Document:-
A/CN.4/SR.530

Summary record of the 530th meeting

Topic:
Consular intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
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61. The fact that the provisions of consular conventions were not uniform meant that with regard to the question of consular intercourse and immunities the Commission was expected to develop rules of international law rather than to re-state existing practice.

62. Mr. FRANÇOIS asked Mr. Scelle whether, if it were agreed that the sending State had a right to display its flag and coat-of-arms, a clause in a lease entered into with a consulate which prohibited such display would in fact be invalid.

63. Mr. SCELLE reiterated that the clause in question would be invalid as incompatible with international law, which prevailed over municipal law.

64. Mr. ERIM said that there appeared to be a possibility that the terms of article 24 might serve as a pretext to the authorities of the receivingt State for compelling a reluctant landlord to accept a consulate as a tenant.

65. For his part, he had always understood that the codification of the rules of international law in the matter could not affect rights under private law, but having heard Mr. Scelle's statement, he now entertained some doubts on the question.

66. As a matter of drafting, he suggested that article 23 (*a*) should read " soit arboré au consulat " (at the consulate) instead of " soit arboré par le consulat " (by the consulate). The latter wording suggested that the flag might be flown elsewhere than at the consulate itself.

67. The CHAIRMAN said that the only question to be decided was whether articles 22 and 23 should state that the receiving State " shall (or " is bound to ") permit " the use of the coat-arms and flag or that the sending State " is entitled " (or " has a right ") to such use.

68. Whatever decision was taken by the Commission on that point, the further question of a possible conflict between a consulate and a landlord was a matter of interpretation by the competent courts of the receiving State.

69. Mr. BARTOŠ said that a different kind of difficulty had occurred in Yugoslavia. At Split, four consulates were housed in the same building, and there had been a conflict between them over the right to fly their respective flags over the building. . Neither the courts nor the Protocol Division of the Ministry of Foreign Affairs had been able to settle that dispute.

70. Sir Gerald FITZMAURICE suggested that articles 22 and 23 should be referred to the Drafting Committee on the understanding that the purpose of those articles was to lay down that the receiving State should, so far as it was concerned, permit (or not prevent) the use of the coat-of-arms and national flag of the sending State. There was no intention to interfere in the private relations between a consulate and a landlord.

71. The CHAIRMAN said that, if thore was no objection, he would take it that the Commission agreed to Sir Gerald Fitzmaurice's suggestion.

It was so agreed.

Appointment of drafting committee

72. The CHAIRMAN proposed that the Commission should appoint a drafting committee with the following membership: Mr. Yokota (Chairman), Mr. Ago, Sir Gerald Fitzmaurice, Mr. François and Mr. Žourek.

It was so agreed.

The meeting rose at 6.5 p.m.

530th MEETING

Monday, 2 May 1960, at 3 p.m.

Chairman: Mr. Luis PADILLA NERVO

Consular intercourse and immunities (A/CN.4/131, A/CN.4/L.86) [*continued*]

[Agenda item 2]

PROVISIONAL DRAFT ARTICLES (ACN.4/L.86) [*continued*]

ARTICLES 25 *(Inviolability of consular premises)* and 27 *(Inviolability of the archives and documents)*

1. The CHAIRMAN, observing that article 34 *(Accommodation)* had been adopted at the previous session as article 15 A (524th meeting, paragraph 8) and as article 19, [1] invited the Commission to consider article 25.

2. Mr. ŽOUREK, Special Rapporteur, said that he had tried to make the article on the inviolability of consular premises concord in principle with article 20 of the draft articles on diplomatic intercourse and immunities, [2] and it was indissolubly linked with article 27 of the present draft *(Inviolability of the archives and documents)*. Such inviolability was already recognized by customary international law and had been embodied in many conventions, including those mentioned in the commentary to the corresponding article (article 25) in his first draft.[3] Doctrine had recognized the principle of the inviolability of consular archives as early as 1896 in article 9 of the regulations on consular immunities adopted in that

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[1] *Official Records of the General Assembly, Fourteenth Session, Supplement No. 9*, p. 35.

[2] *Yearbook of the International Law Commission, 1958*, vol. II (United Nations publication, Sales No. 58.V.1, vol. II), p. 95.

[3] *Ibid., 1957*, vol. II (United Nations publication, Sales No. 1957.V.5, vol. II), pp. 98 and 99.

year by the Institute of International Law.[4] Indeed, those regulations even went so far as to provide that, when entering on his functions or when any important changes were made a consul was bound to send to the receiving State, through his diplomatic mission, a plan of the consular premises. Certain conventions and some national legislation also accorded inviolability to the official residence of consuls, as for example, the Convention on Consular Agents adopted by the Sixth International American Conference at Havana in 1928 (article 18).[5] He doubted, however, whether the practice could be regarded as sufficiently developed to be codified in a general convention on consular intercourse and immunities; if the Commission did decide to include it in the draft, the provisions should preferably be placed in a later section dealing with personal immunities (section II, sub-section C).

3. He had intentionally repeated in the first sentence of paragraph 1 the somewhat vague terms employed in the definition given in paragraph 1. The Commission would have to decide later whether the principle laid down in the article was to apply only to the consular offices or whether it might be extended also to cover accommodation for staff acquired by the consul or by the sending State.

4. It was clearly desirable to lay down the principle of inviolability in a draft convention on consular intercourse and immunities, for there had been many cases of violation. The Commission should for the present simply decide whether the principle should be included in the codification. If it did so, the article might be referred to the Drafting Committee. The Commission itself should not, he thought, spend time in further drafting.

5. The CHAIRMAN said that the Spanish text of the final phrase of paragraph 1 did not concord with the English and French texts, since it implied that the authorities might not place the premises under seal, whereas the English and French made the prohibition apply to files, papers or other documents which were in the consular premises.

6. Mr. ŽOUREK, Special Rapporteur, confirmed that the English and French texts expressed his intention.

7. Mr. BARTOŠ said that he was in general satisfied by the draft article, but the Commission should consider certain questions of principle and substance. In countries where no capitulations existed, there was no general rule that consular premises enjoyed absolute inviolability. In Yugoslavia, for example, very broad toleration was exercised, but there was no absolute rule. In customary law, local authorities could perform certain acts in parts of the consular premises which were not used solely for the purposes of a consulate, and the consular files, papers and other documents had therefore to be kept separate from non-consular papers. The inviolability of consular premises applied as a general rule when a career consul was appointed, but there could also be honorary consuls who performed other activities. A practice, begun by the USSR and later adopted by some of the People's Democracies, was to set up consulates which were at the same time the headquarters of trade missions. In its consular convention with the USSR, however, Yugoslavia had not recognized the inviolability of premises used for such a purpose. In western Europe also consular premises very often included offices which were not used for strictly consular purposes, such as travel agencies established on the consular premises for convenience. Such situations could not be disregarded.[6]

8. In certain circumstances, recognized in consular conventions between France and the United States of America and between France and the United Kingdom, the local authorities might enter consular premises in search of a fugitive from justice, if the consul refused to surrender him. Thus, even if the principle of the inviolability of the consular premises was laid down, it should be qualified by certain restrictions, especially with regard to non-consular acts and cases in which the receiving State retained some jurisdiction over foreign consuls. Obviously, consular premises could not be entitled to complete inviolability if the person of the consul himself did not enjoy inviolability. He considered that the Commission's draft should accord to consular premises inviolability to the greatest possible extent, subject, however, to certain specific exceptions.

9. Mr. AGO agreed with the general principle stated by the Special Rapporteur, but had some criticisms to make with regard to details. The Special Rapporteur had stated that he had deliberately drafted the first sentence of paragraph 1 in vague terms because it was not yet clear whether the principle of inviolability should cover only the consulate or the consulate and accommodation for the consular staff as well. In his (Mr. Ago's) opinion, the two kinds of premises should be completely separate. Article 25 should deal with consular premises as such, which were quite distinct from residential accommodation; the latter, in his opinion, did not enjoy inviolability. The phrase " consular premises " should be used instead of " the premises used for the purposes of the consulate ", and the implications of the latter phrase should be discussed later.

10. The parallel phrase used in article 20 of the draft articles on diplomatic intercourse and immunities was a better formulation than the second sentence in article 25, paragraph 1, of the present draft, and should be followed. The

[4] *Ibid.*, Albéric Rolin, *Tableau général de l'organisation des travaux et du personnel de l'Institut de droit international pendant la période décennale 1904 à 1914* (Paris, A. Pedone, 1919), p. 87 ; *Annuaire de l'Institut de droit international*, édition nouvelle abrégée (1928), vol. III, p. 1078.

[5] League of Nations, *Treaty Series*, vol. CLV (1934-1935), p. 299.

[6] See 545th meeting, para. 6.

provision should cover every case in which local authorities wished to enter the consular premises and not only cases in which they wished to inspect them, or " visit " them, as the French text put it.

11. The third sentence in paragraph 1 had no parallel in article 20 of the draft articles on diplomatic intercourse and immunities, but the basic principle was already well expressed in article 27 of the present draft. The separation was useful, especially as the archives and documents of the consulate might perhaps be physically outside the consular premises. The third sentence in paragraph 1 might therefore be deleted.

12. Paragraph 2 of article 25 had its parallel in paragraph 3 of article 20 of the draft articles on diplomatic intercourse and immunities, but the latter was considerably broader in scope. Paragraph 2 of the present text should cover more than military requisitioning or billeting, since it was conceivable that cases of search or attachment might occur unless provision was made against them.

13. Some drafting changes might be required in paragraph 3 to bring it into line with article 20, paragraph 2, of the draft articles on diplomatic intercourse and immunities.

14. Mr. FRANÇOIS agreed with Mr. Bartoš and Mr. Ago, but would wish to go further. He doubted whether the principle that the protection of consular premises was on a par with the extraterritoriality of embassies and legations was valid. There was, indeed, an essential difference. As the Special Rapporteur had well remarked in the commentary to his first draft, the logical corollary to the inviolability of consular correspondence and archives was the inviolability of the premises where such correspondence and archives were found. On the other hand, consulates could not enjoy the same degree of extraterritoriality as diplomatic missions. Undoubtedly, consular premises were given extraterritorial status in a number of conventions, but those conventions were the exception, whereas the Special Rapporteur wished to make them the rule. It was more than doubtful whether many countries would acquiesce in such a decision, and inviolability should therefore be restricted to certain consular offices.

15. Mr. YOKOTA noted a discrepancy between the English and French texts of draft article 25. In paragraph 1 the English wording was " wish to inspect " whereas the French was " désirent visiter ". He asked the Special Rapporteur whether the two expressions meant the same thing and, if so, whether the authorities of the receiving State must obtain permission only when they wished to inspect the consular premises or, conversely, whether they did not need to obtain permission when they merely wished to enter them for other purposes. Under article 20 of the draft articles on diplomatic intercourse the agents of the receiving State were debarred from entering the premises of a mission, save with the consent of the head of the mission. The word " enter " was a more general term than " inspect ". The conclusion might be drawn that an agent of the receiving State was not allowed to enter a diplomatic mission's premises for any purpose, whereas he was allowed to enter consular premises provided that he did not intend to " inspect " them. He doubted whether it was true that the inviolability of consular premises was not so absolute as that of mission premises, as Mr. Bartoš had suggested. He personally thought that the principle of the inviolability of consular premises should be laid down. At any rate, he doubted whether the word " inspect " was appropriate, even if some restriction on inviolability was intended.

16. Mr. SANDSTRÖM observed that the Special Rapporteur had cited an imposing number of conventions in support of his view; but other conventions existed which did not accord consular premises the same degree of inviolability as mission premises. An apposite example was the Consular Convention between the United Kingdom and Sweden of 14 March 1952 (article 10, paragraph 3.[7]) The relevant provision in that convention might not represent customary law as it stood, but it would be interesting to know in how many conventions the inviolability of consular premises did not apply and in how many the principle was embodied.

17. Sir Gerald FITZMAURICE said that Mr. Sandström and Mr. François had raised the central issue. The text could not be sent to the Drafting Committee until the Commission had decided to accept the principle of the inviolability of consular premises. He had been rather surprised to find Mr. François agreeing with Mr. Ago, as Mr. Ago had based his argument on the view that consular premises enjoyed the same inviolability as mission premises, whereas Mr. François had taken a quite different stand. He hoped, with Mr. Standström, that the Special Rapporteur would be able to inform the Commission how many conventions afforded consular premises complete inviolability and how many heavily qualified that privilege. It might be surmised, however, that practice was by no means uniform. The Commission itself was free to propose the practice which seemed best in what might be called modern circumstances. Mr. François had suggested that the inviolability of consular premises was the corollary of the inviolability of consular archives and was one of the methods of ensuring the latter. Some such idea might have existed, but he was not convinced that it was either logical or necessary. If it were assumed that there was no inviolability of consular premises, but only of consular archives, would it follow that the inviolability of consular premises would be necessary in order to secure protection of the archives ? It might be possible to maintain that. On the other hand, it was conceivable that the local

[7] United Nations, *Treaty Series*, vol. 202 (1954-1955), No. 2731, p. 168.

authorities might wish to enter the premises for some other purpose, and not to inspect the archives; and the fact that they entered the premises did not necessarily mean that they would interfere with the archives. However, he thought that inviolability of the premises should now be considered more objectively, not as a mere adjunct to the question of consular archives. As Mr. Sandström had pointed out, complete inviolability of premises had not been stipulated in the Convention of 1952 between the United Kingdom and Sweden. There was, however, a strong case for postulating the same kind of inviolability for consular premises as for a diplomatic mission's premises, and it was not easy to see where they differed fundamentally. Both were places in which a foreign State carried on its official activities. It was difficult to see why official premises controlled by a foreign State carrying out acts, some of them representative of the State, should not have the same status as mission premises. If the Commission concluded that some kind of independent inviolability should be provided for consular premises, he would agree with the criticisms made by Mr. Ago and Mr. Yokota with regard to the use of the word " inspect ", which was certainly not a proper translation of the French word " visiter ". Visiting did not necessarily imply any such drastic action as inspection. If, however, the Commission thought that consular premises should enjoy the same inviolability as mission premises, he agreed with Mr. Ago that the same language should be used as that in the draft articles on diplomatic intercourse and immunities.

18. Mr. VERDROSS said that the Institute of International Law had recognized in the Regulations on consular immunities which it adopted in 1896 that premises occupied by consuls were inviolable. Consular conventions undoubtedly existed in which that principle was not stated, but under article 1 of its Statute (General Assembly resolution 174 (II)) the Commission had for its object the promotion of the progressive development of international law. The only problem was whether the Commission believed that inviolability was necessary for the proper operation of a consulate or not.

19. Mr. SCELLE agreed with Mr. François that there was a difference between extraterritoriality and inviolability. Extraterritoriality was, of course, a pure fiction. There was a great difference between the inviolability of diplomatic missions, which was axiomatic, and the inviolability of consulates, which was necessarily subject to exceptions, especially if the consul was not a career consul. The withdrawal of the exequatur did not give the receiving State the right to consider the consular function abolished. It had, however, been used as a pretext for violating consular premises and archives. The Commission should therefore maintain the inviolability of consular archives and at least of that part of the consular premises which contained them.

20. Mr. SANDSTRÖM observed that there was a relation not only between the inviolability of the consular premises and that of the consular archives, but also between their inviolability and the immunity of the consular official. In the case of the premises of a diplomatic mission, most of the persons within them enjoyed inviolability and were immune from arrest. The position of the consular staff was quite different; even consuls themselves might be arrested or detained. That was the key to the difference between the diplomatic and the consular status.

21. Mr. MATINE-DAFTARY recalled that at the eleventh session (496th meeting, paragraph 37) he had expressed the opinion that, although any State could refuse to maintain diplomatic relations with another, it could not refuse to engage in consular relations with any country with which it had commercial ties.

22. Accordingly, since a State might find itself under a duty to accept the establishment of a consulate and since the consular function was unconnected with political activities and therefore did not require any secrecy, he supported the view, expressed by Mr. François, that the inviolability of consular premises should be limited to the strict minimum required for the accomplishment of the consular function.

23. He therefore suggested that the first sentence of article 25, paragraph 1, should be deleted and that the provision should do no more than specify the circumstances in which the local authorities could enter consular premises.

24. The CHAIRMAN said that the wording of the corresponding article 18 of the Havana Convention of 1928 was closer to that of article 20, paragraph 1, of the draft on diplomatic intercourse and immunities than to article 25, paragraph 1, under discussion. Article 18 of the Havana Convention laid down that permission from the consul was required for the purpose of " entering " the consular premises and drew a clear distinction between the acts performed by a consul in his official capacity and his private acts. It extended the inviolability, however, to the consul's official residence.

25. For his part, he considered that the Commission should recognize the principle of inviolability along the lines of the Havana Convention.

26. Mr. ŽOUREK, Special Rapporteur, said that the case of such offices as travel agencies and information centres housed in a consulate was an exceptional one and could be appropriately dealt with in the commentary to the article. The question which arose in that connexion was simply whether certain activities were part of the consular function or not.

27. With regard to the drafting of article 25, paragraph 1, he said he was prepared to change the second sentence to read " wish to enter " (instead of " to inspect ") (in French, " pénétrer " instead of " visiter "). With regard to substance, however, in spite of the objections put forward

by Mr. François and Mr. Matine-Daftary, he believed that the arguments in favour of the inviolability of the consular premises were similar to those which applied in the case of diplomatic missions. The reason in both cases was the same: there must be no interference with certain functions carried on in the name of a foreign State. It was for that reason, and not by virtue of the obsolete notion of exterritoriality, that a diplomatic mission enjoyed inviolability.

28. It would be difficult to reply to the question asked by Mr. Sandström, because it would be necessary to consult a large number of consular conventions concluded over the past three centuries. He did not believe that such a laborious inquiry would prove useful; a great many consular conventions made no reference to the question of inviolability and explicitly or implicitly left the matter to be governed by customary international law.

29. In conclusion, he said that, so far as the inviolability of consular premises was concerned, the Commission's draft could hardly be less liberal than the regulations of the Institute of International Law of 1896 or the Havana Convention of 1928. The comments which Governments would make on the Commission's draft would make it possible to prepare a final text.

30. Mr. ERIM said that he could not accept the first sentence of article 25, paragraph 1, which seemed to lay down the inviolability of consular premises in absolute terms. There was a difference of nature, and not merely of degree, between the premises of diplomatic missions and those of consulates. He agreed with Mr. François and Mr. Matine-Daftary that consular premises should be inviolable in so far only as the performance of the consular function demanded inviolability.

31. In practice, the provision in question could give rise to difficulties. Quite frequently, a consul's living quarters were in the same apartment as the consular office. In addition, information offices and travel agencies were often housed not only in the same premises as the consulate but actually in the same room in which consular functions were carried out.

32. Article 25, paragraph 1, did not express, in its first sentence, the existing practice in the matter. Indeed, international practice with regard to the inviolability of consular premises was not uniform and article 25 merely gave expression to one of several existing trends. The question before the Commission was whether the acceptance of the trend in question constituted progressive development of international law. For his part, he felt that the inviolability in question should be limited to what was needed for the exercise of the official functions of the consulate.

33. Mr. AMADO considered that the words " for the purposes of " were unsatisfactory; even a garage could be said to be used for the purposes of the consulate.

34. With regard to the principle, however, he considered there was no doubt that consular premises were inviolable. Of course, inviolability applied only to those premises in which the consular function was exclusively carried out.

35. Accordingly, subject to drafting changes, he was prepared to accept article 25.

36. Mr. FRANÇOIS said that the regulations adopted in 1896 by the Institute of International Law had attracted considerable criticism. In 1950, the Institute had even acknowledged that consulates had the right to give political asylum, which gave an idea of the sort of consequences to which such a concept could lead. For his part, he felt that it was extremely dangerous to give members of the consular staff the same treatment as diplomatic personnel by invoking the need to enable them to carry out their duties unhindered. The law of nations had established a very clear distinction between consuls and diplomats, and the Commission should respect that distinction.

37. Mr. AGO said that it was essential to recognize the inviolability of consular premises. That recognition would not have the effect of placing consuls on the same footing as diplomats, for, whereas not only the offices, but also the residential quarters, of diplomats were inviolable, only the offices actually used by the consulate were inviolable. There was a close parallel with the differences regarding the immunity from jurisdiction; diplomatic personnel were not amenable to the jurisdiction of the courts of the receiving State with regard to both private and official acts, whereas consular staff enjoyed immunity only in respect of acts performed in the exercise of their official duties.

38. He could not agree with Mr. Matine-Daftary with regard to the need for secrecy; a consul acted as registrar and notary public for his nationals, and therefore needed secrecy to carry ourt his duties adequately.

39. A majority of consular conventions laid down the inviolability of consular premises. Even in conventions which, like those concluded by the United Kingdom with Sweden and Italy, provided for exceptions to that inviolability, the relevant clause began with a clear statement of the principle (cf. article 10, para 3, of the Consular Convention between United Kingdom and Sweden, 1952). It was true that the clause went on to state that permission to enter would be assumed in the event of fire or other disaster, but an assumption of that kind was generally admitted even in the case of diplomatic missions. As to the provision that certain measures could be carried out in consular premises by the local authorities pursuant to appropriate writ or process, and with the consent of the Minister of Foreign Affairs of the receiving State, he said that provision was of an exceptional character and could not serve as a basis for the formulation of a general rule. The commentary to article 25 might well mention that the provisions of that article would not prevent States from concluding special conventions

authorizing the local authorities to enter consular premises in exceptional cases with the consent of the Ministry of Foreign Affairs of the receiving State.

40. Mr. HSU considered that the Commission's draft should expressly recognize the inviolability of consular premises, for that inviolability was necessary to protect members of the consular staff in the proper exercise of their functions.

41. The CHAIRMAN said that there seemed to be general agreement that the Commission's draft should recognize the inviolability of consular premises and records. From the terms of the consular conventions cited, even those between the United Kingdom and Sweden and the United Kingdom and Italy, it was evident that the status and privileges of diplomats differed from those of consular officials. The Havana Convention of 1928 (article 17) clearly laid down that consular staff were subject to the jurisdiction of the receiving State. It was obviously very difficult to establish the limits of inviolability, and in particular to define the circumstances in which the residence of a consular officer could properly be entered. If, as he believed, there was general agreement in the Commission on the principle of inviolability, that principle could only be qualified by exceptions stipulated in other articles of the draft.

42. Mr. MATINE-DAFTARY explained that he had not meant that consuls had no secrets; they might well have some, but such secrets were not state secrets, as they were in the case of diplomatic agents. Accordingly access should be allowed to their premises and their archives by order of the judicial authorities. For instance, a court might direct that a consulate's marriage register should be produced for the purpose of proceedings. He wanted to stress the difference between the work of a consular agent and that of a diplomat. A diplomat was a representative of the State which had accredited him, but a consul was only an official. He did not think that consular staff ought to have the complete inviolability enjoyed by diplomats.

43. Mr. BARTOŠ considered that the inviolability of consular premises should be recognized, subject to certain restrictions. In the period between the two world wars consular privileges and immunities had greatly increased, as consular conventions showed, and it was essential that the Commission should take account of that development. Consulates, however, were also performing many more commercial and other functions which could not properly be described as being of a consular nature, although they might be related to the work of the consulate. In Yugoslavia, for example, every effort was made to ensure that offices in which work of that kind was carried on were not under the same roof as the consulate, and, where they were in the same building, commercial offices were not treated as part of the consulate and did not enjoy consular privileges although they did in fact enjoy some measure of protection. The books and archives relating to commerical activities should be kept separate from those of the consulate. He did not want to criticize recent developments or the proliferation of consular activities. Since the war new principles had been recognized in a number of consular conventions, notably the very recent one between Yugoslavia and Austria. Its object was to give as much freedom as was acceptable to the two States, but to avoid attaching consular privileges to activities which were not germane to the work of a consulate.

44. Mr. ŽOUREK, Special Rapporteur, replying to Mr. Matine-Daftary, said that the draft articles adopted by the Commission at its eleventh session reflected the extension of consular functions, as was shown by article 4. Thus, consulates were now, for example, concerned with shipping and with the development of trade and cultural relations. He thought that Mr. Matine-Daftary took too narrow a view of the functions of a consulate. In nearly all consular conventions there was some provision concerning the consul's refusal to produce the records of the consulate in court, and that was why his draft article 40, paragraph 4, which the Commission would discuss later, provided that consular staff could decline to give evidence in court on the grounds of professional or State secrecy. A consul might, after all, know a good deal about the work of commercial firms concerning which he could legitimately refuse to give evidence.

45. Mr. SANDSTRÖM asked the Chairman whether, as the Commission appeared to be agreed that the inviolability of consular premises should be recognized, subject to certain exceptions, those exceptions could not be expressly defined.

46. The CHAIRMAN replied that, of course, the exceptions might be specified. He thought that the matter could best be left to the Drafting Committee.

47. Mr. EDMONDS said that members of the Commission clearly had no doubt concerning the inviolability of consular documents. He wondered, however, in what way it would be possible to differentiate between consular and non-consular documents in cases where papers of both kinds were in the possession of the consul and the local authorities wished to obtain access to those in the non-consular category. If permission were given to the local authorities to examine documents to see to which class they belonged, the whole principle of inviolability of consular archives would be destroyed.

48. Mr. ERIM thought that the examples which Mr. Bartoš had mentioned proved that article 25 would have to be drafted in less categorical terms. He personally did not think the inviolability was absolute. The discussion had really been concerned not with normal procedure but with extreme cases where conflict might arise between the head of a consular post and the local autho-

rities. Though rare, such extreme cases could occur, and hence provision for them should be made in the draft. He thought the discussion had given the Drafting Committee sufficient guidance, so that it could work out an acceptable text for article 25.

49. Mr. YOKOTA thought that article 25 should be referred to the Drafting Committee with more precise directives. The first two sentences of paragraph 1 would probably be acceptable with certain modifications. With regard to the third sentence, however, he said that, as the inviolability of consular premises was generally recognized, all consular papers within the consular premises were of course free from examination or seizure. Besides, an express provision concerning the inviolability of the consular archives and documents, was contained in article 27. Accordingly he thought that the sentence in question should be deleted, especially as the draft on diplomatic intercourse had no corresponding provision.

50. Mr. PAL said that the discussion had disclosed that there were several difficulties which affected the very principle of consular inviolability, the way in which it was to be formulated, observed and applied and the abuses to which it might give rise. The principle itself required cautious handling, inasmuch as, on the one hand, by its very nature, it involved some derogation of the sovereignty of the receiving State while on the other, the fact that state activities were constantly expanding — thus rendering consular offices ever more necessary and useful for the representation of State interests in international life — inevitably raised those offices to the diplomatic level in many respects, making it requisite that similar protection should be provided. Accordingly, for the progressive development of the law in that respect, guidance should be freely sought from state practices entailing deliberate and willing acceptance of the principle of the inviolability of consular offices. He therefore hoped that, in full awareness of the difficulties involved and with the help of state practice, the Drafting Committee would be able to overcome the difficulties that had been raised. He considered it most important, however, that the new draft should be discussed again by the Committee at some intermediate stage, before it came to the report stage.

51. Sir Gerald FITZMAURICE said that two possible difficulties could be disposed of. Firstly it was clear that a member of the staff of a diplomatic mission who was at the same time carrying out consular functions continued to enjoy his diplomatic status; secondly, the position of honorary consuls would raise no problem because their premises would not be inviolable. A problem might arise, however, if diplomatic and consular premises were in the same building possibly with intercommunicating doors. Even then, there would be no difficulty if, as was normally the case, each had separate entries and access to the street. A more intricate problem arose when work which was not of a strictly consular nature was done in consular premises, for instance in the case of a commercial mission. It seemed impracticable that within a consular building some rooms could be described as inviolable and others not. But he did not think that that rather special problem should affect the general principle of the inviolability of consular premises.

52. Mr. MATINE - DAFTARY agreed with Mr. Yokota that the third sentence of article 25, paragraph 1, should be deleted. The local authorities could not be deprived of the power in all circumstances to have access to documents of the consulate which might constitute evidence in legal proceedings. He thought the Drafting Committee could define the necessary exceptions to inviolability.

53. The CHAIRMAN thought that article 25 could now be referred to the Drafting Committee. He took it that the Commission would accept Mr. Pal's suggestion that the Drafting Committee should prepare a revised text well before the end of the session.

54. Mr. ŽOUREK, Special Rapporteur, replying to Mr. Pal, said that the revised draft would in any case come before the Commission some time before the commentary was discussed.

55. Mr. AGO hoped that the Drafting Committee would submit a revised text of all other articles on which there had been differences of opinion well before the report stage.

56. The CHAIRMAN proposed that articles 25 and 27 should be referred to the Drafting Committee, and the Commission should have an opportunity of discussing the text submitted by the Drafting Committee of all articles on which there had been any divergence of view.

It was so agreed.

The meeting rose at 6.10 p.m.

531st MEETING

Tuesday, 3 May 1960, at 10 a.m.

Chairman: Mr. Luis PADILLA NERVO

Co-operation with other bodies (A/CN.4/124)

[Agenda item 8]

1. The CHAIRMAN asked the Secretary to read relevant passages of a letter dated 14 March 1960 from the Secretary-General of the Pan American Union to the Secretary-General of the United Nations concerning relations between the Inter-American Council of Jurists and the Commission.

2. Mr. LIANG (Secretary to the Commission) summarized the letter, which referred to a reso-