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Summary record of the 469th meeting

Topic:
Consular intercourse and immunities

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50. Another matter which deserved more detailed treatment in the draft was the amalgamation of diplomatic and consular functions. In Australia, New Zealand and the Union of South Africa, for example, the consular officers of some countries, though not empowered to perform diplomatic functions, and though not regarded as *chargés d'affaires,* acted as intermediaries between the Ministry of Foreign Affairs of the sending State and the Ministry of Foreign Affairs of the receiving State. Furthermore, as in the case of many Latin-American diplomatic missions accredited to London, it was not uncommon for diplomats to act as consuls without losing their diplomatic rank. In some cases they might possess both diplomatic credentials and consular commissions giving them the right of direct access to the local authorities in the receiving State. In cases of doubt, however, their status as diplomatic agents was always regarded as having priority over their status as consuls. Reference might also be made to the common practice whereby embassies had a consular section, some members of which, though performing consular duties and provided with consular commissions, were nevertheless included in the diplomatic list.

51. The Special Rapporteur had suggested that some countries would not allow the appointment of honorary consuls. In his (Mr. Bartos') experience that was true exclusively of certain eastern European countries.

The meeting rose at 1 p.m.

469th MEETING

Monday, 23 June 1958, at 3 p.m.

Chairman : Mr. Radhabinod PAL.

Consular intercourse and immunities (A/CN.4/108) (*continued*)

[Agenda item 6]

GENERAL DEBATE (*continued*)

1. Mr. HSU said that he would like to associate himself with those who had congratulated the Special Rapporteur on his excellent report (A/CN.4/108).

2. In paragraph 43, the report stated that despite repeated efforts China had only achieved the abrogation of consular jurisdiction during the Second World War. Why such jurisdiction in China was not abrogated earlier needed an explanation. By itself, such jurisdiction would have been abrogated long before, because in the first place the system was not based upon customary law but upon treaties and, secondly, is was to a large extent established voluntarily except in the cases of England after the Opium War and Japan after the Korean War. What delayed the abrogation was its complication by the existence of foreign settlements and concessions in certain towns and special navigation rights on certain rivers and canals. As the foreign merchants and some of their Governments were bent upon preserving this set of rights, it was necessary to wait until the Second World War before the abrogation of consular jurisdiction became a success, then it appeared to them that preserving that set of rights was no longer possible.

3. In the last sentence of paragraph 72, the report stated that the attributes of diplomatic representatives included consular functions. That statement had been challenged, and superficially there was something to be said for both points of view. Traditionally, the two sets of functions had been kept apart because they had developed independently, but in modern times they tended to merge. Closer consideration of the matter inclined him to agree with the Special Rapporteur. The development of consular functions had been influenced at every stage of their development by the requirements of international trade in the widest sense. In article 2 of its draft on diplomatic intercourse and immunities, however, the Commission had admitted that the functions of diplomatic missions included the protection of the interests of their nationals and the promotion of economic, cultural and scientific relations. It could, therefore, hardly be denied that diplomatic functions included consular functions.

4. At the present stage of development, diplomatic missions had in general taken over the policy side of the problem of meeting international trade requirements, leaving to the consular missions what were more or less only matters of administration. That, however, should be no obstacle to regarding the other consular functions as part of the functions taken over by the diplomatic missions. The functions of a consular mission were no less entitled to be regarded as diplomatic than the functions performed by the administrative, technical and service staff of a diplomatic mission, which were not themselves regarded as non-diplomatic.

5. Those who had objected to the Special Rapporteur's statement in paragraph 72 had presumably wished to restrict the meaning of the term " diplomatic " as applied to functions, but he did not think that there was any substantial disagreement between them and the Special Rapporteur. The question was not purely academic, since it had a bearing on the question of diplomatic privileges and immunities, and particularly on the provisions of article 28 of the Commission's draft on that subject. Since the functions of the members of the administrative and technical staff of a diplomatic mission differed little from those of the members of a consular mission, it would perhaps be inadvisable to grant them greater privileges and immunities than were granted to the members of consular missions.

6. Mr. EDMONDS said that to the practising lawyer and to the business community the subject of consular intercourse and immunities was perhaps more important than any other subject on the Commission's agenda, for

it involved international trade. The Special Rapporteur's report would be read with great interest.

7. To many people, diplomatic and consular intercourse meant much the same thing. The Commission should be careful to make a proper distinction between the two, and to see that terms which were used in the one case and which were not strictly applicable to the other should not be employed in a way which might lead to confusion. If the Commission could establish clear distinctions in matters relating to the two institutions, it would be performing a great service.

8. Mr. AGO said that, generally speaking, the work produced by the Special Rapporteur seemed admirable. He wondered, however, whether in part I of chapter III it might not have been possible to bring out more clearly a distinction which was often implicit in the Special Rapporteur's statements. While a diplomatic mission was an organ by means of which the State acted at the international level, dealing with relationships governed by international law, a consular mission was international only in the sense that it was established abroad. Its activity, therefore, although sanctioned and regulated by international law, was on the domestic level, confined to human relationships governed by the municipal laws of either the State which sent the consul or of that which received him. In substance, therefore, concular and diplomatic functions were wholly separate and not merely different in degree.

9. He was opposed to the suggestion made in paragraph 101 of the Special Rapporteur's report that the term " consular representative " should be used as a generic term applying to all the members of consular missions. It was doubtful whether even diplomatic agents could properly be called representatives in the full sense of the word, though they did represent their State in its relations with another. In the context of international relations *stricto sensu* he could accept the expression " consular officer " if the Commission preferred that to " consular agent ", though he did not think the objections to the latter were as serious as had been suggested.

10. Mr. ZOUREK, Special Rapporteur, replying to members of the Commission who had taken part in the general debate, said that the difficulties of terminology to which a number of members of the Commission had referred, were due largely to the great diversity of usage in the legislation, treaties and conventions on which the law of the subject was largely based. While he agreed that, where analogous problems were dealt with, the manner of treatment in the two drafts on diplomatic and consular intercourse and immunities should correspond, the Commission should beware of any temptation to carry the parallel too far. He would emphasize that it would not always be possible to keep the two drafts similar, especially in the matter of terminology. The term " diplomatic agent " had been used as a generic term for all diplomatic officials, and it could conveniently so be used because there was no category of diplomats to which that term was specifically applicable, but " consular agent " had the disadvantage that it might be taken to apply only to the fourth of the four classes he had listed in article 3 of his draft. Moreover, under several legislations, the term meant non-official staff who were not members of the consular corps. In some States consular agents were even regarded as private agents employed by consuls. Consequently he did not think that the term could be used generically, even if it were accompanied by a definition. Similarly, the word " consul " used by itself might be taken to refer only to a particular class of consular officials. The expression " consular representative " had been objected to, with some justification, on the grounds that it was rather grand by contrast with the simple " diplomatic agent ". The term " consular officer " was too comprehensive, since it might be taken to include members of the administrative and technical staff of consular missions.

11. One of the purposes of the draft, however, was to introduce some clarity into the question of terminology ; and for that purpose, an expression must be employed which would be interpreted uniformly in all countries. Since it was probably too late to change the terminology used in the draft relating to diplomatic intercourse, perhaps the draft on consular intercourse should contain a separate definitions article, as suggested by Mr. Tunkin. That was the more desirable since a similar article had already been included in the other draft. In that case, the Commission might agree to the use of the expression " consular officer ".

12. A number of observations had been made on the subject of honorary consuls. To avoid all misunderstanding, he wished to say that he had had no intention of discriminating against that class of consular officer. He had merely been obliged to take into account the different attitudes adopted by State towards that category of officer and the differences between the treatment accorded to honorary consuls and to career consuls by various States and legislations. There were States whose consular services included only career consuls, and which neither appointed nor accepted honorary consuls. The majority of States, on the other hand, used both types of consular officers. He had had to put the provisions of the draft in a form which would be generally acceptable. If no provision had been made for the possibility of separate ratification of these articles which related to consular officers other than honorary consuls, the States which did not recognize honorary consuls would have been compelled to enter reservations to the articles dealing with that category, and the final result would have been the same as would be produced by the procedure he had suggested for partial ratification.

13. Mr. Verdross had suggested that the report did not attach sufficient importance to customary law as a source of the rules relating to consular intercourse and immunities. He (Mr. Zourek) had not meant, however, to deny that customary law was a source of those rules, but merely to emphasize that the most important sources were treaties.

14. Mr. Bartos had suggested that not enough attention was given in the draft to the functions of consular agents. The reason why the subject was not dealt with more extensively was the diversity of treatment in national legislations and in consular conventions. Consular agents constituted the fourth of the four classes of consular officials listed in article 3. The draft left aside the question of their mode of appointment. He had been of the opinion that in view of the diversity of legislation on the subject it would be unwise to go too far ; but if the Commission so wished he would be willing to deal more fully with the legal status of the consular agent in an additional paragraph. In that connexion the question arose whether consular agents should be regarded as on exactly the same footing as other consular officials or whether they should be given legal status inferior to that of consuls-general, consuls and vice-consuls. Perhaps the whole subject could be more appropriately dealt with in connexion with article 3.

15. Mr. Bartos had also referred to the practice of some consular missions of maintaining consular correspondents in the receiving State. He did not think, however, that the practice was sufficiently general to afford a basis for codification in the draft.

16. He could not altogether agree with Mr. Ago's contention that not enough attention had been drawn to the distinction between the diplomatic mission as an organ of the State acting under international law and the consular mission as an institution acting under domestic law. While that distinction was to some extent valid in cases in which a country had both consular and diplomatic missions in a receiving State, it should be remembered that the duties of a consular mission included not only purely administrative matters and such functions as the notarization and translation of documents, but also the duty of ensuring the observance of commercial treaties between the two States concerned and of protecting the nationals of the sending State. The duties of a consular mission in that respect were confined to the consular district, but the Commission must remember that that district was sometimes coterminous with the whole territory of the receiving State. Thus it could not be said that a consular mission was concerned only with questions of domestic law. Perhaps the subject could most appropriately be discussed in relation to the article on the duties of consular missions.

17. With reference to the form of the instrument in which the draft articles on consular intercourse and immunities should be embodied, he thought that the only possible answer was a convention, since, for reasons already stated, the draft would largely constitute progressive development of international law. A further argument in favour of a convention was that it was in that form that the Commission had decided to present the draft articles on diplomatic intercourse and immunities.

18. He would reserve his replies to other comments, particularly those relating to article 1, until the draft was discussed article by article.

Draft provisional articles on consular intercourse and immunities (A/CN.4/108, part II)

Article 1

19. Mr. ZOUREK, Special Rapporteur, introducing article 1, said that paragraph 1 reflected the well-known rule that the right to establish consular relations was derived from the sovereignty of States. The right could, of course, be limited by constitutional or international law and could not be exercised in any specific instance without the agreement of the States concerned. It was unfortunate that an analagous provision had not been maintained in the draft convention on diplomatic intercourse and immunities. He felt that the paragraph should stand.

20. Paragraph 2 raised a very important question. Since the nineteenth century, and in particular since the Second World War, diplomatic functions had changed greatly, because of the increasing importance of economic problems. The result had been an extension of diplomatic functions, and in many States the amalgamation of diplomatic and consular services and the creation of commercial attachés and counsellors as members of diplomatic missions. Few States had been unaffected by the change. Such extension of diplomatic functions, reflected in many international conventions and municipal statutes, did not mean that diplomatic missions had all the prerogatives of consuls, for, unless there was a special agreement with the receiving State, diplomatic agents could not deal directly with the local authorities. Hence, in some States, applications for an exequatur had been lodged by diplomatic agents, appointed to perform consular duties. He hoped that the observations of Governments on the draft under consideration would yield more information on the subject. In general, however, it could be said that paragraph 2 was in keeping with existing practice.

21. There was no need for comment upon paragraph 3. Where there were no diplomatic relations between States, the agreement of the receiving State was necessary for the establishment of consular relations, just as in the case of diplomatic relations. Between some States consular relations had been established by agreement and no diplomatic relations existed. The establishment of consular relations often foreshadowed diplomatic intercourse.

22. Mr. VERDROSS said that no rights should exist without corresponding obligations. Paragraph 1 provided for a right without an obligation and should therefore be deleted. It was desirable to say that consular relations were established, in the same way as diplomatic relations, by mutual consent between States.

23. With regard to paragraph 2, he said that admittedly many consular functions could be, and were, in fact, carried out by diplomatic agents, but essentially the function of consuls was to protect the interests of their nationals before the local authorities of the receiving State, and that presupposed an exequatur. Diplomatic agents, on the other hand, conducted their activities essentially through the Ministry of Foreign Affairs. In other words, the functions of a consul were different

from those of a diplomatic agent; and the consul was more concerned with the every-day life of the receiving State. With such a clear distinction between diplomatic and consular functions, it could not be said that the latter were included in the former. He therefore opposed paragraph 2.

24. Mr. ALFARO agreed that paragraph 1 conferred a right without a corresponding obligation. The paragraph was therefore unacceptable, particularly since paragraph 3 specifically provided for an agreement between States, thus introducing a limitation to the absolute right laid down in paragraph 1. Paragraph 1 should therefore be deleted.

25. The Special Rapporteur had given weighty reasons in favour of paragraph 2, and he was prepared to accept that paragraph as a desirable expression of *lex ferenda,* as opposed to *lex lata.* Paragraph 3 was equally acceptable without the first phrase, but he would prefer it to read simply: "The establishment of consular relations shall be effected by an agreement between the States concerned". That was the basic provision, from which the rest of the article should follow, and should therefore become paragraph 1.

26. It was desirable that there should be other paragraphs to express the Special Rapporteur's ideas. Paragraph 2 should lay down that every State had the right to propose the establishment of consular relations with other States. Paragraph 3 should be the original paragraph 2. Finally, as a corallary, there should be a paragraph 4, which could be taken from paragraph 10 of the Special Rapporteur's commentary on article 1 and would read: "In the absence of such diplomatic relations or previous agreement, no State shall be obliged to admit foreign consuls into its territory."

27. Mr. GARCÍA AMADOR said that there was no rule of international law to the effect that a State had the right to establish consular relations with another; for that reason he considered that article 1, paragraph 1, should be deleted.

28. Paragraph 2 was acceptable and indeed should, in his opinion, become paragraph 1; for upon the establishment of diplomatic relations the establishment of consuls could be said to become necessary. In fact, it was the establishment of diplomatic relations which gave rise to a right to appoint consuls and to the corresponding duty to admit them.

29. He had no objection to paragraph 3, except that he would prefer the first phrase to be deleted.

30. Mr. MATINE-DAFTARY asked that a special procedure be adopted during the rest of the session for the study of the draft articles concerning consular intercourse, since owing to the work connected with the United Nations Conference on the Law of the Sea and with the draft on diplomatic intercourse and immunities he, like other members, had not had the time to study the Special Rapporteur's report with the thoroughness it deserved. He suggested that each article should be discussed in general and in terms of the principles involved, but not voted upon. At the eleventh session, by which time members would have studied the report thoroughly, the articles could be put to the vote.

31. Paragraph 1 enshrined an incomplete right, inasmuch as it provided for no corresponding obligation. Moreover, it did not correspond to reality, for many States refused to permit the establishment of consular relations by specific States or the establishment of consular offices in places other than the capital. He doubted whether the paragraph should be retained.

32. There could be no general rule of the kind laid down in paragraph 2. Iran, for example, had established diplomatic relations with the Soviet Union, but the Soviet Union Government had refused to permit the Government of Iran to establish consulates. The Government of Iran could only offer a like refusal regarding the establishment of a Soviet consulate in its territory. It did not follow, therefore, that the establishment of diplomatic relations included the establishment of consular relations; accordingly, paragraph 2 should be deleted.

33. Subject to the omission of the first phrase, paragraph 3 was acceptable, though its drafting might be improved.

34. Mr. AGO also considered that paragraphs 1 and 2 should be deleted. As far as paragraph 1 was concerned, he said that no State had the right to establish consular relations under general international law, for the source of the law on the subject was an agreement with another State. Again, the establishment of diplomatic relations did not include the establishment of consular relations, for the latter could only be established *ipso jure* if the agreement between States so provided. He agreed with the Special Rapporteur that it was rare for the establishment of diplomatic relations not to lead to the establishment of consular relations, but the one did not follow automatically from the other.

35. He accepted paragraph 3 in substance. Dissatisfaction had been expressed with the drafting, but he was not sure that he would be fully satisfied with the suggestion that the paragraph be modelled on article 1 of the draft on diplomatic intercourse and immunities. Diplomatic and consular functions should not be identified too closely even in that respect, for whereas the establishment of a diplomatic mission in a State implied a corresponding establishment in another State, the same was not true of consular relations. A small State, for example, whose nationals emigrated in large numbers to another State, might need consulates, whereas the State to which the emigration took place might not. For that reason he would prefer a simple statement to the effect that a State, by agreement with another, might establish consulates in the territory of that other State.

36. Sir Gerald FITZMAURICE agreed with previous speakers that it would be quite sufficient if article 1 consisted simply of a somewhat redrafted version of its paragraph 3. He doubted whether the Special Rapporteur, in his extremely interesting commentary on the article, had successfully demoustrated the existence of a right to establish consular relations; and

from his description of a state of fact, namely, that the establishment of diplomatic and consular relations often went hand in hand, it did not necessarily follow that the establishment of the one implied the establishment of the other. In international practice, and indeed in the Havana Convention of 1928 cited by the Special Rapporteur in paragraph 4 of the commentary, a clear distinction was drawn between diplomatic and consular relations. It was to be noted, furthermore, that the Special Rapporteur in paragraphs 10 and 11 himself acknowledged that a State might refuse to establish consular relations even though it agreed to establish diplomatic ones. Again, the fact that the diplomatic and consular services were often merged did not mean either that the two functions were amalgamated or that the establishment of diplomatic and consular relations necessarily went together.

37. He did not believe that there was any " right " to establish consular relations and, in that connexion, found the considerations put forward in paragraph 12 of the commentary a trifle misconceived. It was not with the object of " achieving international co-operation in solving international problems of an economic, social, cultural or humanitarian character " that consular relations were established. The primary object of establishing consular relations was quite different ; it was to allow agents of each State to perform certain necessary functions in the territory of the other with respect to their own nationals in that State. Some of those functions might have a decided commercial aspect, but that was very different from stating that the purpose of the consular function was primarily economic.

38. Incidentally, he did not regard the word " intercourse " used in the English text of the titles of the drafts on consular and diplomatic intercourse as a particularly happy choice and in the case of the latter it was his intention to propose changing that part of the title to " diplomatic relations ". In consular matters the use of the term " relations " was not wholly appropriate. Representation was not the primary function of a consul and many of his activities contained no representative element, though he did not deny that the consular function involved some representative element. To avoid the misleading term " relations " it might be better to refer to " consular functions and immunities " in the title and throughout the draft.

39. Mr. BARTOS said that he found it difficult to reach a final opinion either for or against article 1. In the first place, he differed from the Special Rapporteur in the conception of the nature of consular relations. In the older textbooks a distinction was drawn between a diplomatic agent as a representative of his State conducting relations between the sending and the receiving State, and the consul, whose function it was to protect before the courts and the local authorities the nationals and the interests of the State which had appointed him and to perform certain duties in connexion with the nationals of that State but not to intervene in relations between that State and the State which had given him his exequatur. The concept of " consular representation " had gained a certain currency in recent years because the consular corps performed certain representative, or to be more precise, ceremonial functions. He was, however, not at all sure that he could accept the concept. Consequently, the term " consular relations " appeared to be inappropriate. The existence of so-called " consular relations " meant no more than permission to establish consulates and the obligation to facilitate their establishment. For example, so-called " consular relations " still continued between the Federal Republic of Germany and Yugoslavia although diplomatic relations had been broken off between them, but those " consular relations " merely involved the maintenance of consulates and the obligation to allow them to exist. There were no relations between the consular officers and the Governments of their States of residence, such relations being conducted by the respective protecting Powers.

40. With respect to paragraph 1, he said his position was very near to that of Mr. Alfaro ; he considered that every State enjoyed the capacity to establish consular relations, or in other words, to propose the establishment of consulates. To say that a State had the right to establish consular relations would mean that its decision was not dependent on the consent of the other State. He was accordingly in favour of the amendment proposed by Mr. Alfaro.

41. In connexion with paragraph 2 of the article, the question naturally arose how consular relations were to be conducted, whether through consulates or by the diplomatic mission. If consulates were to be opened, then surely according to article 2 of the draft, a further agreement was necessary. The establishment of consular relations did not follow automatically upon the establishment of diplomatic relations. What did follow perhaps was that certain officials of diplomatic missions could perform some consular functions. But that was not a universal custom and he knew of no countries which accorded to diplomats the same status as to a consul for the purpose of performing consular functions. Diplomatic agents, for instance, could not appear before courts as the representative and protector of one of their nationals resident in the receiving State ; they could perform such functions only through the Ministry of Foreign Affairs, and even then only in certain countries which tolerated the practice.

42. Accordingly, though he could accept many of the ideas contained in the article, if stated in another form, he could not accept paragraph 2 because it gave no indication how the consular relations were to be conducted. The Special Rapporteur had cited the Norwegian law of 7 July 1922 in support of his ideas. Yet, if Norway wished to open a consulate in Yogoslavia, the consul could exercise his functions only if he had been duly appointed and given his exequatur : there was no automatic admission. On the other hand, no objection was normally raised to the conduct of certain consular business in the so-called " consular sections " of diplomatic missions. Nevertheless, many States which were not prepared to allow consulates to be opened by another State in their territory were likewise not prepared to permit the diplomatic agents of that State

to take the necessary steps on the sport to protect one of its nationals.

43. Referring to paragraph 3 of the article, he observed that the provision was wrong in speaking of the " exchange " and the " admission of consular representatives " the agreement in question offered, rather, the possibility of exercising the capacity to open consulates.

44. Incidentally, one consequence of the existence of " consular relations ", which was not brought out in the text or in the commentary, was that if a State permitted the establishment of the consulate of a second State in a particular locality, it could not, without becoming guilty of a grave act of discrimination, refuse to accord the same facility to all other States competent to exercise consular functions in its territory.

45. Mr. SCELLE said that, in contrast to most previous speakers, he found article 1 acceptable in principle, though formulated in too absolute terms. In his opinion, every State had the right to establish consular relations but only when it was socially necessary. Thus, whenever persons from one country were established in, traded with or even travelled through another country, the first country had the right to establish consular relations and the corresponding duty to establish them, while the second country was under the obligation to permit the establishment of consular relations. The question whether it was necessary in the particular circumstances to provide for consular protecion could be the subject of an agreement but the rule of law held good. The right in question was a veritable constitutional right and a rule of law as clear as the right to establish diplomatic relations. For rules of law invariably regulated relations between individuals, or between groups of individuals represented not by the State, which was for him a meaningless abstraction, but by their Governments.

46. What in that case was the purpose of the exequatur ? The answer was that the exequatur corresponded to the *agrément* in diplomatic relations. States were bound to permit consular relations but were under no obligation to accept a particular person as consul. Thus the exequatur was a guarantee offered by the appointing State of the competence of the consul and a recognition by the State of residence of his capacity to perform consular functions.

47. It had also been argued that certain States refused to accept consular relations. But should the Commission base its draft on a mentality that belonged to another age and to an early stage of social development ? Its task was surely to prepare the international law of tomorrow and no to codify the customs of the past. A State which refused consular relations was refusing international trade and denying the existence of international law and international society and was guilty of a fault as grave as that of a State which refused to honour an undertaking to arbitrate.

48. The question whether consular relations were conducted by a special class of official or by diplomatic agents was to him of minor importance, a matter which varied with the relations between particular States.

49. Paragraph 3 of the article might be more concisely redrafted to read : " The establishment of consular relations shall be effected by agreement between the States concerned, as in the case of diplomatic relations." In both cases no relations could be established without prior agreement.

The meeting rose at 6 p.m.

470th MEETING

Tuesday, 24 June 1958, at 9.45 a.m.

Chairman : Mr. Radhabinod PAL.

Consular intercourse and immunities (A/CN.4/108) *(continued)*

[Agenda item 6]

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

ARTICLE I *(continued)*

1. Mr. FRANÇOIS said that, though not agreeing that the concept of the State was a meaningless abstraction, he shared Mr. Scelle's views to some extent. He was not, however, in favour of article 1, paragraph 1, of the draft on consular intercourse (A/CN.4/108, para II). Since in many cases States did not wish to establish consular relations, he considered it inadvisable to establish a right without a corresponding obligation.

2. On the other hand he was in favour of maintaining paragraph 2. The institution of consul had been regarded from the outset as of great importance in promoting peaceful and economic relations between peoples. The establishment of consular relations followed directly from a State's desire to establish friendly relations with other States. If diplomatic relations existed between two States, those States must also accept consular relations. That did not, however, mean that one State could appoint consuls without the consent of the other State. Both must agree on the choice of consuls and of consular districts. He could conceive of cases in which States would not be prepared to receive consular officials and even of cases in which, in special circumstances, a State might refuse, temporarily perhaps, to accept consular relations. But the general principle still stood. Thus his position was that he was not entirely opposed to the views of Mr. Matine-Daftary and at the same time could not entirely agree with Mr. Scelle. Though the principle that States were obliged to accept consular relations was not part of existing international law, he thought that the Commission should include such a provision in its draft as a contribution to the progressive development of international law.

3. Mr. YOKOTA agreed with Mr. Verdross and other speakers that a right, in the strict sense, to establish consular relations did not really exist. The position was similar to that of the alleged right of legation, whose existence a few members of the Commission had affirmed at the previous session. It would be recalled,