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Summary record of the 602nd meeting

Topic:
Consular intercourse and immunities

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85. Mr. SANDSTRÖM, explaining his vote, said that he had voted against the proposal for the same reason. He, too, found the terms of the last sentence of commentary (3) much too broad.

86. Mr. YASSEEN, explaining his adverse vote, said that he regarded the consul as acting as a notary and registrar of the sending State. In that capacity, he was not amenable to the jurisdiction of the receiving State. Any evidence that might be required in respect of acts performed by him in the course of his official duties could be obtained only through the competent authorities of the sending State.

87. The CHAIRMAN said that there remained no question of substance to be decided by the Commission so far as article 42 was concerned. He therefore suggested that the Commission should:

(1) refer article 42 to the Drafting Committee with instructions to revise paragraphs 1 and 3 in clearer terms;

(2) instruct the Drafting Committee to take into account, in paragraph 2, the drafting proposals made by Mr. Amado and by some governments; and

(3) ask the Special Rapporteur to consider the advisability of including in the commentary a reference to the distinction drawn by Mr. Bartoš.

It was so agreed.

The meeting rose at 1 p.m.

602nd MEETING

Friday, 2 June 1961, at 10 a.m.

Chairman: Mr. Grigory I. TUNKIN

Consular intercourse and immunities
(A/4425; A/AC.4/136 and Add.1-11, A/CN.4/137)
(continued)

[Agenda item 2]

DRAFT ARTICLES (A/4425) *(continued)*

ARTICLE 43 (Exemption from obligations in the matter of registration of aliens and residence and work permits)

1. The CHAIRMAN invited debate on article 43 of the draft on consular intercourse and immunities (A/4425).

2. Mr. ŽOUREK, Special Rapporteur, said that the comments received had shown that not all governments had understood the Commission's intention regarding work permits, notwithstanding the explanation given in commentary (4).

3. The Government of Finland (A/CN.4/136) had suggested that the exemption from work permits should be limited to work performed in the consulate. A similar suggestion had been made by the Netherlands Government (A/CN.4/136/Add.4), and the Norwegian Government (A/CN.4/136) had stated that the exemption should not apply to members of the consulate and their families who carried on a gainful private activity outside the consulate. The Governments of Belgium (A/CN.4/136/Add.6) and Spain (A/CN.4/136/Add.8) had expressed similar views.

4. With the object of removing all doubt regarding the Commission's intention, he had in his third report (A/CN.4/137) proposed a redraft containing the qualifying proviso " other than those who carry on a gainful private activity outside the consulate ". On reflection, however, he thought it would be preferable to revert to the 1960 text (A/4425), for he proposed to prepare a general provision dealing with the status of members of the consulate who carried on a gainful private activity outside the consulate. The problem of that status arose in connexion with a number of articles, and it was desirable that it should be settled for all purposes in a single provision.

5. The Polish Government (A/CN.4/136/Add.5) had suggested that article 43 should contain a reference to the practice of issuing special cards to members of the consulate, mentioned in commentary (2). The Drafting Committee might be asked to consider the suggestion, which was consistent with the view expressed in the Commission's own commentary.

6. The only question of substance to be decided by the Commission arose from proposals restricting the scope of application of article 43. In particular, the Governments of Norway, Belgium and Japan (A/CN.4/136/Add.9) took the view that the private staff of members of the consulate should be debarred from the benefits of article 43.

7. He urged the Commission to maintain the provision as it stood; the extension of the exemption laid down in article 43 to private staff was justified on practical grounds, as explained in commentary (3).

8. Mr. YASSEEN said that the exemption from the obligations in the matter of work permits should apply only to work performed in the consulate. The drafting of article 43 should be improved so as to show clearly that it was not intended to grant exemption in respect of a gainful private activity carried on outside the consulate.

9. According to the definitions article, the expression " members of the consulate " included the head of post. However, the head of post was granted an exequatur authorizing him to carry out his official duties. It would only be necessary to specify the exemption from work permits in the case of other members of the consulate and in respect of work done in the consulate.

10. Mr. ŽOUREK, Special Rapporteur, agreed that it was necessary to revise the text of article 43, which was so concise that it had obviously been misunderstood by governments.

11. It was clearly the Commission's intention that no work permit should be needed for work performed by a member of the private staff employed by a member of the consulate. It was equally clear that, in those countries where a work permit was needed, the members of the consulate or their families who carried on a gainful

activity outside the consulate would require such a permit.

12. In fact, the exemption from work permits covered a narrower ground than the exemption from aliens' registration and residence permits. The best course would be to draft a separate paragraph concerning work permits, stating that the exemption applied to the case where a member of the consulate brought a member of his private staff with him from abroad: he would, in that case, not be required to obtain a work permit for that person.

13. Mr. LIANG, Secretary to the Commission, said that he had been struck by Mr. Yasseen's remark that article 43 referred to work done in the consulate itself. The Special Rapporteur had explained the position in that respect. However, there still remained some doubt on the interpretation of the text. A member of the consulate could bring with him from abroad a person belonging to the technical staff, such as a typist. According to the interpretation given by both Mr. Yasseen and the Special Rapporteur, it would seem that such a person was not covered by the exemption, since a typist was not a member of the private staff of the member of the consulate. The intention of the Commission, however, did not, as was evidenced by paragraph (4) of the commentary, seem to have been to confine the exemption only to private staff.

14. He had received many inquiries regarding the meaning of the provisions of article 43 on work permits. The difficulty arose from the fact that the text referred in the same sentence to the registration of aliens, residence permits and work permits, which could not be placed on the same footing. In the circumstances, it would be preferable to make the provision on work permits the subject of a separate paragraph.

15. Mr. YASSEEN suggested that article 43 should contain a separate paragraph stating that the members of the consulate were exempted from work permits in respect of their work in the consulate.

16. Mr. SANDSTRÖM said that, in practice, the requirement of a work permit could refer only to work performed outside the consulate. He thought the best course was to explain the matter in the commentary.

17. The CHAIRMAN thought that the text of article 43 as it stood sufficed, and concurred with Mr. Sandström's suggestion.

18. Mr. YASSEEN did not press for the inclusion of the proposed separate paragraph, provided that the situation was explained in the commentary.

19. Mr. JIMÉNEZ de ARÉCHAGA said that it was important to clarify the text itself, for the article as drafted left the matter in doubt. He suggested that a proviso, along the following lines, be added in article 43 after the words " work permits": " except those which may be required for a gainful private activity outside the consulate."

20. The CHAIRMAN suggested that article 43 should be referred to the Drafting Committee, with instructions to take into consideration the observations of the Government of Finland, and the remarks made in debate: the Committee would decide whether to add a new paragraph or a qualifying proviso, so as to clarify the position regarding work permits.

It was so agreed.

ARTICLE 44 (Social security exemption)

21. Mr. ŽOUREK, Special Rapporteur, said that there was one comment on article 44 by the Netherlands Government, which suggested substituting the words " social security measures " for " social security system ", because some States, in particular federal States, had more than one social security system. That suggestion could be referred to the Drafting Committee.

22. Article 44 was much more elaborate than the corresponding provision adopted by the Commission at its tenth session as article 31 of the draft articles on diplomatic intercourse and immunities (A/3859).

23. The Vienna Conference had in fact adopted, as article 33 of the Convention on Diplomatic Relations (A/CONF.20/13), a text based on article 44 of the draft on consular intercourse, subject to a number of changes, including drafting changes. In the circumstances, article 44 might be approved as it stood and the Drafting Committee should be instructed to consider whether its wording should be brought into line with that of article 33 of the Vienna Convention.

24. However, in some respects it would be inadvisable to adopt the language of article 33 of the Vienna Convention.

25. In the first place, the phrase " with respect to services rendered for the sending State ", which appeared in paragraph 1 of article 33, did not seem necesssary in the consular draft. By virtue of article 54 on honorary consuls, the exemption specified in article 44 did not apply to those consuls, who were the consular officers most likely to be engaged in activities other than the service of the sending State. Moreover, it was his intention to examine at a later stage whether a special article would be needed to describe the legal status of career consuls who were authorized to carry on a private gainful activity in addition to discharging their consular duties. For the time being the point might be left in abeyance until the Commission decided whether an article of that type was to be included.

26. In the second place, the expression " private servants", appearing in paragraph 2 of article 33 of the Vienna Convention, was somewhat old-fashioned and incomplete, because it did not include a private secretary, for example.

27. Lastly, paragraph 5 of the Vienna Convention, which specified that the provisions of article 33 did not affect existing or future bilateral or multilateral agreements, was not necessary in article 44 of the draft because a special article dealt with the relationship between that draft and bilateral conventions.

28. The CHAIRMAN, speaking as a member of the Commission, said that he broadly agreed with the suggestions made by the Special Rapporteur. However, he urged the Commission to follow the wording of the

Vienna Convention as closely as possible. For example, there appeared to be no reason to alter the term " private servants " as used in paragraph 2.

29. The question of the phrase " with respect to services rendered for the sending State " appearing in paragraph 1, probably involved more than drafting. Although article 42 of the Vienna Convention forbade diplomatic agents from engaging in any gainful private activity, it had been considered necessary to include that phrase in article 33, paragraph 1, because the social security exemption specified in that article applied not only to the diplomatic agent himself but also, by virtue of article 37, paragraph 1, of the Convention, to members of his family forming part of his household. If, however, a member of the diplomatic agent's family engaged in an outside private activity, that person would not be exempted from the social security provisions in force in the receiving State.

30. Since the same situation could occur in respect of members of the family of a member of the consulate, it was appropriate to include the phrase in question in article 44, paragraph 1.

31. Mr. AGO said that article 44 dealt with a delicate matter. He therefore agreed with the suggestion that the Drafting Committee should be instructed to bring the text into line with the wording of article 33 of the Vienna Convention. Any departure from that wording could be interpreted as involving a difference of substance.

32. In connexion with paragraph 1, the social security scheme referred to included accident insurance and other benefits related to a person's work. If a member of the family of a member of the consulate worked outside the consulate, that person should be covered against such risks as accident.

33. Mr. PAL said that he had some difficulty in understanding the phrase in article 33 of the Vienna Convention which referred to " services rendered for the sending State." He could not see the connexion between a national health scheme and services rendered to the sending State as stated in the article.

34. The CHAIRMAN explained that, in many countries, the benefit of health insurance, like other social security benefits, was directly related to a person's employment. The phrase in question was intended to specify that the social security exemption referred only to employment by the sending State and not to outside employment. Such outside employment was possible in the case of members of the family.

35. Mr. SANDSTRÖM said that, whereas a diplomatic agent would not of course engage in any outside activity, it was not impossible that one of his subordinates should carry on, in addition to his duties in the diplomatic mission, some outside activity. In that event, the question would arise of the application of a workmen's compensation scheme if he were injured, for example, when proceeding to his work. The same question could arise in the case of a subordinate member of the staff of a consulate.

36. Mr. ERIM pointed out that, by virtue of article 50 of the present draft, article 44 did not apply to members of the consulate who were nationals of the receiving State. In the circumstances, there could be no objection to retaining article 44 as it stood. Members of the consulate who were not nationals of the receiving State would thus not be obliged to participate in the social security scheme of the receiving State. Their voluntary participation, however, was always possible by virtue of article 44, paragraph 4.

37. Lastly, the phrase " with respect to services rendered for the sending State " should not be included, for it would not conform to the structure of the draft as a whole.

38. The CHAIRMAN suggested that article 44, as adopted at the twelfth session, be referred to the Drafting Committee with instructions to take into consideration the wording of article 33 of the Vienna Convention and the remarks made in the course of discussion.

It was so agreed.

ARTICLE 45 (Exemption from taxation)

39. Mr. ŽOUREK, Special Rapporteur, said that article 45 had elicited a considerable number of observations from governments because it dealt with an important matter and one in which the practice of States varied considerably.

40. Some of the government observations were of a general character. The delegation of Ghana in the Sixth Committee at the fifteenth session of the General Assembly (A/CN.4/137, *ad* article 45) had requested that it should be specified whether the exceptions provided for in article 45 were to be regarded as rights or privileges. He had dealt with that question in another context (*ibid.*, *ad* article 36); in conformity with international law the article conferred rights. The United States Government (A/CN.4/136/Add.3), referring to the question of investments, had expressed the view that article 45 seemed to produce results not intended by the Commission.

41. A number of suggestions had been made with a view to restricting the scope of application of article 45. The Governments of Denmark (A/CN.4/136/Add.1) and the United States had suggested that persons permanently resident in the receiving State at the time of their engagement on the consular staff should not be exempt from taxes other than the tax on the salary received from the consulate. The Indonesian delegation to the General Assembly had proposed (as mentioned in his third report) that the exemptions set forth in article 45 should be granted only to consular officials, in other words not to employees of the consulate. A somewhat similar suggestion was made by the Government of Norway. The Governments of Spain and Japan considered that members of the families of members of the consulate should not be eligible for the benefit of article 45.

42. With regard to paragraph 1 (a), the United States Government had stated that the language of the provision was ambiguous: it was not clear whether it referred only to those taxes which were not normally stated separately, or whether it referred to taxes which could not ordinarily be separated out of the price. The Chilean Government (A/CN.4/136/Add.7) had proposed the

deletion of the concluding phrase " incorporated in the price of goods or services".

43. In view of different taxation techniques in different countries, paragraph 1 (a) had proved a difficult provision to draft. His suggestion was that the Commission should adopt the language used in sub-paragraph (a) of article 34 of the Vienna Convention, which spoke of indirect taxes " of a kind which are normally incorporated in the price of goods or services". That language would seem to avoid most of the difficulties pointed out in the government comments.

44. The Government of Norway had suggested that paragraph 1 (b) should be redrafted so as to cover all kinds of property. In the opinion of the Yugoslav Government (A/CN.4/136), it should be provided that a consul was liable to taxation on capital invested for gainful purpose or deposited in commercial banks.

45. The Belgian Government had proposed that at the end of paragraph 1 (e) the words " or as the countervalue of local public improvements " should be added. That expression, as pointed out by the Belgian Government in its remarks on article 32, was intended to cover such services as the improvement of the street or of public lighting, and the installation of water mains.

46. The Swedish Government (A/CN.4/136/Add.1) had suggested that the article should define the expression " members of their families ". Since that expression was used in many articles it would be appropriate, in his opinion, to define it in article 1 under definitions.

47. There were also proposals for additional paragraphs. For example, the Belgian Government had proposed a paragraph specifying that members of the consulate, even if they carried on a gainful private activity, would be exempted from taxes and duties on their remuneration received from the sending State. It would not be appropriate to include such a provision, for the status of honorary consuls was dealt with in article 58. To cover the rare case where a career consul might be allowed to carry on a gainful private activity, he thought that, as he had suggested before, a special clause describing the consul's legal status might be inserted in the draft; that course would be preferable to the method of mentioning exceptions in each one of the relevant articles.

48. The Chilean Government's suggested addition " This provision [i.e. paragraph 2] shall not apply to persons who are nationals of the receiving State " would become unnecessary if an appropriate clause was inserted to article 1 drawing attention to the status of nationals of the receiving State in the consulate's employ.

49. The Government of Japan had proposed that paragraph 1 (a) should read " Excise taxes including sales tax;" the same Government also proposed the deletion of paragraph 2.

50. The only real question of substance to be settled by the Commission was which categories of person should enjoy the exemptions conferred by article 45. The impression he had gathered from their comments was that governments would like the scope of the article to be narrower. Since tax laws varied considerably, he felt bound to suggest, though with some reluctance, that with a view to making article 45 more acceptable the Commission should follow the general lines of articles 34 and 37 of the Vienna Convention. Of course, States could always agree to accord more liberal treatment by bilateral arrangement.

51. The other points raised by governments concerned matters of detail which could be referred to the Drafting Committee. He referred to his redraft of paragraph 1 (a) and (d) as proposed in his third report.

52. Mr. VERDROSS observed that the first objection made by the Norwegian Government was unfounded, since paragraph 1 in article 45 related only to heads of post and members of the consular staff and did not cover employees of the consulate. In fact, the article made no provision whatever for such employees, who should perhaps be mentioned in paragraph 2.

53. The stipulation suggested by the Yugoslav Government that the consul should be liable to taxation on capital invested or deposited in commercial banks was unnecessary, for paragraph 1 (d) dealt with the taxability of private income originating in the receiving State.

54. The wording of article 45 and the Special Rapporteur's proposed amendments were acceptable: it seemed that all the points raised by governments were in fact covered.

55. Mr. MATINE-DAFTARY asked whether the Special Rapporteur would not agree that, given the whole structure of the draft, it should be explicitly stated in paragraph 1 that the exemptions laid down in article 45 did not apply to nationals of the receiving State.

56. He had strongly opposed the clause introduced in the Vienna Convention, on the initiative of the Swiss delegation, that the diplomatic agent's private capital invested in commercial or industrial undertakings in the receiving State should be liable to tax (article 34 (d) of that Convention). Such a provision might be acceptable for a prosperous country like Switzerland which did not need capital, but would be very undesirable in countries short of capital. He saw no justification for such a clause and wondered why the Special Rapporteur had taken it over in his redraft of paragraph 1 (d) in his third report.

57. Mr. BARTOŠ approved of the Special Rapporteur's decision to follow the provision of article 34 (d) of the Vienna Convention because he considered the text of article 45, paragraph 1 (d) of the present draft too general. He would point out to Mr. Matine-Daftary that members of a consulate could not, by reason of the functions, be granted greater privileges than those enjoyed by members of a diplomatic mission. A provision of the kind now included in article 34 (d) of the Vienna Convention would in any case not prevent States from granting exemption by autonomous provisions or from concluding bilateral agreements concerning the taxation of capital invested in the receiving State. Any exemptions agreed upon would form part of the municipal law of that State and depended on its good will. They could not be regarded as forming an international obligation.

58. Mr. FRANÇOIS said that article 34 (f) of the Vienna Convention granted exemption from stamp duty in respect of transactions relating to immovable property

only. In that respect the Vienna Convention was more restrictive than the present draft. He asked for an explanation, and whether paragraph 1 (f) of article 45 of the present draft should be brought into line with the Vienna Convention.

59. Mr. PAL said that article 45 should not be read in the abstract, but should be viewed in the light of the actual taxation laws of various countries. As the article stood, members of the family of a consul would not be exempt from taxes in relation to sources situated in the receiving State. The tax laws of certain countries, including the United Kingdom and certain members of the Commonwealth, based liability on the factum of legal residence. That would render a member of the consul's family liable to taxation on income in the sending State, where such a member was actually resident in the receiving State with the consul. The existing exemption would extend only to such cases.

60. He criticized the proviso in paragraph 1, the effect of which would be to withdraw the exemptions on all forms of income, whatever their source, as soon as the person began to engage in gainful private activity in the receiving State. He doubted if that could have been the Commission's intention. Presumably, the case of a member of the family engaging in gainful private activity was fully covered by the provisions of the paragraph 1 (d).

61. Mr. ŽOUREK, Special Rapporteur, replying to Mr. Matine-Daftary, referred to paragraph 2 (b) of the commentary and explained that the Commission had decided not to insert the proviso excluding nationals of the receiving State from the application of article 45 on the grounds that article 50 fully dealt with their privileges and immunities. Admittedly to mention one condition (namely, that exemption from taxation was only given if the person concerned did not carry on a gainful private activity) without mentioning the other (viz. that he must not be a national of the receiving State) might create some problems of interpretation; on the other hand, it was hardly feasible to repeat both those conditions in every article where they applied. The difficulty might be partly overcome by an explicit statement in article 1 to the effect that consular officials or employees who were nationals of the receiving State were in a special position so far as privileges and immunities were concerned.

62. In regard to the second point raised by Mr. Matine-Daftary, since regulations concerning tax exemption on investments varied widely the best solution would be to follow article 34 (d) of the Vienna Convention. Moreover, it would be difficult to explain a deviation from that text.

63. In reply to Mr. Pal, he observed that according to the tax laws of certain countries the income of persons resident there was taxable whatever its source.

64. The CHAIRMAN, referring to the question asked by Mr. François, said that he could not recall exactly why article 34 (f) of the Vienna Convention had been approved in that form.

65. Mr. FRANÇOIS said that there was a real difference of substance between article 34 (f) of the Vienna Convention and article 45, paragraph 1 (f), of the draft, according to which all stamp duties would have to be paid.

66. The CHAIRMAN suggested that the Drafting Committee might be instructed to examine the records of the discussions on that point at the Vienna Conference so as to discover the reason for its formulation of article 34 (f) of the Vienna Convention and whether article 45, paragraph 1 (f), of the present draft should be modelled on that clause.

It was so agreed.

67. The CHAIRMAN said that the Commission seemed generally in favour of the Special Rapporteur's redraft of paragraph 1 (a) and (d), and was agreed that article 45 should, where necessary, be brought into line with the Vienna Convention. Paragraph 1 would thus apply to consular officials and administrative and technical staff of a consulate, and paragraph 2 to service staff and private servants.

68. He would draw the Drafting Committee's attention to the desirability of substituting the more general term " emoluments " used in the Vienna Convention for the word " wages " in paragraph 2 of article 45.

69. He suggested that article 45 should be referred to the Drafting Committee with the foregoing instructions.

It was so agreed.

ARTICLE 46 (Exemption from customs duties)

70. Mr. ŽOUREK, Special Rapporteur, introducing the article, said that several governments had expressed the view that the article was too liberal and that exemption from customs duties should be restricted to consular officials. Thus, the Government of Norway had pointed out that the expression " members of the consulate " as defined in article 1 (h) included service staff, whereas service staff fell outside the term " diplomatic agents " in the corresponding provision of the draft on diplomatic intercourse (A/3859). The Government of Denmark considered that exemption from customs duties should be enjoyed only by career consuls who were not nationals of the receiving State and who did not carry on a gainful private activity in that State; he would point out that the second of those conditions was stipulated in the text of article 46 as approved by the Commission at its twelfth session. The Swedish Government had stated that the article was more liberal than the corresponding provision of the Commission's draft on diplomatic intercourse, and the United States Government that article 46 was among those which should be considered in the light of the results of the Vienna Conference. The Government of Yugoslavia considered that the words " and foreign motor vehicles " should be added at the end of sub-paragraph (b) and that it should be specified that, in connexion with the re-sale of objects imported duty free, customs duties must be paid or the sale could take place only in conformity with the customs regulations of the receiving State. He believed that the second suggestion of the Yugoslav Government was covered by the introductory phrase " in accordance with the provisions of its legislation ".

71. Finally, the Government of Japan, in addition to suggesting that the words " members of the consulate " should be replaced by " consular officials " had suggested that a new paragraph be added, providing that members of the administrative or technical staff should enjoy the privileges specified in paragraph 1 in respect of articles imported at the time of first installation.

72. In his opinion, the main problem before the Commission was to decide which category of persons was entitled to the benefit of the exemption. The municipal law of many countries was less liberal than article 46; moreover, the provisions of article 36 of the Vienna Convention should be taken into account. Accordingly, he had prepared a redraft of article 46 (A/CN.4/137, *ad* article 46), limiting the exemption to consular officials only. At the time of writing his third report, however, he had not known the results of the Vienna Conference. Since article 37, paragraph 2, of the Vienna Convention granted some of the privileges specified in article 36, paragraph 1, to members of the administrative and technical staff of the diplomatic mission, he had reached the conclusion that a like exemption should be extended to the corresponding staff of the consulate. The modalities of the exemption seemed to be covered by the introductory part of his redraft; accordingly, as soon as the Commission had decided on the category of the beneficiaries, the text could probably be referred to the Drafting Committee.

73. Mr. ERIM agreed with the Special Rapporteur that the article should be modelled on the corresponding provisions of the Vienna Convention and, in any case, should not go further than that Convention. The Special Rapporteur's redraft was very close to article 36 of that Convention, except that it did not mention members of the family of the consular official. He asked whether that omission was due to the Special Rapporteur's intention to prepare a special article on privileges enjoyed by members of the families of consular officials. In the light of article 37, paragraph 1, of the Vienna Convention, which provided that members of the family of a diplomatic agent should enjoy the privileges and immunities specified in articles 29 to 36 of that Convention, the special mention of members of the family in article 36, paragraph 1 (b), seemed to be superfluous.

74. The CHAIRMAN pointed out to Mr. Erim that the purpose of the special reference to articles for the personal use of members of the family of a diplomatic agent in article 36, paragraph 1 (b), of the Vienna Convention was to indicate that the diplomatic agent could bring into the receiving State not only articles for his own personal use, but also articles for the use of his family. Article 37, paragraph 1, on the other hand, covered the case of members of that agent's family who passed through customs separately.

75. Mr. ERIM opined that article 37, paragraph 1, would have sufficed to cover both cases.

76. Mr. ŽOUREK, Special Rapporteur, said that he had admitted the reference to the families of consular officials because several governments had expressed the view that the exemption should be limited strictly to consular officials. Under the law of many States, exemption from customs duties did not extend to any person except the official concerned. In view of the diversity of customs regulations and the need to agree upon a widely acceptable text, the Commission should not give the impression of undue generosity in that respect.

76. Mr. ERIM considered that the Special Rapporteur's redraft would be unduly restrictive if it did not extend the privilege concerned to members of the families of consular officials.

77. Mr. ŽOUREK, Special Rapporteur, agreed that the Drafting Committee might be instructed to extend the scope of the article along the lines suggested by Mr. Erim.

78. The CHAIRMAN, speaking as a member of the Commission, observed that, if the Commission were to follow the corresponding provisions of the Vienna Convention, it should include a text along the lines of the last sentence of article 37, paragraph 2, of that Convention and extend the exemption to articles imported at the time of first installation by members of the administrative and technical staff of the consulate.

79. Mr. ŽOUREK, Special Rapporteur, agreed that, since the scope of article 46 was to be limited to consular officials only, it would be wise to add a second paragraph granting limited privileges to the administrative and technical staff along the lines of the Vienna Convention, although the law of a number of States did not provide for such privileges.

80. Mr. JIMÉNEZ de ARÉCHAGA thought that the Drafting Committee should be asked to set forth the provision on the exemption of administrative and technical staff in a separate paragraph, in order to enable States wishing to do so to make reservations to that provision.

81. The CHAIRMAN suggested that article 46 as redrafted by the Special Rapporteur should be referred to the Drafting Committee, with the two amendments suggested by Yugoslavia and Japan and with instructions to use the wording of the corresponding provisions of the Vienna Convention as far as possible.

It was so agreed.

ARTICLE 47 (Estate of a member of the consulate or of a member of his family)

82. Mr. ŽOUREK, Special Rapporteur, introducing the article, referred to the United States Government's opinion that the provision should be considered in the light of the corresponding clause of the Vienna Convention. The Belgian Government had pointed out that sub-paragraph (a) conflicted with a provision of Belgian law under which money and securities passing to heirs resident abroad could not be transferred before a deposit had been made to guarantee payment of the duties payable in Belgium on the estate of an inhabitant of the Kingdom. A like objection, based on the municipal law of one country, might also be raised by other States; he was not conversant with the corresponding Belgian law concerning diplomatic agents, but believed that the objection might be raised in connexion with the corresponding provision concerning diplomatic agents as well. The Netherlands Government had suggested that the words "gainful private

activity" should be replaced by "private commercial or professional activity". The Government of Japan had suggested that the provision should be restricted to consular officials and members of the administrative or technical staff who were nationals of the sending State and not of the receiving State, and also that sub-paragraph (b) should grant exemption from estate duty in respect of movable property situated in the territory of the receiving State and held by the decedent in connexion with the exercise of his function as a member of the consulate.

83. Since, apart from the observation of the Belgian Government, there seemed to be no serious objection to the text approved by the Commission at its twelfth session, the Commission might agree to follow the general lines of the corresponding provision of the Vienna Convention (article 39, paras. 3 and 4) and to adopt the article in principle, leaving the final wording to the Drafting Committee.

84. Mr. AGO said that, since the Special Rapporteur had proposed that the general lines of the Vienna Convention should be followed, two questions called for consideration. In the first place, the situation arising on death was not the subject of a separate article in the Vienna Convention, but was dealt with in the article relating to the beginning and end of diplomatic privileges and immunities; it might be wise to adopt the same system in the draft under discussion. Secondly, the last sentence of article 39, paragraph 4, of the Vienna Convention stated that estate duty should not be levied on movable property — a provision which was less liberal than that of sub-paragraph (b) of article 47 of the draft. The Drafting Committee should be instructed to recast the sub-paragraph along the lines of that provision of the Vienna Convention, which corresponded roughly to the second suggestion of the Japanese Government.

85. Mr. ŽOUREK, Special Rapporteur, replying to Mr. Ago, recalled the discussion of the placing of the article at the Commission's twelfth session (543rd meeting, paras. 55-62). He had explained at that time that he had submitted the provision as a separate article because it dealt with exemption from estate duty, rather than with the duration of privileges and immunities. The corresponding provision of the Vienna Convention, however, related to exemption in a special case and was closely connected with the beginning and end of diplomatic privileges and immunities.

86. The CHAIRMAN suggested that the Drafting Committee should be instructed to make the necessary changes in the article in the light of article 39, paragraph 4, of the Vienna Convention and especially of the last sentence of that article, to which Mr. Ago had drawn attention. The Drafting Committee should also decide whether the provision should be kept in a separate article or incorporated in another.

It was so agreed.

The meeting rose at 1 p.m.

603rd MEETING

Monday, 5 June 1961, at 3.10 p.m.

Chairman: Mr. Grigory I. TUNKIN

Address of Welcome by the Assistant Director-General of the International Labour Office

1. Mr. JENKS, Assistant Director-General of the International Labour Office, said that the International Labour Organisation [ILO] was particularly happy to extend the hospitality of its premises to the International Law Commission for the remainder of its thirteenth session, while the International Labour Conference was meeting in the enlarged Assembly Hall of the Palais des Nations. The enlargement of that Hall might be regarded as symbolical of the transformation of the international community, which had added an element of urgency to the restatement and codification of international law and had therefore greatly increased the importance of the Commission's work.

2. Welcoming the success of the recent United Nations Conference on Diplomatic Intercourse and Immunities, he said that the ILO had been glad to make a modest contribution to the deliberations of that Conference with regard to social security. The ILO would always be glad to place its knowledge and experience at the disposal of the Commission and of future conferences, and would continue to follow with interest the Commission's work on consular intercourse and immunities, especially in so far as it might have a bearing on the functions of consuls in connexion with the application of international labour conventions concerning maritime labour, migration and foreign workers. When the Commission came to consider further the topic of relations between States and intergovernmental organizations under General Assembly resolution 1289 (XIII), the long and continuous experience of the ILO in the matter would be at its disposal. Its basic philosophy in that connexion was based on two simple propositions. In the first place, international immunities had a fundamental institutional significance as a device enabling international organizations to discharge their responsibilities with freedom, independence and impartiality. Secondly, those responsible for administering the immunities had an overriding obligation to do so in such a manner as to avoid any kind of abuse liable to discredit or prejudice their fundamental objective.

3. The ILO was also following with especial interest the Commission's work on the law of treaties, since the network of the treaty obligations for the administration of which it was responsible was growing annually. When welcoming the Commission at the time of its eleventh session (481st meeting, paras. 2-5), he had described that network as comprising 111 Conventions, 92 of them in force, which had received 1,892 ratifications and 1,382 declarations of application in respect of non-metropolitan territories, covering 76 countries and 94 territories. The figures had since risen to 115 Conventions, 98 of them in force, with 2,288 ratifications and