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Summary record of the 624th meeting

Topic:
Consular intercourse and immunities

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624th MEETING

Tuesday, 4 July 1961, at 9.30 a.m.

Chairman ; Mr. Grigory I. TUNKIN

Consular intercourse and immunities

(A/4425; A/CN.4/136 and Add. 1 to 11; A/CN.4/137)

(concluded)

[Agenda item 2]

DRAFT ARTICLES (A/4425): SECOND READING (concluded)

ARTICLE 66 (formerly article 52 *bis*) (Exercise of consular functions by diplomatic missions) (continued)

1. The CHAIRMAN, referring to the discussion at the end of the 623rd meeting, invited the Commission to continue its discussion of article 66, taken in conjunction with article 2 *bis* (Exercise of consular functions.)

2. Mr. ŽOUREK, Special Rapporteur, said that the discussion at the previous meeting had clarified a number of points. In particular, he stressed that article 66 was not concerned with the case of a diplomatic agent who was assigned to perform consular functions away from the seat of the diplomatic mission.

3. It had been asked what was meant by the "other authorities in the receiving State" to which a diplomatic mission could apply in the exercise of consular functions. The expression meant the authorities competent under the law of the receiving State.

4. The essential provision, however, was embodied in the phrase "if the local law and usages so permit," which left it open to the receiving State not to permit contacts at the local level and to oblige the diplomatic mission to deal exclusively with the Ministry of Foreign Affairs.

5. The provisions of article 66 did not therefore involve any risk to the receiving State and gave expression to an existing practice. His research had shown that a great many States allowed the consular sections of diplomatic missions to address authorities other than the Ministry of Foreign Affairs, notably local authorities.

6. Mr. PADILLA NERVO had suggested that paragraph 2 should specify that the members of the diplomatic mission concerned were those employed in the consular section. That would be the case very often, but some diplomatic missions were so small that one staff member had to combine the exercise of consular functions with duties of a diplomatic character. The rule embodied in paragraph 2 should cover all cases and it was therefore not advisable to amend it in the manner suggested by Mr. Padilla Nervo.

7. Lastly, in reply to Mr. Bartoš, he wished to make it clear that he had not expressed any approval of the

practice of certain States of reserving to the consular section of the embassy the final decision in certain important matters arising out of the work of the consulates of the sending State throughout the receiving State. He had merely referred to that practice, but article 66 did not mention it and there was no suggestion in the article that it should be encouraged. As an example of that practice, he mentioned the fact that certain countries did not authorize their consulates to issue visas on diplomatic passports and insisted that applications for such visas should be made to their diplomatic missions.

8. Mr. BARTOŠ expressed satisfaction at the explanation given by the Special Rapporteur that the text as amended was not intended to give any sanction to the practice to which he (Mr. Bartoš) had objected at the previous meeting.

9. Actually, the example given by the Special Rapporteur was a doubtful one. It was true that diplomatic visas were not issued by the consulates of many countries, but most writers were of the opinion that the issuance of a diplomatic visa constituted a diplomatic rather than a consular function.

10. It was the consistent practice not only of Yugoslavia but of a large number of countries to reject any diplomatic note dealing with a specifically consular matter.

11. In view of the amendments made and of the explanations given, he would be prepared to support article 66.

12. The CHAIRMAN said that the Commission would have to decide whether it wished in principle to retain article 2 *bis*. A decision on that point might perhaps affect the wording of article 66.

13. Sir Humphrey WALDOCK proposed that the Commission should deal first with article 66. Many of the difficulties experienced by various members of the Commission in regard to article 2 *bis* had arisen out of the fact that the exact terms of article 66 had not been known at the time.

14. Once the questions of substance had been disposed of in article 66, the provisions of article 2 *bis* might assume a merely formal character and the article could perhaps then be retained.

15. The CHAIRMAN said that, if there were no objection, he would proceed in the manner suggested by Sir Humphrey Waldock.

16. He put to the vote paragraph 1 of article 66.

Paragraph 1 was adopted.

17. The CHAIRMAN invited discussion on paragraph 2 and recalled the proposal made by Mr. Padilla Nervo at the 623rd meeting (para. 93) that the paragraph be reworded so as to state that the names of the members of a diplomatic mission who were in charge of the consular section should be notified to the Ministry of Foreign Affairs of the receiving State.

18. Mr. AGO said that, if Mr. Padilla Nervo's amendment were adopted, perhaps paragraph 1 should also be amended.

19. Mr. PADILLA NERVO said that it was sufficient for his purposes to introduce the amendment in paragraph 2. Paragraph 1 mentioned the provisions of the draft which applied to the exercise of consular functions by the diplomatic mission itself. Paragraph 2 referred to the practice of communicating to the Ministry of Foreign Affairs the name of the diplomatic agent in charge of the consular section.

20. The existing practice was that the diplomatic agent whose name had been notified would address the consular division of the Ministry of Foreign Affairs in consular matters for the purpose of oral communications. In the case of a written note, however, it was the embassy itself which addressed it to the Ministry.

21. His intention was to make it perfectly clear that a diplomatic mission could not exercise consular functions by assigning one of its officers to a consulate away from the seat of the diplomatic mission itself (the capital of the receiving State).

22. Sir Humphrey WALDOCK said that perhaps the views of Mr. Padilla Nervo and the Special Rapporteur could be reconciled by adopting a wording along the following lines: "The names of members of a diplomatic mission assigned to the consular section or otherwise entrusted with the exercise . . ."

23. The CHAIRMAN, speaking as a member of the Commission, suggested, in order to meet more fully Mr. Padilla Nervo's point, the insertion of the words "of the mission" after the words "consular functions". That amendment would exclude the case of an assignment of a diplomatic agent to consular functions outside the seat of the mission.

24. Mr. PADILLA NERVO agreed to Sir Humphrey Waldock's amendment as further amended by the Chairman.

25. Mr. YASSEEN said that he fully understood Mr. Padilla Nervo's preoccupations and supported the useful suggestions made by Sir Humphrey Waldock and the Chairman.

26. He stressed, however, that the expression "consular section" should not be construed in a purely formal sense, for it referred to the distribution of duties among the members of the diplomatic mission. Even in a mission consisting of only one diplomatic agent, there might be a consular section, because the same person could perform different duties.

27. The CHAIRMAN put to the vote paragraph 2, amended to read:

"The names of the members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State."

Paragraph 2, as amended, was adopted by 13 votes to none, with 2 abstentions.

28. The CHAIRMAN invited the Commission to consider paragraph 3.

29. Speaking as a member of the Commission, he

recalled his amendment (623rd meeting, para. 76) deleting the words "members of".

The amendment was adopted.

30. Mr. AGO said that the wording of paragraph 3 was unsatisfactory. In particular, the words "may address" gave the impression that the right of a diplomatic mission to address the Ministry of Foreign Affairs was derived from article 66. In fact, of course, the right and duty of a diplomatic mission to deal with that Ministry was laid down by general international law and by the Vienna Convention on Diplomatic Relations.

31. Accordingly, he proposed that paragraph 3 should be amended to read:

"3. In the exercise of consular functions a diplomatic mission may address authorities in the receiving State other than the Ministry for Foreign Affairs only if the local law or usages so permit."

32. Mr. PADILLA NERVO urged that paragraph 3 should be brought into line with that of article 41, paragraph 2, of the Vienna Convention, which specified that a diplomatic mission dealt with the Ministry of Foreign Affairs "or such other Ministry as may be agreed". That language was preferable because it showed that in no case could a diplomatic mission deal with local authorities: it could only deal with the central government.

33. Mr. MATINE-DAFTARY explained that the reference to "such other Ministry as may be agreed" had been introduced into the Vienna Convention simply to allow for the fact that Commonwealth High Commissioners in London dealt with the Commonwealth Relations Office and not with the Foreign Office.

34. Mr. ŽOUREK, Special Rapporteur, urged that paragraph 3 be retained as drafted. It was necessary to refer to the existing practice in many countries, which allowed the consular sections of embassies to deal with local authorities.

35. Mr. PADILLA NERVO said that the practice of his country and of all those of which he had knowledge precluded any contact by a diplomatic mission at the local level, even in the exercise of consular functions. Permission was sometimes given to address a Ministry other than the Ministry of Foreign Affairs, but the mission was always obliged to deal with the departments of the central government. A diplomatic agent could not divest himself of his representative character and diplomatic rank; it would therefore be improper for him to contact local authorities.

36. The CHAIRMAN, speaking as a member of the Commission, said that Mr. Padilla Nervo's point was in fact met by the words "if the local laws and usages so permit". If the receiving State wished to preclude the mission from addressing local authorities, it could always do so under the provisions of paragraph 3.

37. Speaking as Chairman, he put to the vote paragraph 3 in the amended form proposed by Mr. Ago (see above, para. 31).

Paragraph 3, as amended, was adopted by 15 votes to none, with 1 abstention.

38. The CHAIRMAN invited the Commission to consider paragraph 4.

39. Mr. PADILLA NERVO said that the status of diplomatic agents would not be affected by the draft on consular intercourse. He therefore doubted the advisability of including paragraph 4, which seemed to grant to diplomatic agents privileges to which they were in any case entitled.

40. Sir Humphrey WALDOCK said that it was useful to clarify that, even where a diplomatic agent was permanently assigned to consular duties, he retained his diplomatic status.

41. The CHAIRMAN said that although Mr. Padilla Nervo was probably right in saying that diplomatic status would subsist regardless of the retention or deletion of paragraph 4, the provisions of that paragraph contained a useful indication; they should be retained in order to avoid any possible misunderstanding.

42. Mr. SANDSTRÖM said that the words "shall continue to be governed" made it clear that paragraph 4 did not purport to grant the privileges under reference; it merely confirmed their continued existence.

Paragraph 4 was adopted.

Article 66, as amended, was adopted as a whole by 16 votes to none, with 1 abstention.

ARTICLE 2 *bis* (Exercise of consular functions)

43. The CHAIRMAN invited the Commission to consider article 2 *bis*, the text of which had been submitted at the 616th meeting (para. 71).

44. Mr. ERIM said that the discussion had convinced him of the need to include a provision of the type of article 2 *bis*. The wording of the second sentence, however, stood in need of improvement: the concluding phrase "within the limits of their competence" was too ambiguous.

45. Mr. PADILLA NERVO proposed the deletion of article 2 *bis*. If its provisions covered the same ground as those of article 66, they were unnecessary. If they were intended, or could be construed as being intended, to have a wider scope than article 66, they were dangerous.

46. Mr. ŽOUREK, Special Rapporteur, urged the retention of article 2 *bis*.

47. He recalled that, in the course of the previous discussion of the article (616th meeting, paras. 71 to 84), his amendment deleting the word "normally" from the first sentence had been accepted. As to the second sentence, he suggested, in order to allay the doubts expressed by some members, that the word "competence" be replaced by "functions."

48. Mr. PADILLA NERVO suggested that, if his proposal to delete article 2 *bis* were rejected and the article retained, it should be amended so as to refer specifically to the provisions of article 66 and be governed by those provisions. The article would then read:

"Consular functions are exercised by consulates. They may also be exercised by diplomatic missions

within the limits of their functions and in accordance with article 66."

49. The whole question of the exercise of consular functions by diplomatic missions was regulated in detail by the provisions of article 66, in particular its paragraph 1, specifying which articles of the consular draft applied in the matter. The reference to article 66 was therefore essential if the article were to be retained.

50. Mr. JIMÉNEZ de ARÉCHAGA said that article 2 *bis* covered a somewhat wider field than article 66. It concerned not only the exercise of consular functions by the consular section of a diplomatic mission, but also the performance of such functions as that of protecting the nationals of the sending State, which formed part of the general functions of a diplomatic mission by virtue of article 3, paragraph 1 (b), of the Vienna Convention.

51. Accordingly, he suggested that the second sentence of article 2 *bis* should be amended to read: "They are also exercised by diplomatic missions in accordance with the provisions of article 66 or within the limits of their functions."

52. Mr. PAL favoured the retention of article 2 *bis*. The article was fully consistent with the provisions of article 3, paragraph 2, of the Vienna Convention, which was only a kind of saving clause. Article 2 *bis* would be useful in that it stated affirmatively that the diplomatic mission would have as part of its functions also consular functions.

53. The CHAIRMAN, speaking as a member of the Commission, said that, despite the undoubted link between the two articles, he would prefer not to include in article 2 *bis* a reference to article 66.

54. The provisions of article 2 *bis* were very general, and any reference to a specific article might lead to a misunderstanding.

55. Sir Humphrey WALDOCK, with reference to the remarks by Mr. Jiménez de Aréchaga, stressed that the function of protection mentioned in the Vienna Convention was a diplomatic function and not a consular function.

56. Article 2 *bis* was intended to deal with the exercise of specifically consular functions and, in that context, it was not at all clear what was the intended meaning of the phrase "within the limits of their functions."

57. The Vienna Convention merely stated that nothing in its provisions should be construed as preventing the performance of consular functions by a diplomatic mission. That statement gave no indication of how those functions would be carried out, and the only clarification was given in that respect by article 66 of the draft under discussion.

58. For those reasons, he favoured the inclusion in article 2 *bis* of a reference to article 66.

59. Mr. MATINE-DAFTARY said that he still believed that article 2 *bis* was unnecessary, and reiterated his suggestion made at the 617th meeting (paras. 16 and 17).

60. Mr. ŽOUREK, Special Rapporteur, said that the phrase "within the limits of their functions" was neces-

sary because it had been claimed on occasion that consular functions were completely separate from diplomatic functions, and that the latter could not include the former. For those reasons, it was appropriate to state that, where a diplomatic mission exercised consular functions, it was acting within the scope of its normal duties.

61. Mr. AGO said that the discussion had convinced him of the desirability of dropping article 2 *bis*.

62. He could not accept a provision containing the vague reference to "the limits of their functions." That expression was obviously open to the most diverse interpretations. The Special Rapporteur appeared to interpret it as meaning that all consular functions were comprised in the diplomatic function. He (Mr. Ago) had originally understood the phrase as limiting the scope of the second sentence of article 2 *bis* to those consular functions which could be performed within the framework of the diplomatic function and hence as excluding all other consular functions which were not so exercisable.

63. It was unthinkable that the Commission should adopt an article on the basis of a general agreement upon its formal wording, while there remained a wide divergence of opinion with regard to its substance.

64. Mr. ŽOUREK, Special Rapporteur, said that article 2 *bis* did no more than reflect the existing practice of States, as was evident from official publications. For example, the official calendar of Switzerland showed that nearly all the diplomatic missions accredited to the Swiss Federal Council exercised consular functions in the Canton of Berne and, in most cases, in other Swiss cantons as well.

65. Lastly, he pointed out that, in cases where the receiving State did not permit direct communication with the local authorities, a diplomatic mission could not perform those of the consular functions which required contact with the said authorities.

66. Mr. ERIM agreed with the Special Rapporteur; the Turkish consulate at Zurich had recently been abolished and its functions vested in the Turkish Embassy at Berne.

67. Mr. YASSEEN said that the principle set forth in article 2 *bis* was implied in article 66. By regulating the exercise of certain consular functions, it recognized the right to exercise those functions.

68. Article 2 *bis* was not only superfluous; the phrase "within the limits of their functions" could give rise to problems of interpretation regarding the scope of the consular functions performed by a diplomatic mission, as shown by Mr. Ago. He therefore favoured the deletion of article 2 *bis*.

69. Lastly, he did not share the view expressed by the Special Rapporteur that a diplomatic mission would be unable to perform certain consular functions because it could not address local authorities. In fact, the mission could address those local authorities through the Ministry of Foreign Affairs of the receiving State.

70. Sir Humphrey WALDOCK said that it would be extremely difficult to devise a satisfactory formula for article 2 *bis*. He was therefore inclined to drop the

article, since article 3, paragraph 2, of the Vienna Convention, and article 66 of the draft under discussion already covered all the necessary ground.

71. Mr. BARTOŠ said that he could not agree with Sir Humphrey Waldo on his last point. The provisions of article 3, paragraph 2, of the Vienna Convention did not solve the question. Those provisions merely stated that a diplomatic mission was not prevented from performing consular functions; they did not give the mission the right to perform those functions.

72. In fact, the practice of States showed that diplomatic missions did exercise consular functions, and article 2 *bis* was therefore necessary in the draft under discussion. The wording proposed, however, was defective because it did not make it clear that the diplomatic mission only exercised consular functions in respect of those areas of the territory of the receiving State which were not already covered by a consular district.

73. Mr. TSURUOKA favoured the retention of article 2 *bis*, which was fully consistent with article 3, paragraph 2 of the Vienna Convention. Since the proposed consular convention would be independent of the Vienna Convention, article 2 *bis* should be retained in the draft. However, he favoured the inclusion in the second sentence of the article of a reference to article 66.

74. Mr. JIMÉNEZ de ARÉCHAGA pointed out that article 3, paragraph 2, of the Vienna Convention was drafted in a negative form. In his opinion a positive provision was necessary in the draft, for otherwise it might be contended that consular functions could only be performed by a diplomatic mission if it had a special consular section, an argument which was manifestly not supported by practice.

75. Mr. HSU considered that article 2 *bis* would only serve a useful purpose if the ambiguous phrase "within the limits of their functions" were reworded. He would have thought the difficulty could be overcome by deleting the second sentence and adding at the end of the first the words "being part of diplomatic functions they may also be exercised by diplomatic missions".

76. Mr. AMADO said the article was deplorably vague; he would have no part in the presentation of so ambiguous a text and proposed the deletion of the words "within the limits of their functions".

77. The CHAIRMAN put to the vote Mr. Padilla Nervo's proposal that article 2 *bis* should be deleted.

There were 8 votes in favour and 8 against, with 1 abstention. The proposal was rejected.

78. The CHAIRMAN put to the vote Mr. Padilla Nervo's amendment adding at the end of the article the words "in accordance with the provisions of article 66".

The amendment was adopted by 10 votes to none, with 6 abstentions.

Mr. Amado's amendment to delete the words "within the limits of their functions" was adopted by 12 votes to 1, with 3 abstentions.

ARTICLE 2 bis, as a whole, as amended,
was adopted by 15 votes to none, with 2 abstentions.

79. Mr. ŽOUREK, Special Rapporteur, explained that he had voted for the article in its amended form. The deletion of the words "within the limits of their functions" would not alter either the international law in force or the existing practice of States.

80. The CHAIRMAN invited the Commission to consider a number of modifications and additions proposed by the Drafting Committee.

ARTICLE 1 (Definitions), paragraphs 2 and 3 (*continued*)¹

81. The CHAIRMAN said that the Drafting Committee proposed the following amended text for paragraphs 2 and 3 of article 1:

"2. Consular officials may be career officials or honorary. The provisions of chapter II of this draft apply to career officials and to consular employees; the provisions of chapter III apply to honorary consular officials, and to career officials who are assimilated to them under article 62.

"3. The particular status of members of the consulate who are nationals of the receiving State is governed by article 63 of this draft."

82. Mr. SANDSTRÖM thought that the second sentence in paragraph 2 was unnecessary.

83. Mr. ŽOUREK, Special Rapporteur, said the sentence served a useful purpose in providing a general indication of the structure of the draft in which the Commission had been at pains to differentiate between career and honorary consuls and between consular officials who were nationals of the receiving State and those who were not. Such a provision was particularly necessary for readers who were not lawyers in order to indicate that the various categories of persons mentioned in paragraphs 2 and 3 enjoyed different treatment in the matter of consular privileges and immunities.

84. Mr. AMADO strongly opposed the inclusion of the second sentence in paragraph 2 which he found quite inappropriate in a general definitions article.

85. The CHAIRMAN, speaking as a member of the Commission, said that although the drafting of the second sentence was not particularly elegant it served a useful purpose; moreover the Commission had already decided in principle to insert such a statement.

86. Mr. BARTOŠ observed that it should be borne in mind that chapter III indicated which provisions in chapter II were applicable to honorary consuls. Although the second sentence in paragraph 2 was not well drafted it was useful and should be adopted.

The amended text of paragraphs 2 and 3 of article 1, as proposed by the Drafting Committee, were adopted.

ARTICLE 3 (Establishment of a consulate)
paragraphs 4 and 5 (*continued*)²

87. The CHAIRMAN said that the Drafting Committee

proposed the following amended text for paragraph 4 of article 3:

"4. The consent of the receiving State shall also be required if a consulate-general or a consulate desires to open a vice-consulate or an agency in a locality other than that in which the consulate itself is established."

88. The CHAIRMAN said that the Drafting Committee also proposed an additional paragraph 5 reading:

"5. The sending State may not, without the prior express consent of the receiving State, establish offices forming part of the consulate in localities other than those in which the consulate itself is established."

Paragraphs 4 and 5 as proposed by the Drafting Committee were adopted.

ARTICLE 4 (Consular functions) (*continued*)³

89. The CHAIRMAN said that the Drafting Committee proposed that the following sub-paragraph should be inserted after sub-paragraph (h) of article 4:

"Representing nationals of the sending State before the tribunals and other authorities of the receiving State, where, because of absence or any other reason, these nationals are unable at the proper time to assume the defence of their rights and interests, for the purpose of obtaining, in accordance with the law of the receiving State, preliminary measures for the protection of these rights and interests."

90. Mr. MATINE-DAFTARY strongly criticized the use of the expression "preliminary measures" which, being unknown in any procedural code, would be quite unfamiliar to any court of law.

91. Mr. ŽOUREK, Special Rapporteur, said that the expression had been deliberately chosen by the Drafting Committee instead of *mesures conservatoires*, which, because it had a very precise technical connotation, would be too restrictive in the context where not only judicial proceedings were envisaged. In paragraph (12) of the commentary to article 4 adopted at the previous session, he had sought to explain the kind of measures that might be necessary.

92. Mr. LIANG, Secretary to the Commission, referring to the point raised by Mr. Matine-Daftary, drew attention to the terms of article 41, paragraph 1, of the Statute of the International Court of Justice, which spoke of "provisional measures".

93. After further discussion, Mr. SANDSTRÖM proposed formally that the expression "preliminary measures" in the additional sub-paragraph should be replaced by "provisional measures".

Mr. Sandström's amendment was adopted by 9 votes to 2, with 5 abstentions.

94. Mr. ŽOUREK, Special Rapporteur, said that the word "provisional" should be interpreted as meaning

¹ Resumed from the 616th meeting.

² Resumed from the 617th meeting.

³ Resumed from the 617th meeting.

any preliminary measures necessary to protect the rights and interests of the individual concerned.

95. Although he did not wish to make any formal proposal, he submitted that the sub-paragraph should be interpreted as referring also to bodies corporate having the nationality of the sending State.

96. The CHAIRMAN, speaking as a member of the Commission, agreed with the Special Rapporteur that the measures in question were all those which were allowed under the law of the receiving State and which could be taken without the direct authorization of the person concerned.

97. Mr. PADILLA NERVO strongly opposed the Special Rapporteur's interpretation, under which the new sub-paragraph applied to bodies corporate, on the grounds that their nationality was not determined by uniform criteria. He was all the more opposed to that interpretation inasmuch as under article 66, paragraph 1, the provisions of article 4 had been made applicable also to the exercise of consular functions by a diplomatic mission.

98. Mr. JIMÉNEZ de ARÉCHAGA said there was no need to make express mention of bodies corporate in the context or in the commentary, for they were not necessarily excluded from the application of the sub-paragraph as drafted.

The new sub-paragraph for insertion in article 4 was adopted as amended.

ARTICLE 12 (formerly article 16) (Temporary exercise of the functions of head of a consular post) (*continued*)⁴

99. The CHAIRMAN said that the Drafting Committee proposed the following text for an additional paragraph 4 in article 12:

"4. If a member of the diplomatic staff is instructed by the sending State to assume temporarily the direction of a consulate, he shall continue to enjoy diplomatic privileges and immunities while exercising that function."

The additional paragraph 4 was adopted.

ARTICLE 14 (formerly article 18) (Performance of diplomatic acts by the head of a consular post) (*continued*)⁴

100. The CHAIRMAN said that the Drafting Committee proposed the addition of the following paragraph 2 in article 14:

"2. A head of consular post or other consular official may act as representative of the sending State to any international organization."

101. Mr. SANDSTRÖM suggested that there was no need for such an addition: the statement it contained was self-evident.

102. Mr. ŽOUREK, Special Rapporteur, pointed out that such a provision had been included in article 5,

paragraph 3, of the Vienna Convention and was all the more necessary in a draft concerning consular relations.

103. Mr. BARTOŠ said that the question was not a simple one. In theory a diplomatic agent was bound to abstain from criticizing the State to which he was accredited, but as a representative to an international organization he might do so.

104. Practice in regard to consuls acting as representatives to international organizations varied from country to country. That of the Swiss Government was extremely liberal and such persons enjoyed diplomatic immunities. On the other hand, the State Department of the United States of America had issued a memorandum debarring consular officials who acted for foreign countries in the United States from acting as permanent representatives or observers to any international organization. He was uncertain whether that prohibition was enforced in practice.

105. He supported the addition of such a clause and agreed with the Special Rapporteur that it was even more necessary in an instrument on consular relations than in one dealing with diplomatic relations.

106. Mr. SANDSTRÖM said that in view of the foregoing explanations he would withdraw his objection.

The additional paragraph 2 proposed by the Drafting Committee was adopted.

ARTICLE 21 (formerly article 24) (Notification of the appointment, arrival and departure of members of the consulate, members of their families, and members of the private staff) (*continued*)⁴

107. The CHAIRMAN said that the Drafting Committee proposed the following amended text for paragraph 1 (b) of article 21:

"(b) The arrival and final departure of a person belonging to the family of a member of the consulate forming part of his household and, where appropriate, the fact that the person becomes or ceases to be a member of the family of a member of the consulate;"

That text was adopted.

ARTICLE 22 (formerly article 25) (Modes of termination of the functions of a member of the consulate) (*continued*)⁴

108. The CHAIRMAN said that the Drafting Committee proposed the following amended text for article 22:

"The functions of a member of the consulate come to an end in particular:

"(a) On notification by the sending State to the receiving State that the functions of the member of the consulate have come to an end;

"(b) On the withdrawal of the exequatur or, as the case may be, the notification by the receiving State to the sending State that the receiving State refuses to recognize him as a member of the consular staff."

The amended text of article 22 was adopted.

⁴ Resumed from the 618th meeting.

ARTICLE 24 (formerly article 28) (Protection of consular premises and archives and of the interests of the sending State in exceptional circumstances) (*continued*)⁵

109. The CHAIRMAN said that the Drafting Committee proposed the following amended text for article 24, paragraph 1:

“ 1. In the event of the severance of consular relations between two States:

“ (a) The receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consulate and its archives;

“ (b) The sending State may entrust the custody of the consular premises, together with the property it contains and its archives, to a third State acceptable to the receiving State;

“ (c) The sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.”

110. Mr. BARTOŠ, referring to paragraph 1 (a), pointed out that, as the consular premises were not always the property of the sending State, the lease might have to be surrendered if consular relations were severed. He did not think, however, that a specific reference to that eventuality was necessary.

The amended text of paragraph 1 and article 24 as a whole were adopted.

ARTICLE 27 (formerly article 31) (Inviolability of the consular premises) (*continued*)⁶

111. The CHAIRMAN said that the Drafting Committee proposed the following amended text for article 27, paragraph 3:

“ 3. The consular premises, their furnishings, the property of the consulate and its means of transport shall be immune from any search, requisition, attachment or execution.”

The amended text of paragraph 3 was adopted.

ARTICLE 41*bis* (formerly article 50*bis*)
(Waiver of immunities) (*continued*)⁷

112. The CHAIRMAN said that the Drafting Committee proposed the following revised text for the article concerning the waiver of immunities:

“ 1. The sending State may waive, with regard to a member of the consulate, the immunities provided for in articles 38, 40 and 41.

“ 2. The waiver shall in all cases be express.

“ 3. The initiation of proceedings by a member of the consulate in a matter where he might enjoy immunity from jurisdiction under article 40, shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

“ 4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.”

The revised text was adopted.

113. The CHAIRMAN announced that the Commission had concluded its consideration of the draft articles on consular intercourse and immunities.

Recommendation to the General Assembly

114. The CHAIRMAN said that the general consensus appeared to be that the Commission should recommend, under article 23, paragraph 1 (d), of its Statute, that an international conference should be convened for the purpose of concluding a convention on the basis of the Commission's draft. He suggested accordingly that the Commission should address a recommendation in that sense to the General Assembly.

It was so agreed.

The meeting rose at 1.15 p.m.

625th MEETING

Wednesday, 5 July 1961, at 9.30 a.m.

Chairman: Mr. Grigory I. TUNKIN

Consideration of the Commission's draft report covering the work of its thirteenth session

(A/CN.4/L.95 and Add. 1 and 2)

1. The CHAIRMAN invited the Commission to consider its draft report (A/CN.4/L.95 and Add.1 and 2).

CHAPTER I (Organization of the session)

Chapter I of the draft report (A/CN.4/L.95) was adopted, subject to drafting changes.

CHAPTER II (Consular intercourse and immunities) (A/CN.4/L.95/Add.1)

Section I (Introduction)

2. Mr. ERIM asked whether there was to be any further reference, other than that made in paragraph 27, to the Commission's recommendation that the General Assembly should convene an international conference to study its draft on consular intercourse and immunities.

3. The CHAIRMAN suggested that it would be desirable to devote a special subsection of the report to that recommendation so as to give it greater prominence.

4. Mr. ŽOUREK, Special Rapporteur, supported the Chairman's suggestion.

The suggestion was approved.

⁵ Resumed from the 618th meeting.

⁶ Resumed from the 619th meeting.

⁷ Resumed from the 612th meeting.