Document:-
A/CN.4/SR.470

Summary record of the 470th meeting

Topic:
Consular intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
1958 , **vol. I**

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,

however, that after lengthy discussion the Commission had finally adopted a statement that diplomatic relations were established by mutual agreement,[1] which meant implicitly that a State had no right in the strict sense of the term to establish diplomatic relations and could do so only on the basis of a mutual agreement. He was in favour of omitting paragraph 1.

4. As far as paragraph 2 was concerned, he agreed with Mr. Matine-Daftary and other speakers that the establishment of diplomatic relations did not always include the establishment of consular relations. For example, when diplomatic relations had been established between Japan and the Soviet Union in 1956 by mutual declaration, no exchange of consular officers had taken place, a question which had not been taken up until two years later in connexion wih the establishment of trade relations.

5. The Special Rapporteur, whose concept of consular relations was somewhat different from his own, seemed to consider that they existed when a section of a diplomatic mission performed acts normally performed by a consul. Though that view might be theoretically defendable, he thought it untenable from the practical standpoint and from the standpoint of codification of international law. Even when the protection of his nationals, development of commerce, or even notarial acts were entrusted to a diplomatic agent, it would not be proper to describe those functions as consular functions. Consular relations could be said to exist only when consuls had been exchanged or admitted by States, or at least when States were agreed to admit consuls and to permit them to perform their functions in their territories. He could not therefore accept paragraph 2, though he was anxious to keep the term " consular relations " or at least " consular intercourse " which was part of the very title of the subject. In his opinion " consular relations " was an appropriate term to describe those relations existing between States when they had either exchanged consuls or were prepared to admit them.

6. He proposed that the article should be redrafted concisely, on the lines of article 1 of the draft on diplomatic intercourse, to read: " The establishment of consular relations and the exchange or admission of consular representatives takes place by mutual agreement."

7. Although agreeing with Mr. Ago in principle that the analogy between consular and diplomatic intercourse should not be carried too far, he felt that where the situation as between consular and diplomatic intercourse was really similar, it was preferable to adopt a like formula. And on the question of the establishment of relations, the similarity was quite marked.

8. Mr. HSU, referring to Sir Gerald Fitzmaurice's remarks at the previous meeting, said that he had no objection to substituting the word " relations " for " intercourse ", since the two terms were practically synonymous. Substitution of the term " functions " was a different matter, though he would have no objection provided that the same term was used in both drafts. Such a change would then merely reflect a change in viewpoint. But to use the term in the title of the consular draft only would be illogical and misleading, since both drafts dealt with international relations.

9. He found article 1 acceptable, subject to some drafting changes. The principle enunciated in paragraph 1 was, admittedly, not to be found in text-books, yet it was no longer open to challenge. It was difficult to see how nations could develop friendly and trade relations, which was their duty under Article 1 of the Charter of the United Nations, if they did not possess the right to establish consular relations. It had been argued that a right which could not be enforced was no right at all. The right would, however, be enforceable, but for the abnormal international situation. In that sense, the right in question was no less enforceable than any other international right, with the possible, and rather doubtful, exception of the right to be immune from armed aggression.

10. Paragraph 2 was a sound provision also and he agreed with Mr. Scelle that the exequatur was no more than a consular *agrément,* the recognition of a country's consul by a foreign Government. Too much importance should not be attached to the exequatur. In some countries, a diplomatic mission wishing to set up a consulate section did not need to apply for an exequatur but simply notified the Government of the receiving State of the appointment of a member of the mission to exercise consular functions. And in some countries, an exequatur consisted merely of the letters patent of the consul with the word exequatur written over them.

11. Paragraph 3 seemed somewhat unclear and in conflict with the principles of the first two paragraphs. If the phrase " establishment of consular relations " in that context meant the establishment of consulates independent of the diplomatic mission, it would be advisable to redraft the paragraph to make that clear. The establishment of consulates was clearly subject to agreement, since such questions as the place and size of the consulates were involved.

12. Although he supported the principles in all three paragraphs of the proposed article, he thought that the Special Rapporteur could meet the criticism by reducing the three paragraphs to one, as follows:

> " The establishment of a consulate in the absence of diplomatic relations or independent of a diplomatic mission or in parts of the country other than the capital takes place by mutual consent."

Such a compromise text should be acceptable to those members of the Commission who took a more conservative view, and would cover all points except the right to establish consular relations. The question whether the establishment of consular relations was included in the establishment of diplomatic relations would then to some extent be covered by the reference to a diplomatic mission.

13. He was unable to agree with Mr. Yokota that the draft on diplomatic intercourse repudiated the idea that

[1] *Yearbook of the International Law Commission, 1957,* vol. I (United Nations publication, No.: 1957.V.5, Vol. I), 384th meeting, paras. 34 *et seq.*; 385th meeting, paras. 1-31.

States had a right to establish diplomatic relations ; it merely left the question untouched. Nor could he agree that the example of the agreement between the Soviet Union and Japan showed that the establishment of diplomatic relations did not include the establishment of consular relations. It was merely an example of relations being established in two stages. After all, two years was not a very long time in international law.

14. Mr. TUNKIN said that he could not accept Mr. Ago's view of the nature of consular functions. While it was perfectly true that the consul had a far less representative character than the diplomatic agent, he could not be said to have no representative character at all. Mr. Ago had himself agreed that consular officers could appear before the local authorities of the sending State as well as to protect its nationals, and in such cases the officer was clearly appearing as the representative of the public authorities of the sending State.

15. In paragraph 1, the Special Rapporteur seemed to have in mind certain concepts current in theoretical literature, affirming the right of States to establish consular relations on the analogy of the right of legation. He himself largely agreed with Mr. Verdross and considered that the Commission should not go further in article 1 of the present draft than it had done in article 1 of the draft on diplomatic intercourse, which dealt with a similar question. If the Commission enunciated the right to establish consular relations, it would imply that any State must agree to any proposal to establish consular relations made by any other State, under pain of failing to honour its international obligations. That seemed to him to be incorrect in substance. It should, however, be quite easy to redraft article 1 on the lines of the corresponding provision in the draft on diplomatic intercourse.

16. Paragraph 2 seemed to him to be correct in substance, and in his opinion the objections to it were due to some misunderstanding. There was a distinction between the establishment of consular relations and the establishment of consular offices, parallel to the distinction drawn in article 1 of the draft on diplomatic intercourse between the establishment of diplomatic relations and the establishment of permanent diplomatic missions. Cases could arise where consular relations were established but no exchange of consular officers took place for quite a long time. For instance, the provisions of the consular treaty between the Soviet Union and the Federal Republic of Germany, signed in April 1958, applied both to consular activities conducted by consular departments of embassies and also to the activities of any consulates which might be established by the contracting parties in each other's territory. If either contracting party found it necessary to establish a consulate the parties would enter into negotiations with a view to reaching an agreement. Thus the treaty envisaged the possibility of consular functions being performed solely by the consular departments of embassies. When consulates were set up, the consular officers might, it was true, exercise wider functions than diplomatic agents performing consular duties but it was a recognized practice that a minimum of consular functions could be performed by diplomatic missions. Furthermore, he knew of no cases where, once it had been agreed to establish diplomatic relations, a further agreement on the establishment of consular relations had nevertheless been required. Any subsequent agreement would relate simply to the actual establishment of consular offices. Hence, if a distinction between consular relations and the establishment of consular offices was understood in paragraph 2, he would have no objection to it.

17. If paragraph 1 were redrafted on the lines of article 1 of the draft on diplomatic intercourse, and paragraph 2 retained as it stood, he thought that paragraph 3 could be dispensed with. Incidentally, he agreed with Mr. Matine-Daftary's suggestion that the Commission should take no vote on the articles at that stage.

18. Mr. EDMONDS observed that article 1, paragraph 1, appeared to be rather inconsistent both with the corresponding provision in the draft on diplomatic intercourse and with certain statements in the commentary on the article — paragraph 11, for example, which stated that a State might refuse to receive consuls. He had, however, been much impressed by Mr. Scelle's statement at the previous meeting (para. 45). If a State allowed the nationals of another State to lead normal lives in its territory and to engage in normal trade relations, it hardly became that State to refuse to enter into consular relations. Science and invention had brought States so close together that it was necessary to take a progressive view consistent with the realities of the age. Hence, he was in favour of retaining paragraph 1, especially if it could be modified along the lines suggested by Mr. Scelle.

19. The same considerations applied to paragraph 2. As the Special Rapporteur had shown in his commentary, it was the custom for diplomatic agents to perform certain consular duties and, if two States entered into diplomatic relations, that fact should imply a right to perform the usual consular functions as well.

20. As for paragraph 3, he failed to see how it could apply in view of the foregoing paragraphs. It should therefore be either reconsidered or omitted.

21. Faris Bey EL-KHOURI observed that the right referred to in paragraph 1 implied the existence of a corresponding obligation. The Commission would not be exceeding its powers if it drew attention to the existence of that obligation in cases where the establishment of consular relations was necessary and in the interests of relations between the States and the progressive development of international law. As Mr. Edmonds had observed — and the point might with advantage be referred to in the commentary — the establishment of consular relations could be regarded as necessary when there was commercial intercourse between the two States concerned and when the receiving State had authorized nationals of the sending State to reside in its territory. While a provision that was not recognized as compulsory could not be imposed

on the receiving State, the paragraph should be expressed in such a form as to show that the Commission favoured the promotion of the idea that consular relations were established by virtue of a right and its concomitant obligation.

22. He thought that the statement in paragraph 2 was correct, but that the text should be improved so as to show that it was only the establishment of a consular office in the capital, and not in other cities and ports, which was included in the establishment of diplomatic relations. The establishment of consular offices in other cities and ports was covered by paragraph 3, which indicated that in such cases separate agreements would be required.

23. All three paragraphs were, he thought, useful and should be acceptable to States if the Drafting Committee modified them so as to overcome the difficulties which had been mentioned during the discussion.

24. Mr. MATINE-DAFTARY said that since Mr. Hsu had described as excessively conservative the attitude of those members of the Commission who were opposed to article 1, he would like to make it clear that his position would depend on the form of the instrument in which the draft articles were to be embodied. If it was to be a convention, he would adhere to the position he had adopted at the preceding meeting, but if the draft articles were to constitute only a model or declaration, he would support the solution proposed by Mr. Scelle.

25. Mr. VERDROSS said there seemed to be some misunderstanding between the Special Rapporteur and some members of the Commission.

26. Relations between Governments, including commercial relations, came within the sphere of diplomatic intercourse, though a diplomatic mission might have a special department to deal with commercial matters. The main duties of a consul, however, were not concerned with the relations between Governments but with matters of internal law. The consul was a kind of advocate appointed by the sending State to act on behalf of its nationals residing in the territory of the receiving State. Under bilateral treaties a consul might have other functions, but under general international law he was there to protect the interests of the nationals of the sending State before the local authorities, including the tribunals, and the exercise of his functions, which depended on the issue of an exequatur by the receiving State, was not necessarily related to the conduct of diplomatic intercourse. If clarity was achieved on that point, it would be easy to find an acceptable formula, especially since the Special Rapporteur had recognized that a consul or a member of a diplomatic mission could not present himself before the local authorities unless he was in possession of an instrument, specifically the exequatur, authorizing him to do so.

27. Mr. SCELLE said he wished to supplement Mr. Verdross' remarks. The functions which a consular official performed in protecting the interests of the nationals of the sending State represented only one aspect of his position. There was another aspect: the consular officer was appointed by the sending State. When the organization of the international society was fully developed there would be representatives of all countries in all other countries and thus interpenetration would be complete. It was part of the Commission's task to define the essential functions of consular and diplomatic missions as institutions of the international community.

28. Mr. AGO said he had had no wish to deny that consular officers were appointed by the sending State and were in the official service of that State. They were in fact organs of the State, and their resemblance to diplomatic agents went even further, since their functions were provided for and regulated by international law. The essential difference between consular officers and diplomatic agents was that whereas the latter acted at the international level, dealing with relations between two subjects of international law, the former acted at the internal level, in matters governed by the municipal law of either the sending State or of the receiving State. For example, when he assisted in the settlement of successions or issued certificates or solemnized marriages, the consular officer acted as an organ of the legal system of the sending State; and when the consul took action to assist the nationals of his country resident in the receiving State in their relations with some local authorities, the action was taken in a domain governed by the law of the receiving State.

29. It would be somewhat illogical to use the word "representative" in relation to consular officers when that word had not even been adopted for diplomats in the Commission's draft concerning diplomatic intercourse, where it would have been more apt.

30. Mr. Tunkin and the Special Rapporteur had spoken, in relation to consular functions, of a right — a kind of counterpart in the consular field to the right of active and passive legation;[2] but Mr. Bartos had been correct, he thought, in affirming that the term was inexact, as the capacity enjoyed was strictly conditional. A State had a concrete right *vis-à-vis* another State to open consulates on the latter's territory if there was an agreement between the two. Without such an agreement, the right did not exist.

31. In connexion with paragraph 2, some members of the Commission had affirmed that when diplomatic relations had been established, the diplomatic mission was at any rate by implication empowered to engage in consular activities. He entirely disagreed. If the agreement between the two countries provided that the embassy should have a consular section, the affirmation would be correct, but it did not automatically follow from the institution of diplomatic relations that a consular section might be established.

32. He supported Mr. Matine-Daftary's suggestion that

[2] See commentary on article 1.

a vote on the draft articles concerning consular intercourse would be premature at that stage.

33. Mr. ZOUREK, Special Rapporteur, said he had not been convinced by the critics of paragraph 1. Though the wording might perhaps be modified, he did not think that every right was necessarily associated with a corresponding duty. That was an over-simple theory of the law, influenced by civil law notions. The employment of the word " right " was, however, consistent with accepted usage, and " right of legation " had been a current expression for centuries. It had been used in international conventions, including the Havana Convention of 1928.[3] Yet nobody contended that a State was legally bound to establish diplomatic relations with any other State that requested it. Furthermore, paragraph 3 was sufficiently clear to dispel all doubt on that point. Since, however, no reference had been made to a right in the Commission's draft on diplomatic intercourse, he would not object to, though he would regret, the deletion of the paragraph.

34. Most of the objections to paragraph 2 were, he thought, based on a misunderstanding. The paragraph certainly did not mean, as had been suggested, that when diplomatic intercourse was established the sending State had the right to set up consular offices in the receiving State. In that connexion he would refer to paragraph 2 of the commentary on article 2. A distinction should be drawn between the inception of consular intercourse and the establishment of consular offices. What article 1, paragraph 2, meant was that when diplomatic intercourse was established the establishment of consular relations was implied. But those relations could be conducted in such a case only by the diplomatic mission. That implication had been questioned, especially by Mr. Ago. Mr. Matine-Daftary and Mr. Yokota had cited cases in which diplomatic relations were said to exist without consular relations. But who performed the consular functions in such cases ? It could hardly be suggested that they were not performed at all, for their performance was essential to routine intercourse between States. In many cases, however, a sending State would find it too expensive to establish special consular offices in the receiving State, and consular duties were performed by the diplomatic mission. For those reasons he was therefore of the opinion that the idea expressed in paragraph 2 was in keeping with a general if not a universal practice.

35. Mr. Verdross had supported the view that the ability to approach the local authorities was a distinguishing feature of consular, as opposed to diplomatic, relations. He (Mr. Zourek) did not think, however, that that was an essential criterion. The relations between consular officers and the local authorities were regulated either by local usage or by the legislation of the receiving State, and the whole subject would be discussed when the Commission came to deal with article 24 of the draft. He would point out, however, that consular officers were sometimes empowered to approach the central authorities as, for example, in cases where it was claimed that the authorities of the receiving State had not given fair treatment to a national of the sending State ; and also that diplomatic agents were in some cases empowered to approach the local authorities, even though they were bound to do so through the Ministry of Foreign Affairs.

36. He could not agree with Mr. Ago that the functions of a consular officer must fall solely within the framework of the internal law either of the sending or of the receiving State. That might be the false impression in cases where a country maintained both a diplomatic mission and concular missions in the receiving State, but consular officers generally had to undertake duties in connexion with the observance of such international instruments as commercial and navigation treaties, and to ensure the protection of their nationals. That function assumed even greater significance where the consular district was coterminous with the territory of the receiving State. Moreover, under most national legislations, consular officers were empowered to deal with the central authorities, such as the Ministry of Commerce or the Ministry of Foreign Affairs, when the sending State was not represented in the receiving State by a diplomatic mission ; that was a practical necessity. In such cases the consular mission had to deal with matters affecting the relations between States.

37. It had been rightly pointed out that consular intercourse was not necessarily based on reciprocity, for sometimes a State might wish to maintain consular offices in a country which did not need to have consular offices in that State. He had provided for that possibility by the use of the phrase " the exchange or admission of consular representatives " in article 1, paragraph 3.

38. Objection had been raised to the expression " consular intercourse " but he thought the Commission would be obliged to retain it, for it was consecrated by usage and had been employed previously by the Commission itself and approved by the General Assembly.

39. Summing up, he said he would be prepared to sacrifice paragraph 1, but thought that paragraphs 2 and 3 should stand.

40. The CHAIRMAN observed that if paragraph 2 merely meant that diplomatic missions were also empowered to carry out consular functions, there was no need to say so in the present draft ; the performance of consular functions should have been included among the functions of a diplomatic mission enumerated in the draft on diplomatic intercourse and immunities.

41. He asked the Special Rapporteur whether one of the implications of paragraph 2 was that when diplomatic intercourse had been established there would be no need for another agreement for the purpose of establishing consular intercourse.

42. Mr. ZOUREK, Special Rapporteur, replied in the

[3] Convention regarding Diplomatic Officers, signed at Havana on 20 February 1928. See League of Nations, *Treaty Series*, vol. CLV, 1934-1935, No. 3581.

affirmative. Special agreements would, however, be needed if the sending State wished to establish consular offices either in the capital of the receiving State or in other towns.

4. Mr. TUNKIN said that, like the Special Rapporteur, he was unable to accept the view that consular activities must necessarily be within the framework of internal law. The distinction between diplomatic and consular functions in this respect was in fact a distinction of degree rather than of principle. While the activities of consular officers were largely determined by the internal law of the sending and receiving States, that did not mean that consular officers could not also discharge functions which were regulated by international law, as, for example, functions connected with the observance of commercial agreements.

44. Nor could he accept Mr. Ago's assertion that diplomatic agents could carry out consular functions only with the express consent of the receiving State or by virtue of a specific agreement between the two States. Not only could the consular department of an embassy discharge consular functions in the territory of the receiving State, but it might also carry out such duties in respect of nationals of the sending State who resided in the territory of a third state in which the sending State maintained no consular departments or offices. Such persons might, for example, send their passports for renewal to consular offices in the receiving State. In respect of the consular functions discharged by a diplomatic mission, no separate agreement was needed.

45. Sir Gerald FITZMAURICE said that the question whether diplomatic functions included consular functions was a question less of theory than of fact, and the facts should be ascertained. The Special Rapporteur had pertinently asked by whom the consular functions were discharged in countries in which a sending State maintained a diplomatic, but no consular, mission. He doubted, however, whether a sending State had an absolute right to exercise consular functions merely by virtue of the establishment of diplomatic relations. If such a right existed, the performance of consular functions should have been mentioned among the functions of diplomatic agents enumerated in the Commission's draft on diplomatic intercourse and immunities.

46. The real question was whether, if a sending State opened a consular section in its embassy in a receiving State without being specifically authorized to do so, the receiving State would have the right to object. The position was often obscured by the existence of a kind of implied agreement. What often happened in practice was that the embassy of the sending State would inform the receiving State that certain personnel had been designated to exercise consular functions. No objection would be made by the receiving State, and consequently there was a tacit agreement that the sending State might arrange for the performance of consular functions through its diplomatic mission. In his opinion, however, the receiving State would in such circumstances be within its rights if it objected to the procedure. Under article 2 of the draft, the agreement concerning the exchange and admission of consular officers should specify the seat and district of the consular mission. How would the consular district be defined in cases where consular activities were carried out by the diplomatic mission in the absence of a special agreement for the purpose of establishing consular relations? The Special Rapporteur's answer would presumably be that the consular district comprised the whole territory of the receiving State, but the point should be clarified.

47. He did not agree that a diplomatic agent had an automatic right, for example, to appear before the courts of the receiving State for the purpose of carrying out — and because he said that he was carrying out — a consular function. That argument, in fact, showed the weakness of the theory that diplomatic functions included consular functions, for a diplomatic agent had to act through the Ministry of Foreign Affairs. He must be invested with consular as well as a diplomatic capacity before he could exercise consular rights; and consular functions were essentially distinct from the functions of diplomatic agents.

48. Mr. ALFARO disagreed with the view that consular functions were exercised only for the protection and defence of nationals of the sending State. Such a view of consular relations would have been correct in past centuries, but was no longer valid; for consuls not only rendered services to nationals of the sending State, but also to nationals of the State where they acted as consul, and even to those of other States. Thus, a consul stamping an invoice for goods to be shipped abroad helped the interests both of the importing country and of the exporting country, which was generally the receiving State.

49. In the same way, the principal function of a consul was no longer, as it had been under the capitulatory system, to appear before local authorities. In reality, he still did so in cases where the laws of the receiving State protected the interests of a national of the sending State, for example, in the case of an estate with no known heir to the deceased foreign person in the receiving State. In such a case a consul acted as representative of a national of the sending State. A consul might also assist nationals of a third State, as when he issued visas authorizing entry into the sending State. In other words, he had a wide variety of functions. It could not be said that those functions were concerned only with the protection of the nationals of the sending State, for they were commercial, civil and international in character.

50. Mr. YOKOTA said that Mr. Hsu had criticized his example of delay in the establishment of consular relations between the Soviet Union and Japan, on the ground that two years was an insignificant time in international relations. Such an objection might appeal to a philosopher or a political thinker, but not to a jurist,

who could not disregard two years so lightly. Surely, if a delay of two years could occur between the establishment of diplomatic relations and the establishment of consular relations, the latter could hardly be said to be implicit in the former. It had further been argued that the Soviet embassy had maintained a consular section before consular relations had been established with Japan. That might have been so, but it must have been purely an internal arrangement within the embassy; to the best of his knowledge, the existence of the section had never been notified to the Japanese Government, nor had it been officially recognized.

51. It was doubtful whether it was proper to speak of consular functions being performed by diplomatic agents. It had been said that one of the functions of consuls was to protect the nationals of the sending State and that that function was performed by diplomatic agents; but in his opinion that was the proper function of the diplomatic mission and not of consuls, nor did diplomatic agents perform that function in their capacity as consuls. The fact that such protection had been a consular function in the past did not mean that it was still a consular function in modern times. In his view, therefore, the term consular relations should be reserved for those cases in which States had agreed to admit consuls into each other's territories; for otherwise there would be confusion.

52. Mr. TUNKIN thought that, in the Soviet-Japanese declaration on the re-establishment of diplomatic relations, consular relations had also been mentioned. In that case, Mr. Yokota's example would be irrelevant. In any case, the Soviet Union had established diplomatic relations with many other countries without mention being made of consular relations; and yet the embassies both in the Soviet Union and in the other countries had consular sections. One example was the Federal Republic of Germany.

53. Mr. ZOUREK, Special Rapporteur, replying to the points raised by Sir Gerald Fitzmaurice, said that in the absence of consuls the consular district of a diplomatic mission would comprise the entire territory of the receiving State. Again, a diplomatic agent's appearance before local authorities was not a characteristic of his functions. Without some special authority, such as an agreement between the States, a diplomatic agent could not appear before the local authorities, but neither could a consular agent. Legislations differed on the matter, and in some cases local usage permitted one or the other to appear.

54. The Commission would deal with the exact functions of a consul when it discussed article 13 of his draft. Those functions were defined in many conventions, even if some went beyond generally existing practice, and there was little danger of States not accepting them. If, however, the draft was to apply solely to cases where consular relations were conducted only by separate consular offices, as Mr. Yokota suggested, then the scope of the draft would be enormously reduced, and the Commission would then also have to consider how the draft could deal with the situation in the many countries without such offices. No such question had been raised in connexion with the draft on diplomatic intercourse and immunities, and he felt that if Mr. Yokota's limitation was accepted there would be a lacuna in that draft. Consular relations covered a host of international as well as intranational matters, and consular functions were exercised in all countries; nor was it conceivable that they should not be exercised, even in the absence of an agreement for the establishment of consular relations. There was therefore no need for special recognition by States of the consular section of a diplomatic mission.

55. The CHAIRMAN said that if paragraph 2 was accepted without change it would raise no difficulties. If, however, it was so changed as only to extend diplomatic functions to cover consular functions the proper, and the only, place for such a provision was the draft on diplomatic intercourse and immunities.

56. Mr. ZOUREK said that he had raised that very point during the discussion of the draft on diplomatic intercourse and immunities, but it had not been pursued. Perhaps it would be desirable to mention it in both the draft conventions.

57. Mr. SCELLE said that the question was of great importance. It should certainly be mentioned in the draft on diplomatic intercourse and immunities, but above all it required mention in the draft on consular intercourse.

58. Mr. ZOUREK proposed that paragraph 2 should be retained, and that paragraph 3 should be merged with paragraph 2. The article would then consist of a single provision, general agreement being implied in the first sentence and special agreement provided for in the second.

59. Mr. SCELLE said in that case article 1 should be drafted rather differently, for, although diplomatic and consular functions were closely linked, they were nevertheless very different. He considered that there was an obligation on the part of States to admit consuls and to specify consular districts. The Commission would fail to codify the international law on the subject if it did not lay down both the right to send consuls and the obligation to receive them.

60. Mr. VERDROSS thought that the article would be generally acceptable if paragraph 2, as presented in the report, was prefaced by the words: "Without prejudice to the functions which are governed by the internal law of the State of residence,".

61. Mr. ZOUREK said he had no objection to the substance of Mr. Verdross' proposal. Its final form might need further consideration.

The meeting rose at 1 p.m.