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**Summary record of the 575th meeting**

Topic:  
**Consular intercourse and immunities**

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## 575th MEETING

Wednesday, 29 June 1960, at 9.30 a.m.

Chairman: Mr. Luis PADILLA NERVO

Consular intercourse and immunities  
(A/CN.4/L.86, A/CN.4/L.90 and Add.1) [continued]

[Agenda item 2]

PROVISIONAL DRAFT ARTICLES  
(A/CN.4/L.90/Add.1) (continued)

1. The CHAIRMAN invited the Commission to continue its discussion of the draft articles prepared by the Drafting Committee concerning honorary consuls (A/CN.4/L.90/Add.1).

ARTICLE 56 a (*Inviolability of the official correspondence, archives and documents of the consulate*)

*Article 56 a was adopted by 12 vote to none, with 1 abstention.*

ARTICLE 56 b (*Special protection*)

2. Mr. MATINE-DAFTARY suggested that the title of article 56 b should be amended. The position of an honorary consul was different from that of a career consul and the title of the corresponding article relating to career consuls (article 32) should not be automatically reproduced.

3. Mr. YOKOTA observed that the title of article 32 was "Special protection and respect due to consuls". In the case of article 56 b that title had not been reproduced since the article contained no reference to the respect due to honorary consuls.

*Article 56 b was adopted by 10 votes to none, with 2 abstentions.*

ARTICLE 56 c (*Exemption from obligations in the matter of registration of aliens and residence and work permits*)

4. Mr. YASSEEN reiterated the objections he had expressed, in connexion with article 35, to the inclusion of any reference to work permits. From the point of view of logic, there was an additional objection in the case of article 56 c. In effect, the article said that honorary consuls who did not engage in gainful private activity did not need a work permit.

5. It seemed to him that the outside activities in which honorary consuls engaged were so diverse that unless the words "work permit" were carefully qualified, it would be better to omit them entirely, and he made a formal proposal to that effect.

6. Mr. ERIM supported Mr. Yasseen's amendment. Whereas article 35 was concerned with the

exemption of the consular official's private staff from the duty to obtain work permits, article 56 c spoke of a like exemption for the honorary consul and the members of his family.

7. Sir Gerald FITZMAURICE said that the words "work permits" should be retained in order to guard against the possibility that an honorary consul who was not engaged in a gainful private activity might have to obtain a work permit in order to discharge his consular functions.

8. Mr. YASSEEN did not think that the words "work permits" could be construed as meaning permission to act as an honorary consul.

9. Mr. ERIM pointed out that if Sir Gerald's understanding of the words "work permits" was correct, article 56 c would permit the receiving State to require nationals who wished to act as honorary consuls to obtain an authorization to do so.

10. Mr. ŽOUREK, Special Rapporteur, thought it was clear both in article 35 and article 56 c that the words "work permits" referred to private staff hired by consular officials. Article 56 c said in effect that an honorary consul who was a national of the receiving State could not employ anyone without a work permit, if such permits were generally required.

11. Mr. ERIM noted that there was no mention in article 56 c of private staff, in contrast to article 35, which specifically referred to private staff. If the same type of work permit was intended, that intention should be made plain.

12. Mr. SANDSTRÖM said that while it might be possible to omit the words "work permits", he would prefer them to stand for reasons of consistency with article 35, especially as the exceptions relating to nationals of the receiving State or persons carrying on a gainful private activity were plainly stated.

*The Chairman put Mr. Yasseen's amendment to the vote.*

*The result was 5 votes in favour and 5 against, with 3 abstentions.*

*Mr. Yasseen's amendment was not adopted.*

*Article 56 c was adopted by 8 votes to 1, with 4 abstentions.*

ARTICLE 56 d (*Exemption from taxation*)

13. Mr. YOKOTA, Chairman of the Drafting Committee, pointed out that the text of the article contained two conditional phrases between square brackets. The brackets had been included in error and should be ignored.

14. Mr. BARTOŠ said that not only should the brackets be ignored but that the text in the brackets should be omitted, for it implied that an honorary consul who was a national of the receiving State should not be exempted from taxes on emoluments received from the sending

State. He was against such an implication. He proposed the omission of the passage in question.

15. Mr. TUNKIN agreed that the words "and if not engaged in any gainful private activity" should be omitted. There was no need to stipulate that condition since the article provided only for exemption from taxes on emoluments received by the person concerned in his capacity as honorary consul. By contrast, the words "if not a national of the receiving State" should stand, for without those words the article would exempt all honorary consuls, irrespective of nationality, from taxation on their emoluments. In his view, if an honorary consul was a national of the receiving State there was no reason to exempt any of his earnings from income tax, which, where it existed, was applicable equally to all citizens.

16. Mr. SANDSTRÖM pointed out in support of Mr. Tunkin's position that article 37 of the draft articles on diplomatic intercourse and immunities left it to the receiving State to decide whether to tax the emoluments received from the sending State by a diplomatic agent who was a national of the receiving State.

17. Mr. ERIM agreed with Mr. Tunkin that the conditional phrase relating to gainful private activity was unnecessary.

18. Sir Gerald FITZMAURICE observed that it was generally agreed that States should not tax each other. Whatever form the taxation of the emoluments of an honorary consul might take, it would ultimately be the sending State which would be taxed. Any tax levied on the honorary consul's earnings accruing from his consular capacity would in effect have to be compensated for by the sending State.

19. He agreed with Mr. Tunkin that the conditional phrase relating to gainful private activity was unnecessary and should be omitted.

20. Mr. FRANÇOIS supported Mr. Tunkin's position. The exemption of any nationals from taxation always raised a serious problem. The case of international civil servants was not parallel to that of honorary consuls: the emoluments of international civil servants were paid out of contributions from all the members of the international organization concerned and, what was more, it was necessary to avoid inequality among international civil servants. While he sympathized with Sir Gerald's view, which was theoretically sound, for practical reasons he supported Mr. Tunkin's position.

21. Mr. ŽOUREK, Special Rapporteur, pointed out that as the text stood the two conditional phrases were cumulative. Perhaps it should be made clear that each constituted a separate condition.

22. Mr. SCELLE expressed his support of the position of Mr. Bartoš and Sir Gerald.

23. Mr. TUNKIN observed that the question whether the taxation of the earnings of a national

paid by a foreign State was taxation of a national or taxation of a foreign State, was a theoretical question that had been discussed by the Commission more than once. However, apart from that aspect of the matter, the Commission had already decided, as Mr. Sandström had pointed out, that a diplomatic agent in a similar situation would enjoy exemption from taxation only if the exemption was granted to him by the receiving State.

24. What was more, by virtue of article 42 of the present draft, career consuls who were nationals of the receiving State could be taxed by that State on their emoluments as consuls. It would be incongruous to accord to honorary consuls who were nationals of the receiving State a fiscal exemption more extensive than that accorded to career consuls who were nationals of that State.

25. Mr. BARTOŠ cited a case which had occurred in his own country. An effort had been made to collect taxes on the emoluments received by a Yugoslav national who acted as the honorary consul of a foreign State. The consul in question had protested, citing the terms of his contract. Although it had been decided in principle that he should be taxed, a difficulty had arisen because the tax could not be assessed without examining the consular books. Eventually, it had been decided that it would be better to exempt him from taxation on his earnings as honorary consul.

26. Mr. YOKOTA said that while it was true as a general principle of international law that a State could not tax another State, it was a principle that was difficult to apply in practice. For example, the Japanese Government had not yet signed the convention on the privileges and immunities of employees of specialized agencies because of the problem of Japanese nationals working in Japan for the specialized agencies. The problem would be even greater in the case of honorary consuls who were nationals of the receiving State, and he was therefore inclined to support Mr. Tunkin.

27. Mr. ŽOUREK, Special Rapporteur, pointed out that the text of article 56 *d*, as it stood, went beyond the existing practice in the matter.

28. The CHAIRMAN, speaking as a member of the Commission, supported the proposal of Mr. Bartoš. It would avoid the danger of double taxation since in most cases the emoluments paid by the sending State would have already been taxed by the sending State.

29. Mr. PAL said that if it did not wish to be inconsistent the Commission was compelled to accept Mr. Tunkin's view. If honorary consuls who were nationals of the receiving State were exempted from taxation on their earnings as consuls, the same privilege should be extended to career consuls who were nationals of the receiving State, and article 43 would have to be changed accordingly.

30. Mr. LIANG, Secretary to the Commission, doubted whether the test of the source of the

income was necessarily sound. For example, in the United States there were many lawyers who received substantial emoluments from foreign governments for work performed for them. The more easily applicable criterion was that of nationality. In the case of the Anglo-Swedish convention, the exemption was limited to the emoluments of honorary consuls who were nationals of the sending State.

31. As to double taxation, he said the question might not be very relevant in cases where honorary consuls functioned on a part-time basis and were remunerated according to the services actually rendered.

32. Mr. AGO pointed out that under article 56, honorary consuls who were nationals of the receiving State were excluded from the benefit of the exemption by virtue of the terms of article 42, paragraph 1. The proposal of Mr. Bartoš could therefore be adopted without thereby exempting such honorary consuls from taxation.

33. Mr. TUNKIN said that he failed to see the relevance of the example cited by Mr. Bartoš. The honorary consul in question had simply been accorded an additional immunity by the receiving State, as provided for in article 42, paragraph 1.

34. If, as Mr. Ago had said, nationals of the receiving State were automatically excluded from the exemption provided for in article 56 *d*, there was no harm in so indicating in the text of the article. To omit the words between brackets would leave a text which on its face was applicable to all honorary consuls and which might lead to confusion, although the confusion might be mitigated by a rearrangement of the articles.

35. Mr. PAL observed that if article 42 applied to honorary consuls who were nationals of the receiving State it would still be inconsistent to have in article 56 *d* an unqualified text applicable to all honorary consuls.

36. Mr. YOKOTA agreed with Mr. Ago that nothing would be changed by omitting the words between brackets. The case of honorary consuls who were nationals of the receiving State was covered by article 42.

37. Mr. AGO said that it would be bad drafting to specify in each article relating to honorary consuls that it did not apply to the nationals of the receiving State. Inasmuch as the general provision of article 42 would be applicable to honorary consuls, article 56 *d* would not be applicable to such nationals unless it read "An honorary consul, even if a national of the receiving State," etc.

38. Mr. BARTOŠ observed that the retention of the words "if not a national of the receiving State" would tend to deny to honorary consuls who were nationals of the receiving State an immunity that could otherwise be granted by the receiving State under article 42. The receiving State would be tempted to say that the case of its nationals had been settled by article 56 *d*

and that they were not eligible for the benefit of the exemption.

39. Mr. TUNKIN said that the point at issue was not merely a question of drafting; it was a question of principle, since some members had taken the views that all honorary consuls, including those who were nationals of the receiving State, should be exempt from taxation. It might be that the text between brackets was unnecessary, but the Commission should decide whether or not the mandatory exemption applied only to honorary consuls who were not nationals of the receiving State. One that principle had been decided, the actual form of words could be left to the Drafting Committee.

40. Mr. ERIM said that in that case the Drafting Committee would also have to reconsider article 56 *c* as just adopted, which also specifically, and presumably unnecessarily, excluded honorary consuls who were nationals of the receiving State from the benefits conferred by that article.

41. Mr. EDMONDS pointed out that there were formal proposals for the omission of certain words. It seemed to him that the correct procedure was to vote on those proposals rather than on a general principle.

42. The CHAIRMAN did not see any need for a vote on the principle. Whatever might be the views of individual members, the words in article 42 had a plain meaning.

43. Speaking in his personal capacity, he said that the Commission should not do anything that might cause a State to deny to nationals who were honorary consuls privileges and immunities which it might otherwise have granted. In his view the words between brackets should be omitted.

44. Mr. BARTOŠ observed that there was really no substantive difference of opinion and no question of principle to decide. The matter had been settled by article 42, under which the question of the position of nationals of the receiving State was left to be decided by that State.

45. Sir Gerald FITZMAURICE explained that in expressing his views earlier in the discussion he had not thought of the terms of article 42. Obviously the Commission's draft could not give to honorary consuls more extensive advantages than it gave to career consuls, and the case of honorary consuls who were nationals of the receiving State would have to be governed by article 42.

46. Mr. AGO observed that there was no longer any need to vote on the principle involved, since all members were agreed that article 56 *d* had to be read in conjunction with article 42.

47. Mr. TUNKIN took it that it was agreed that article 56 *d* would apply only to honorary consuls who were not nationals of the receiving State.

*The proposal of Mr. Bartoš for the deletion of the words between brackets in article 50 d was adopted by 10 votes to 2, with 4 abstentions.*

*Article 56 d as amended was adopted by 12 votes to 1, with 3 abstentions.*

48. Mr. SANDSTRÖM explained that he had voted for the deletion of the words in brackets on the assumption that a new text would be prepared containing a specific reference to article 42.

49. Mr. ERIM said that the Commission's decision on article 56 *d* called for a retrospective modification in article 56 *c*. The arguments in favour of omitting the words "if not a national of the receiving State" in the former applied all the more forcibly to the words "who are nationals of the receiving State or" in the latter.

50. Mr. AGO agreed that those words should be omitted from article 56 *c* since the exemption concerning the registration of aliens and residence permits clearly had no relevance to nationals of the receiving State.

*It was agreed to omit the words "who are nationals of the receiving State or" in article 56 c.*

**ARTICLE 56 e (Exemption from personal services and contributions)**

*Article 56 e was adopted by 10 votes to none, with 2 abstentions.*

**ARTICLE 56 f (Liability to give evidence)**

51. Mr. EDMONDS said that he would be obliged to vote against article 56 *f* as it stood because it did not precisely convey the Commission's intention. Honorary consuls were certainly bound to produce official documents such as birth and marriage certificates or testimonies in the form of a deposition if they properly fell within the scope of a judicial inquiry.

52. Mr. TUNKIN said that the wording of article 56 *f* seemed to confer a greater privilege on honorary consuls than was conferred on career consuls by the corresponding provision in article 40, paragraph 3. As that was presumably not the intention, the Drafting Committee should bring the two texts into line.

53. Mr. ŽOUREK, Special Rapporteur, said that perhaps the phrase in the English text "to attend as witness" was not an exact rendering of the French text.

54. Mr. AGO observed that article 56 *f* would have to be amplified now that the Commission had decided (574th meeting, paragraphs 56 and 57), that article 40, paragraph 2, should be applicable to honorary consuls.

55. Mr. ERIM suggested that it would suffice to add in article 56 *f* a cross-reference to article 40, paragraph 2, without repeating the substance of that paragraph.

56. Mr. MATINE-DAFTARY said he was unable to see why article 40, paragraph 1, should not also apply to honorary consuls. In the matter of liability to give evidence he was inclined to think

that honorary consuls should be assimilated to career consuls. He therefore proposed that article 56 *f* be deleted and that article 40 be added to the enumeration contained in article 56, paragraph 2.

57. Sir Gerald FITZMAURICE agreed with Mr. Matine-Deftery that the whole of article 40 applied to honorary consuls and that article 56 *f* should be deleted.

58. Mr. ŽOUREK, Special Rapporteur, pointed out that the provision contained in the second sentence of article 40, paragraph 1, represented a very considerable concession: the Commission should therefore exercise the greatest caution in extending the privilege in that form to honorary consuls. He would have thought that article 56 *f* correctly stated the position.

59. Mr. TUNKIN urged Mr. Matine-Deftery not to press his proposal in view of the serious nature of the privilege provided for in the first sentence of article 40, paragraph 1.

60. The CHAIRMAN suggested that the Commission should approve article 56 *f*, subject to drafting changes.

*Article 56 f was adopted by 13 votes to none, with 1 abstention, subject to drafting changes.*

**ARTICLE 56 g (Respect for the laws and regulations of the receiving State)**

61. Mr. LIANG, Secretary to the Commission, considered that for the sake of precision the words "in receiving State" should be inserted after the words "official position".

62. Mr. ŽOUREK, Special Rapporteur, disagreed. Such a phrase might be understood to mean that an honorary consul could use his official position for political purposes or to secure personal advantage in a third State.

63. Mr. AGO believed that such an amendment was unnecessary. It was self-evident that the requirement laid down in article 56 *g* applied to activities in the receiving State.

64. Mr. YOKOTA formally proposed the amendment suggested by the Secretary which was consistent with the corresponding provision in article 46, paragraph 1.

65. Mr. SCELLE proposed the omission of article 56 *g*, which was wholly unnecessary and out of place in a legal draft, being concerned with a matter of civilized behaviour and integrity.

66. Mr. ERIM and Mr. SANDSTRÖM agreed with Mr. Scelle.

67. Mr. ŽOUREK, Special Rapporteur, pointed out to Mr. Scelle that the Commission had already adopted a similar article (article 46) in respect of career consuls and had agreed that certain elements in that article were applicable to honorary consuls. Article 56 *g* certainly had some utility.

68. Mr. YASSEEN said that since an honorary consul might both be a national of the receiving State and engage in a gainful private activity, there was no need for article 56 *g*, which concerned ethical conduct.

69. Mr. ŽOUREK, Special Rapporteur, emphasizing the very explicit terms of article 46, pointed out that the obligation laid down in the first sentence of article 46, paragraph 1, was self-evident as far as nationals of the receiving State were concerned, but it was equally applicable to honorary consuls who were nationals of the sending State or of a third State.

70. The obligation laid down in article 56 *g* was a legal and not a moral one.

71. Mr. SCELLE maintained his view that there was no connexion between article 46, which was concerned with respect for the laws of the receiving State, and article 56 *g* which purported to lay down rules of conduct.

72. Sir Gerald FITZMAURICE observed that the Commission had decided (574th meeting, paragraph 13) that, since honorary consuls were in most cases nationals of the receiving State, the wording of the obligation laid down in the second sentence of article 46, paragraph 1 was inappropriate to such consuls, and had to be framed differently for purposes of the present article, which as it now stood should be acceptable.

73. The CHAIRMAN said that in the absence of any objection, he presumed that Mr. Yokota's amendment adding the words "in the receiving State" after the words "official position" was acceptable.

*It was so agreed.*

*Article 56 g, as amended, was approved by 13 votes to 1, with 2 abstentions.*

#### ARTICLE 57 (*Precedence*)

74. Mr. TUNKIN asked the Special Rapporteur whether in practice honorary consuls ranked in each class after career consuls. In other words, would an honorary consul-general have precedence over a career consul?

75. Mr. ŽOUREK, Special Rapporteur, confirmed that that was the practice of a number of States.

76. The CHAIRMAN said that although the text of article 57 had been approved earlier he would put it to the vote to comply with the wishes of Mr. Edmonds.

*Article 57 was adopted by 14 votes to none, with 2 abstentions.*

#### ARTICLE 57 bis (*Optional character of the use and admission of honorary consuls*)

77. Mr. SCELLE considered that article 57 bis was too absolute and arbitrary since it might imply that a State could refuse to accept all

honorary consuls, whereas in fact it could only refuse the appointments of its own nationals as honorary consuls by the sending State. That hypothetical case was perhaps far-fetched but it was not inconceivable, and such a refusal would certainly be contrary to international law and to the interests of the international community, for which consular relations were indispensable.

78. Mr. ERIM, emphasizing that the rule set forth in the article had been discussed at considerable length, said that its adoption had enabled certain members to support other articles. If article 57 bis were now to be modified, the discussion on other articles might have to be reopened.

79. Mr. LIANG, Secretary to the Commission, criticized the wording both of the title and of the text of the article. The words "use" and "admission" were quite inappropriate.

80. After some discussion, the CHAIRMAN suggested that the article might be amended to read:

"Each State is free to decide whether it will appoint or receive honorary consuls."

*That text was adopted by 14 votes to none, with 2 abstentions.*

The meeting rose at 1.10 p.m.

### 576th MEETING

*Wednesday, 29 June 1960, at 3.30 p.m.*

*Chairman: Mr. Luis PADILLA NERVO*

#### Consular intercourse and immunities (A/CN.4/L.86, A/CN.4/L.90 and Add.1) [*concluded*]

[Agenda item 2]

#### PROVISIONAL DRAFT ARTICLES (A/CN.4/L.90 and Add. 1) (*concluded*)

1. The CHAIRMAN invited the Commission to continue its debate on the draft concerning consular intercourse and immunities prepared by the Drafting Committee (A/CN.4/L.90/Add.1).

#### ARTICLE 59 (*Relationship between these articles and bilateral conventions*)

2. Mr. YOKOTA, Chairman of the Drafting Committee, said that the Committee had found it impossible to reconcile the two different points of view which had been expressed during the Commission's discussion of article 59 (560th meeting, paragraphs 8 to 69, and 561st meeting, paragraphs 1 to 40). It had, therefore, put forward alternative texts for the article (A/CN.4/L.90/Add.1), and wished to propose that both should be submitted to governments for their comments.