

Document:-
A/CN.4/SR.555

Summary record of the 555th meeting

Topic:
Consular intercourse and immunities

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duty would be to protect the interests of the nationals of the sending State, whatever his own nationality. Admittedly, the provision should not apply to consuls who were nationals of the receiving State, but subject to that exception all consuls should have the same special protection, because they exercised the same functions. In law, the only basis on which the different classes of consular officials could be distinguished was the difference in the mode of appointment. He reiterated his view that career consuls and honorary consuls were all officials and consequently had the same basic legal status. Accordingly, special protection was due to them all, with the exception of those who were nationals of the receiving State, and even they were in many respects entitled to such protection.

99. Mr. AMADO said that Mr. Scelle had stated some undeniable facts. Nevertheless, it should be borne in mind that the position of a business man or a banker would be considerably strengthened by his appointment as an honorary consul. To extend yet further privileges to persons whose standing in the community was already high was a step not to be taken lightly. He could appreciate the arguments in favour of both the opposing schools of thought, and would therefore find it extremely difficult to vote on the question of the applicability of article 32 to honorary consuls.

100. Mr. SCELLE observed that, if the receiving State believed that the appointment of an honorary consul might lead to an abuse of privileges, it could refuse to grant him the exequatur. Once it had consented to the appointment, however, it could hardly refuse to accord the honorary consul special protection; up to a point, that was also the case even if he was a national of the receiving State.

101. The CHAIRMAN, speaking as a member of the Commission, observed that members seemed to envisage specific persons in specific positions when referring to hypothetical appointments of honorary consuls. For example, Mr. Amado seemed to see the honorary consul as a man of property and high standing in the foreign community; surely, however, not all honorary consuls were in that position. In his opinion, the question of the applicability of article 32 to honorary consuls hinged on the possibility of public reaction against a consul by reason of the fact that he represented the sending State, even if he was a national of the receiving State. If such a person incurred any danger through representing the sending State, he should be protected from attack against his person, freedom or dignity, and it should not be assumed *a priori* that a national of the receiving State, who was subject to the laws of that State, would abuse such protection in order to evade the jurisdiction of his country.

The meeting rose at 1.5 p.m.

555th MEETING

Tuesday, 7 June 1960, at 3 p.m.

Chairman: Mr. Luis PADILLA NERVO

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

[Agenda item 2]

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

ARTICLE 56 (*Legal status of honorary consuls*) (continued)

1. The CHAIRMAN invited the Commission to continue its discussion on the applicability of article 32 (*Special protection and respect due to consuls*) to honorary consuls, and drew attention to the text of the article as provisionally adopted by the Drafting Committee, in the following terms:

"The receiving State is bound to accord special protection to the foreign consul by reason of his official position, and to treat him with due respect. It shall take all reasonable steps to prevent any attack on his person, freedom or dignity." *

2. Mr. MATINE-DAFTARY observed that the text was identical with that approved by the majority of the Commission (538th meeting, paragraph 47); he had not voted for it because it was so vague. The objections he had made at the time (*ibid.*, paragraph 45), applied *a fortiori* to honorary consuls, who might enjoy certain guarantees against abuse of authority under articles 33 (*Personal inviolability*) and 34 (*Immunity from jurisdiction*), but should not be given special protection, particularly if they were nationals of the receiving State. He therefore did not think that article 32 should be made applicable to honorary consuls, and reserved the right to refer to the matter again in connexion with articles 33 and 34.

3. Mr. JIMÉNEZ DE ARÉCHAGA observed that at the moment the Commission's task was not to review article 32, but to decide whether it was applicable to honorary consuls. He had been impressed by the view that an honorary consul often had the dual personality of a foreign resident of the receiving State and of honorary representative of the sending State. In the former capacity, the honorary consul enjoyed in any case the ordinary protection accorded to resident aliens, and to grant him special protection under article 32 would be going too far. Like Mr. Amado, he did not oppose the institution of honorary consuls, since over 50 per cent of all Latin American consuls

* References to article 32 in this summary record should be construed as references to the text reproduced above.

were honorary officers; but precisely for that reason he considered that the Commission's draft should not extend too many privileges to honorary consuls, lest States should refuse to grant them the *exequatur*.

4. While, in principle, he did not oppose the idea of extending the applicability of article 32 to honorary consuls, he thought that two points should be borne in mind. In the first place the absence of a provision granting special protection to honorary consuls would not mean that they would have no protection, for they enjoyed the protection normally granted to all foreign residents; secondly, honorary consuls should be protected against any attack to which they might be exposed by reason of their official position and their performance of official acts of the sending State. Since the Commission was not approving a text on the subject, however, the wording could be left to the Drafting Committee or to the Rapporteur of the Commission.

5. Mr. YASSEEN drew attention to the title of sub-section C, "Personal Privileges and Immunities". It was logical to hesitate before recognizing the same personal privileges and immunities for honorary consuls as for career consuls, not only because honorary consuls were often nationals of the receiving State and were often engaged in gainful occupation, but precisely by reason of their honorary status. In principle, career consuls were distinguishable from honorary consuls in that their respective relationships with the government of the sending State were different and the difference of relationship necessarily had some effect on the personal position of the consul concerned. States should normally appoint career consuls, but, for various reasons, such as financial reasons or shortage of qualified personnel, they sometimes resorted to appointing honorary consuls, who were usually recruited from among persons who could not or did not wish to be career consuls, either because they were not qualified for the service or because they wished to carry on a gainful occupation. The persons enjoying consular privileges and immunities should be worthy of those privileges: the system of selecting career consuls, which was frequently the same as that used for selecting diplomatic agents, took that fact into account. The purpose of that system was to select persons who would merit the privileged position that they would enjoy abroad. The method of choosing honorary consuls, however, did not offer the same guarantees and it was therefore difficult to grant them the same personal privileges and immunities as those enjoyed by career consuls.

6. Mr. VERDROSS said that he would refer only to article 32, and not to the general question of the privileges and immunities of honorary consuls. Opinions in the Commission seemed to be divided concerning the applicability of the article to honorary consuls; general agreement might perhaps be reached by restricting the extent to which article 32 would apply to such officers. Inasmuch

as honorary consuls were usually engaged in additional activities extraneous to their consular functions, it might be said that in principle they should be treated as private persons; in the exercise of their consular functions, however, they might be accorded special protection. Therefore, the receiving State would not normally be bound to accord to honorary consuls protection in excess of that granted to other foreign residents. The provision in article 32 was quite different from those appearing in the subsequent articles, since, under article 32, the receiving State was bound to take certain action, whereas under the rules dealing with immunities that State was bound to abstain from certain acts.

7. Mr. AGO agreed with Mr. Verdross that reference should be made only to article 32 and not to the general question of the privileges and immunities of honorary consuls. He thought that article 32 provided an excellent illustration of the fact that a distinction often had to be made, not between honorary and career consuls, but between consuls who were nationals of the sending State and those who were nationals of the receiving State. Special protection within the meaning of the article meant protection greater than that given to ordinary foreign residents, and such special protection ought to be extended to all consuls, whether honorary or career, who were not nationals of the receiving State. He could not agree with Mr. Yasseen that the relationship with the sending State had anything to do with the position of a foreign honorary consul. Nor could he agree with members who asserted that the privilege accorded by article 32 was excessive for honorary consuls, for in his opinion honorary consuls were also representatives of the sending State; it was because consuls possessed that characteristic that special protection was provided for in the article in question.

8. Mr. SANDSTRÖM thought that, in discussing article 32, the Commission should consider the practical implication of extending its applicability to honorary consuls. If it was decided that the article was applicable to honorary consuls, many of them would not (because it spoke expressly of "the foreign consul") qualify for the benefit of the provision, by reason of having the nationality of the receiving State. Moreover, the "special protection" would not consist in stationing a policeman at the consulate; it would be extended only in the rare cases when the consul would be threatened with danger. If those practical considerations were borne in mind, it would be seen that the privilege conferred by the article was not as extensive as some members seemed to think.

9. In his opinion, the article should apply to foreign honorary consuls as representatives of the sending State, and he could not agree with Mr. Verdross that the protection should be extended only to the honorary consul on the performing of his official functions.

10. Mr. BARTOŠ considered that the protection of the consular function was the predominant

consideration. Even consuls who were nationals of the receiving State had to perform certain acts as representatives of the sending State and should receive special protection in such cases. The key phrase of the article was "by reason of his official position". Accordingly, he thought that article 32 should be one of the provisions applicable to honorary consuls.

11. Mr. FRANÇOIS agreed with Mr. Bartoš that the nationality of the consul should not be unduly stressed, and that the fact that the consul represented a foreign State was the real basis of his right to special protection, even if he was a national of the receiving State. He could not agree with Mr. Yasseen that honorary consuls should be treated on an equal footing with ordinary foreign residents, or with Mr. Verdross that protection should be accorded only in the exercise of consular functions, for a consul might stand in need of special protection because he was representing a certain State. Nevertheless, the protection to be extended to career and honorary consuls should not be exactly the same, and simply to render article 32 applicable to honorary consuls would imply identical protection. Accordingly, the text should state that honorary consuls needed some special protection, but not quite the same protection as career consuls.

12. Mr. TUNKIN said that Mr. Ago was contending, in effect, that except on grounds of nationality or of non-consular activities, consuls were indistinguishable from each other so far as status was concerned; actually, however, they might be distinguishable according to the manner in which they performed their functions. The two criteria of nationality and engaging in gainful occupation had certainly played a vital part in the evolution of the special status of honorary consuls, since those had been the main reasons for withholding certain privileges and immunities from such consuls. However, the institution of honorary consuls had undoubtedly come into being, and it was now well established that honorary consuls had a specific legal status. Thus, a person appointed as an honorary consul enjoyed only the privileges and immunities due to that class of officials, and even if he was a national of the sending State, the practice was not to give him greater privileges and immunities than any other honorary consul. Even though some States might not distinguish between honorary and career consuls, the general practice was to make a distinction between them.

13. It had been argued that if a receiving State accepted an honorary consul, it should grant him all the necessary privileges and immunities; but the question was in what capacity the person concerned had been accepted. If the legal status of the two categories was distinct, as he believed, acceptance of an honorary consul did not, *ipso facto*, involve granting him the privileges and immunities to which a career consul was entitled. He therefore did not consider that article 32 as a whole was applicable to honorary consuls, although he might be prepared to agree that it should be

made applicable to them with the qualification proposed by Mr. Verdross.

14. Mr. AMADO reiterated that he was not opposed to the institution of honorary consuls, whom he regarded as persons appointed to render a certain type of service, which might even be very similar to that of career consuls. Nevertheless, even Mr. François, who was in favour of granting honorary consuls as many privileges as possible, had just said that it would be an exaggeration to extend exactly the same protection to honorary consuls as to career consuls. If there was one conclusion to be drawn from the debate in the Commission, it was that a difference between the two categories undeniably existed. The Drafting Committee should be asked to draft a text granting a measure of protection to honorary consuls, but not to the same extent as to career consuls.

15. Mr. SCELLE agreed with Mr. Bartoš that the vital point was that a consul performed consular functions. It was relatively immaterial whether the person concerned was a national of the sending State, a third State, or even the receiving State; what mattered was that the consular function as such should be protected, not necessarily against the government of the receiving State, but perhaps against hostility on the part of the population of that State. All reasonable steps should therefore be taken to prevent any attack on the person, freedom or dignity of an honorary consul, even if he was a national of the receiving State. Mr. Verdross's proposal did not go far enough, and an honorary consul should be protected not only in the exercise of his consular functions, but as the representative of the sending State. Finally, he did not believe that the expression "foreign consul" was appropriate.

16. Mr. HSU agreed with speakers who had pointed out that the question of nationality was immaterial in the context, but he did not believe that article 32 should be regarded as applicable to honorary consuls. The functions of an honorary consul differed from those of a career consul in that the former was a part-time official. Special protection for honorary consuls should therefore be limited to times of emergency, when such officials might be in danger, but it was unnecessary in ordinary circumstances.

17. Mr. AGO pointed out to Mr. Scelle that the expression "foreign consul" meant simply the consul of a foreign country.

18. He observed that the Commission, in its attempt to find common ground, seemed to be agreed that honorary consuls should have some special protection, but not the same protection as career consuls. He did not believe, however, that Mr. Verdross's proposal should be followed, since the second sentence of the article could not apply to the consul only in the exercise of his functions. In any case, he believed that the Drafting Committee should have no difficulty in finding a formula acceptable to all members.

19. Mr. ŽOUREK, Special Rapporteur, noted that few speakers had suggested that the provisions of article 32 should apply to honorary consuls without any qualification. For his part, he did not believe it was possible to give honorary consuls the special protection set forth in article 32. The majority of those consuls devoted only a small part of their time to their consular duties and the bulk of it to their private activities. A few of them might not perhaps be engaged in a gainful occupation, but the essential fact was that they were allowed to engage in such an occupation. Some national legislations, like that of Peru (Decree No. 69 of 1954), actually defined honorary consular officers as those who could lawfully carry on, in addition to their official activities, some gainful occupation in the receiving State, it being immaterial whether or not in fact they carried on such an occupation.

20. He did not believe it was desirable to distinguish between several categories of honorary consuls, and in particular to draw a distinction based on their nationality. As to the distinction between honorary consuls and career consuls, the Commission had decided to leave it to the States concerned to decide what criteria to apply.

21. Those members who had defended the applicability of article 32 to honorary consuls had not cited any State practice in support of their views. In fact, if the article were to be applied to honorary consuls, the Commission would be going further than it had done in the case of diplomatic agents. Article 36, paragraph 1, of the diplomatic draft excluded persons who were nationals of the receiving State from the benefit of article 27 on personal inviolability, which was the article of the diplomatic draft corresponding to article 33 of the consular draft.

22. For those reasons, the Commission should exclude article 32 from the list of articles applicable to honorary consuls, and state in the commentary that honorary consuls were entitled to the same measure of protection as other persons, and, in addition, to such protection as was essential to enable them to carry out their duties and shield them from any adverse effects resulting from the exercise of those duties. He considered that the Commission could not go any further in the direction of granting special protection to honorary consuls.

23. Mr. YASSEEN said that in his earlier remarks he had concentrated on the question of the applicability to honorary consuls of the whole sub-section on personal privileges and immunities. With regard to article 32 specifically, he considered that the first sentence of the article could only apply to a limited extent to honorary consuls and suggested that, in so far as it related to such consuls, the sentence should be qualified by a proviso along the following lines: "for the performance of their functions" (pour l'accomplissement de leurs fonctions). Like Mr. Bartoš, he thought that all facilities should be extended to

the consular function as such, regardless of who exercised it.

24. As to the second sentence of article 32 he had no difficulty in accepting its application to honorary consuls because he felt that all States were under a duty to "take all reasonable steps to prevent any attack" on the "person, freedom or dignity" of all persons within their borders, nationals and aliens alike.

25. Mr. YOKOTA noted that on the particular subject under discussion there was a large measure of agreement in the Commission. Most members considered that honorary consuls could not be given the same special protection as that afforded to career consuls, but all agreed that some minimum protection must be given. The difficulty was largely that of drafting a provision which would adequately express the consensus of the Commission.

26. In principle, he agreed with Mr. Verdross's proposal that honorary consuls should be entitled to special protection in the exercise of their consular functions but thought that that formula was somewhat too restrictive. If, for example, special protection had to be given to a consul against a hostile mob, it was difficult to relate that protection to the actual exercise of his functions as a consul. He therefore suggested that special protection should be granted as far as was necessary by reason of the honorary consul's official position and the exercise of his functions. The actual wording could be left to the Drafting Committee.

27. Sir Gerald FITZMAURICE said that he remained convinced that there was no logical reason for drawing a distinction between honorary consuls as such and career consuls. He could have understood some difference in treatment between a consul who was a national of the receiving State and one who was not a national of that State; but that distinction would apply regardless of whether the consul served in an honorary capacity or was a career official.

28. However, he was prepared to bow to the majority opinion and accept a provision along the lines suggested by Mr. Yokota. It was essential that the honorary consul should be protected not only when actually performing his duties, but also at all times because of his position. He pointed out that the receiving State was not bound to accept a person as honorary consul; if it did so, it should give him the necessary protection.

29. Mr. MATINE-DAFTARY recalled that he had not voted in favour of the first sentence of article 32 as applied even to career consuls. As to the second sentence, he agreed with Mr. Yasseen that it described a measure of protection which a State had a duty to afford to everyone within its borders.

30. For his part, if article 33 (*Personal inviolability*) were not to apply to an honorary consul, he would be prepared to accept the applicability of article 32 to such consuls, subject to qualifi-

cations. He suggested that the Drafting Committee consider qualifying the protection as being granted to the honorary consul solely in his capacity as a consul.

31. The CHAIRMAN, speaking as a member of the Commission, said that, like other members, he saw no difficulty in applying the second sentence of article 32 to honorary consuls without any qualification. As to the first sentence, it appeared to express a general principle which embraced the various privileges set forth in that second sentence and in article 33 *et seq.*

32. He was prepared to agree with the majority view that the prerogatives of honorary consuls in the matter of special protection should not be as extensive as those of career consuls, even though in principle he did not like to see a distinction being drawn between career consuls and honorary consuls as such.

33. He pointed out that the kind of protection to be afforded, as well as the extent of that protection, and the circumstances in which it would be granted were left to the judgement of the receiving State. It was the duty of that State to protect a consul from any possible attack which might proceed from the very fact of his holding an official position and his connexion with a foreign State; accordingly, the protection would not be limited to the occasions on which the honorary consul was actually performing his consular duties.

34. Moreover, there would be no reason to draw a distinction between honorary consuls who were nationals of the sending State and those who were nationals of the receiving State; clearly, the police protection to be given in case of a hostile demonstration against the foreign country represented by the consulate would have to be the same, regardless of the nationality of the honorary consul.

35. Speaking as Chairman, he said that, if there were no objection, he would consider that the Commission agreed to instruct the Drafting Committee to draft a provision qualifying the privileges granted to honorary consuls under article 32 by comparison with those afforded to career consuls; the qualifying provision would operate so as to limit the scope of special protection to those situations which were produced by the fact of the consul's official position.

It was so agreed.

36. The CHAIRMAN invited the Commission to consider whether article 33 (*Personal inviolability*) should be applicable to honorary consuls. The text of that article had been provisionally adopted by the Drafting Committee in the following terms :*

" 1. Consular officials who are not nationals of the receiving State and do not engage in commerce or any other gainful private occupation shall not

be liable to arrest or detention pending trial, except in the case of a criminal offence punishable by a maximum sentence of not less than 5 years' imprisonment.

" 2. Save in the case specified in paragraph 1 above, the officials referred to in that paragraph shall not be committed to prison or subjected to any other restriction upon their personal freedom except under a final sentence of at least two years' imprisonment.

" 3. In the event of criminal proceedings being instituted against a consular official of the sending State, that official shall appear before the competent authorities. Nevertheless the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case referred to in paragraph 1 of this article, in a manner which will not hamper the exercise of consular functions.

" 4. In the event of the arrest or detention pending trial of, or of criminal proceedings being instituted against, a member of the consular staff, the receiving State shall notify the head of consular post. Should the latter be himself the subject of the said measures, the receiving State shall notify the diplomatic representative of the sending State."

37. Mr. ŽOUREK, Special Rapporteur, explained that he had not proposed in article 56, paragraph 2, that article 33 should be applicable to honorary consuls, though he did consider that they should enjoy immunity from jurisdiction as provided in article 34.

38. Mr. VERDROSS agreed with the Special Rapporteur that the immunities laid down in article 33 were extended as a matter of international courtesy and by virtue of a rule of international law; consequently, the provisions of that article could not be applied to honorary consuls.

39. Sir Gerald FITZMAURICE did not share the Special Rapporteur's view. The most important provision in article 33, namely that contained in paragraph 1, was in any case expressly declared not to be applicable to officials who were nationals of the receiving State, even if they were career consuls. If that condition was imposed, he was unable to see on what grounds a distinction should be made between career and honorary consuls for the purpose of personal inviolability.

40. Mr. PAL said that he had not anticipated that there would be any disagreement in the Commission on the need to extend the application of article 33 to honorary consuls. Even where career consuls were concerned, the immunities laid down in the article were not stated in unqualified terms. In so limiting its operation, the article took into account the very reasons which had hitherto been advanced for according different treatment to honorary consuls. He could see no reason why the article should not apply to honorary consuls.

41. Mr. YOKOTA agreed with Sir Gerald Fitz-

* References to article 33 in this summary record should be construed as references to the text reproduced above.

maurice and Mr. Pal. Honorary consuls who were not nationals of the receiving State and did not carry on any gainful private occupation should be entitled to personal inviolability.

42. Mr. ŽOUREK, Special Rapporteur, said that the members who considered that article 33 should apply to honorary consuls started from the premise that honorary consuls did not constitute a separate category. That thesis, being contrary to doctrine and practice, was untenable. Moreover, in the face of the diversity in practice where the definition of an honorary consul was concerned, the Commission had itself decided that that definition should be left to governments.

43. In saying that there was no reason why personal inviolability should not be accorded to honorary consuls who were nationals of the sending State, Sir Gerald Fitzmaurice had overlooked the great difference between career consuls, who formed part of a permanent consular service and who were exclusively engaged on the performance of consular functions, and honorary consuls, who were not subject to the disciplinary powers of the sending State and who were private persons carrying out consular functions for what was often a mere fraction of the time which they devoted to their other occupations. Those distinctive features were the essential ones and the nationality or the fact that the person in question might or might not be engaged in gainful private occupation was secondary. Obviously the privileges conferred by article 33, which were the most important in the draft, could not be granted to private persons who at any moment might be reverting to their private occupation or who might be engaged in clandestine activities.

44. Mr. LIANG, Secretary to the Commission, said that, having decided in principle to extend the application of article 32 on special protection to honorary consuls who were not nationals of the sending State, the Commission would be acting illogically if it withheld the benefit of article 33 from honorary consuls who were nationals of the sending State and not engaged in private occupation. Article 33 in a sense supplemented article 32.

45. He also wished to point out as a matter of drafting that paragraphs 3 and 4 would have to be modified so as to indicate clearly that they applied to the same categories of officials as those specified in paragraphs 1 and 2.

46. Mr. TUNKIN contended that there was no real link between articles 32 and 33. The purpose of the former was to protect consular officials from attacks on their freedom and dignity, whereas the latter imposed on the authorities of the receiving State an obligation not to commit certain acts. Even if the Commission agreed in principle that article 32 should apply to honorary consuls, that did not mean that it must necessarily follow the same course in the case of article 33.

47. Those members of the Commission who did

not consider that honorary consuls formed a separate category had implied that it would be otiose to discuss whether article 33 was applicable to them, since paragraph 1 already explicitly excluded honorary consuls who were nationals of the receiving State, or who engaged in gainful private occupation, from the privileges provided for in that article. But surely in practice States did not accord such exceptional privileges as those specified in paragraphs 1 and 2, even to honorary consuls who were nationals of the sending State or of a third State and who were not gainfully occupied, since such officials exercised consular functions part of the time only. Nor did he think that States would grant the far-reaching privilege specified in paragraph 3 to honorary consuls, though they might be willing to accord the privilege referred to in paragraph 4.

48. In support of his view he referred to the provisions contained in the Anglo-Swedish Consular Convention of 1952 (article 14), the Consular Convention of 1951 between the United Kingdom and France (article 15) and the Consular Convention between the United Kingdom and Norway of 1951 (article 15) all of which provisions explicitly excluded honorary consuls from the privileges extended to career consuls in the matter of personal inviolability.

49. Mr. ERIM said that he did not propose to follow Mr. Tunkin and to enter into the question whether the provisions of the consular conventions were indicative of a uniform practice of granting the privileges in question to honorary consuls; nor did he propose to ask himself whether States would be prepared to agree to such an extension of the privileges. What he but wished to emphasize was that the Commission should approach the problem from the point of view of the progressive development of international law. No general practice existed; but it was necessary to study a question in the abstract and to see whether a new development was logical or not. The Special Rapporteur had based his defence of the view that article 33 should not apply to honorary consuls on the argument that their distinguishing characteristics were that they exercised consular functions temporarily, that they were private persons and that there was no means of ascertaining at any given moment whether or not they were engaged on a private occupation. Those criteria did not provide a convincing reason for drawing a distinction between the treatment of career consuls and that to be accorded to honorary consuls, and it was difficult to see why a receiving State should wish to deny the privileges provided for in article 33 to honorary consuls who were not its nationals and were not gainfully occupied. Those were the two decisive conditions governing the operation of article 33, and the question whether the official was a career or honorary consul was not relevant. The only aspect of the matter which was important was the function exercised, and that was the same whether a consul was career or honorary. If an honorary consul was a national of the receiving State, that

ceased to be the dominant aspect; but otherwise, in all cases where an honorary consul gave his whole time to his consular functions, the requirements of those functions must prevail. That being so, it was only logical to extend the privileges to honorary consuls and to await the reactions of governments.

50. Mr. VERDROSS emphasized that the Commission was at the moment engaged in transforming privileges and immunities which had formerly been accorded by international courtesy into rules of law. Article 33 was already a bold step as far as career — i.e. full-time — consuls were concerned, and it could not be made applicable to officials acting on a part-time basis.

51. Mr. JIMÉNEZ DE ARÉCHAGA referring to the point made by the Secretary, considered that if the Commission was to deny the special protection provided for in article 32 to honorary consuls, then, *a fortiori*, it could not extend to them the privileges accorded under article 33. The principal distinguishing feature of an honorary consul as recognized in the Anglo-Swedish Consular Convention was that he was not a *consul missus* but was chosen from the community in which he worked, and it would be going too far to grant the privileges of article 33 to honorary consuls who were not nationals of the receiving State, such as foreign merchants for example. Exceptional cases of that kind should be taken into account in addition to those covered in paragraphs 1 and 2.

52. Mr. ŽOUREK, Special Rapporteur, in reply to the Secretary, said that articles 32 and 33 dealt with quite separate questions and in any case the Commission had not decided that article 32 should be made applicable to honorary consuls but had asked the Drafting Committee to draft a more restrictive formula concerning the special protection to be accorded to honorary consuls.

53. Mr. Erim's argument that the decisive criterion was, in effect, whether or not an honorary consul was a national of the receiving State was an oversimplification and if accepted would be tantamount to imposing on States a single criterion. He was uncertain whether Mr. Erim's own country applied that criterion, and in that connexion he referred to the Turkish Act of 1 July 1948; he also recalled the Instruction of the Belgian Ministry of Finance of 1955. In any event the Commission had already decided that it should be left to States to establish the definition of honorary consuls and it could not go against its own decision. It would be wholly contrary to practice to stipulate that honorary consuls who were not nationals of the receiving State must enjoy all the privileges laid down in article 33.

54. The discussion would take a considerable time if the substantive arguments about the distinction between career and honorary consuls were brought up repeatedly in connexion with each article. The Commission was engaged in the first reading of the draft and the members who

had not been convinced by his arguments might perhaps wait until governments had sent their observations.

The meeting rose at 6 p.m.

556th MEETING

Wednesday, 8 June 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 56 (*Legal status of honorary consuls*) (continued)

1. The CHAIRMAN invited the Commission to continue its discussion on the applicability of article 33 (*Personal inviolability*) (555th meeting, paragraph 36) to honorary consuls.

2. Mr. YASSEEN said that the personal immunities granted under the first three paragraphs of article 33 were so extensive that they should not be granted to honorary consuls, even if they were nationals of the sending or of a third State and even if they did not engage in commerce or in a private occupation, for the mode of appointment of honorary consuls was such that it offered little if any safeguard against malpractices. The institution of honorary consuls was a useful one, particularly for a State which could not afford to appoint career officials to all consular posts, and for that very reason governments were not always scrupulous in their choice. The immunities granted in article 33 formed a serious exception to the principle of the territoriality of criminal jurisdiction and should not be lightly accorded.

3. Mr. MATINE-DAFTARY said that the Commission must not go too far in attempting to place honorary consuls on the same footing as career consuls, for the legal status of the two differed greatly. Those members who considered that the two classes of consul were on a par — a view which, if it were embodied in the draft, would constitute a considerable development — probably had little knowledge or experience of the type of persons sometimes appointed honorary consuls, particularly in the East. It had been argued that there was no reason to deprive the small number of honorary consuls who were not nationals of the receiving State and who did not engage in commerce or in a gainful private occupation of the privileges laid down in article 33; his answer to that argument was that it would be wrong