Document:-
A/CN.4/SR.551

Summary record of the 551st meeting

Topic:
<multiple topics>

Extract from the Yearbook of the International Law Commission:-
1960 , **vol. I**

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.

5. Mr. LIANG, Secretary to the Commission, agreed with Sir Gerald Fitzmaurice's interpretation of the United Kingdom Aliens (Foreign Representatives) Direction in which the term " consular officer " comprised both career and honorary consuls. Where the provisions of that Direction did not apply to the latter category, an express statement to that effect was made as in paragraph 1 (1). That restriction related to immunities and not to the functions of honorary consuls.

6. According to the Consular Convention between the United Kingdom and Sweden of 1952,[2] article 2, paragraph 6, a " consular officer " was any person who had been granted an exequatur or other authorization to act in such capacity by the appropriate authorities of the territory and could be a career or honorary officer. The Swiss regulations concerning diplomatic and consular privileges and immunities made no distinction between career and honorary officers.

7. Where the provisions of a consular convention did not apply to honorary consuls, express mention was made of that fact as in the Treaty of 1948 between the Republic of the Philippines and the Spanish State on civil rights and consular prerogatives, article IV, paragraph 2.[3]

8. Mr. TUNKIN, on a point of order, moved that the Commission defer further discussion of article 55 until the Special Rapporteur's new draft had been circulated and that it pass on to article 56. That procedure would save time since article 56 was a key provision and once disposed of it would be easier to reach a conclusion on articles 54 and 55.

9. Mr. EDMONDS was unable to see how the Commission could discuss article 56 before it had disposed of article 55.

10. The Commission he thought, was unnecessarily complicating a simple matter. In practice an honorary consul was any person appointed to that office with the consent of the receiving State and performing functions to which that State had assented. Article 2, paragraph 6, of the Convention between the United States and the United Kingdom relating to consular officers of 6 June 1951[4] defined a " consular officer " as any person who was granted an exequatur or provisional or other authorization by the appropriate authorities of the territory and paragraph 7 defined a " consular employee " as a person employed at a consulate for the performance of executive, administrative, clerical, technical or professional duties. No distinction was made between career and honorary consuls. Some of the consular functions were enumerated in the Convention, but not exhaustively. Provisions of the kind found in that Convention were simple to understand and easy to apply. There was no need for the Commission to spend much time discussing unnecessary definitions.

11. Mr. TUNKIN felt that, in the interests of orderly discussion, it would be desirable to adopt his motion and tackle the concrete problems at issue.

12. The CHAIRMAN suggested that, as article 55 had already been discussed in considerable detail, perhaps it would suffice for purposes of continuing the debate if the Special Rapporteur could explain what was to be the content of his new draft. The question was whether or not to include a special article on the powers of honorary consuls. Several members of the Commission considered it unnecessary because the matter was already covered in earlier articles.

13. Mr. ŽOUREK, Special Rapporteur, said it would be preferable to defer further discussion on article 55, which was concerned with a question of principle, until his new text had been circulated. The Commission could in the meantime take up article 56, which dealt with an entirely different matter.

14. Mr. EDMONDS said that, in his opinion the majority was opposed to introducing any definition of honorary consuls or specifying what should be their duties. If that were the case, much time could be saved if a vote on the issue could be taken forthwith.

15. Mr. ŽOUREK, Special Rapporteur, considered that procedure to be quite unacceptable: the Commission must discuss the draft before it article by article.

16. Mr. YOKOTA pointed out that Mr. Edmonds's point had already been met by the decision taken at the previous meeting with regard to article 1 (*f*) (550th meeting, paragraph 54).

17. The CHAIRMAN said that, after discussing article 56, the Commission could decide whether a special section should be devoted to the legal status of honorary consuls. In the absence of any objection he suggested that the procedure proposed by Mr. Tunkin be followed.

It was so agreed.

ARTICLE 56 *(Legal status of honorary consuls)*

18. Mr. ŽOUREK, Special Rapporteur, drew attention to the new text he was proposing for article 56 which read as follows:

" 1. The provisions of section I of this draft, in so far 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.

---

[2] United Nations *Treaty Series*, vol. 202 (1954-1955), No. 2731, p. 160.

[3] *Ibid.*, vol. 70 (1950), No. 903, p. 146.

[4] *Ibid.*, vol. 165 (1953), No. 2174, p. 126.

" 3. The official correspondence, archives and documents of honorary consuls shall be inviolable and not liable to search or seizure, provided 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."

19. Article 56 was the most important in chapter II. During the discussion of articles 54 and 55, one or two members of the Commission had maintained that no distinction had been made in past or present practice between the legal status of career and honorary consuls. The fact was that practice varied widely. Some States accorded no special privileges to honorary consuls, while others were more liberal, but he had found no instances of the same privileges and immunities being accorded to career and honorary consuls.

20. He had sought to frame a provision that would be acceptable to the majority of States. His researches had confirmed his opinion that the full range of consular privileges and immunities was never accorded to honorary consuls. On the other hand he considered that the provisions contained in sections I and IV of the draft concerning consular relations in general also covered honorary consuls — in so far, of course, as they applied to them.

21. Some account should be taken of the fact that the sending State might appoint a career consular officer or clerk to act as assistant to an honorary consul. When that occurred, such career officials had the advantage of the more favourable conditions applicable to them under international law, whereas the honorary consul would be subject to a different set of rules.

22. After reviewing the different provisions contained in section II of the draft, he had selected those which were applicable to honorary consuls and had listed them in paragraph 2 of the new text. Perhaps he might have gone a little far in that paragraph and it would be useful to have the comments of governments on existing practice since at present, apart from national legislation, there was not enough information to enable the Commission to decide what privileges and immunities honorary consuls did in fact enjoy. Sir Gerald Fitzmaurice had already criticized him for not having been liberal enough, but national legislation did not bear out Sir Gerald's view.

23. The view that honorary consuls did not possess the same legal status as career consuls was upheld in the legislation of certain countries. For example, under the 1955 Direction of the Belgian Ministry of Finance [5] honorary consuls who were classified as not being permanent officials of the sending State and who were entitled to follow other occupations did not enjoy certain financial exemptions. Under the Turkish law of 1948 [6] honorary consuls were not entitled to tax exemption. The Peruvian decree of 1954 [7] did exempt honorary consuls from taxes on salaries, emoluments and allowances but such exemptions were not likely to involve large sums. In the Netherlands Antilles,[8] honorary consuls, unlike members of the diplomatic and consular corps, had to comply with the formalities required on temporary or permanent admission. Iraq Law No. 26 of 1949 [9] excluded honorary consuls from enjoyment of any of the immunities or privileges accorded to foreign consuls. Similarly article 12, paragraph 3, of the Consular Convention between the United Kingdom and Sweden of 1952 showed that career and honorary consuls were not treated on the same footing.

24. The question whether or not honorary consuls could be defined by reference to nationality or to the fact whether or not they were engaged in some gainful occupation besides exercising consular functions was irrelevant to the question of their status. He had wished to avoid a narrow definition and thought it preferable to leave the matter to domestic legislation.

25. Some members seemed to favour a move to assimilate honorary consuls to career consuls but surely that would prove unacceptable to most governments. He had prepared the present draft on the assumption that it would ultimately form the basis for a multilateral convention and that existing bilateral consular conventions would remain in force, while others would be concluded in the future which might differ from the multilateral convention. He had therefore been guided by the conviction that the Commission should not seek to regulate what could better be settled on a bilateral basis between States. It was also important not to seek guidance from a particular group of consular conventions; the result of adopting such a course would be a one-sided draft which for that reason would prove unacceptable to a large number of States.

26. It was with those considerations in mind that he had re-drafted paragraph 2 of article 56.

27. Turning to paragraph 3, he said that official correspondence and papers would only be inviolable if they were kept separate from the honorary consul's private correspondence and from books or documents relating to any business or other activity in which the honorary consul might be engaged.

28. Under paragraph 4, an honorary consul could decline to give evidence or to produce official correspondence or papers in his possession, should the evidence or the correspondence and papers relate to his consular functions. The safe-

[5] *Laws and Regulations regarding Diplomatic and Consular Privileges*, p. 41.

[6] *Ibid.*, p. 326.

[7] *Ibid.*, p. 234.

[8] *Ibid.*, p. 211.

[9] *Ibid.*, p. 168.

guards he proposed in that paragraph should be adequate both for the sending and the receiving State.

29. Mr. YASSEEN considered that the drafting of article 56 was imprecise because it seemed to confuse facilities granted to consulates and immunities granted to consuls as such. He would have thought that consulates run by honorary consuls should at any rate enjoy the same facilities as those provided for in articles 23, 28, 29, 30 and 31, regardless of the attitude that might be adopted towards the extent of the personal privileges and immunities to be accorded to honorary consuls.

30. Mr. EDMONDS agreed with the views expressed by Sir Gerald Fitzmaurice during the discussion on articles 54 and 55 about the privileges and immunities of honorary consuls.

31. Referring to paragraph 3 of the new text of article 56 he wondered whether it was not a little stringent since private correspondence might by an oversight find its way into official files. Perhaps it would be desirable to delete the latter part of the paragraph starting from the words " provided that ".

32. Mr. YOKOTA, speaking on a point of order, proposed that the Commission go through the draft article by article, or perhaps sub-section by sub-section, to decide which provisions applied to honorary consuls as well as to career consuls. That procedure would be appropriate for the formal consideration of article 56; in paragraph 1, the Special Rapporteur stated that the provisions of section I of the draft should apply to honorary consuls, with the exception of article 17, and the Commission would therefore only have to take a decision in respect of that one article. It could then proceed to consider the articles in section II from that point of view also, with the exception of the articles that the Special Rapporteur had listed in paragraph 2.

33. The CHAIRMAN said that, while he sympathized with the purpose of Mr. Yokota's proposal, he could not give a ruling on it, since the ensuing discussion in the Commission might be so broad as to defeat its very purpose.

34. Mr. MATINE-DAFTARY thanked the Special Rapporteur for his clarification of the new text of article 56, and particularly for his anxiety not to go too far, in order that the draft might be acceptable to the largest possible number of governments. The main issue before the Commission, however, seemed to be the general structure of the article. There had been a trend towards assimilating honorary consuls to career consuls; he would submit that the advocates of assimilation came from countries which took the institution of honorary consuls seriously, but that many small States did not take such great care not to abuse the institution. Indeed, he knew of many cases where honorary consuls performed no consular functions whatsoever, but had been appointed merely in order that they might enjoy certain privileges and immunities.

35. The Special Rapporteur had unfortunately not succeeded in his gallant attempt to find a formula acceptable to all. As an attempt to provoke observations from governments, his endeavour was praiseworthy; but it should be borne in mind that the practice of granting privileges and immunities to honorary consuls varied widely and it could not be assumed, as the Special Rapporteur seemed to assume, that honorary consuls were never treated on an equal footing with career consuls. On the other hand, the advocates of complete assimilation of the two categories could not generalize so far as to include cases where an honorary consul performed no consular functions whatever.

36. In his opinion the essential point was to distinguish between honorary consuls who were nationals of the sending State and those having the nationality of the receiving State. The criterion of a regular salary did not apply, since in many cases a national of the sending State who was appointed honorary consul was unpaid. In the interests of equity, therefore, the Commission should make the initial distinction of assimilating to career consuls only honorary consuls who were nationals of the sending State and who did not engage in commercial or other gainful occupations. That provision would meet the requirements of governments which wished to appoint a consul, but could not afford to send a career consul to a given country. He drew attention to the fact that the French text of paragraph 1 referred to chapter I, while the English text referred to section I.

37. Turning to paragraph 3, he pointed out that the distinction between private and official correspondence of honorary consuls was somewhat impractical, since it was difficult to ensure that an official was in fact keeping his official correspondence, archives and documents separate from his private correspondence, books and documents.

38. With regard to the reference to production of documents in paragraph 4, he said that his remarks in connexion with article 40 *(Attendance as witnesses in courts of law and before thea dministrative authorities)* (541st meeting, paragraph 32) applied, *a fortiori*, to honorary consuls. There were a number of documents relating to consular functions, such as birth, death or marriage certificates, which should not be exempt from production before a judicial or administrative authority.

39. In conclusion, he thought that once the Commission had decided on the applicability of the article to honorary consuls who were nationals of the sending State, Mr. Yokota's proposal might usefully be followed.

40. Mr. ŽOUREK, Special Rapporteur, said it was the English text of paragraph 1 that was correct; the articles concerned were Nos. 2 to 21. He had not distinguished between honorary consuls who were nationals of the sending State and those who were nationals of the receiving State because national legislations, whatever criteria they might adopt as a basis for their definition of an honorary

consul, did not as a rule differentiate between the various categories of honorary consul. It should also be borne in mind that nationals of a third State could also be appointed as honorary consuls. In any case, the Commission should not disregard the practice of States in the matter.

41. Sir Gerald FITZMAURICE said he could agree with Mr. Yokota's approach to the question, but not with that of the Special Rapporteur, whose introduction of the new text of article 56 showed that he still had at the back of his mind the idea that an honorary consul was usually a national of the receiving State and, as such, should be given inferior treatment. The Special Rapporteur started out from the view that none of the provisions of the draft should apply to honorary consuls unless it were proved that they should so apply, and he had selected several such articles, thus inferring that the unlisted articles were inapplicable to that category of official. He himself took the opposite view: while he did not assert that the treatment of honorary and career consuls should never differ, he believed that cases when they should were very few indeed. The distinction based on having the nationality of the receiving State was false, since both honorary and career consuls could have that nationality.

42. He did not believe that a separate article on honorary consuls was necessary, but if the Commission decided otherwise, he considered that the text should adopt a different course. It should state not what was applicable to honorary consuls but what was not applicable.

43. The Special Rapporteur had argued that the practice of States must be taken into account, but the examples he had given did not support the thesis that most States distinguished clearly between the two categories. He had yet to find a consular convention which made the distinction at all frequently, and many such conventions did so very seldom. For example, the Consular Convention between the United Kindgom and Italy of 1954[10] stated in article 2, on definitions, that a consular officer might be a career officer or an honorary officer, but it contained no other reference to honorary consuls, except by negative implication in one or two places where career consuls only were specified. For instance, there was the provision in article 9 which stated that the sending State might acquire land and buildings " for use as a consulate or as a residence for a career consular officer; " the assumption there was that an honorary officer would normally have or acquire his own residence in the receiving State.

44. The Special Rapporteur had implied that the Consular Convention between the United Kingdom and Sweden of 1952 contained many distinctions between honorary and career consuls, but again, apart from one or two provisions specifying career consuls only, the only clear distinction was made in the article on communications; the other articles cited by the Special Rapporteur based the distinction entirely on criteria which were not peculiar to honorary consuls. For example, article 11 (5) of that Convention provided that a person exempted from certain services should be a national of the sending State and not possess the nationality of the receiving State, should not be engaged in any private occupation for gain in the territory and should not have been ordinarily resident in the territory at the time of his appointment to the consulate. The Special Rapporteur would be entitled to say that those criteria usually applied mainly to honorary consuls, but in actual fact the provision would apply equally to a career consul if circumstances brought him under one of the categories listed. The inference that the Special Rapporteur had drawn from that article was a telling example of his approach to the whole question. The Commission's best course would be to recognize that the case of local nationality was, in principle, equally applicable to career and honorary consuls and, if there were any individual article in respect of which a special regime should be provided for honorary consuls, to say so in that article. Alternatively, a general article might be included, listing the few cases where special treatment of honorary consuls was warranted.

45. Mr. AGO observed that the wide difference between Sir Gerald Fitzmaurice's approach and that of the Special Rapporteur proved that the Commission had reached a deadlock. Certain members had stressed that the essential distinction did not lie between the titles of honorary and career consul, but between persons who were nationals of the sending State and those who were nationals of the receiving State, and between those engaging in gainful occupation those not doing so. The main point was that the categories of nationals and non-nationals of the sending State did not coincide with those of career and honorary consuls, as the Special Rapporteur was inferring. Unless agreement could be reached on that point, no useful result could be achieved.

46. At the previous meeting (550th meeting, paragraph 41), the Special Rapporteur had accepted Mr. François' suggestion, but his introduction of his new text showed that his original idea of the distinction between honorary and career consuls remained unchanged.

47. Mr. Yokota's proposal seemed the most likely to lead the Commission out of the deadlock. Thus, if article 17, referred to as an exception in the new text of paragraph 1, were considered in the light of its applicability to honorary consuls, it would, in his opinion, be applicable to honorary consuls or at least any honorary consul having the nationality of the sending State and engaged in no gainful occupation. While it might be maintained that no honorary or career consul who was a national of the receiving State and was engaged in gainful occupation should be entrusted with diplomatic functions, in the contrary case there was no reason why an honorary consul fulfilling the necessary conditions should not be granted diplomatic status, particularly since many

[10] United Kingdom, *Italy No. 1 (1954)* (Cmd. 9193).

States appointed as their ambassadors persons who were not connected with the diplomatic service.

48. Mr. TUNKIN, speaking on a point of order, observed that, despite a general agreement to follow Mr. Yokota's proposal, discussion still ranged very wide. Would it not be advisable to limit discussion to the individual paragraph of the new text of article 56 ?

49. Mr. SANDSTRÖM, also speaking on a point of order, said that, while endorsing Mr. Yokota's proposal to examine the draft article by article, he did not consider it out of place to begin by stating the general principles to be followed.

50. Mr. TUNKIN, again speaking on a point of order, said he had not meant that no general observations should be admitted, but thought that the Commission should try to limit discussion to the text before it.

51. Mr. PAL, observing that his remarks were not on a point of order but referred to the method to be adopted in discussing article 56, said that the Commission's task in considering that article paragraph by paragraph would be vast, in view of the fact that each paragraph would present positive and negative aspects, each involving the possibility of wide discussion. For example, a discussion of paragraph 1 could not be limited just to a decision on article 17, but must involve a review of all the other articles in section I — unless the Commission was prepared to accept without question what the Special Rapporteur declared to be applicable to honorary consuls. The Special Rapporteur's enumeration in paragraph 2 implied that the unlisted articles were not applicable to honorary consuls and consequently opened the door to a review of all the articles in section II of the draft — unless, again, the Commission took a decision *in limine* not to question what was stated by the Special Rapporteur to be applicable to consuls and furthermore to discuss only those articles, if any, the possible applicability of which to honorary consuls had been specifically raised by means of an amendment. Otherwise he apprehended that the discussion of that article alone would occupy the remainder of the session.

52. In his opinion, the Commission had two courses open to it. Either it could act upon the method adopted at earlier sessions, though never actually followed, and consider only written amendments to the Special Rapporteur's text; or, preferably, it could pass the article on to the Drafting Committee with the request that that Committee scrutinize all the articles of the draft and consider which of them were applicable to honorary consuls. That was a task which could the more fittingly be performed by the Drafting Committee, since all the articles had been submitted to it for drafting purposes.

53. Mr. MATINE-DAFTARY, speaking on a point of order, recalled his earlier suggestion that the Commission should first decide whether the exceptions applied only to honorary consuls who were nationals of the sending State and did not engage in commercial or other gainful occupations. It was important to make that distinction before proceeding along the lines proposed by Mr. Yokota.

54. Mr. SCELLE endorsed Mr. Yokota's proposal and thought the same method should be used to fill a serious gap in article 55, which in his opinion, should be completed by a provision reading as follows :

" When honorary consuls are vested with more limited special powers than the general powers of career consuls, they shall enjoy in the exercise of their official functions the same privileges and immunities as career consuls, subject to . . ."

55. The Commission should examine the whole draft to ascertain whether any restrictions should be placed on the privileges and immunities of honorary consuls and if so, what those restrictions should be. In the exercise of special and limited consular functions, however, honorary consuls should enjoy exactly the same privileges and immunities as career consuls, since they could not exercise their consular functions satisfactorily without such privileges and immunities. The consular function was indivisible, and as a rule, was the same, whether performed by honorary or career consuls; the main difference was that honorary consuls might not be competent to exercise all the functions, and might be nationals of the receiving State; that, however, was another question.

56. Mr. VERDROSS drew attention to the difference of treatment of honorary consuls in respect of consular relations and privileges and immunities. In principle, the same rules were applied to honorary and career consuls with regard to consular relations, but the Special Rapporteur had made considerable distinctions with regard to privileges and immunities. Sir Gerald Fitzmaurice and Mr. Ago were right in saying that in a number of bilateral conventions no distinction was made merely according to whether an official was an honorary or a career consul, but in the domestic legislation of many countries the position was quite different. For example, article 5 of Iraqi law No. 26 of 1949 on the privileges of foreign consuls provided that an honorary consul should not enjoy any immunity, privilege or distinction and should receive the same treatment received by ordinary persons, foreigners or nationals, practising the same profession. Consequently, it would be inadmissible to assimilate honorary consuls to career consuls in all respects and a formula acceptable to all signatory States must be found.

57. A distinction might be made in paragraph 2 between privileges and immunities essential for the performance of consular functions and privileges and immunities which were strictly personal, by providing that honorary consuls should be granted only the personal privileges and immunities conferred upon them by bilateral agreements or by the law of the receiving State. He

would be prepared to submit a written amendment to that effect, in accordance with Mr. Pal's suggestion.

58. Sir Gerald FITZMAURICE said that the Iraqi legislative provision cited by Mr. Verdross did not quite bear out Mr. Verdross's argument. It stated that an honorary consul would be given " the same treatment received by ordinary persons, foreigners or nationals, practising the same profession". The final phrase of that passage appeared to indicate that the provision was based on the assumption that the honorary consul would be practising a profession, in other words, that he would be engaged in a gainful occupation. In fact, however, an honorary consul could well be a local resident who was not engaged in any gainful occupation.

59. Mr. YASSEEN said that article 5 of the Iraqi Law No. 26 of 1949 which had been cited by Mr. Verdross and referred to by Sir Gerald stated the principle in general and absolute terms : " the honorary consul shall not enjoy any immunity, privilege or distinction." In pursuance of that article, the practice in Iraq was to treat an honorary consul as an ordinary person, regardless of his nationality or occupation. It followed that an honorary consul who was a national of the sending State and was not engaged in any gainful occupation did not enjoy any immunity, privilege or distinction either.

60. The CHAIRMAN drew attention to article 26 of the Harvard draft which read as follows :

" A receiving State is not required to grant the exemptions provided for in articles 20, 23, 24 and 25 to a consul who is a national of the receiving State or to a consul who is not a consul of career, provided that it shall exempt every consul from taxes upon his income as a consul and from customs duties upon property imported for official use."

The Harvard draft thus assumed that all consuls were to be treated in the same manner and only specified those privileges or immunities which were not applicable to consuls who were not career officers.

61. Many different suggestions had been put forward by members and perhaps the best way of co-ordinating them would be for the Commission to decide on certain general principles. It could start by deciding on the principle that certain privileges which were necessary for the exercise of the consular function should apply to all consuls, on the ground that the receiving State should not interfere with the exercise of that function, regardless of whether it was performed by a career consul or by an honorary consul. It could then examine the various provisions of the draft which restricted the scope of consular privileges and immunities on the ground that the consul was a national of the receiving State or was engaged in a gainful occupation. Finally, it could then take a decision on the general question whether an honorary consul who was not a national of the receiving State and was not engaged in a gainful occupation therein should be treated differently from a career consul, merely by reason of the fact that he had been designated as an honorary consul.

62. However, from the opinions expressed by the various members, it appeared that they wished to follow the method suggested by Mr. Yokota. If there were no objection, the Commission would therefore proceed to discuss exclusively paragraph 1 of article 56, on the understanding that that procedure did not imply any definite decision to include in the draft a separate section dealing with honorary consuls.

It was so agreed.

63. Mr. EDMONDS proposed the deletion from paragraph 1 of the words " with the exception of article 17 ". Article 17 stated that " in a State where the sending State has no diplomatic mission, a consul may, with the consent of the receiving State, be entrusted with diplomatic functions ", and added that the consul would in that case " enjoy diplomatic privileges and immunities ". As was clear from the terms of that article, a consul could only be entrusted with diplomatic functions with the consent of the receiving State. If that consent were granted, there was no reason why article 17 should not apply to any consul, whether a career consul or an honorary consul. The two States concerned were free to enter into an agreement on the subject and he saw no reason why the Commission should state in effect that such an agreement was not permissible.

64. Mr. MATINE-DAFTARY felt it was essential to decide whether article 56 referred only to honorary consuls who were nationals of the sending State or also to honorary consuls who were nationals of the receiving State. The point was perhaps not very important as regards paragraph 1, but as regards paragraph 2 he could not express a view on the advisability of applying the various articles of the draft to honorary consuls until he knew whether or not paragraph 2 was to apply also to honorary consuls who were nationals of the receiving State.

65. Mr. ŽOUREK, Special Rapporteur, said that the Commission, at its previous meeting, had agreed to consider as honorary consuls those persons who were designated as such by the sending State and accepted in that capacity by the receiving State (550th meeting, paragraphs 44 and 54); it had accordingly agreed to delete the definitions of " career consul " and " honorary consul " from sub-paragraph (*f*) of article 1, on the understanding that those definitions and the whole position would be explained in the commentary. As a result of that decision, the sending State had been left free to decide whether it would give a consul the title of honorary consul or of career consul.

66. Sir Gerald FITZMAURICE said that there could be no question of excluding article 17 from the provisions of paragraph 1 because that article

was only permissive; it further stipulated that the consent of the receiving State was necessary for the purpose of entrusting a consul, even a career consul, with diplomatic functions. He therefore supported Mr. Edmonds's proposal for the deletion of the words " with the exception of article 17 ". Retention of that proviso would imply that, even with the consent of the receiving State, an honorary consul could not be entrusted with diplomatic functions.

67. Mr. TUNKIN favoured the retention of the proviso. If it were deleted, article 17 would apply to honorary consuls; the result would be to suggest, quite simply, that a practice existed of entrusting an honorary consul with diplomatic functions, subject of course to the consent of the receiving State. That, however, was not the case.

68. Mr. BARTOŠ recalled that when the Commission had discussed article 7 of the diplomatic draft, he had voted with the minority against the provisions of that article, which made it possible for a national of the receiving State to be appointed a member of the diplomatic staff, subject to the express consent of the receiving State. The situation under discussion, however, was entirely different where consuls, especially honorary consuls were concerned, since it was generally agreed that the sending state could even appoint a national of the receiving state as consul. Accordingly, if the Commission wished to be consistent with its earlier decision, it should delete the proviso. In the interests of consistency he supported Mr. Edmonds's proposal.

69. Mr. SANDSTRÖM said that he also supported the proposal for the deletion of the proviso for the reasons adduced by Mr. Edmonds and Mr. Bartoš.

70. Mr. HSU said that, while there was much force in the arguments submitted by Mr. Edmonds and Mr. Bartoš, he was inclined to favour the retention of the proviso because he felt that the privileges of honorary consuls should be limited as much as possible. Honorary consuls were part-time consuls only and were allowed to engage in activities other than their consular duties; quite naturally, States wished to limit the privileges granted to those consuls. Of course, if the two States concerned wished to grant greater privileges and immunities to an honorary consul than those specified in the draft, they could always do so by agreement between themselves.

71. Mr. SCELLE said he doubted whether anyone could quote a specific case of an honorary consul being entrusted with diplomatic functions; the question under discussion was therefore purely academic.

72. He would vote for the deletion proposed by Mr. Edmonds because he saw no practical reason to include in paragraph 1 a reference to article 17.

73. Mr. AGO agreed with Mr. Scelle that the question was of little practical importance but felt that, if honorary consuls were expressly excluded from the proviso, the Commission would in effect be laying down an imperative rule that an honorary consul could not be entrusted with diplomatic functions even with the consent of the receiving State.

74. Mr. YOKOTA, with reference to the concern expressed by Mr. Hsu, said that if a receiving State did not wish to grant diplomatic privileges to an honorary consul, it could always refuse its consent to his being entrusted with diplomatic functions. For the reasons already given, he supported the proposal to delete the proviso.

75. Mr. ŽOUREK, Special Rapporteur, pointed out that diplomatic functions were incompatible with the exercise of any other profession; neither in existing international law nor in the Commission's draft on diplomatic intercourse and immunities was any provision made for part-time diplomatic officers. If the Commission were to accept the idea that article 17 should apply to honorary consuls, it would be accepting the altogether novel conception of a part-time diplomatic officer, a conception hitherto unknown to State practice. However, he agreed with Mr. Scelle that the proviso was not of great practical importance.

76. Sir Gerald FITZMAURICE said that the Special Rapporteur assumed that an honorary consul was engaged in another occupation. In fact, an honorary consul might well be a person who was not engaged in any occupation at all and the Special Rapporteur's arguments therefore did not apply.

77. Mr. ŽOUREK said that the provisions of paragraph 1 applied to all honorary consuls and not merely to a single class of them. There could be no question of basing a draft which was intended as a codification on exceptional cases; the Commission had to take into account what normally occurred—i.e., those cases where consuls were engaged, or could engage, in a private occupation of a gainful nature.

78. The CHAIRMAN invited the Commission to take a decision regarding paragraph 1 of the new text of article 56. The only question which had been raised in connexion with it had been Mr. Edmunds's proposal to delete the words " with the exception of article 17 ", and he therefore called for a vote on that proposal.

The proposal was adopted by 11 votes to 5, with 2 abstentions.

79. The CHAIRMAN said that paragraph 1 of the new text of article 56, as thus amended, would be referred to the Drafting Committee.

The meeting rose at 1 p.m.