether consular agents existed in their systems; the Commission might then decide whether the class should be maintained, or whether a reference to consular agents should be made in a separate paragraph.

22. Mr. YOKOTA was glad that the Special Rapporteur had decided to amend his original text so that paragraph 1 related only to heads of consular offices. He also endorsed Mr. Sandström's amendment to the first sentence of paragraph 2 (see para. 7 above).

23. He thought, however, that it might be wise to delete the last sentence of that paragraph, which seemed to raise questions of unnecessary detail. The draft articles on diplomatic intercourse and immunities contained no provision concerning the precedence of members of the staff of diplomatic missions, but only provisions concerning precedence among the heads of such missions. The same course should be followed in the draft on consular intercourse and immunities. Moreover, the provision raised some complicated questions, such as the precedence of consular officials of different classes. It would therefore be wiser to eliminate all difficulties by deleting the sentence.

24. Mr. MATINE-DAFTARY considered that, with the substitution of the words "heads of consular offices" for "consular representatives", paragraph 1 would not correspond to all situations arising in practice. Under the new wording, the classification would be comparable to that in article 13 (*Classes of heads of mission*) of the draft on diplomatic intercourse and immunities. However, in consular practice the question of territorial distribution also arose. He thought the expression "consular officers" would be preferable.

25. He agreed with members who considered the fourth class of the enumeration to be superfluous. Consular agencies were becoming increasingly rare; the term was reminiscent of the capitulations system. Moreover, a consular agent could hardly be the head of a consular office. In practice, such agents had formerly been sent out by consuls or vice-consuls to remote parts of the country of residence as their representatives, but under modern conditions such cases were unlikely to arise often.

26. With regard to paragraph 2, he did not think it accurate to make the ranking of the four classes dependent on the date of the granting of the exequatur; it might be better to model the provision on article 12 (*Commencement of the functions of the head of the mission*) of the draft on diplomatic intercourse and immunities. Finally, he said he did not fully understand the *raison d'être* of the last sentence of paragraph 2, and asked for an explanation.

27. The CHAIRMAN thought that there had been some misunderstanding concerning the last sentence of paragraph 2. It did not deal with precedence among the members of the same consular office. If, for example, the consulate of one of two sending States was headed by a consul-general who had consuls under him, and the consulate of the other State was headed by a consul, the consul who was the head of the office would take precedence over the consul of the other country, because the latter had a consul-general as the head of the mission.

28. Mr. YOKOTA observed that the Chairman's example covered only one aspect of the difficulty. The sentence did not cover the question of precedence between consular officers of different classes, for instance, between a vice-consul who was the head of the office of one State and a consul who was not the head of the office in the same country of residence. Many similar difficulties would arise if such a detailed provision were retained.

29. Mr. EDMONDS thought that the article was both unnecessary and undesirable. Paragraph 1 stated categorically that consular representatives should be divided into four classes. But who would make the division, and to what purpose? As the Special Rapporteur had said, the Commission's draft would not affect national legislation and, moreover, the classification was inconsistent with the legislation of certain countries. The mandatory form in which the article was drafted was therefore inappropriate. At most, the article should state that the title of a consular representative should be determined by the sending State and that the two States concerned should agree on the class to which each representative belonged. To say more than that would be trespassing on the province of domestic legislation.

30. Mr. ZOUREK, Special Rapporteur, said that none of the arguments had convinced him that the article was unnecessary or undesirable. Mr. Edmonds seemed to have misunderstood his statements. The enumeration in no way imposed acceptance of all the four classes. All that States would be undertaking by agreeing to the text proposed in article 3 would be to place the heads of their consular posts abroad in one or the other of the categories referred to in article 3; moreover, many

[2] *Ibid.*, pp. 430 *et seq.*

recent consular treaties and conventions referred to all four. Indeed, the United States of America had concluded a consular convention with the United Kingdom on 6 June 1951,[3] article 3 of which provided that it should be within the discretion of the sending State to determine whether the consulate should be a consulate-general, consulate, vice-consulate or consular agency. There was no danger or disadvantage in stating the existing practice in the matter. No sending State had ever used a different nomenclature. Any State was free to choose whichever of the four classes was best suited to its purposes.

31. The Chairman had correctly interpreted the meaning of the last sentence of paragraph 2. The sentence served a useful purpose, since the paragraph did not constitute a separate article. In addition to heads of posts, a consular corps in the wider sense could also contain consuls to whom an exequatur had been granted but who were not the heads of consular posts.

32. The CHAIRMAN thought that Mr. Edmond's objection might be met if, in paragraph 1, the words "shall be divided into" were replaced by "may consist of". The intention was not to compel countries to appoint officers in the four classes, but to standardize the terminology. In the absence of such a provision, any country might appoint a consular officer with a totally unfamiliar designation.

33. Mr. TUNKIN thought that the misunderstanding over the last sentence of paragraph 2 would be dispelled if it were borne in mind that the precedence in question was that among the consular corps in a particular place or district. The sentence did not relate to precedence as between heads of consular offices throughout a whole country.

34. Some members had criticized the classification in paragraph 1 as too rigid. The Special Rapporteur had pointed out that there were no other classes of heads of consular offices in international practice. Accordingly, the classification was perfectly adequate. Nor was the provision too rigid from the point of view of domestic legislation. The Special Rapporteur and the Chairman had rightly said that no State was obliged to appoint officers of all the four classes. Every State was entirely free to decide for itself.

35. He could not agree with Mr. Matine-Daftary that it was inconceivable for a consular agent to be the head of a consular office. His own country had no consular agents at the present time, but it had appointed such officials several years previously and, earlier still, had had a consular agency in Iran. He recalled the debate in the Commission on the second class of diplomatic heads of mission, in article 13 of the draft on diplomatic intercourse and immunities; it had been argued that envoys were seldom accredited at the present time, but it had been decided not to eliminate the class, because it existed in actual practice. Although the Commission was aware that the class was gradually disappearing, the fact that such officials did exist made it necessary to mention them.

36. The Secretary had said that the generic and specific use of the term "consular agent" might cause confusion. He thought that the problem was one of terminology and might be easily solved by using the word "consul" in a generic sense, to cover all classes of heads of consular offices.

37. Finally, he observed that the question of precedence had not given rise to difficulties during the consideration of the draft on diplomatic intercourse and immunities. The interpretations of the sentence given by the Special Rapporteur and the Chairman were quite clear, but the provision might be inserted in a separate article.

38. Mr. BARTOŠ said that he did not agree with Mr. Matine-Daftary that consular agents were a vestige of the system of capitulations, for they were appointed by many States which had never applied the system. In connexion with the remarks of the Secretary, he said that some countries had recently returned to, or expanded, the system of consular agencies. For example, the United Kingdom, after a study of its consular services, had eliminated, mainly for reasons of economy, a large number of consulates and replaced them in certain cases by consular agencies. Consular agencies were not so expensive to maintain as consulates and were suitable for areas in which the interests of the sending State were not too important. Even in Switzerland there were consular agencies in some of the smaller towns in which certain States had special interests.

39. States which had consular agents wanted them to be represented in the consular corps, and the question of their position *vis-à-vis* other heads of consular offices often gave rise to difficulties in practice. They usually objected if they were not invited to functions of the consular corps, and in practice they were generally ranked after consuls-general, consuls and vice-consuls.

40. In his view the Special Rapporteur had done well to include consular agents as heads of consular offices. It was, of course, for the sending State to decide whether the head of a particular office was to have the rank of consul-general, consul, vice-consul or consular agent, but so far as the State of residence was concerned, the head of a consular agency was a head of office.

41. He therefore agreed with Mr. Tunkin that the question of consular agents should be regulated in the codification because the system of consular agents did exist in practice, even if all countries did not use that institution. Moreover, the Commission had, in its corresponding article on diplomatic intercourse and immunities, included *chargés d'affaires en pied* as heads of diplomatic missions, even though some States did not have that category in their diplomatic service.

42. There were certain fundamental differences between consular agents and the other classes of consular officers. Principally, the mode of accreditation differed. Furthermore, sometimes a consul had the right to appoint consular agents. However, such differences between consular agents and other consular officers were not germane to article 3, except in so far as the references in paragraph 2 to the exequatur were concerned, and would have to be dealt with in a later article.

43. He agreed that the words "consular representatives" should not be used, and considered article 3 acceptable subject to amendments to paragraph 2 in line with existing practice.

44. Mr. FRANÇOIS agreed in principle with the remarks of Mr. Tunkin and Mr. Bartoš. The classes of diplomatic officers had been regulated by the Congress of Vienna, and he thought that the Commission would

[3] Convention between the United States of America and the United Kingdom of Great Britain and Northern Ireland relating to consular officers, United Nations, *Treaty Series*, vol. 165 (1953), No. 2174.

make a useful contribution by introducing some uniformity in the nomenclature of consular officers. He did not agree with Mr. García Amador and Mr. Edmonds that the matter could be adequately dealt with by domestic legislation. Consular relations and also the question of precedence were a subject-matter of international law, and he saw no reason why the Commission could not establish certain categories while leaving it for States which had a different nomenclature to decide to which category their consular officers should be assimilated.

45. He supported the Special Rapporteur's suggestion that the words "consular representatives" in paragraph 1 should be replaced by "heads of consular offices". If that change was adopted, the last sentence of paragraph 2 would be superfluous. In that connexion, he pointed out that the corresponding article on diplomatic intercourse and immunities did not contain such a sentence.

46. As to the question whether a consul who was the acting head of a consulate-general should take precedence over a consul who was the permanent head of a consulate, he thought it might be advisable, in view of the varying practice, to ask Governments for their views and to formulate a provision on the matter when the final draft of the articles was prepared.

47. Finally, he agreed with the Special Rapporteur's remarks concerning honorary consuls. His country made wide use of honorary consuls, and there was no reason to classify them in a fifth category, since honorary consuls could be appointed in any of the four classes already specified in article 3.

48. Mr. SCELLE felt strongly that the term "consul" should not be used in both a generic and a specific sense. He agreed that the best solution would be to use the expression "consular officers" (*fonctionnaires consulaires*) as the generic term. If further classification was necessary, the words "in charge of a consular office" or "heads of posts" (*chefs de poste*) might be added.

49. There was a tendency to confuse the classes of consular officers which a sending State was free to decide upon and the order in which consular officers ranked in the State of residence. It was in the latter connexion that the classes of consular officers were of international interest.

50. There were two types of consular officers which gave rise to difficulties: honorary consular officers and consular agents. In his view, a consular agent was, in principle, in the position of an "acting" consul without being the head of a consular office. Honorary consular officers might be appointed as consuls-general, consuls or vice-consuls, and in the consular corps they enjoyed the same order of precedence, depending on their class, as career officers, even if they were nationals of the State of residence.

51. In his view, if consular agents were included in the classification, honorary consular officers should also be included. While the Special Rapporteur had suggested that honorary consuls should be dealt with in another article, that should not prevent their being mentioned in article 3, where the absence of any reference to honorary consuls would be puzzling.

52. Mr. ALFARO supported Mr. Scelle's view that the word "consuls" should not be used in two meanings and agreed that the best general term would be "consular officers".

53. It was the practice of States to divide their consular officers into different categories. While the classification of the members of a consular service was a matter of domestic law, the existence of categories was, as Mr. Scelle had pointed out, a matter of international interest, and he agreed with the view that States would always be free to organize their consular services as they saw fit within the frame work of certain general categories established by international law.

54. Perhaps some of the difficulty with article 3 was due to the mandatory formulation of the introductory sentence of paragraph 1. The difficulty might be avoided if that sentence were amended to read: "The classes in which consular officers may be accredited are the following:".

55. He agreed that, since the article would be limited to heads of consular offices, the last sentence of paragraph 2 could be omitted.

56. The position of honorary consular officers *vis-à-vis* career officers would have to be considered in connexion either with article 3 or with a subsequent article.

57. As to the question of including consular agents, he pointed out that various countries continued to accredit them. For example, the United States of America had maintained consular agencies at two small towns in Panama where there were relatively small numbers of United States citizens who, however, were in need of consular services.

58. Mr. AMADO recalled his earlier objection (496th meeting, para. 41) to the term "consular representatives".

59. Although Brazil did not have consular agents, he would not object to a reference to such officials in paragraph 1 if the term "consular agents" were not widely used in different senses. It was sometimes used in the generic sense of all consular officers, and paragraph 7 of the Special Rapporteur's commentary to article 3 drew attention to certain specific uses in the legislation of various States. Moreover, article 4 of the Havana Convention of 1928 used the term "commercial agent" to designate a consular agent in the technical sense. While it was true that the term "consular agents" might be included in order to enable Governments to describe their practice in the matter, he thought that it would be best to avoid the terminological confusion if possible.

60. Mr. PADILLA NERVO agreed that the Commission would make a useful contribution by regulating the relative positions of consular officers. It seemed to him that the only way of avoiding the problem of terminology was to insert an introductory definitions article, as in the draft on diplomatic intercourse.

61. There were consular officers who, as career officers, were wholly under the discipline of the sending State and others, honorary officers, who were under such discipline to a limited extent only; in many cases more privileges were accorded to career officers. Again, if a consul engaged in outside gainful activities he was often treated by the State of residence in a different way from full-time officers. On the other hand, in some respects the legal position of both honorary and career officers in the State of residence was the same. The question of honorary consuls was complex but he agreed with the Special Rapporteur that it could be dealt with in a separate article.

62. Referring to paragraph 7 of the Special Rapporteur's commentary on article 3, he expressed some doubt concerning the wisdom of attempting to use the

term "consular agent" in a sense that differed from its generally accepted meaning, and he pointed out that, if consular agents were included as the lowest class of consular officers, certain difficulties would arise in subsequent articles. For example, article 6 would not apply to such consular agents because they were in many cases appointed not by the sending State but by its consul and did not require the exequatur. In his view the best solution would be to omit consular agents from the text of article 3, and include a description of their position and functions in the commentary or in a separate article.

63. He favoured the use of the term "consular officers" in the generic sense with a suitable explanation in the commentary. He agreed with Mr. Scelle that article 3 should contain some reference to honorary consular officers and he also agreed with the speakers who had suggested the omission of the final sentence of paragraph 2.

64. Accordingly, he suggested that: (*a*) an article on definitions should be inserted; (*b*) the term "consular officer" should be used in its generic sense; (*c*) class 4 should be omitted in paragraph 1 and consular agents should be referred to in the commentary or in a separate article; and (*d*) honorary consular officers should be mentioned in article 3.

65. Mr. VERDROSS pointed out that article 3 made no distinction between honorary and career officers, and the precedence of the four classes mentioned would not be affected by the fact that an officer had been appointed in an honorary capacity. If Mr. Scelle insisted on his point, it might be made clear in the commentary that article 3 applied equally to honorary officers.

66. Mr. SANDSTRÖM agreed with Mr. Scelle that the use of the same term in two senses should be avoided and that the best generic term would be "consular officers". He also agreed that honorary consular officers should be mentioned in article 3; however, they should not be listed as a fifth class. A sentence might be added after the enumeration to the effect that consular officers might be career officers or honorary officers. He had thought that the question of rank had been adequately settled in practice, but Mr. François had convinced him that it might be useful to retain paragraph 2 in order that Governments could comment on the question.

The meeting rose at 1 p.m.

507th MEETING

Wednesday, 3 June 1959, at 9.50 a.m.

Chairman: Sir Gerald FITZMAURICE

Consular intercourse and immunities (A/CN.4/108, A/CN.4/L.79, A/CN.4/L.80, A/CN.4/L.82) (*continued*)

[Agenda item 2]

DRAFT PROVISIONAL ARTICLES ON CONSULAR INTERCOURSE AND IMMUNITIES (A/CN.4/108, PART II) (*continued*)

ARTICLE 3 (*continued*)

1. Mr. PAL recalled that the Special Rapporteur had at the very beginning of the discussion of his draft withdrawn the term "consular representatives" (see 497th meeting, para. 29), and it seemed to him that the Commission might have been spared the discussion that had taken place on terminology. For his part, had the Special Rapporteur not withdrawn the term, he could have defended it in view of the changing field of State activities and the increasing importance of the State in consular relations.

2. He supported the amendment of the title to read: "Classes of heads of consular offices" (see 506th meeting, para. 9) and had no objection to Mr. Sandström's amendment, which had been accepted by the Special Rapporteur (*ibid.*, para. 11).

3. Paragraph 1 set out four classes of heads of consular offices. He had listened to the discussion carefully but no one had questioned that the classes specified were the actual categories used to represent the heads of consular offices, or had maintained that any other classes existed. While there had been objection to the inclusion of consular agents, it had been shown that consular agencies were established by some countries, and the Commission's codification could not ignore that fact. Again, it had been argued that the term "consular agents" was unsatisfactory because, being used in a technical sense, it did not correspond to the term "diplomatic agents" which had been used in a generic sense in the draft on diplomatic intercourse and immunities. That was true, but in the latter draft the term had been defined that way only to cover what was dealt with there under that name, whereas in the present draft the term "consular agents" was being used to indicate a particular category of consular officers, actually so designated in practice, and the Commission could not but take account of that practice.

4. He invited the Drafting Committee to bear in mind article 13, paragraph 2, and articles 14 and 15 of the draft on diplomatic intercourse and immunities with a view possibly to include corresponding provisions in relation to article 3.

5. As to the question of mentioning honorary consuls, he supported the Special Rapporteur's solution of dealing with them in a separate article, since honorary consuls were not an additional class of heads of consular offices, but could be placed in any one of the four classes specified in article 3.

6. Mr. YOKOTA pointed out that there had already been considerable debate on the generic term for consular officials. The question would arise repeatedly in connexion with subsequent articles. Nearly all members of the Commission were prepared to accept the term "consular officers" and he suggested that it would save time if the Commission could take a formal decision to that effect as soon as possible.

7. Mr. ZOUREK, Special Rapporteur, announced that he had prepared an article on definitions which would probably be distributed at the next meeting, and thought that it would be best to take up Mr. Yokota's suggestion in connexion with that article. For the present, he would only point out that article 3 dealt exclusively with heads of consular offices whereas in other articles it would be necessary to deal with members of the consular staff. He pointed out that the term "consular officers" should be reserved for all persons, including the heads of consular offices, who, appointed from among the officials of the consular service of a State, exercised their consular functions at a consulate on the territory of the State of residence. Such persons were, apart from the heads of consular offices, consuls and any vice-consuls assisting them, attachés and consular secretaries, consular assistants (*élèves-consuls*), etc. If there was any objection to