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**Summary record of the 531st meeting**

Topic:  
**<multiple topics>**

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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-

lution adopted by the Inter-American Council of Jurists, at its fourth meeting, held at Santiago, Chile, in 1959 (A/CN.4/124, paragraph 159). He had attended that meeting as observer on behalf of the Commission and he had undertaken to bring the resolution to the Commission's attention as soon as possible.

3. The CHAIRMAN said it was urgent to take a decision on the question of inviting an observer for the Inter-American Juridical Committee, because he understood that a representative of that body was already in Geneva. He proposed that the committee's representative should be invited to take part in the Commission's meetings as an observer.

*It was so decided.*

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

[Agenda item 2]

PROVISIONAL DRAFT ARTICLES  
(A/CN.4/L.86) (continued)

ARTICLE 26 (*Exemption of consular premises from taxation*)

4. Mr. ŽOUREK, Special Rapporteur, said that his draft of article 26 corresponded to article 21 of the draft on diplomatic intercourse, subject to a few modifications. He had considered the phrase "all national, regional or municipal dues or taxes in respect of the premises of the mission" in article 21 of the diplomatic draft as not quite broad enough. In draft article 26 he had therefore used the formula "taxes and dues levied by the receiving State or by any of its territorial sub-divisions". That formula covered every kind of territorial subdivision of a State, such as states forming part of a federal State, cantons, provinces, regions, departments, districts and communes. What was really involved was the sending State's exemption from all taxes and dues in respect of its consular premises. Nearly all consular conventions were uniform in that respect — e.g., that of 1952 between the United Kingdom and Sweden and several others recently concluded by the United Kingdom, and a number of consular conventions lately concluded by the socialist States, notably those entered into by the USSR with the People's Republic of Bulgaria on 24 August 1957 (article 8); with the Romanian People's Republic on 4 September 1957 (article 11); with the Czechoslovak Republic on 5 October 1957 (article 9); with the People's Republic of Albania on 18 September 1957 (article 9); with Austria on 28 August 1959 (article 10); and others. Some recent conventions, notably the Consular Convention of 1952 between the United Kingdom and Sweden and others entered into by the United Kingdom, went further in that they exempted the movable property of consulates from fiscal charges. He felt sure that the Commission would approve the principle of article 26 since it had been accepted by a majority of States. He did not think it

was necessary to draft the provisions in even broader terms, for it was open to States to stimulate more liberal conditions in bilateral conventions. He proposed that article 26 should be referred to the Drafting Committee.

5. Mr. EDMONDS fully agreed with the principle of article 26, but pointed out that the liability for the kind of taxation with which the article was concerned usually attached to the property and not to its owner or custodian. He thought that article 26 should make it clear that the property, the sending State and the head of post were all exempt from dues or taxes. In the United States, for instance, the article as it stood might be construed as not being broad enough to exempt the property from taxation.

6. Mr. PAL agreed with Mr. Edmonds: in his country also, income tax could be levied on the owner of a building who let it for consular purposes.

7. Mr. ŽOUREK, Special Rapporteur, said that he had followed the draft on diplomatic intercourse, but he saw no difficulty in accepting the suggestion made by Mr. Edmonds which Mr. Pal had supported. Ownership or leasehold property might be subject to special taxes, and he thought it better that the substance of article 26 should be the same as that of article 21 of the draft on diplomatic intercourse.

8. The CHAIRMAN felt confident that the wording of article 26, with the suggestions made by Mr. Edmonds and Mr. Pal, could be entrusted to the Drafting Committee. He suggested that it should be referred to that committee.

*It was so agreed.*

ARTICLE 27 (*Inviolability of the archives and documents*) [continued] \*

9. Mr. SCALLE said that he had reflected on article 27 which had been referred, unamended, to the Drafting Committee at the previous meeting. He had in particular given some thought to the observations which Mr. François had made on the subject (530th meeting, paragraph 14). What was really important was the inviolability of consular archives. It was not merely a matter of old papers, as some might have thought, but also of the day-to-day correspondence of the consul. Their inviolability should be beyond question. The inviolability of consular premises was a more difficult matter, because it could obviously not, for instance, extend to the right of asylum or prevent the search for criminals. He thought the exceptions to the inviolability of consular premises ought to be clearly defined. Article 30 of the Harvard Draft on the Legal Position and Functions of Consuls<sup>1</sup> went to the root of the matter, and should be included in

\* Resumed from the 530th meeting.

<sup>1</sup> *Harvard Law School, Research in International Law. (II): The Legal Position and Functions of Consuls* (Cambridge, Mass., Harvard Law School, 1932), p. 362.

article 27. Under that article, it was the responsibility of the sending State to require that the consular archives be kept separate from other correspondence or documents. That provision was applicable both to career and to honorary consuls, and it should be a fundamental rule in the administration of a consulate.

10. Referring in passing to the text of article 25, which had likewise been referred to the Drafting Committee and which was connected with article 27 he said that, in any case in which the consul refused to allow the local authorities to "enter" (a term which in French should be rendered by "pénétrer") the consular premises, there would probably have to be consultations at a higher level, either between the ambassador of the sending State and the Foreign Office of the receiving State, or even between the two governments. That case should be provided for in the article.

11. The CHAIRMAN said that Mr. Scelle's remarks would be taken into account by the Drafting Committee, especially those concerning the exceptions of inviolability; he definitely agreed that consular premises could not be used as asylum. In discussing articles 30 to 40 of the Special Rapporteur's draft, the Commission would have an opportunity of reviewing and defining the exceptions to consular privileges and immunities.

12. Mr. ŽOUREK, Special Rapporteur, thought that Mr. Scelle's suggestions might help in the drafting of article 27. He had not in his draft included a provision such as that embodied in article 30 of the Harvard Draft, because that provision seemed to be concerned with the position of consuls who were engaged in business, which had been the common situation in the seventeenth and eighteenth centuries. He had, however, included in article 56, paragraph 2 (*Legal status of honorary consuls*), a provision to the effect that the archives of honorary consuls would be inviolable provided that they were kept separate from private correspondence. He thought such a provision had become obsolete in the case of career consuls, but he would have no objection in principle to its inclusion in article 27.

13. Mr. SCELLE remarked that, at an earlier period, prior to the sixteenth century, trade had been carried on exclusively through governments, and consuls had been practically viceroys, or pro-consuls in the Roman sense. In the seventeenth and eighteenth centuries the position of consuls had changed; they had ceased to be viceroys except in the capitulation countries, and had become officials. In his opinion, the Commission should develop the law on the subject and recognize that, by virtue of the evolution in the consular function, the consul was entitled to an increasing degree of protection. It had to be borne in mind that a consul was the servant of a State, and that the question should be governed by the equality obtaining between sovereign States.

14. Mr. YOKOTA said that it was not quite clear from the wording of article 27 whether the archives

and documents which were to be inviolable were those of the consulate or those in the consulate. They might be in the consul's private residence. Many writers made a distinction between the archives and documents in the consulate and those in other places and recognized that, while the archives in the consulate were inviolable, those in other places were not necessarily so. No comparable provision existed in the diplomatic draft, because it had there been laid down that the residence of the ambassador was as inviolable as the mission premises, whereas under the consular draft articles the consular premises were inviolable, but the consular residence was not necessarily so. If article 27 was to mean that all archives and documents belonging to the consulate were to be inviolable, a provision should be inserted, similar to article 30 of the Harvard Draft, requiring that the consular archives in the consul's residence be kept separate from private archives.

15. Mr. LIANG (Secretary to the Commission) thought that a distinction might be drawn between archives and documents. Archives were more permanent and virtually part of the consular premises, whereas documents might be current consular papers. A similar distinction had been made in the commentary on article 22 of the draft articles on diplomatic intercourse and immunities. It might be validly contended that documents addressed to consuls could be opened by authorities of the receiving State only if they were willing to take the risk that they might prove to be official documents. So long as acts of consular offices were official acts, they must be recognized as such and hence as being outside the jurisdiction of the receiving State. The problem was whether a valid distinction could be drawn between draft article 27 of the consular articles and article 22 of the diplomatic articles. So long as the official acts of a consul were not subject to the jurisdiction of the receiving State, the consular documents and archives would be as inviolable as diplomatic documents and archives. When drafting article 22 of the diplomatic draft, the Commission had discussed at length whether documents might be regarded as part of the archives and had decided that they were not necessarily so.

16. Mr. SANDSTRÖM agreed with the Secretary. The point was developed at some length in the commentary to article 22 of the diplomatic draft.

17. The CHAIRMAN suggested that the Drafting Committee should be asked to take the comments on article 27 into account.

*It was so agreed.*

#### ARTICLE 28 (*Facilities*).

18. Mr. ŽOUREK, Special Rapporteur, explained that article 28 corresponded to article 23 of the draft articles on diplomatic intercourse and immunities. It was even more imperative to include a

statement of the principle in the consular than in the diplomatic articles, since consuls needed the authorities' help almost daily in order to exercise their functions. He would have preferred to make the article even more explicit, but had taken the text from the diplomatic draft article practically word for word, *mutatis mutandis*. The Drafting Committee might perhaps consider expanding the text, which stated as simply as possible the principle which must appear in the draft. Many consular conventions were more explicit, but a draft code such as the Commission was preparing could not go into so much detail as a bilateral treaty. There could be no doubt that without full facilities consuls could not exercise their functions properly. It might be asked what those facilities consisted in, but the Commission could not detail the practical facilities, which might range from help in finding accommodation to information about trade conditions in the receiving State. As stated in the commentary on diplomatic draft article 23, it was assumed that requests for assistance would be kept within reasonable limits, in conformity with practice in the relations between the States concerned. The Commission should first decide whether the principle should be retained and the actual drafting should then be entrusted to the Drafting Committee.

19. The CHAIRMAN suggested that the Drafting Committee might consider whether the wording should differ from that of the corresponding provision in the diplomatic draft and whether all the supporting reasons, which had been very fully discussed when that provision had been drafted, should be appended in the commentary.

*It was so agreed.*

ARTICLE 29 (*Freedom of communication*) and PROPOSED ADDITIONAL ARTICLE (*Freedom of movement*).

20. Mr. ŽOUREK, Special Rapporteur, explained that article 29 corresponded to article 25 of the draft article on diplomatic intercourse and immunities, but was drafted in more concise terms, since such questions as that of the consular courier did not arise in the context of consular intercourse. Article 29 was essential for the exercise of consular functions. Consuls made use of diplomatic couriers, whose privileges and immunities had already been determined by the draft articles on diplomatic intercourse and immunities. If the consul did not enjoy freedom of communication for all official purposes with the government of the sending State, its diplomatic missions and other consuls, his functions could not be performed. He did not insist on the precise wording, but believed that the principle should be included in the draft. Obviously, freedom of communication might be restricted in the event of disputes; provision was made for such restriction in certain conventions, as indeed for similar restrictions on the freedom of diplomatic communication. Attention might be drawn to that in the commentary. The second sentence of article 29 was the corollary

of the first and corresponded to current practice. Express stipulations as to the use of messages in code or cipher had been included in several consular conventions. The statement of the principle might be supplemented or developed, if the Commission so wished, but the text should first be referred to the Drafting Committee.

21. Mr. AGO asked the Special Rapporteur whether he had any special reasons for omitting a provision concerning freedom of movement such as appeared in article 24 of the draft articles on diplomatic intercourse and immunities or whether in his opinion the principle was implicit in other articles of the consular articles. Consuls required freedom of movement even more than diplomatic agents. Draft article 29 was well worded on the whole, but a clause similar to article 25, paragraph 2, of the diplomatic articles (relating to the inviolability of official correspondence) might well be reproduced in it.

22. Mr. ŽOUREK, Special Rapporteur, replied that he had not included an article on free movement because the competence of consuls was restricted to the consular district and was therefore much narrower than that of the diplomatic mission, which extended over the entire territory of the receiving State. The principle of free movement could be deduced from article 28 (*Facilities*), which undoubtedly gave consuls the requisite freedom of movement to travel within their consular districts and even outside them if that should prove necessary.

23. Mr. VERDROSS entirely concurred in the idea expressed in the first sentence of article 29, but thought the expression "in particular" went too far, since it implied the possibility of communications with authorities other than the government of the sending State, its diplomatic missions and consulates. He wondered whether the phrase was intended to cover vessels of the sending State, as in article 13 of the Harvard Draft.<sup>2</sup>

24. Mr. YOKOTA observed that the question of free movement had been thoroughly discussed in connexion with article 24 of the diplomatic draft, and the Commission had come to the conclusion that free movement was one of the necessary facilities that members of diplomatic missions must enjoy, subject, of course, to certain restrictions. The same should be true for consuls, at least within the consular district. It was a right of long standing and recognized all over the world. The fact that consular conventions did not usually make specific reference to it did not mean that free movement was not recognized, but was rather proof that the practice was so well established that the drafters of such conventions took it for granted. The provision appeared in the diplomatic articles; if it was not included in the consular articles, the inference might be drawn that diplomatic agents enjoyed that right whereas consuls

<sup>2</sup> *Ibid.*, p. 306.

did not. With regard to the freedom of communication, the slight difference in drafting between consular article 29 and diplomatic article 25, paragraph 1, was of substantive significance. The implication was that, while a diplomatic mission might use code or cipher in communicating with its government and the other diplomatic missions and consulates of the sending State for official purposes, consuls might use code in all their communications for official purposes, not only with the government and the diplomatic missions and consulates of the sending State, but even with nationals of the sending State living in the receiving State. To give consular officers greater privileges than diplomatic agents would be most inappropriate; the reverse should be the case, if any distinction was to be drawn at all, and he did not think there was any good reason for drawing one. With regard to the official correspondence of consulates, he agreed with Mr. Ago that a clause should be included providing that it should be inviolable. The concept of such inviolability could be regarded as a rule of international law and many writers so regarded it. Oppenheim did not draw a clear distinction between archives, papers and correspondence, but clearly held that the official correspondence of consulates was inviolable.<sup>3</sup>

25. The CHAIRMAN asked the Special Rapporteur whether he had any objection to including in the consular draft an article similar to article 24 of the diplomatic draft.

26. Mr. ŽOUREK, Special Rapporteur, replied that, as he had said before, he believed it would be sufficient to explain in the commentary the reasons why the Commission did not consider it absolutely necessary to include such an article in the body of the text. Its absence could not be construed to the detriment of consuls; but he had no objection to including the article if the majority so wished, though he doubted whether it would serve a useful purpose. Replying to Mr. Verdross's question about the phrase "in particular", he confirmed that allowance had also to be made for communications with vessels of the sending State and with the local representatives of international organizations.

27. Mr. SANDSTRÖM said that the article on free movement had been included in the diplomatic draft in order that governments might be kept informed of every aspect of conditions in the country concerned. Consuls should enjoy similar freedom of movement and that should be explicitly provided in the consular articles, although possibly with a proviso that such free movement should be confined to the consular district. He agreed with Mr. Yokota that the wording of article 25, paragraph 1, of the diplomatic draft was preferable. More than a mere drafting point was involved; besides, a provision modelled on that paragraph

might meet the point raised by Mr. Verdross. A provision stating that the official correspondence of the consulate should be inviolable might be included, as Mr. Ago had suggested. A consular bag was mentioned in some consular conventions, but a reference to it might take the Commission too far, as its use did not seem to be a general practice.

28. Mr. FRANÇOIS said that he preferred the draft article 23 in the Special Rapporteur's first report (A/CN.4/108). The Special Rapporteur had explained that the phrase "in particular" covered communications with vessels of the sending State and with international organizations; in fact it went much further and could be interpreted as including communications with private persons who were nationals of the sending State. The idea that communications for official purposes with private persons should be regarded as inviolable was quite unacceptable, and even more unacceptable was the idea, implicit in the final sentence of article 29, that consulates might be entitled to communicate with private persons in code or cipher. He wondered, too, whether it was the practice for consulates to correspond with each other in code or cipher.

29. Mr. AMADO considered that the draft should include an explicit provision on freedom of movement.

30. With regard to freedom of communication, he suggested that the drafting of article 29 might be improved by adopting the language of article 25 of the draft on diplomatic intercourse and immunities ("The receiving State shall permit and protect . . ." instead of "The receiving State shall accord and protect . . ."). Secondly, he thought Mr. Yokota's criticism was justified; the comma after the words "official purposes", coupled with the use of the unsatisfactory phrase "in particular", suggested that a consulate might be entitled to send messages in code or cipher to nationals of the sending State.

31. Lastly, he agreed that a provision on the inviolability of the official correspondence of the consulate should be included.

32. Mr. ERIM urged that the distinction between diplomatic and consular privileges be maintained in connexion with freedom of communication, in the same way as the inviolability of consular premises was differentiated from that of diplomatic premises. Just as the inviolability of consular premises was not absolute, so too the consul's privileges with respect to freedom of communication had to be considered within the limits set by the requirements of his official duties. He therefore suggested that article 29 should remain in substance as it stood, subject to some drafting amendments. First, a full stop should be inserted after the words "official purposes". The remainder of the article would then simply state that the consulate was entitled to employ all appropriate means, including messages in code or cipher, for its official communications. Although some members of the Commission had mentioned communica-

<sup>3</sup> L. Oppenheim, *International Law: A Treatise*, 8th ed., H. Lauterpacht (ed.) (London, Longmans, Green and Co., 1955), vol. I, "Peace", p. 842.

tions with private individuals, he did not see how it was possible in practice to limit the use of those means to the correspondence of the consulate with certain categories of persons only, nor why it should be done.

33. With regard to freedom of movement, he agreed that an article modelled on article 24 of the draft on diplomatic intercourse and immunities should be included. Article 28 of the draft before the Commission did not suffice to ensure freedom of movement, for, inasmuch as it reproduced the terms of article 23 of the diplomatic draft, the omission of a provision similar to article 24 of that draft might be misconstrued. In that connexion, he noted that article 24 of the diplomatic draft empowered the receiving State to prohibit entry into certain zones for reasons of national security. In view of the vagueness of the term "national security", a provision along those lines would leave it open to the receiving State to restrict the freedom of movement of consuls if it so desired.

34. The argument put forward by the Special Rapporteur that consular districts were generally small was not always valid. Certain countries had, for example, only two or three consuls in the whole of the United States of America, so that a consular district could in those cases be larger than the aggregate areas of several European countries.

35. Mr. BARTOŠ said that the Commission, as a matter of principle, had decided to follow the pattern of the draft on diplomatic intercourse and immunities. Consequently, the omission of any of the provisions contained in that model would be interpreted as deliberate. For example, the omission of article 24 of that draft might be interpreted as meaning that a consul would have to give valid reasons before he was allowed to leave the seat of the consulate. Nor would it be sufficient to provide for the consul's freedom of movement within his consular district, for a consul often required to go outside his own district to obtain information or to confer with his colleagues in other cities.

36. Accordingly, he urged the Commission to weigh carefully any decision to make the text of the consular draft shorter than the diplomatic draft. The same was true of the provision on the inviolability of the official correspondence of the consulate. Article 27 covered only archives and documents, and it was customary in consular conventions and in State practice to draw a distinction between archives and documents on the one hand and correspondence on the other.

37. So far as means of communication were concerned, he said that it was the practice in western Europe, America, Africa and parts of Asia to allow consulates to make use of couriers and to avail themselves of the diplomatic bag. He gave as an example the practice regarding official correspondence to and from Yugoslav diplomatic missions and consulates in Canada and the United States. By virtue of an exchange of letters between the governments concerned,

it was the Yugoslav Consulate-General in New York, and not the Yugoslav Embassy at Washington, which acted as a collecting centre for all official correspondence to be sent by diplomatic bag to Yugoslavia and as a distribution centre for all official correspondence received from Yugoslavia and intended for Yugoslav diplomatic missions and consulates throughout North America. The use of the diplomatic bag was governed by the relevant provisions of the Universal Postal Convention.

38. For all those reasons, he thought that a provision along the lines of article 25, paragraph 2, of the draft on diplomatic intercourse and immunities should be included in the consular draft and that some reference should be made to the use of couriers and of the diplomatic bag.

39. Sir Gerald FITZMAURICE agreed that article 29 should be re-drafted along the lines of article 25, paragraph 1, of the draft on diplomatic intercourse and immunities. Although for his part he saw no objection to the use of messages in code or cipher by a consulate in its correspondence with its own nationals, there was no reason to give that privilege to consuls when it was being denied to diplomatic officers.

40. He agreed on the inclusion of a provision on freedom of movement but saw no reason to limit that freedom to the consular district. A consul might well have official business outside his own district and need to visit his country's diplomatic mission and its other consulates in the receiving State.

41. With regard to the use of a consular bag, he drew attention to the provisions of article 12, paragraph 4, of the consular convention concluded by the United Kingdom with Sweden which provided that bags containing the official correspondence of consulates were entitled to receive the same treatment as diplomatic bags and that the correspondence itself was inviolable.<sup>4</sup>

42. The purpose of those provisions was to reflect existing practice in the matter, and it would be noted that the inviolability of consular correspondence was the subject of a provision separate from that governing the inviolability of consular archives and documents. Other conventions likewise contained separate provisions on the two subjects; for example, article 9, paragraph 1, of the Consular Convention between Italy and Czechoslovakia laid down the inviolability of consular archives, while paragraph 4 of the same article specified that official correspondence was inviolable, and must not be censored.<sup>5</sup>

43. Accordingly, he agreed that a provision should be included along the lines of article 25, paragraph 2, of the draft on diplomatic intercourse and immunities.

<sup>4</sup> United Nations, *Treaty Series*, vol. 202 (1954-1955), No. 2731, p. 172.

<sup>5</sup> League of Nations, *Treaty Series*, vol. 34 (1925), No. 867, p. 63.

44. Mr. LIANG (Secretary to the Commission) said that in peacetime messages in code were often sent by individuals and commercial firms. The sending of messages in code was sometimes restricted in wartime, but the restriction then applied to diplomatic missions and consulates as well.

45. The right to send messages in secret language was often acknowledged as a privilege to which consulates, as well as diplomatic missions, were entitled.

46. In that connexion, he drew attention to article 12, paragraph 3 (a), of the Consular Convention between the United Kingdom and Sweden, which specified that a career consular officer could "use secret language" in his communications "with his government, with his superintending diplomatic mission or with other consulates of the sending State which are situated in the same territory", and in the official correspondence sent and received by him in consular pouches and bags. The relevant provision, however, went on to specify that in case of war or "imminent risk of war" the consular officer's right of communication and correspondence with the superintending diplomatic mission could be restricted if that mission was situated outside the territories of the receiving State.<sup>6</sup>

47. The CHAIRMAN agreed that an explicit provision should be included in the draft to safeguard freedom of movement. In line with the existing practice, that freedom of movement should not be restricted to the consular district; a consul should be at liberty to move throughout the territory of the receiving State on official and even private occasions.

48. He also agreed with the suggestion for the inclusion of a provision on the inviolability of official correspondence.

49. Lastly, with regard to means of communication, he suggested that the existing practice regarding the use of couriers and of the diplomatic bag should be recognized, along the lines of article 13 of the Harvard Draft. The right to make use of couriers was particularly useful to consulates in cases of earthquakes and other natural disasters and of strikes.

50. Mr. MATINE-DAFTARY said that, since the principle of the freedom of movement was recognized by all members of the Commission, the principle should be expressly stated and the freedom should not be limited to the consular district.

51. He agreed with the suggestion for the deletion of the words "in particular" from article 29, but suggested that the list of those with whom the consulate was free to communicate should be expanded to include the sending State's nationals; communication with its nationals was essential to the work of a consulate.

52. He recalled that he did not accept as absolute the inviolability of consular premises and archives; if that inviolability were to be expressed in the draft in general and absolute terms, he wished his dissenting views to be recorded in the Commission's report, since he considered that, for the purpose of the examination of evidence in judicial proceedings, the inviolability could not be absolute. With regard to the facilitation of the work of the consulate, however, he considered that the inviolability of official correspondence should be recognized.

53. As to the use of a consular bag, he felt that any refusal to permit it would lead to consulates using the diplomatic bag and would place at a disadvantage the consulate of a country which did not have a diplomatic mission in the receiving State concerned.

The meeting rose at 1.5 p.m.

### 532nd MEETING

Wednesday, 4 May 1960, at 10 a.m.

Chairman: Mr. Luis PADILLA NERVO

#### Co-operation with other bodies (A/CN.4/124) [continued] \*

[Agenda item 8]

1. The CHAIRMAN welcomed Mr. Antonio Gómez Robledo, designated observer to the Commission for the Inter-American Juridical Committee by virtue of resolution XVI of the fourth meeting of the Inter-American Council of Jurists (A/CN.4/124, paragraph 159).

2. Mr. GÓMEZ ROBLEDÓ (Observer for the Inter-American Juridical Committee) said that it was a great honour for him to represent the inter-American organ entrusted with the progressive development of international law. He transmitted to the Commission the good wishes of the Chairman of the Inter-American Juridical Committee, and expressed the hope that the relations between the two bodies would become increasingly fruitful.

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

[Agenda item 2]

#### PROVISIONAL DRAFT ARTICLES (A/CN.4/L.86) (continued)

ARTICLE 29 (*Freedom of communication*) and  
PROPOSED ADDITIONAL ARTICLE (*Freedom of  
movement*) \*

3. Mr. ŽOUREK, Special Rapporteur, said that, although still not fully convinced of the usefulness

<sup>6</sup> United Nations, *Treaty Series*, vol. 202 (1954-1955), No. 2731, pp. 170-172.

\* Resumed from the 531st meeting.