Document:-
A/CN.4/SR.570

Summary record of the 570th meeting

Topic:
Consular intercourse and immunities

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mission should forward sections II, III and IV of the 1958 draft to the Drafting Committee for the purpose of settling the text applicable to *ad hoc* diplomacy.

It was so agreed.

73. Mr. TUNKIN said that he had thought at one time that section V of the 1958 draft might also be rendered applicable to special missions. On reflection, however, he had decided that the question of the applicability of section V to special missions probably did not arise. He therefore withdrew his suggestion.

74. Mr. SANDSTRÖM, Special Rapporteur, observed that, since the clauses on *ad hoc* diplomacy were to be contained in the same document as the draft on diplomatic intercourse and immunities, sections V and VI would constitute general clauses referring to all parts of the convention, and would thus apply to special and permanent missions alike. Thus, the draft would consist of a chapter on permanent missions, a chapter on special missions and a final chapter consisting of sections V and VI.

The meeting rose at 12.5 p.m.

570th MEETING

Thursday, 23 June 1960, at 9.30 a.m.

Chairman: Mr. Luis PADILLA NERVO

Consular intercourse and immunities (A/CN.4/131) *(resumed from the 564th meeting)*

[Agenda item 2]

PROVISIONAL DRAFT ARTICLES (A/CN.4/L.90)

Consular intercourse and immunities (item 2 of the agenda) (A/CN.4/131, A/CN.4/L.86, A/CN.4/L.90) *(resumed from the 564th meeting)*

PROVISIONAL DRAFT ARTICLES

1. The CHAIRMAN asked the Chairman of the Drafting Committee to introduce the provisional draft articles relating to consular intercourse and immunities (A/CN.4/L.90) which had been prepared by the Drafting Committee.

2. Mr. YOKOTA, Chairman of the Drafting Committee, said that the document contained all the provisional draft articles relating to career consuls; the draft provisions concerning honorary consuls would be submitted later.

3. Only one point deserved special mention. During the debate on article 20, some members had been in favour of amalgamating (529th meeting, paras. 9 and 11) that article with article 18 as adopted at the previous session (A/CN.4/L.86), in which the unacceptability of a member of the consular staff was rendered conditional on conduct giving serious grounds for complaint. The Special Rapporteur had been against such amalgamation and the question of the possibility of such amalgamation had therefore been referred to the Drafting Committee (*ibid.*, para. 26). Opinion had been divided in the Committee on the criterion of conduct giving serious grounds for complaint, and it had therefore been decided to refer the question back to the Commission.

4. The CHAIRMAN thought that the Commission might begin its consideration of the provisional draft articles with article 20, on which the Drafting Committee's opinion had been divided.

5. Mr. ŽOUREK, Special Rapporteur, felt that the Commission would be wasting a lot of time if it discussed the substance of article 20 and might be obliged to alter the entire structure of the draft. There was no need to settle the problem at the current session, and it would be better to await the comments of governments on the matter.

6. Mr. TUNKIN and Mr. YOKOTA thought that the provisional draft articles should be discussed one by one.

7. Mr. EDMONDS said that the Commission should decide what kind of report it was going to submit. It had already departed from its normal practice of first commenting on and submitting amendments to the Special Rapporteur's texts, voting on the amendments and articles and then forwarding the texts to the Drafting Committee for improvement of the wording, but not for decision on matters of substance. In the present case, it had voted on only one or two articles, and many of them had been referred to the Drafting Committee when there had been considerable differences of opinion. In those circumstances, the text before the Commission was the Special Rapporteur's draft with changes made by the Drafting Committee; it was not a text reflecting the considered opinion of members of the Commission. Accordingly, unless the Commission now voted on every article, the report should clearly state that the articles had not been adopted by the majority, but were the Special Rapporteur's text as altered by the Drafting Committee in the light of the views expressed by some, but not a majority, of the members. In several cases, the differences of opinion expressed in the debate were so great that the Drafting Committee could not possibly reconcile them.

8. The CHAIRMAN considered that, even when no vote had been taken, the Drafting Committee had in most cases been given guidance reflecting the opinion of the majority. Naturally, if there were disagreement on the text of any particular provision, that provision would be put to the vote. He appealed to members who objected to some of the clauses either to submit specific amendments or to confine themselves to explaining

their votes, so as not to repeat the earlier lengthy discussions on the principles involved.

9. Mr. ŽOUREK, Special Rapporteur, thought it would be wise to take a vote on each article, but not to reopen the debate on basic principles.

10. He pointed out to Mr. Edmonds that the text of the provisional draft articles before the Commission was not a document prepared by the Special Rapporteur, but a text prepared by the Drafting Committee.

11. The CHAIRMAN invited the Commission to consider the provisional draft articles *seriatim* (A/CN.4/L.90).

ARTICLE 1 *(Definitions)*

12. Mr. ŽOUREK, Special Rapporteur, said that, as compared with the text in his own draft (A/CN.4/L.86), the only changes in article 1 related to subsections (*f*), (*h*) and (*k*). A new definition had been added in subsection (*h*). On the other hand, the definitions included at the previous session in subsection (*f*) had been deleted. The remaining sentence merely stated that a consul might be a career consul or an honorary consul. The new expression " members of the consulate " in subsection (*h*) covered the persons defined in subsections (*i*) and (*j*) and thus meant all the consular officials, including the head of post, and all the employees of the consulate; the expression " members of the consular staff " defined in subsection (*k*) now covered consular officials (other than the head of post) and the employees of the consulate.

13. Mr. TUNKIN, referring to subsection (*f*), asked why an exception was made for article 6 and why articles 11 and 12 were mentioned.

14. Mr. YOKOTA observed that the whole text of subsection (*f*), with the exception of the last sentence, had been adopted by the Commission at its previous session. Accordingly, the last sentence was the only one before the Commission.

15. Mr. ŽOUREK, Special Rapporteur, explained that the term " consul " was used generically throughout the draft, except in article 6, where it was used in the technical sense, as the second class of heads of consular posts. Articles 11 and 12 set forth the necessary authorization conferring consular status upon the consul.

16. Mr. GARCÍA AMADOR, referring to subsection (*k*), said that the phrase " (other than the head of post) " was neither necessary nor advisable, since technically the head of post was a member of the consular staff.

17. Mr. SANDSTRÖM said that the wording of the subsection had the advantage of corresponding to the definition in the draft on diplomatic intercourse and immunities.

18. Mr. SCELLE agreed with Mr. García Amador that the head of post was a member of the consular staff.

19. Mr. LIANG, Secretary to the Commission, said that the question had been discussed at the beginning of the session. He pointed out that, for example, the Secretary-General of the United Nations was not regarded as a member of the staff of the United Nations.

20. Mr. YOKOTA considered that the brackets might well be omitted.

21. Mr. ŽOUREK, Special Rapporteur, supported the views expressed by Mr. Sandström and the Secretary. The definition was essential if it was to be made clear that certain provisions related to consular officials and employees of the consulate excluding the head of post. In the case of provisions relating to all consular officials including the head of post and all employees of the consulate, the new expression " members of the consulate " was used.

22. Mr. PAL thought the difficulty lay in applying the modified definitions to articles which the Commission had already adopted. He hoped that the Drafting Committee had gone through those articles, with a view to ensuring that the new definitions were properly aligned with them.

23. Sir Gerald FITZMAURICE agreed with the Special Rapporteur that it was absolutely necessary to retain the phrase " (other than the head of post) ". If it were omitted, there would be no difference between the definitions in subsection (*h*) and subsection (*k*), and no way of providing for members of the consulate other than the head of post.

24. The CHAIRMAN agreed with Mr. Pal that the discrepancy between the new and the earlier definitions should be corrected in the articles already adopted.

25. Mr. ZOUREK, Special Rapporteur, said that, if the Commission adopted the new wording for the article on definitions, the earlier articles would have to be adapted to the new terminology. It was purely a question of drafting.

26. Mr. BARTOŠ said that the Commission might proceed to adopt the article, but during its final examination of the draft should bear in mind the application of the new definitions to the articles adopted at its previous session, in order to ascertain whether any points of substance were involved by such adaptation.

27. Mr. GARCÍA AMADOR still thought that the phrase " (other than the head of post) " was redundant, especially in view of the terms of subsections (*h*) and (*i*). Nor could he agree with Mr. Sandström that the similarity of subsection (*k*) to a corresponding provision of the draft on diplomatic intercourse was a reason for retaining that phrase, which might lead to misinterpretation. He would not, however, insist on a vote on the question.

28. The CHAIRMAN said that, if there were

no objection, article 1 as revised by the Drafting Committee would be regarded as adopted.

There being no objections, article 1 was adopted.

ARTICLE 19 *(Appointment of the consular staff)*

29. Mr. SANDSTRÖM thought it doubtful whether articles 19 *a* and 20 could really be regarded as qualifying the rule set forth in article 19. The question dealt with in those articles was rather that of the effectiveness of the appointment. Nevertheless, he had no objection to the wording of article 19.

30. Mr. SCELLE agreed with Mr. Sandström, and also thought that the term " freely " (à son gré) should be omitted, since it cancelled out the proviso concerning articles 19 *a* and 20.

31. Mr. ŽOUREK, Special Rapporteur, recalled the Commission's decision to follow the draft on diplomatic intercourse in the matter and to insert the reference to articles 19*a* and 20 to correspond with article 6 of that draft. The French expression used in that text was " à son choix ", but the Drafting Committee had thought that " à son gré " might be preferable.

32. Mr. SCELLE still maintained his view concerning the expression; it had almost the same meaning as " arbitrarily ".

33. Mr. PAL considered that the article was acceptable and pointed out that the adverb " freely " was governed by the phrase " subject to the provisions of articles 9, 19s *a* and 20 ".

34. Mr. MATINE-DAFTARY supported Mr. Scelle's view.

35. Sir Gerald FITZMAURICE agreed with Mr. Pal. The faculty freely to appoint the members of the consular staff, however strongly worded, was governed by the phrase " subject to the provisions of articles 9, 19 *a* and 20 ", and the word " freely " could not cancel out that limitation.

36. Mr. YASSEEN suggested that the word " librement " might be more acceptable to Mr. Scelle.

37. Mr. LIANG, Secretary to the Commission, said that the point had been discussed extensively in connexion with article 6 of the draft on diplomatic intercourse. In his opinion, it was axiomatic that the sending State could freely appoint the members of the consular staff; the important point was the limitation imposed by the first phrase. The word " freely " seemed to have no great significance; since it had been included in the draft on diplomatic intercourse and could do no great harm, the Commission might decide to retain it.

38. Mr. YOKOTA, Chairman of the Drafting Committee, observed that the Committee had been instructed to draft article 19 more or less on the pattern of the corresponding provision of the draft on diplomatic intercourse.

39. Mr. EDMONDS thought that the word " freely " was redundant and could well be omitted.

40. Mr. ŽOUREK, Special Rapporteur, observed that the omission would lead to a discrepancy between the draft on diplomatic intercourse and the present draft. If the Commission did not like the term " freely ", it might be best to follow the former draft and to use the term " à son choix ", for otherwise governments might question the discrepancy. In any case, the question did not seem important enough to warrant a lengthy debate.

41. The CHAIRMAN agreed that governments might question the discrepancy. It would be unwise to invite inferences not intended by the Commission.

42. Mr. MATINE-DAFTARY thought that the use of the term " à son choix " was happy solution, and would be in conformity with the Commission's decision to use the same general wording as in the draft on diplomatic intercourse, wherever possible.

43. Mr. SCELLE said he could see no reason for slavishly copying the draft on diplomatic intercourse without regard for the best possible wording. In any case, it would be for the plenipotentiary conference to decide the final wording.

44. Sir Gerald FITZMAURICE pointed out that the adverb " freely " was not entirely useless, as some members seemed to think. It had been deliberately included in the draft on diplomatic intercourse in order to emphasize that, with the exception of the head of post, whose appointment was governed by the agrément, the choice of members of the staff lay entirely in the hands of the sending State; it was only later that the receiving State could declare such persons *persona non grata*. The Commission's best course would be to await the decision of the conference on diplomatic intercourse and immunities and to conform with that decision in respect of article 19.

Article 19 was adopted by 11 votes to 2, with 4 abstentions.

ARTICLE 19 *a (Size of staff)*

45. Mr. TUNKIN said that he had doubts regarding the advisability of including article 19 *a* but would not formally propose its deletion, since other members considered it necessary.

46. He asked whether there was any special significance in the ommission of the adjective " specific " to qualify the agreement as to the size of staff. That adjective was used in article 10, paragraph 1, of the draft on diplomatic intercourse, on which article 19 *a* was based.

47. Mr. YOKOTA explained that in the course of the discussion in the Drafting Committee, some members had pointed out the discrepancy between the English expression " specific agreement " and the French " accord explicite " used in article 10, paragraph 1, of the draft on diplomatic

intercourse. The Committee had thereupon decided to delete the adjective.

48. Mr. TUNKIN proposed that the adjective " specific " be reintroduced. It was useful to retain the idea of an express agreement on the size of the consular staff, distinct from the agreement on the establishment of a consulate.

Mr. Tunkin's proposal was adopted by 13 votes to 1, with 3 abstentions.

Article 19 a as a whole, as amended, was adopted by 15 votes to none, with 2 abstentions.

49. Mr. MATINE-DAFTARY said that he had voted for the insertion of the English term " specific " but must make reservations regarding the French translation of that term.

ARTICLE 20 *(Persons deemed unacceptable)*

50. Mr. ŽOUREK, Special Rapporteur, in reply to a question by Mr. TUNKIN, said that article 20, unlike article 8 of the draft on diplomatic intercourse, dealt only with subordinate officers and employees of the consulate because the question of the recall and withdrawal of the *exequatur* of the head of post was already dealt with in article 18.

51. Mr. YOKOTA suggested that the Commission should deal at that stage with the proposal for the amalgamation of articles 18 and 20, which had been favoured during the earlier discussion by the majority of the Commission (529th meeting, paragraphs 9 to 26), but on which the Drafting Committee had not been able to agree.

52. Mr. ŽOUREK, Special Rapporteur, opposed the amalgamation of articles 18 and 20. It was desirable to draw a clear distinction between the head of a consular post and his subordinate staff. With regard to the head of post, it was appropriate to specify, as was done in article 18, paragraph 1, that his recall could be requested only if his conduct gave " serious grounds for complaint ". That condition was not stipulated in the case of the head of a diplomatic mission in article 8 of the draft on diplomatic intercourse, but there were good grounds for drawing a distinction between a consul and a diplomatic representative. In the first place, the consul was often the only consular officer in a consular district and his presence was indispensable to the continuance of consular relations. In the second place, a consul, because of the specialized knowledge often required, could not always be replaced readily. Those considerations also applied to members of the consular staff and that was why he had originally proposed the inclusion even in that article of a provision that that right could only be exercised if the conduct of the member of the consular staff gave serious grounds for complaint.

53. However, the difference between article 18 and article 20 could be explained by making it clear that the reasons given did not apply to the same extent to the subordinate staff, who were the subject of article 20.

54. Accordingly, he suggested that, for the reasons he had mentioned, the two articles should be left as they stood. That course would have the additional practical advantage of giving governments an opportunity of commenting on the two provisions in question, and on the differences between them, particularly in the question whether the same limitation should be added to article 20 as to article 18.

55. Sir Gerald FITZMAURICE recalled that he had been one of those members who had favoured the amalgamation of the two articles and the elimination of the proviso " where the conduct of a consul gives serious grounds for complaint ". The arguments put forward by the Special Rapporteur had convinced him, however, that there were solid grounds for drawing a distinction between the head of a consular post and the head of a diplomatic mission and also between the head of a consular post and his subordinate staff. He was therefore satisfied to leave articles 18 and 20 as they stood.

56. Mr. BARTOŠ expressed misgivings with regard to the method adopted by the Commission. Governments were reluctant to contradict the decisions of the Commission and it was therefore desirable that it should take a vote on any question on which it was divided, rather than leave the issue to be decided in the light of government comments.

57. In the present instance, he urged that the commentary should explain the division of opinion in the Commission.

58. The CHAIRMAN drew attention to the fact that at its previous session the Commission had already adopted article 18 with the proviso in question. It would be therefore sufficient for the Commission to vote on article 20 and leave the question of the amalgamation of articles 18 and 20 to be dealt with at its next session. The commentary would set forth the reasons given by those members who, during the discussion, had criticized the proviso in question. If there were no objection, he would take it that the Commission adopted article 20 on that understanding.

It was so agreed.

ARTICLE 21 *(Notification of the arrival of members of the consulate and of the termination of their functions)*

59. Mr. SANDSTRÖM asked why article 21, unlike article 9 of the draft on diplomatic intercourse, made no reference to the departure of the officials concerned.

60. Sir Gerald FITZMAURICE explained that consular officials were not necessarily always recalled. Sometimes they were discharged locally because they were local residents. The essential point was therefore the termination of their functions and not their departure, for a consular official did not always actually leave the country on the termination of his functions.

61. Mr. TUNKIN said that the departure of one of the persons concerned, as distinct from the termination of functions, should be notified to the competent authorities of the receiving State. He therefore proposed the insertion of the words " their departure or " before " the termination of their functions ".

62. Mr. YOKOTA supported Mr. Tunkin's proposal.

63. Mr. SANDSTRÖM agreed that it was desirable to introduce a reference to the departure of the persons concerned.

Mr. Tunkin's amendment was adopted.

64. Mr. MATINE-DAFTARY proposed the introduction of the words " or departure " in the second sentence of paragraph 1, immediately after the words " The same shall apply in the case of the arrival ". The authorities of the receiving State had an interest in being notified of the departure of a member of the family of a consular official.

Mr. Matine-Daftary's amendment was adopted.

65. Mr. ŽOUREK, Special Rapporteur, explained that the departure of a member of the consulate meant his final departure on the termination of his functions. The authorities of the receiving State were not interested in being notified of a consular official's casual absence on holiday, for example. In the case of a member of the household of a member of the consulate, the receiving State was primarily interested in being notified when the person concerned ceased to be a member of that household.

66. Sir Gerald FITZMAURICE agreed with the Special Rapporteur that the term " departure " meant final departure, and said that an explanation could be given in the commentary.

67. Mr. SCELLE pointed out that the French term " ménage " meant the husband, wife and children but did not include private staff. Accordingly, the last phrase of the second sentence of paragraph 1 would have to be re-drafted. He suggested the use of some such expression as " cesseraient leur emploi ".

68. Sir Gerald FITZMAURICE said that the English term " household " included all the persons under the same roof and therefore covered servants or private staff.

69. The phrase referred to by Mr. Scelle applied not only to private staff but also to members of the families of consular officials. He suggested that the provision would be clearer if the words " the latter " were replaced by the word " these ".

70. Mr. ŽOUREK, Special Rapporteur, said that, while the wording could be improved, the substance of the provision was necessary. The authorities of the receiving State were interested in knowing when a member of the private staff ceased to be in the service of a consular official, just as they were interested in knowing when a member of a consular official's family ceased to live under his roof. Such events affected the admittedly very limited privileges enjoyed by those persons. He therefore proposed that the Drafting Committee should be asked to prepare a satisfactory formula.

71. Mr. SANDSTRÖM said that even with the change suggested by Sir Gerald Fitzmaurice, the phrase in question could still be construed as referring only to the private staff, and the same was true of the French text.

72. Mr. BARTOŠ said that the intention of the provision could be clarified in the commentary. He supported the Special Rapporteur's proposal that the Drafting Committee should prepare a text which would make it clear that a notification was necessary if a member of the family or of the private staff of a consular official ceased to form part of his household, in other words ceased to live under the same roof. As had been pointed out during the discussion on the draft on diplomatic intercourse, the decisive test was not the existence of family relationship but life under the same roof (communauté de vie).

73. Mr. SANDSTRÖM said that it was essential to include a reference to the case where a member of the family or private staff ceased to form part of the household of the consular officer.

74. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed on the substance of article 21, subject to rewording of the final phrase of paragraph 1 and on the understanding that the commentary would explain the intention of the provision.

It was so agreed.

ARTICLE 22 *(Use of the national flag and of the state coat-of-arms)*

75. Mr. EDMONDS said that he had not had an opportunity to refresh his memory of the discussion on articles 22 and 23 of the Special Rapporteur's draft from the summary record *(ibid.*, paras. 41 to 72) but to the best of his recollection the Commission had decided that it should go no further than to declare that the receiving State should place no restriction on the right of the consulate to fly the national flag and display the state coat-of-arms. The wording of article 22 as prepared by the Drafting Committee might well be construed as stating a rule which would override the right of the owner of a building leased for consular purposes to attach conditions to the flying of the national flag or the display of the coat-of-arms on the building.

76. The CHAIRMAN said that as far as he could remember it had been agreed *(ibid.*, paras. 71 and 72) that the problem referred to by Mr. Edmonds seldom arose and could be left for settlement between the owner of the premises and the lessee.

77. Mr. ŽOUREK, Special Rapporteur, explained

that the right of a consulate to fly the national flag and to display the state coat-of-arms was recognized in all consular conventions and could not be left unmentioned in the present draft; the Drafting Committee's text of article 22 was modelled on article 18 in the draft on diplomatic intercourse. The Commission had not wished to enter into the complex issues of the relationship between municipal and international law but had recognized that a signatory to the multilateral instrument which the Commission was drafting would have to enact the necessary legislation to give effect to the international obligations assumed in the instrument.

78. Mr. TUNKIN said that the right laid down in article 22 was well-established and was unlikely to cause practical difficulties of the kind mentioned by Mr. Edmonds.

79. Sir Gerald FITZMAURICE also thought that Mr. Edmonds' concern was unfounded, since the lessor of consular premises could hardly be unaware of the invariable practice of consulates to fly a national flag and display the state coat-of-arms on the premises. If the landlord had any objection he could propose a special clause for insertion in the lease and it would then be for the sending State to decide whether or not such a clause was acceptable. If it were not, presumably the sending State would look for other premises. He considered that article 22, which was very similar to article 18 in the draft on diplomatic intercourse, was acceptable.

80. Mr. ERIM said he was not sure that article 22 could be interpreted in the way Sir Gerald had interpreted it. Under the constitution of certain States, a convention once ratified became part of municipal law. The Drafting Committee did not appear to have been guided by the Commission's decision that articles 22 and 23 of the Special Rapporteur's draft be referred to the Drafting Committee on the understanding that the purpose of those articles was to lay down that the receiving State, so far as it was concerned, should permit (or not prevent) the use of the coat-of-arms and national flag of the sending State.

81. Mr. BARTOŠ, observing that he had been responsible for drawing attention to the practical difficulties which such a provision might cause, said the Drafting Committee's version was acceptable, provided the commentary explained that the exercise of the right in question might raise an issue of private law as between the landlord and the consul as lessee.

82. Mr. AGO said that, although under the law of some States an international instrument on being ratified became, *ipso facto*, part of municipal law, the provision contained in article 22 should not cause any difficulty, since the landlord was free to impose special conditions in the lease or simply not to let the premises for consular purposes.

83. Mr. ARIM maintained his objection, in particular to the phrase " shall have the right ", and emphasized that if the article were approved in its present form, and later incorporated in a general international instrument, once that instrument came into force article 22 would immediately apply even to those premises for which leases had already been signed.

84. Mr. AGO pointed out to Mr. Erim that article 22 simply stated a customary rule of law and was not an innovation.

85. Mr. YOKOTA, Chairman of the Drafting Committee, suggested that the concern expressed by Mr. Edmonds and Mr. Erim might be met by the inclusion in the commentary of a statement to the effect that there was no intention of interfering in the private relations between a consulate and a landlord; that would be entirely consonant with the decision taken by the Commission at its 529th meeting.

86. Mr. SCELLE considered that the discussion was entirely idle. Landlords and consuls belonging to two signatory States of an international instrument were not free to reach an agreement that would frustrate a provision of that instrument.

87. Mr. ŽOUREK, Special Rapporteur, suggested that as article 22 enunciated a rule of international law, the Commission should be able to reach a decision without more ado. Those who were opposed to the article could register their opinion by a negative vote.

88. Sir Gerald FITZMAURICE said that as Mr. Erim might be taken as almost suggesting that the Drafting Committee had ignored the Commission's directives, some explanation should be given of the Drafting Committee's action. It had decided not to use some such wording as " the receiving State shall place no restriction on the right of the consulate to fly the national flag and to display the state coat-of-arms " because such language might have provoked doubts about what was an invariable practice and might even have encouraged objections to that practice. No one could compel the owner of premises to let them for consular purposes at all and therefore the prospective landlord was automatically protected, especially as he would normally know in advance of the existence of the practice.

89. If the Drafting Committee had gone any further, then Mr. Erim's preoccupation might have been justified.

90. Mr. JIMÉNEZ DE ARÉCHAGA said that although he had not been present during the discussion of articles 22 and 23 of the Special Rapporteur's draft he gathered from the summary record that the Commission had decided that the obligation lay on the receiving State to ensure that the exercise of the right specified in article 22 would not be impeded.

91. Mr. MATINE-DAFTARY said that some provision was necessary in article 22 whereby the receiving State would be obliged to ensure that the right in question could be exercised. Such a provision should obviate long-drawn-out disputes.

92. Mr. ERIM, thanking Sir Gerald Fitzmaurice for his explanation, observed that there was no real disagreement between them. His only concern was that the Commission should not adopt a clause enabling the consul to force the landlord to agree to the flying of the national flag or to the display of the coat-of-arms on the leased premises. He noted that the analogous provision in article 10 of the Consular Convention between the United Kingdom and Sweden was permissive.

93. Mr. EDMONDS said that he had not been reassured by Sir Gerald Fitzmaurice's argument that article 22 would not give rise to practical difficulties. He pointed out that in many urban areas in the United States, many, perhaps even most, large office buildings had rules prohibiting the display of signs or flags by tenants.

94. The CHAIRMAN, observing that there was a real divergence of opinion, asked the Commission to decide by a vote whether the opening words of article 22, paragraph 1, should be amended to read, as suggested by Mr. Edmonds, " The receiving State shall place no restriction on the right of the consulate to fly the national flag . . ."

The amendment was rejected by 11 votes to 7, with 1 abstention.

95. The CHAIRMAN put to the vote the Drafting Committee's text for article 22.

Article 22 was adopted by 14 votes to 3, with 2 abstentions.

The meeting rose at 1 p.m.

571st MEETING

Friday, 24 June 1960, at 9.30 a.m.

Chairman: Mr. Luis PADILLA NERVO

Planning of future work of the Commission

[Agenda item 10]

1. The CHAIRMAN invited discussion on item 10 of the agenda.

2. Mr. ŽOUREK said that although in the past the Commission had decided to allow two years to elapse between the first and second reading of a draft so as to allow Governments more time to comment, since it had undertaken to complete its work on consular intercourse and immunities by 1961 it must of necessity make an exception to that rule and resume consideration of the draft articles on consular intercourse and immunities at its next session. If the work was well organized four or five weeks at the beginning of the next session would be sufficient for the purpose.

3. Mr. GARCÍA AMADOR agreed with Mr. Žourek that the first topic on the next session's agenda should be consular intercourse and immunities, but considered that, as a great deal of time had been taken up with it at the previous and current sessions, no more than four weeks should be assigned to it. In order to make progress with its general programme of work the Commission should then devote the following five weeks to state responsibility.

4. After further discussion, the CHAIRMAN suggested that, at its thirteenth session, the Commission should decide to complete its work on consular intercourse and immunities and then take up state responsibility.

It was so agreed.

Date and place of the thirteenth session

[Agenda item 9]

5. The CHAIRMAN invited discussion on item 9 of the agenda.

6. Mr. LIANG, Secretary to the Commission, said that the Commission's thirteenth session was scheduled to last for ten weeks, from 24 April to 30 June 1961.

7. The plenipotentiary conference on diplomatic intercourse and immunities was scheduled to meet at Vienna from 2 March to 14 April 1961, so that there would be an interval of ten days before the opening of the Commission's session. It had not proved feasible, as hoped, to allow for a longer interval.

8. Mr. GARCÍA AMADOR asked whether the opening date of the thirteenth session could be postponed for one week so as to allow a longer interval between the end of the Vienna conference and the opening of the Commission's own session, even though in that event the last week of the Commission's session would overlap with the first week of the Economic and Social Council's summer session at Geneva.

9. Mr. LIANG, Secretary to the Commission, drew attention to the terms of General Assembly resolution 694 (VIII), paragraph 1 (*c*), under which the Commission's sessions at Geneva should not overlap with the summer session of the Economic and Social Council. If Mr. García Amador's request were accepted, the Commission would lose one week of its session. The thirty-second session of the Economic and Social Council was scheduled to begin at Geneva on Tuesday, 4 July 1961.

10. Sir Gerald FITZMAURICE observed that the stipulation quoted by the Secretary from General Assembly resolution 694 (VII) had repeatedly given rise to difficulties. He did not object to the principle but only to the rigid manner in which it had been applied. The overlap in 1961 would only be four working days, which he would not have thought could cause serious inconvenience, whereas it would make a great deal of difference to members of the Commission if its session could start one week later.