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Summary record of the 550th meeting

Topic:
Consular intercourse and immunities

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550th MEETING

Tuesday, 31 May 1960, at 9.30 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 54 (*Honorary consuls*) (continued)

1. The CHAIRMAN, observing that article 56 had been mentioned during the debate on article 54 (549th meeting, paragraphs 47 and 49), drew attention to the Special Rapporteur's new text for article 56, which read as follows:

"1. The provisions of section I of this draft, insofar as they concern consular relations, shall also, with the exception of article 17, apply to honorary consuls, save as otherwise provided in the present section.

"2. In the matter of privileges and immunities, honorary consuls shall enjoy the benefits provided for in articles 22, 23 (a), 28, 29, 30, 31, 34, 38 (a) and 43.

"3. The official correspondence, archives and documents of honorary consuls shall be inviolable and may not be the subject of any search or seizure, provided that they are kept separate from the private correspondence of the honorary consuls and from books or documents relating to their non-consular occupation.

"4. Honorary consuls may decline to give evidence before a judicial or administrative authority or to produce documents in their possession, should the evidence or production of documents relate to their consular functions. No coercive measures may be taken in such cases."

2. Mr. HSU observed that the two questions before the Commission were whether it should deal with honorary consuls in the draft and, if so, whether it should define the term "honorary consul". He felt that the answer to both questions should be in the affirmative.

3. Honorary consuls could not be regarded as exceptional; Mr. François had said (549th meeting, paragraph 36) that about 80 per cent of all Netherlands consuls were honorary, while he himself could claim without exaggeration that, in some foreign countries, all his country's consular officials were honorary. Of course, the activities of those consuls were controlled by the consular sections attached to the embassy, but the status, privileges and immunities of the personnel of those sections were covered by the diplomatic draft. Accordingly, omission of any reference to honorary consuls would represent a serious gap in the Commission's codification.

4. He also considered that a definition of the term "honorary consul" should be included. Honorary consuls fell into two main categories, those whose duty it was to protect the nationals of the sending State and those engaged in facilitating commerce. The Special Rapporteur's definition seemed to cover the first category only and in that limited sense would be acceptable with a few drafting changes, such as, perhaps the substitution of the word "free" for the word "authorized". Nevertheless, in view of the existence of two categories, the definition required some amplification. The Special Rapporteur's definition might be described as deductive, but that approach did not suit the Commission's purposes; the synthetic approach would be more appropriate. An honorary consul was a person who engaged in activities other than consular functions; the important point of any definition, therefore, was to make it clear that honorary consuls were part-time officials, who performed consular functions in addition to their own profession or, if they were retired persons, performed those functions in their spare time. The fact that an honorary consul did not receive regular pay need not, in his opinion, be a material factor in the definition. The Drafting Committee might find a satisfactory text on the basis of those considerations.

5. Mr. YOKOTA observed that the Commission's debate had not been confined strictly to article 54, but had related to the structure of the draft as a whole; he would therefore deal with those two matters separately.

6. With regard to the article, he thought it would be extremely difficult to formulate a definition of honorary consuls which covered all categories. It would therefore be wiser to provide no definition and simply to refer to honorary consuls in individual articles where their treatment must differ from that of career consuls.

7. With regard to the structure of the draft, he shared the doubts of previous speakers concerning the Special Rapporteur's treatment of honorary consuls in a separate chapter, which could be excluded from ratification under article 60. That method was based on two assumptions, first, that there was a wide difference between the functions, privileges and immunities of career consuls and honorary consuls and, secondly, that most States opposed the institution of honorary consuls. As regards the first assumption he did not believe that the difference between honorary and career consuls was as great as it seemed at first sight. In paragraph 1 of his new draft of article 56, the Special Rapporteur admitted that the provisions of section I applied to honorary consuls with the sole exception of article 17. In connexion with privileges and immunities, the Special Rapporteur had enumerated the articles which in his opinion applied equally to career and honorary consuls, but he (Mr. Yokota) considered that the list was by no means exhaustive and that many other articles also applied to honorary consuls, either wholly or in part. Accordingly, the difference between

the two classes of consul was not great and there was no need to deal with them separately.

8. Nor could he agree with the second assumption that most States in principle opposed the institution of honorary consuls. On the contrary, a great majority of countries appointed and received such consuls. Even if certain States did raise such objections, that was not a sound reason for placing the provision in a separate chapter, subject to separate ratification. A State which opposed the system had only to refrain from appointing or receiving honorary consuls; the fact that the draft contained provisions relating to those officials did not constitute an obligation for the parties to appoint or receive them. The case was analogous to that of consular agents, who were not appointed or accepted under the municipal law of certain countries; but those States were not prevented thereby from acceding to conventions containing provisions on consular agents.

9. His objection to the Special Rapporteur's structure was based on method rather than on principle: he would not be against including honorary consuls in a separate chapter if article 60, under which States might refrain from ratification, were not adopted.

10. Mr. PAL said that the debate had shown the impossibility of passing over the institution of honorary consuls, an institution which was generally recognized. The entire approach would be unrealistic if, despite past and present practice, no provision was made to cover it. The question, however, was how to deal with that institution and in what place to insert the necessary provisions. A decision could be taken only after considering whether and, if so, for what reasons the functions, powers, responsibilities, privileges and immunities of honorary consuls differed from those of career consuls. If it was found that there was no substantial difference, the Commission could follow the example of the Anglo-Swedish Convention of 1952 and limit itself to stating in the article on definitions that both honorary and career consuls existed. Should it be found, however, that differences were substantial, then a mere mention in the article on definitions would hardly be sufficient. If the definition was to be precise and to meet the purpose, it was essential that it should bring out what the differences were and to what they were due. It was only then that it would be possible to judge whether honorary consuls should receive the different treatment that was proposed in the draft. The question whether honorary consuls should form the subject of a separate section in the draft or whether attention should be drawn to their different status—if such existed—where the subject-matter of the articles already dealt with was concerned, was not of much consequence. The main point was to ascertain to what extent the two institutions resembled one another and to what extent they differed. The Commission should therefore first examine wherein and on what grounds the incidents of honorary consuls differed from those of career consuls.

11. Mr. SCALLE pointed out that, from the strictly legal point of view, countries employed both career officials and contractual officials. The status of career officials existed independently of their own will and was entirely governed by law; statutory officials could change none of the conditions of their service. But all countries also had contractual officials, whose legal status was regulated by contract: that was the case with honorary consuls. In the international sphere, their status could be determined not by the transformation of municipal into international law, as provided in the draft, but by bilateral agreement, since some States admitted and appointed honorary consuls and others did not. The general definition, therefore, should not be based solely on the difference between statutory and contractual status.

12. Another question before the Commission was whether a separate chapter should be devoted to honorary consuls. He was rather against a separate chapter and could not agree with the Special Rapporteur that reservations might be permitted for each country. That procedure seemed unnecessary in such a short draft, particularly since reservations could be made in a multilateral consular convention.

13. The main point to be considered was the functions performed by the officials concerned; those functions were exactly the same in principle, and the only difference arose from the manner of appointment. The principal function performed by both career and honorary consuls was to protect nationals of the sending State; cases where an honorary or a career consul was the national of the receiving State was fully covered by article 42. It seemed obvious that a consul's functions were always consular, and the privileges and immunities enjoyed should therefore be the same for career and honorary consuls, except where otherwise provided in consular conventions.

14. Mr. TUNKIN considered that in practice there was a clear distinction between the institutions of career consuls and of honorary consuls, particularly where their legal status was concerned. Accordingly, it was only logical to deal with the two institutions separately in the draft.

15. He doubted whether the majority of the articles already accepted applied wholly or in part to honorary consuls as well as to career consuls. For example, article 17 (*Grant of diplomatic status to consuls*) could scarcely apply to honorary consuls; with regard to article 23 (*Use of the national flag*), it was doubtful whether a part-time consul should be allowed to fly the flag of the sending State on all means of transport used in the exercise of his functions as provided in sub-paragraph (b); it was also doubtful whether honorary consuls should enjoy such wide privileges as those set forth under article 29 (*Freedom of communication*); and the same doubts extended to article 33 (*Personal inviolability*), article 37 (*Exemption from taxation*), article 38 (*Exemption from customs duties*), article 39 (*Exemption from*

personal services), article 40 (*Attendance as witnesses in courts of law and before the administrative authorities*) and article 41 (*Acquisition of nationality*). Moreover, most consular conventions contained certain restrictions with regard to the privileges and immunities of honorary consuls.

16. He could not agree with the view that the difference was based only on nationality and the fact of engaging in commerce or other gainful occupation; in his opinion, the difference was one of status and he endorsed Mr. Pal's view that only after differences of legal status had been examined could the Commission agree on the best structure for the draft. If it were found that those differences were considerable, it would be better to deal with honorary consuls separately.

17. He was not concerned with the position of his country in the matter, agreeing as he did with Mr. Yokota that any State which did not appoint or receive honorary consuls could continue in that policy. Accordingly, his approach to the whole question was purely scientific.

18. With regard to defining the term "honorary consul", all definitions were dangerous and it was difficult, in a Commission of twenty-one members, to agree even on the most elementary definition. Nevertheless, it had often been found useful to accept a formal and general definition for practical purposes.

19. Sir Gerald FITZMAURICE considered that the articles cited by Mr. Tunkin were applicable to honorary consuls, provided they were not nationals of the receiving State and were not engaged in commerce or other gainful occupation. In many cases, honorary consuls were nationals of the receiving State or were engaged in gainful occupations, but the consequent difference in treatment was based exclusively on grounds of such nationality or occupation. Moreover, those conditions did not apply to a number of honorary consuls. For example, in places where there were large permanent residential foreign communities, consisting of retired nationals of the sending State not engaged in commerce, the status of a person asked to act as an honorary consul would be a matter between him and his own government, and his position vis-à-vis the government of the receiving State was exactly the same as that of a career consul.

20. The definition in article 2 (6) of the Consular Convention between the United Kingdom and Sweden of 1952 described a career officer as a *consul missus* and an honorary officer as a *consul electus*—i.e., one who was engaged on the spot. He did not believe that distinction to be fully satisfactory, since a government might send a national of its country to act as consul on an honorary basis. In his opinion, the only fundamental legal difference between the two categories was that one comprised career consuls and the other did not. There was no other basis for distinction, since the factors of nationality of the receiving State and of engaging in commerce or other gain-

ful occupation might theoretically apply to career consuls as well as to honorary consuls.

21. He agreed that some reference to honorary consuls must be made in the draft, but doubted whether a separate chapter should be devoted to them. If the Special Rapporteur's reason for drafting such a chapter was to make it subject to separate ratification, he felt obliged to object to that method. If a State ratified the remainder of the Convention but failed to ratify the chapter on honorary consuls, the official correspondence, archives and documents of consular posts headed by honorary consuls would not be inviolable though having the status of State archives, and such a situation would be absolutely inadmissible. If, however, the Commission decided to eliminate article 60, his objection would of course disappear.

22. Examining the Special Rapporteur's new text of article 56 from that point of view, he said he was in general agreement with Mr. Yokota, but would be prepared to go even further. Where paragraph 1 was concerned, there seemed to be no reason for excepting article 17 (*Grant of diplomatic status to consuls*) since the provision was in any case subject to the consent of the receiving State, which might agree to allow an honorary consul to discharge diplomatic functions.

23. The list of articles applicable to honorary consuls in paragraph 2 of the new text of article 56 (see paragraph 1 above) seemed to him restrictive, since other articles of the draft were equally applicable to such officials. For example, there seemed to be no reason why, under article 23 (*b*) (*Use of the national flag*), an honorary consul should not be entitled to fly the flag of the sending State on all means of transport used by him in the exercise of his functions. With regard to article 24 (*Accommodation*) the right to procure the necessary premises for a consulate was a right of the sending State, and not of the individual consul; it could not be assumed that an honorary consul always had suitable premises of his own. Freedom of communication (article 29) was just as necessary for an honorary consul as for a career consul. If the honorary consul was a national of the receiving State, he would already be excluded from benefits under article 35 (*Exemption from obligations in the matter of registration of aliens and residence permits*), but if he were a national of the sending State, he should be treated on the same footing as a career consul. The same applied to article 36 (*Exemption from social security legislation*).

24. In his opinion, paragraph 3 was quite unnecessary, since it was already provided earlier in the draft that all consular archives were inviolable. Its only useful provision was that the honorary consul should keep his private correspondence and documents relating to his non-consular occupation separate from official consular correspondence, archives and documents. That could be provided for elsewhere.

25. Finally, he failed to see any reason for the special regime for honorary consuls in paragraph

4, since under article 40, paragraph 1, all consuls, whether honorary or not, were liable to attend as witnesses, although certain facilities were extended to them under other paragraphs of that article. It was unnecessary to repeat the provision in respect of honorary consuls, who performed the same functions as career consuls.

26. In conclusion, he thought that article 1 might contain a definition of a consular official which would cover honorary consuls, along the lines of the definition in the Consular Convention between the United Kingdom and Sweden of 1952. In the last analysis, however, the difference between career and honorary consuls lay in the fact that honorary consuls were not career officers. The Commission could then consider whether it was really necessary to provide for the distinction in any individual article. For his part, he thought that there would be few, if any, such cases.

27. Mr. ŽOUREK, Special Rapporteur, speaking on a point of order, pointed out that the Commission had not yet considered article 60, which provided for the possibility of excluding from ratification the chapter on honorary consuls. The Commission could not prejudge article 60, and he urged that the discussion be confined to article 54, on the definition of honorary consuls. When the Commission had dealt with that article, it could proceed to deal in turn with article 55 (*Powers of honorary consuls*) and article 56 (*Legal status of honorary consuls*).

28. Mr. MATINE-DAFTARY said that, for his part, he had no objection to considering article 56. The Commission had now discussed at some length the contents of that article and a decision on its provisions might assist it in finding a definition for honorary consuls.

29. Mr. AGO said that the discussion had shown how impracticable it would be to consider article 56 without prior agreement on the notion of honorary consuls, a matter on which there was clearly no unanimity. The Special Rapporteur, on the one hand, regarded it as an essential characteristic of honorary consuls that they could be nationals of the receiving State or engaged in commerce or other gainful occupation and consequently subject to a series of exceptions in regard to consular privileges and immunities. Mr. Scelle, on the other hand, thought that the only difference between an honorary consul and a career consul lay in the nature of his legal ties with the sending State. A career consular officer had a permanent relationship with the sending State, a relationship governed by the law of that State; an honorary consul's relationship with the sending State was contingent and based on contract. That, in his opinion, was the proper way of expressing the difference between the two categories.

30. There were, of course, many instances of consular privileges or immunities not applying to a consular officer who was a national of the

receiving State, or was engaged in commerce or other gainful occupation in that State; such exceptions, however, were not peculiar to honorary consuls. A career consul, if a national of the receiving State, or engaged in commerce or other gainful occupation therein, would be in the same position and would not be entitled to claim the privileges and immunities in question.

31. The CHAIRMAN said that he did not believe that the Commission's difficulties would be solved by considering article 56 before article 54, which might involve duplicating its discussion of certain points of substance.

32. There appeared to be general agreement on one important point, that consular functions could be performed by either career consuls or honorary consuls.

33. It had been suggested during the discussion that certain restrictions on consular privileges and immunities arose not out of the title given to a consul by the sending State but out of the nationality of the consul or the fact that he was engaged in commerce or other gainful occupation in the receiving State. If the commission would take a decision on that point, its task might be easier.

34. Mr. PAL said that, after hearing Mr. Tunkin and Sir Gerald Fitzmaurice, the course to be followed had seemed clear, but since it had been suggested that agreement on a definition was essential before proceeding with the discussion, the Commission seemed in danger of getting caught in a vicious circle. Personally, he did not think that the mere title "honorary" justified any difference in treatment; any difference in that respect usually arose from other causes, such as the nationality or the extraneous activities of the person concerned.

35. He therefore urged the Commission to take no decision at that stage on article 54 and to follow its usual method by not taking a decision on the question of a definition until the other relevant articles had been adopted. That method had been followed in regard to article 1, on definitions. The Commission should now examine articles 55 *et seq.* and determine what were the distinctive features of honorary consuls. When those distinctive features had been determined, then only could a definition of honorary consuls be formulated. It might even be found that there were no such distinctive features.

36. Mr. ŽOUREK, Special Rapporteur, said that the Commission had to agree on the meaning of the term "honorary consul" before it could discuss articles 55 *et seq.* In referring to the definition given in article 54, some members of the Commission had described it as being his. In fact, however, the present draft of article 54 differed considerably from the text proposed by him in his first report; it was the work of the Drafting Committee and had been provisionally adopted by the Commission at its eleventh session.

37. Like Mr. Verdross, he considered that the distinctive feature of honorary consuls was the

fact that they were not members of the regular civil service (*cadre régulier*) of the sending State. In that connexion, he could not accept the objections which had been made to the words in article 54 "who does not receive any regular salary from the sending State". Some members had referred to the fact that an honorary consul might receive an allowance for his office expenses or be allowed to retain part of the consular fees collected by him. That made no difference to the situation: the term "traitement" was a technical term used to designate the emoluments of a public servant; it was one of the basic criteria of their membership of the civil service of their country.

38. With regard to Sir Gerald Fitzmaurice's remarks that many of the differences in treatment which had been noted arose out of the fact that the consul concerned was a national of the receiving State, or was engaged in commerce or other gainful occupation in that State, he said that those two criteria, whether separately or combined, were precisely those adopted in many consular conventions for the purpose of defining honorary consuls. Carried to its logical conclusion, the objection thus made could lead to the dropping of all distinction between honorary consuls and career consuls; but such a conclusion would be contrary not only to doctrine but to general State practice.

39. It had been suggested that the question whether a consul was a career officer or not was a matter which only concerned his relations with the sending State. That was a suggestion which could not be accepted and it was at variance with State practice; the fact that an honorary consul was not a career civil servant of the sending State and that he was engaged, or could engage, in a gainful occupation concerned also the receiving State. Under a great many consular conventions, numerous consular privileges and immunities were withheld from honorary consuls, even when they were nationals of the sending State and were not engaged in any gainful occupation; the reason was that such a person could, if he wished, engage in other activities than the exercise of his duties as an honorary consul.

40. He believed it was possible to find an adequate definition of honorary consuls but felt that it could not be sought in the distinction drawn by Mr. Scelle between persons having a contractual, and those having a statutory relationship with the sending State. Members of the career consular staff often included locally engaged employees who served on a contractual basis.

41. In view of the diversity of existing State practice, and considering that the draft was only provisional, he urged the Commission to adopt Mr. François' definition of an honorary consul as a person designated as such by the sending State and accepted as such by the receiving State. Such a definition would not be purely formal, because it would make it clear that the decision to appoint an honorary consul rested with the sending State, while the decision to grant him recognition rested with the receiving State. The adoption of a definition along those lines would enable the Commission

to proceed with its discussion of articles 55 *et seq.* The actual arrangement of the articles was of secondary importance.

42. Mr. VERDROSS said he supported Mr. François' definition of an honorary consul as a person designated as such by the sending State and recognized as such by the receiving State. Only a formal definition of that type, which referred back the question to the municipal law of the sending State, would embrace all existing practice.

43. The question of the legal consequences of that definition was a different matter. In his opinion, honorary consuls had the same rights and duties as career consuls and, so far as their official acts were concerned, enjoyed the same privileges, except where otherwise provided by a consular convention or by a special agreement between the sending State and the receiving State.

44. The CHAIRMAN said that the idea contained in the suggestion by Mr. François could be expressed by omitting article 54 from the draft and considering that the matter had been dealt with in article 1 (*f*). The definition of the term "consul" in that sub-paragraph contained the two elements of the definition suggested by Mr. François—i.e., the appointment by the sending State and the acceptance by the receiving State.

45. Accordingly, he suggested that the Commission consider dropping article 54 and deleting from article 1 (*f*) (*ii*) the words "if he does not receive any regular salary from the sending State and is authorized to engage in commerce or other gainful occupation in the receiving State".

46. Mr. EDMONDS proposed that the term "honorary consul" be added in the third line of article 1 (*f*), so that the passage would then read: "consul-general, consul, vice-consul, consular agent or honorary consul."

47. He further proposed the deletion of the whole of the second part of article 1 (*f*). Such an amendment would reflect the views of the majority of the Commission by deleting all reference to the criteria of the non-receipt of a salary and the exercise of professional activities other than those arising from the consular function.

48. Mr. ŽOUREK, Special Rapporteur, supported the Chairman's suggestion.

49. Mr. Edmonds's proposal would create a new class of consuls. The question whether honorary consuls constituted a separate class of consuls had been already discussed at length in connexion with article 1 and the Commission had arrived at the conclusion that they constituted a category and not a class of consuls. There could be four classes of honorary consuls: honorary consuls-general, honorary consuls, honorary vice-consuls and honorary consular agents. It would be difficult for the Commission to go back on its decision on that point without altering the structure of the whole draft.

50. Mr. AMADO said that the discussion had shown that widely different conceptions were held

by members of the Commission regarding honorary consuls. He himself had always considered the matter of honorary consuls as pertaining to the comity of nations and he had been somewhat surprised to hear it suggested, for example, that the receiving State might have a duty to provide accommodation for such consuls. It had also become clear from the discussion that honorary consuls were more important to such countries as the Netherlands than they were to others like Brazil.

51. For those reasons, it would be very difficult to formulate a generally acceptable definition of honorary consuls, and he suggested that the simplest course would be to delete from article 1 (f) the definitions of the terms "career consul" and "honorary consul" respectively, and to abridge correspondingly the second part of that provision to read: "A consul may be a career consul or an honorary consul".

52. The CHAIRMAN said that it would be difficult to accept in its actual form the proposal submitted by Mr. Edmonds. In the first place, the Commission had not yet adopted the final text of article 1 and could not therefore adopt a proposal relating to the actual wording of that article. In the second place, the addition of the term "honorary consul" in the first part of article 1 (f), combined with the proposed deletion of the second part would mean that there could only be honorary consuls, but no honorary consuls-general, vice-consuls or consular agents.

53. The idea contained in the proposal by Mr. Edmonds, however, could be expressed without deleting the whole of the second part of article 1 (f). If the Commission agreed, the matter could be referred to the Drafting Committee with the guidance that, in article 1 (f), honorary consuls would be characterised only by the fact that they were appointed as such by the sending State and accepted as such by the receiving State. That result could be achieved by deleting the descriptive passages from the second part of article 1 (f) and leaving only the sentence: "A consul may be a career consul or an honorary consul".

54. There also appeared to be general agreement that the two criteria laid down in article 54 were not related to characteristic features of honorary consuls. Accordingly, if there were no objection, he would consider that the Commission agreed to drop article 54 and to instruct the Drafting Committee to word article 1 (f) as he had suggested.

It was so agreed.

ARTICLE 55 (*Powers of honorary consuls*)

55. Mr. ŽOUREK, Special Rapporteur, introducing article 55, said that generally speaking honorary consuls did not exercise such wide functions as career consuls. Matters with which honorary consuls were not empowered to deal included legal questions, the issue of passports and nationality problems. The limited powers of honorary consuls were determined by the sending State in accordance with international law, and

the definition of consular functions contained in article 4 ensured that those powers could not conflict with the municipal law of the receiving State. The receiving State, which was under an obligation to guarantee to honorary consuls certain privileges and immunities, must know what the powers of honorary consuls were in order to be able to pass on the information to its own nationals and local authorities. Hence the practical importance of the provision contained in paragraph 2.

56. Paragraph 1 of article 55 reflected present practice, while paragraph 2 met the needs of both the sending and the receiving State: he hoped therefore that both would be acceptable.

57. Mr. FRANÇOIS proposed the deletion of article 55 which was wholly superfluous. The requirement contained in paragraph 1 was entirely an internal matter for the sending State and that contained in paragraph 2 did not appear to accord with practice and would impose a quite unnecessary burden on the sending State. If the authorities or nationals of the receiving State needed information about the powers of a particular honorary consul they could address their enquiries to his office direct.

58. The CHAIRMAN, speaking as a member of the Commission, suggested that article 55 should be examined in the light of the provisions contained in article 4. The only new element introduced in article 55 was the requirement contained in paragraph 2.

59. Mr. VERDROSS observed that paragraph 1 did not indicate what were the rules of international law according to which the powers of honorary consuls should be determined. He therefore suggested that the words "and recognized by the receiving State" be substituted for the words "in accordance with international law" in that paragraph. That amendment would render paragraph 2 unnecessary.

60. Sir Gerald FITZMAURICE supported Mr. François's proposal for the deletion of article 55, the essence of which was already covered in article 4. The Commission had already defined the term "consul" to include honorary as well as career consuls and therefore, in the absence of any express provision to the contrary, every article in the draft applied to both. If honorary consuls were accepted by the receiving State, there was no reason why they should not exercise all the functions specified in article 4. He was unable to see why the receiving State should wish to know exactly what powers had been conferred on its honorary consuls by the sending State. Career consuls equally, at certain posts, might not be authorized to exercise all the functions covered by article 4, and he had never encountered a case where the receiving State had been informed of such a limitation. Similarly there was no case for the requirement contained in article 55, paragraph 2, where honorary consuls were concerned.

61. Mr. BARTOŠ considered that in normal circumstances the functions exercised by career and honorary consuls were the same. Any limitation in regard to the latter was usually determined in advance by the sending State in the letter of appointment or contract. Certain restrictions on the functions of honorary consuls had been laid down in some consular conventions, but that was exceptional. Accordingly he saw no objection to deleting article 55 altogether or adopting a text on the same lines as article 4.
62. If honorary consuls were included in the definition contained in article 1 there was no need for the special provision proposed in article 55, paragraph 2. So far as he was aware the Yugoslav Government had never been informed by a sending State that the functions of a particular honorary consul were limited. It was true that certain sending States were averse to authorizing their honorary consuls to issue visas, but that was a purely internal matter, as was the manner in which authority was delegated to them. Thus the requirement laid down in paragraph 2, though sometimes included in some conventions, did not reflect universal practice and need not be imposed on all States in the form of a general rule. Moreover, it could cause some embarrassment to those honorary consuls who were purely ceremonial figureheads.
63. Mr. ŽOUREK, Special Rapporteur, said in reply to those members of the Commission who had questioned the need for article 55, that in the vast majority of cases honorary consuls now exercised limited functions. In view of that practice, therefore, the argument that the powers of honorary consuls were already covered in article 4 could not be sustained, nor could he agree that it was unnecessary for the receiving State to be informed of what those powers were. If that were not done, local authorities might be involved in protracted and possibly fruitless correspondence. The requirement laid down in paragraph 2 might mean some extra work for officials of the sending State, but that was surely of minor importance in the light of the advantages which it could bring both to the sending State and the receiving State. The task of the Commission was not only to codify, but also to frame rules of international law that might help to smooth relations between States. Since information about the functions of an honorary consul would be purely official and would not be made public, no embarrassment of the kind mentioned by Mr. Bartoš would result.
64. He was prepared to accept Mr. Verdross's amendment which would render paragraph 2 unnecessary.
65. The CHAIRMAN, speaking as a member of the Commission, pointed out that article 55, paragraph 1, as amended by Mr. Verdross would stipulate first that the powers of an honorary consul were determined by the sending State, which had already been done in article 4, and secondly that those powers should be recognized by the receiving State, which again had already been laid down in article 4 and article 1 (f). Surely the main concern of the receiving State was to ensure that an honorary consul did not exercise functions which violated its legislation, and that point was fully met in article 4.
66. He also had misgivings about article 55, paragraph 2, which seemed to imply the possibility of honorary consuls exceeding their powers; that was an undesirable assumption.
67. For those reasons he neither favoured paragraph 1 as amended nor paragraph 2.
68. Mr. AMADO agreed with Mr. Padilla Nervo. Article 4 fully covered all the requirements which the Special Rapporteur had had in mind when drafting article 55. Article 55 made no positive contribution either to codification or to the constructive development of international law and he therefore supported Mr. François's proposal for its deletion.
69. Mr. VERDROSS said that he had no objection to the deletion of article 55 if its substance was covered in other articles of the draft, but it seemed to him to be doubtful whether that was in fact the case.
70. Mr. TUNKIN suggested that there was some misunderstanding about the purport of article 4 which enumerated the principal functions ordinarily exercised by consuls. Clearly the Special Rapporteur had thought it necessary to insert article 55 because, as practice indicated, only some of those functions were exercised by honorary consuls. The article therefore filled a real need and he agreed with the view that the receiving State must know what functions an honorary consul was authorized to exercise.
71. Mr. AGO did not consider that Mr. Tunkin need fear the consequences of deleting article 55. Though the principal functions ordinarily exercised by consuls were listed in article 4, they could at any time be limited by the sending State both for career and honorary consuls.
72. There was some danger that honorary consuls would not be in a position to carry out their duties properly if the requirement laid down in article 55, paragraph 2, were rigidly imposed. He therefore favoured Mr. François's proposal.
73. Mr. ŽOUREK, Special Rapporteur, said that Mr. Tunkin had brought out the real question at issue. In his own opinion article 55 must be retained, though perhaps in a different form, above all in order to take into account the fact that in general honorary consuls exercised limited functions. He was willing to prepare a new draft in the light of the discussion while retaining the fundamental concept that underlay the present article.
74. Mr. PAL supported the deletion of article 55 because article 4 also covered honorary consuls. There was no need for a separate article dealing

with their functions which need not necessarily be narrower in scope than those of career consuls. Under article 56, as proposed by the Special Rapporteur, the whole of Section I of the draft, including the articles on functions and on the need for an exequatur, was made applicable to honorary consuls.

75. Mr. LIANG, Secretary to the Commission, observed that there was considerable force in the contention that honorary consuls usually exercised more restricted functions than career consuls. He was uncertain whether all honorary consuls were granted exequaturs. He had noted from the United Kingdom's Aliens (Foreign Representatives) Direction of 1954, paragraph 4, that a "consular officer" was defined as a person holding a United Kingdom exequatur or otherwise recognized by the United Kingdom Government as authorized to act as a consular officer in that country.¹

76. If an honorary consul were appointed but did not receive an exequatur or recognition as a consular officer, then the provisions in article 1 (f) would not apply because consular functions could only be exercised in conformity with articles 11 or 12 which required an exequatur or recognition. It would be desirable to investigate further whether all honorary consuls received exequaturs or were recognized as consular officers. Perhaps the Special Rapporteur should take that consideration into account in preparing his new text.

77. The CHAIRMAN observed that the Special Rapporteur was strongly of the opinion that some provision was necessary to indicate that honorary consuls exercised limited functions whereas other members of the Commission held the contrary view. In any event further consideration of article 55 would have to be deferred until the Special Rapporteur's new draft had been circulated.

The meeting rose at 1.5 p.m.

551st MEETING

Wednesday, 1 June 1960, at 9.30 a.m.

Chairman: Mr. Luis PADILLA NERVO

Welcome to new member

1. The CHAIRMAN welcomed Mr. Eduardo Jiménez de Aréchaga, whose experience and knowledge would make a valuable contribution to the Commission's work.

2. Mr. JIMÉNEZ DE ARÉCHAGA thanked the Commission for the honour it had done him in electing him to membership. He looked forward to taking part in its important discussions.

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 55 (*Powers of honorary consuls*) (continued) *

3. The CHAIRMAN, inviting the Commission to continue its consideration of article 55, said that the new text which the Special Rapporteur had undertaken to prepare was not yet ready for circulation.

4. Sir Gerald FITZMAURICE said that the United Kingdom Aliens (Foreign Representatives) Direction of 1954,¹ mentioned by the Secretary at the previous meeting (550th meeting, paragraph 75), illustrated well the proposition he himself had sought to defend that, as far as the performance of consular functions was concerned, there was no difference of principle between career and honorary consuls. The purpose of the Direction had been to give effect to provisions in consular conventions so as to exempt certain categories of persons from the need to comply with the Aliens Order, 1953. A consular officer was defined there as "a person holding Her Majesty's exequatur or otherwise recognized by Her Majesty's Government as authorized to act as consular officer in the United Kingdom" and the entirely different category of consular employee had been defined as a person employed on consular duties who was a permanent employee of the State by which he was employed and who was not engaged in private occupation for gain in the United Kingdom. Entitlement to exemption from the provisions of the Aliens Order and the extent of that entitlement thus depended on the terms of article 4. It was true that article 1 (1) of the Direction only exempted honorary consuls from the provisions of articles 14 to 17 of the Aliens Order, which referred to the registration of aliens, whereas career consuls were exempted from certain additional provisions of that order; that, however, was due to the fact that those additional provisions referred for the most part to matters connected with the arrival of aliens which did not apply to honorary consuls as they were usually appointed *sur place*. Only in respect of deportation did the career consul receive a special exemption.

* Resumed from the 550th meeting.

¹ *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities*, United Nations Legislative Series, vol. VII (United Nations publication, Sales No. 58.V.3), p. 357.