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Summary record of the 533rd meeting

Topic:
Consular intercourse and immunities

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533rd MEETING

Thursday, 5 May 1960, at 10 a.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
(A/CN.4/L.86) (*continued*)

ARTICLE 29 (*Freedom of communication*) (*continued*)

1. Mr. LIANG (Secretary to the Commission) said that the question of communication between consuls and their nationals by messages in code or cipher raised at the previous meeting was covered by article 38 of the International Telecommunication Convention,[1] concluded at Buenos Aires in 1952 and widely accepted. Under that convention, government telegrams might be sent in secret language in all relations. Annex 3 to the convention,[2] defining the terms used, described government telegrams as telegrams originating with any authorities and included among them " diplomatic and consular agents ", thus placing them on the same footing. A provision enabling consulates to employ messages in code or cipher would therefore be quite appropriate in the consular articles.

ARTICLE 30 (*Communication with authorities of the receiving State*)

2. Mr. ŽOUREK, Special Rapporteur, explained that draft article 30 dealt simply with the mode in which consuls communicated with the authorities of the receiving State. The laws and regulations concerning the procedure observable in such communications differed widely from country to country. His principal source had been *A Collection of the Diplomatic and Consular Laws and Regulations of Various Countries*, by A. H. Feller and Manley O. Hudson,[3] since that work was more than twenty-five years old, he was not certain whether all the legislation cited in it was still in force, but in general it could be said that the procedure had remained unchanged. Certain laws and regulations permitted consuls to communicate with the central authorities through the diplomatic mission. The Honduras Act of 1906 (article 16) contained more elaborate provisions; it provided [4] that a consular official did not have the right to communicate directly with Departments of State or with any authorities outside his district except through his country's diplomatic mission, but if there was no mission or its seat was not in Honduras, he must communicate with such authorities through the consul-general of his country. If there was no consul-general, but not otherwise, he had the right to communicate with the Departments of State directly. Yet another procedure was laid down in article 11 of the Havana Convention regarding Consular Agents of 20 February 1928.[5] The obligation to conform to local usage was stipulated in several national laws and regulations concerning consuls. The general provisions concerning consuls issued in Sweden in 1928 and in Denmark in 1942 provided for communication through the diplomatic channel, either in all cases or in certain cases specified in the provisions. Other regulations dealt only with the cases where there was no diplomatic mission in the receiving State and where consuls occasionally performed diplomatic acts — a case covered by article 16 (A/CN.4/L.86). The Brazilian regulations of 1928 authorized consuls of countries having no diplomatic mission in Brazil, when they were entrusted with the negotiation of an international agreement, to address certain officials of the Ministry of Foreign Affairs (article 31) while by the Haitian order of 1925 on foreign consuls (article 17), consuls of States which did not authorize direct correspondence had to resort to the good offices of a friendly legation.[6] A similar diversity of procedure existed even with regard to communication with the local authorities in the consular district. Draft article 30 therefore merely recognized an established practice.

3. Mr. BARTOŠ said that he simultaneously entirely agreed with the Special Rapporteur and was entirely opposed to draft article 30. He accepted the principle that consuls must comply with local laws with respect to the procedure whereby they were to communicate with the authorities of the receiving State. On the other hand, an explicit guarantee had to be given that consuls would be able to approach the local authorities direct. The Commission's prime duty was to do everything possible to check the tendency of certain States to curtail free communication between consuls and the local authorities. The capacity of consuls to intervene with the local authorities was self-evident, but what was lacking in article 30 was any guarantee protecting that right, except a reference to usage and the laws of the receiving State — to which should of course be added a statement to the effect that that State's laws on procedure should conform with the general rules on the subject and with the terms of consular conventions.

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[1] United Kingdom, *Treaty Series*, No. 36 (1958), p. 26.

[2] *Ibid.*, p. 35.

[3] (Washington, D.C., Carnegie Endowment for International Peace, 1933).

[4] For English translation of the Act, see *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities*, United Nations *Legislative Series*, vol. VII (United Nations publication, Sales No. 58.V.3), pp. 153-161.

[5] League of Nations *Treaty Series*, vol. LLV (1934-1935), No. 3582, p. 297.

[6] Cf. commentary to article 24 in the Special Rapporteur's first draft. *Yearbook of the International Law Commission*, 1957, vol. II (United Nations publication, Sales No. 1957,.V.5, vol. II), p. 98.

4. Mr. EDMONDS observed that the purpose of the codification should be to make the rules governing procedure as definite as possible. If that principle was applied to the article under consideration, it was obvious that in order to exercise his functions, a consul must be able to address the local authorities on all matters within his competence. Article 12 of the Harvard Draft[7] was preferable to draft article 30 as it stood, for it defined the scope of consular communication with authorities of the receiving State. It was far less vague than draft article 30 and covered the subject much more satisfactorily.

5. The CHAIRMAN asked the Commission to bear in mind the points raised by Mr. Bartoš and Mr. Edmonds. Even if the laws of receiving States varied, the right of consuls to communicate with the local authorities must have a minimum guarantee. With regard to communications with the central authorities, the Commission would have to consider whether the possibility of such communication should be left open by means of some general formula, as in draft article 30, or whether the exceptions should be specified. The Commission would be well advised to pay regard to article 11 of the Havana Convention as well as article 12 of the Harvard Draft.

6. Mr. YOKOTA agreed with Mr. Bartoš and Mr. Edmonds. The Commission should certainly establish the right of consuls to communicate at least with local authorities, even though the actual procedure might be subject to usage. The ability to address the central authorities should not be excluded. In Japan, for instance, the practice was that consular missions were as a rule permitted to approach the Ministry of Foreign Affairs directly, even if the sending State maintained a diplomatic mission in Japan. A statement should therefore be included in the commentary to the effect that consuls were able to address not only the local, but also the central, authorities of the receiving State.

7. Mr. MATINE-DAFTARY observed that the wording of draft article 30 was logical enough in appearance, but would in fact impede the exercise of consular functions. To make the procedure for communication dependent on the laws of the receiving State made it equally dependent on the will of that State, which might well change. He agreed with Mr. Edmonds that article 12 of the Harvard Draft was preferable since it gave consuls minimum guarantees. In some States consuls could presume to address any authority directly, but in others they could address only the local authorities owing to the rigidity of the laws and regulations on the subject. Some procedure for recourse should be provided for cases where the local authorities failed to heed a consul's representations. The Special Rapporteur might be willing to include in the article an explicit reference to the principle of reciprocity, thus providing the sending State and the receiving State with mutual guarantees.

8. Mr. AGO said that he shared the apprehensions expressed by previous speakers. Draft article 30 as it stood gave undue freedom to the receiving State. The present wording might eventually be added at the end of an article which would first lay down the principle governing the possibilities open to consuls of communicating directly with the authorities. The question then arose what that principle was. The practice was by no means uniform. In certain countries consuls could address the authorities of the consular district, but not the central authorities, except through the diplomatic mission; but they could address the central authorities if there were no diplomatic mission or if the diplomatic mission was unable to act. According to the practice followed in other countries, consuls were denied direct access only to the Ministry of Foreign Affairs itself. Under such modern conventions as those between the United States and Costa Rica (1948), the Philippines and Spain (1948) and the United Kingdom and Sweden (1952) and the United Kingdom and Italy (1954), consuls could address not only the local authorities but also the central authorities, with the exception of the Ministry of Foreign Affairs, which could be approached only by the diplomatic mission. Those provisions represented a welcome development, for they enabled the consul to apply directly, for instance, to the central judicial authorities in cases where the procedure of applying through the diplomatic mission to the Ministry of Foreign Affairs might delay action to protect a national. The article should therefore first lay down the principle of direct communication both with the local authorities of the consular district and with the central authorities.

9. Sir Gerald FITZMAURICE agreed that the consul's right of communication should be defined. The relevant provision in the Consular Convention between the United Kingdom and Sweden, cited by Mr. Ago, appeared in article 18,[8] which dealt very thoroughly with the protection of nationals by the consul. Inasmuch as very elaborate provisions were set forth in certain bilateral conventions, questions might be asked if the Commission's draft failed to deal in any detail at all with one of the most important of the consular functions. Article 19 of the Anglo-Swedish Consular Convention[9] was equally important, for it dealt with the rights of a consular officer in cases where any national of the sending State was confined in prison awaiting trial or was otherwise detained in custody within his district. He was not suggesting that every detail of those provisions should necessarily be reproduced in the Commission's draft, but he thought the difference between the

[7] Harvard Law School, *Research in International Law. (II) The Legal Position and Functions of Consuls* (Cambridge, Mass., Harvard Law School, 1932), p. 302.

[8] United Nations *Treaty Series*, vol. 202 (1954-1955), p. 180.

[9] *Ibid.*, p. 182.

detail in a bilateral convention and the complete absence of any detail in the draft before the Commission was very striking. The provisions concerning communication with the authorities of the receiving State appeared, in the bilateral consular treaties, in the context of provisions relating to the protection of the sending State's nationals; the inference was clearly that the two matters were very closely connected in the opinion of some governments. He wondered, therefore, why the Special Rapporteur had failed to include any provision on the right of the consul to communicate with a national who was in prison or under arrest.

10. Mr. AMADO observed that the Special Rapporteur had used the expression " consular representative " in his first report (A/CN.4/108), but the Commission had preferred the simple term " consul ". In so far as the consul could be said to have a right to address the authorities of the receiving State, that right would hardly be exercised except by virtue of his representative character. The Commission was obviously very anxious to enhance the consul's status, but to afford consuls representative functions would be an innovation — a word quite rightly attacked with some vigour at the previous meeting. A consul should be able to address the local authorities for the reasons and purposes given by previous speakers, but procedures for communication with the State authorities were unacceptable, even in the circumstances described in the Brazilian Regulations cited by the Special Rapporteur — *viz.*, the absence of a diplomatic representative to the State. In such circumstances a consul could address only the head of the consular section in the Ministry of Foreign Affairs and, even then, he had to produce a note from his government guaranteeing the principle of reciprocity. If there was one principle running all through the regulation of consular relations it was the principle of reciprocity. Virtually no consular convention existed which made no reference to it. Yet there was no mention of that principle in the draft prepared by the Special Rapporteur. Draft article 30 was, therefore, unsatisfactory; even article 12 of the Harvard draft, which had been suggested as a substitute, did not precisely represent actual practice, for it failed to provide that when the head of a consular post addressed the government of the receiving State directly, in the absence of a diplomatic representative accredited to it, he had to produce a note from his government giving the consulate the status of an embassy or legation. If such latitude were permitted, the Commission might just as well proceed to the logical conclusion and eliminate any distinction between a consulate and a diplomatic mission.

11. The CHAIRMAN suggested that the Drafting Committee should be asked to prepare a draft embodying the right of the consul to address the local authorities in his consular district; the possibility of addressing the central authorities in certain cases and a reference to the principle of reciprocity to be placed either in the draft or in the commentary. In addition, it should be mentioned at least in the commentary that the practice was not uniform. It should be stated, too, that nationals had the right to approach the consul of the consular district in which they resided and that consuls had the right to approach their nationals in their consular district at any time. Indeed, in some cases where a large number of the sending State's nationals lived in the territory of the receiving State, those rights formed the subject of special conventions. During the Second World War, for example, thousands of Mexicans had been employed in the United States, and special agreements had been concluded guaranteeing the right of Mexican consuls to have access to Mexican nationals in the consular district at all times for the purpose of defending their rights, protecting their interests and even appearing on their behalf before the courts. Some further guiding ideas would be found in article 12 of the Harvard draft and article 13 of the Havana Convention.

12. Mr. ŽOUREK, Special Rapporteur, referring to Sir Gerald Fitzmaurice's comment on the detailed provisions in the Consular Conventions between the United Kingdom and Sweden and between the United Kingdom and Italy, where those provisions appeared under the heading of the protection of nationals, explained that such detail was possible in a bilateral convention which contained elaborate provisions concerning the consular function. The majority of the members of the Commission had, however, preferred a very general definition of consular functions, which it had adopted as article 4 (A/CN.4/L.86). It would be perfectly feasible to mention a great many cases, such as access by consuls to imprisoned nationals, either in the text or in the commentary; but since the Commission had accepted the general definition of consular functions, he had thought it would be illogical to go into details and to introduce a special provision covering cases in which nationals of the sending State were arrested or imprisoned, when the draft was silent on such matters as succession, the guardianship of minors or vessels in distress. Such detail would be out of place if the draft articles were to be kept in due proportion. The point about reciprocity raised by Mr. Matine-Daftary might be inserted more appropriately in subsequent articles. It was unnecessary to refer to it in draft article 30, owing to the reference to usage and the laws of the receiving State. If a sending State found that the laws of the receiving State were not liberal enough, it would be perfectly free to impose equivalent restrictions. He agreed with the Chairman's suggestion that the Drafting Committee should be asked to redraft article 30.

13. Mr. SANDSTRÖM said that the questions raised by Sir Gerald Fitzmaurice concerned matters vital to the consular function. Unless his right to communicate with his nationals, and the right of those nationals to communicate with him, were recognized, and unless the receiving State's duty to inform him of certain occurrences was specifically laid down, the consul would not be able to carry out his duties efficiently. Since the article

on consular functions, as adopted by the Commission, was silent on those matters, it was necessary to introduce a provision to deal with them.

14. Mr. VERDROSS suggested that the words " by bilateral conventions " be introduced after the words " shall be determined ": where bilateral conventions existed, they took precedence over local usage and local legislation.

15. Mr. PAL pointed out that the questions which had arisen in connexion with certain bilateral conventions were dealt with in the conventions concerned under the heading of consular functions. The Special Rapporteur's original draft article on consular functions (A/CN.4/L.108, article 13, second variant) had gone into considerable detail regarding the question of the protection of nationals, and the questions now raised would have been more pertinent if they had been raised in that connexion. The Commission, however, had preferred the shorter formulation contained in article 13 — now article 4 (A/CN.4/L.86) — which did not provide for the details in question. If it were now desired to introduce a provision giving details of the procedure to be followed for the protection of nationals, the most suitable place for it would perhaps be near article 4, although, given an adequate drafting introduction, it could also be inserted in the part of the draft which the Commission was now discussing.

16. Mr. ERIM asked whether the term " usage " in draft article 30 was intended to refer to local usages in the receiving State or to international usage.

17. For his part, he felt that the receiving State could not be left free to regulate at its discretion the matter of communication between consuls and the local authorities. Article 30 should state the procedure observable in communications between consuls and the authorities of the receiving State could be regulated by the laws of the receiving State in so far as the provisions thereof supplemented, but did not depart from, the applicable rules of international law.

18. The CHAIRMAN agreed that the Commission should formulate a rule of international law in the matter and specify in article 30 the right of the consul to communicate with the authorities of the receiving State in the exercise of the functions specified in article 4. Article 30 could then go on to state that the procedure to be observed in the exercise of that right was governed by the laws and usages of the receiving State.

19. Mr. SCELLE said that, although he was reluctant to introduce too much detail into the article, he felt that, as it stood, it was not only too brief but overstressed the role of the legislation of the receiving State.

20. He agreed that there should be some guarantee of the consul's right; the consul should be able to apply to a higher authority, either to the diplomatic representative of the sending State or to the Ministry of Foreign Affairs of the receiving State.

21. Mr. AMADO drew attention to the rules in force in Switzerland, which specified that, where the sending State was not diplomatically represented and access by a consul of that State to the Ministry of Foreign Affairs of the receiving State was tolerated, no right of access could be inferred from that tolerance.[10]

22. For his part, he considered that the prerogatives of consuls should not be extended beyond what was normal practice.

23. Mr. AGO said that he agreed entirely with Mr. Amado's last remark but thought nevertheless that the Commission should devote a great deal of attention to those articles which affected the right of protection, since the protection of the sending State's nationals was the very essence of the consular function; in order to perform that function, it was therefore essential that the consul should have the right to communicate with the authorities of the receiving State.

24. The question of a consul's right of access to the Ministry of Foreign Affairs of the receiving State arose only in extreme and exceptional cases. A consul did not deal with the political authorities of the receiving State, but with the administrative or judicial authorities of that State and it was not sufficient in that regard to specify his right of communication with the local authorities. A consul, in the exercise of his duties, might well need to follow a case from the stage where it came before a local body or court to a later stage, when it came before a higher authority or court, possibly outside the consular district. By making provision for the consul's right to communicate with central administrations, the Commission would be favouring not so much the consul as the nationals of the sending State who were protected by him.

25. Mr. ŽOUREK, Special Rapporteur, said, in reply to Mr. Erim, that the term " usage " meant local usage, which applied in the absence of a provision of municipal law; it did not mean international custom.

26. He accepted the suggestion of Mr. Verdross that the words " by bilateral conventions " should be added after the words " shall be determined ".

27. The suggestion by Mr. Scelle for a provision concerning recourse to a higher diplomatic authority by a consul who had failed to obtain satisfaction was an interesting one.

28. With reference to Mr. Amado's remarks concerning the rules in force in Switzerland, he recalled that in his first report (A/CN.4/108, paragraph 3 of the commentary to article 14) he had mentioned those rules as an example of the restrictive approach to the question of a consul's exercise of virtual diplomatic functions, e.g., communication with the Ministry of Foreign

[10] See text in *Laws and Regulations. . .*, pp. 303 *et seq.*, esp. p. 310.

Affairs of the receiving State. Actually, many States permitted the consul to have access to the Ministry.

29. Mr. AGO'S suggestion for the recognition of a consul's right of access to the central authorities would go beyond existing practice and would give consuls wider privileges than those enjoyed by diplomatic officers. It would be tantamount to recognizing that consuls had the right to approach the government of the receiving State.

30. Sir Gerald FITZMAURICE said that Mr. Pal was right in pointing out that the Special Rapporteur's original draft (A/CN.4/108, article 13, second variant) had dealt in greater detail with the question of the protection of his nationals by a consul. That text, however, did not specify the right of the sending State's nationals to have access to the consul or the consul's right of access to those nationals, or the ancillary obligation of the receiving State to inform the consul when one of his nationals was placed under arrest or detention. It might be said that those rights were implied, but the fact remained that they were not expressly mentioned in the original draft, still less in article 4 as adopted by the Commission. Although the Commission could not expect to include in the draft all the details which appeared in bilateral consular conventions, the rights and duties to which he had referred were so important that they should be stated in explicit terms.

31. Accordingly, he would submit a draft provision to fill the gap.

32. Mr. SCELLE, referring to Mr. Ago's suggestion for the recognition of the consul's right to communicate with higher or central authorities, said that the right of protection could only be exercised in accordance with the laws of the receiving State. It was difficult to see how a consul could act to support one of his nationals before the Supreme Court of the receiving State, otherwise than through the agency of a recognized legal practitioner.

33. Mr. YOKOTA said that more precise directives should be given to the Drafting Committee. State practice regarding the right of communication was admittedly not uniform, but the Commission should specify the minimum requirements in the matter.

34. In the first place, there was general agreement regarding a consul's right to communicate with local authorities. Secondly, it was generally agreed that, in the absence of a diplomatic mission of the sending State, the Ministry of Foreign Affairs of the receiving State could not refuse to deal with a consul.

35. Other points, such as the right to deal with the Ministry of Foreign Affairs in the presence of a diplomatic representative of the sending State, and the right to communicate with other branches of the central government of the receiving State, did not appear to be so well established and could be left for regulation, in the absence of a bilateral agreement, by the laws and usages of the receiving State.

36. Mr. AGO said that he agreed with Mr. Scelle that a consul could not act otherwise than in accordance with the legislation of the receiving State. A consul could not take the place of a legal practitioner, either in the supreme court or in the lower or local courts. What he had suggested was that the consul should be able to follow through a case from the local stage to the stage before a higher or central authority, even outside the consular district.

37. In so doing, he was not suggesting that the consul should have wider powers than a diplomatic representative. The difference between the powers of a consul and those of a diplomatic representative was one of nature, not of degree. They exercised different functions and naturally required different facilities. A diplomatic representative, whose duties were political, dealt with the government of the receiving State; usually, he dealt solely with the Ministry of Foreign Affairs and had no direct access to other authorities, whether local or central. The consul, on the other hand, had a duty to protect his nationals within the framework of the municipal law of the receiving State, and hence had to be able to deal with the authorities of that State, whether local or central.

38. Mr. PAL said that, since the Commission had already dealt with the subject of protection of a consul's nationals and had given an indication of its views as to the pertinence and justice of the principles underlying the provisions under discussion, it would perhaps save time if Sir Gerald Fitzmaurice were to submit his proposed text through the Drafting Committee.

39. Mr. ERIM said that it was premature to refer article 30 to the Drafting Committee. The discussion had revealed a fairly general agreement that the article gave undue latitude to the receiving State to regulate the procedure for communication between a consul and the authorities of that State. Most members of the Commission felt that the receiving State's powers in that regard required clarification and that their scope should be restricted. Differences of opinion still remained, however, regarding the question of the consul's access to the central authorities of the receiving State. As to the right to communicate with the Ministry of Foreign Affairs of the receiving State, he, for his part, favoured the system embodied in the Consular Regulations of Switzerland.

40. Sir Gerald FITZMAURICE accepted the suggestion that article 30 should be referred to the Drafting Committee without further discussion. The problem he had raised was a separate although perhaps a related one, but in any case one of substance. He suggested that his draft provision might be discussed at the next meeting.

41. The CHAIRMAN said of the three questions round which the discussion of article 30 had prin-

cipally revolved, there appeared to be general agreement on two: the consul's right to deal with local authorities and his right to approach the central authorities if the sending State had no diplomatic mission in the receiving State. On the third question — whether the consul should have some recourse to the central authorities, not necessarily through the Ministry of Foreign Affairs — there had been considerable divergence of opinion. Perhaps after some further discussion of Mr. Ago's remarks, article 30 could be referred to the Drafting Committee.

42. Mr. ŽOUREK, Special Rapporteur, said he might be prepared to accept Mr. Ago's view that consuls should in certain circumstances have access to the various organs of the central government, but the Commission must appreciate that a provision to that effect would be a new departure in international law.

43. Mr. BARTOŠ felt the really important distinction was between what was and what was not consular business; whether the authority concerned was central or local was of minor importance. A good example of the problem raised by Mr. Ago could be found in the treatment of matters concerning patents and trade marks. The rights of the sending State's nationals in patents and trademarks would normally be defended by the consul; for that purpose he would have to deal with the authorities of the receiving State competent for those matters, and in some countries — the United States and Germany, for example — those authorities were organs of the central government. Similarly, in most countries certain questions relating to shipping which came within the consul's jurisdiction could not be decided by the port authorities and hence would have to be taken up with the central authorities. Mr. Ago was correct in saying that the consul had to have sufficient power to ensure the protection of the interests of his nationals, whether through the local authorities or, if necessary, by approaching the central administration of the receiving State. The protection of the interests of nationals was properly a consular function and not a matter within the scope of diplomatic relations. The consul had the right to act on behalf of his nationals in whatever way was necessary, although he had of course to observe the administrative procedure of the receiving State. An interesting case had occurred recently in Yugoslavia, in which the question had arisen whether a consul had the right to appear before a parliamentary committee which was empowered to give decisions on petitions for a pardon received from persons convicted of a criminal offence. The case concerned a French citizen who had appealed to the committee after having exhausted all judicial remedies in appealing against a conviction. In that case both the French and the Yugoslav authorities had taken the exceptional view that an approach to the parliamentary committee was within the competence of the consul. Accordingly he considered that a consul, in order to protect his nationals, should be entitled in certain circumstances to approach the competent authorities of the central government, either at the first stage or on appeal.

44. The CHAIRMAN asked Mr. Ago to clarify his views as to whether, and if so by what procedure, a consul could approach the central authorities on behalf of some national who was within his jurisdiction; as to whether the approach might not perhaps be effected through a consular official in the place where the central authority was situated; and on the provision that might be made for consular action when there was no representative in the district of the particular branch of the government concerned, or, if there were a representative, the matter went beyond his competence.

45. Mr. AGO, replying to the Chairman, said that, if the branch of the central authority concerned in the matter had a local office, obviously the consul would approach that office. Secondly, since a consul could only act on behalf of a person who resided in his consular district, a consul in the capital city could not properly act as an intermediary in dealing with a matter which concerned a national in another consular district. Nor for that matter did he think that the diplomatic mission should act as an intermediary for the consul in bringing a case with which the consul was concerned to the notice of the central authorities, for in that event the case would assume international proportions and possibly one of dispute between governments. It was in the interest of all concerned that the remedies open under the municipal law should be exhausted before a case was treated at the diplomatic level. Under the Swiss rules which had been referred to earlier in debate, the consul could apply to the central authorities, but it was expressly stipulated that it was only in the absence of a diplomatic representative that he could approach the Ministry of Foreign Affairs and such access was regarded as an *ex gratia* concession and not a right. Provision for such access in like circumstances was made in the Anglo-Swedish Convention of 1952, in addition to a provision entitling the consul to apply to the local and to the appropriate central authorities in connexion with the protection of nationals. In his view, a consul could not become a diplomat and approach the Minister for Foreign Affairs as a matter of course; but he could deal with both the local and the central authorities provided that he confined himself to consular matters.

46. Mr. ŽOUREK, Special Rapporteur, took it that by " central authorities " the members of the Commission meant ministries or other government departments; there was really no difference in that respect between the Ministry of Foreign Affairs and, for instance, the Ministry of Commerce. He thought it would be anomalous if a consul had direct access to the different departments of the central government, whereas the diplomatic mission had access only to the Ministry

of Foreign Affairs. It had been argued that consular business was distinct from political matters; it would be a mistake, however, to suppose that consular business was devoid of political features. But the fact was that despite the examples which Mr. Bartoš had cited, a direct approach by consuls to the central authorities was not the general practice. It had also been argued that it was the character of the matter which would be decisive. The answer to that argument was that consuls could only deal with consular business, which included the protection of nationals, and he did not think that there was any rule of international law giving them the right to approach the central authorities. The Commission could, of course, propose such a rule, and it might be accepted by a majority of governments, but it must realize that the rule would be a new departure in international law.

47. Mr. SANDSTRÖM, referring to the Anglo-Swedish Convention, said that the intention of the relevant provisions in that convention was probably to enable consuls to deal directly with certain branches of the government or with public authorities which enjoyed a large measure of independence. The consul's capacity to make on occasion a direct approach to government departments would depend to a large extent upon the structure of the receiving State's hierarchy.

48. Sir Gerald FITZMAURICE agreed with Mr. Ago that the Special Rapporteur's view would restrict consular protection. In Great Britain a number of authorities were highly centralized, and many matters which were in the consul's competence could not be dealt with except through authorities in the capital. The Special Rapporteur appeared to think that in such cases the embassy should intervene; surely, however, that view conflicted with the spirit of the diplomatic draft, which did not allow diplomatic missions to exercise consular functions involving contacts with local authorities. The embassy would have to approach the competent authority through the Ministry of Foreign Affairs.

49. Mr. BARTOŠ said the fundamental question was whether or not the Commission wished to facilitate the exercise of the consular function. Social insurance and immigration, for instance, were nearly always dealt with by the central organs of the government. Now, if in a country in which the denial of admission to an alien could be challenged by appeals (as was the case in Yugoslavia) that alien's consul were debarred from pursuing the appeal through all the courts, the case would be magnified into an international dispute which would not be in the best interests of good relations between States. On the contrary, consuls should be given every opportunity to have recourse to legal remedies before a case involving a foreign private individual became an international dispute. He proposed that Mr. Ago should be invited to prepare a new text of article 30. He considered that a matter of substance was involved that should be discussed in the Commission before the article was referred to the Drafting Committee.

50. The CHAIRMAN said that his understanding of Mr. Ago's view was that, if in a consular district there was no local authority competent to act on a matter which the consul had raised, the latter might directly approach the competent organ of the central government.

51. Sir Gerald FITZMAURICE said there was a further point, namely that where a competent local authority did exist in the consular district but the consul had exhausted the local resources, the consul should be able to appeal to a higher authority.

52. Mr. ERIM pointed out that the provisions of article 13 (*Obligation to notify the authorities of the consular district*) as adopted seemed to limit the competence of the consul to his district. The view of Mr. Ago and Sir Gerald Fitzmaurice that the consul should be able to deal with a central authority outside his district was inconsistent with article 13, which would have to be revised if that view was adopted.

53. Mr. YOKOTA felt the question should be considered as a whole. There was general agreement that consuls dealt with local authorities in their district, and could approach the Ministry of Foreign Affairs if there were no diplomatic mission, and he believed that the right to communicate with other authorities should be settled by the law and practice of the receiving State.

54. Mr. AGO said that, in referring to the provisions of article 13, Mr. Erim had raised a delicate point; nevertheless, in practice difficulties would hardly arise. He would not, for instance, think it necessary for the government of the receiving State to inform all its authorities of the consul's appointment. He believed that article 30 could now be referred to the Drafting Committee.

55. Mr. LIANG (Secretary to the Commission) believed that the consul should in general have the right to pursue a matter to the very end in accordance with the law and practice of the receiving State. In the United States, for instance, patents, trademarks and immigration (including the expulsion as well as the admission of aliens) were federal matters, and a consul could do nothing to protect his nationals in those spheres unless he approached the appropriate branch of the central government.

56. The CHAIRMAN proposed that article 30 be referred to the Drafting Committee.

It was so agreed.

The meeting rose at 1.5 p.m.