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**Summary record of the 579th meeting**

Topic:  
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amendment to delete the second sentence of paragraph 6. That sentence merely stated an obvious fact.

*Mr. Ago's amendment to paragraph 5 was adopted unanimously.*

*Mr. Yokota's amendment to paragraph 6 was adopted by 10 votes to 2, with 6 abstentions.*

49. Mr. MATINE-DAFTARY said that he could not accept the first sentence of paragraph 6 without the second. He therefore proposed the deletion of that first sentence.

*The proposal was rejected by 9 votes to 3, with 1 abstention.*

50. Mr. EDMONDS proposed the deletion of paragraph 7.

51. Sir Gerald FITZMAURICE said that he would vote against that proposal because, after the deletion of the fifth and sixth sentences of paragraph 5 and the second sentence of paragraph 6, he could accept paragraph 7 as it stood.

52. Mr. ŽOUREK, Special Rapporteur, said that he would vote against the proposal because he had accepted Mr. Ago's amendment to paragraph 5 only on the understanding that paragraph 7 would be retained as it stood.

*Mr. Edmonds' proposal was rejected by 8 votes to 3, with 3 abstentions.*

*The commentary to article 31 a, as amended, was adopted.*

*Commentary to article 31 (Levying of consular fees and charges and exemption of such fees and charges from taxes and dues)*

*The commentary to article 31 was adopted.*

*Commentary to article 32 (Special protection and respect due to consuls)*

*The commentary to article 32 was adopted.*

The meeting rose at 6 p.m.

### 579th MEETING

Friday, 1 July 1960, at 9 a.m.

Chairman: Mr. Luis PADILLA NERVO

**Consideration of the Commission's draft report covering the work of its twelfth session (A/CN.4/L.90 and Add.1, A/CN.4/L.92/Add.1, 2 and 3) [concluded]**

CHAPTER II (*Consular intercourse and immunities*)  
(concluded)

1. The CHAIRMAN invited the Commission to continue its consideration of the commentary on the draft articles concerning consular intercourse and immunities (A/CN.4/L.92/Add.2).

*Commentary to article 33 (Personal inviolability)*

2. Mr. MATINE-DAFTARY noted that the commentary did not mention his dissenting opinion (539th meeting, paragraph 6, and 540th meeting, paragraphs 40 to 45).

3. Mr. ŽOUREK, Special Rapporteur, did not consider it possible to state the view of a single member of the Commission in the commentary. However, if Mr. Matine-Daftary so wished, his dissent could be recorded in a footnote.

4. Mr. MATINE-DAFTARY pointed out that he had not been alone in opposing the anomalous system put forward in article 33 which appeared to confer on consuls immunity from prosecution for offences punishable by a sentence of a specified number of years. He could have agreed that consular officials should not be liable to arrest or detention pending trial except in the event of criminal proceedings. He regretted that his constructive proposal had been disregarded.

5. Mr. ŽOUREK, Special Rapporteur, said he would be prepared to insert a sentence in the commentary to the effect that some members had held that consuls should not be eligible for immunity from imprisonment in cases where imprisonment was ordered by a judicial decision.

6. The CHAIRMAN, observing that in the past the Commission had even omitted to mention in its commentary a minority view held by several members, suggested that Mr. Matine-Daftary's objection might be recorded in a footnote.

*It was so agreed.*

7. Mr. TUNKIN asked whether the statement made in the last sentence of paragraph 12 was accurate. He had assumed that the exceptions to the benefit of article 33 related to gainful private activity carried on in the receiving State only.

8. Mr. ŽOUREK, Special Rapporteur, said that if a consul carried on a gainful private activity in any country there was a *prima facie* presumption against his eligibility for the privileges specified in article 33. Admittedly, if the activity was carried on in the sending State or in a third State, there was less reason for withholding the privileges in the receiving State. In his opinion, the Commission should reach a decision on the point.

9. The CHAIRMAN observed that the Commission had not discussed the point, and if the last sentence in paragraph 12 was accepted as it stood, article 33, paragraph 1, which seemed to refer only to gainful private activity in the receiving State, would have to be reconsidered.

10. Mr. ŽOUREK, Special Rapporteur, said he would agree to the deletion of the last sentence in paragraph 12 and hoped that the point would be considered at the next session.

*It was agreed that the sentence in question would be omitted.*

11. Mr. AGO suggested that paragraph 13 should be revised in the light of the Commission's decision to offer alternative texts for article 33, paragraph 1 (572nd meeting, paragraph 96).

12. Mr. ŽOUREK, Special Rapporteur, undertook to revise paragraph 13 in the light of the Commission's decision on article 33, paragraph 1.

*The commentary to article 33, as amended, was adopted.*

*Commentary to article 34 (Immunity from jurisdiction)*

13. Mr. AGO suggested that the word "jurisdiction" should be substituted for the word "authority" in the second sentence of paragraph 1. Secondly, in paragraph 2 it should be made clear that members of the consulate were not amenable to the jurisdiction of the receiving State in respect of acts attributable to the sending State. The reference to "official" acts was, therefore, inappropriate in the light of the decisions taken on article 34.

14. Mr. ŽOUREK, Special Rapporteur, accepted Mr. Ago's suggestions.

*The commentary to article 34, as amended, was adopted.*

*Commentary to article 35 (Exemption from obligations in the matter of registration of aliens and residence and work permits)*

*The commentary to article 36 was adopted.*

*Commentary to article 36 (Social security exemption)*

*The commentary to article 36 was adopted.*

*Commentary to article 37 (Exemption from taxation)*

15. Mr. YOKOTA said there seemed to be a discrepancy between the statement in the second sentence of paragraph 1 that, in the absence of treaty provisions, the consul's exemption from taxation was governed by the law of the receiving State and was always conditional on reciprocity, and the statement in the first sentence of paragraph 3 that bilateral conventions usually granted the exemption, subject to reciprocity. He believed the second statement was the more correct.

16. Mr. ŽOUREK, Special Rapporteur, explained that to the best of his knowledge exemption from taxation was never accorded to foreign consuls by the municipal law of any State unless reciprocal treatment was accorded by the sending State.

*The commentary to article 37 was adopted.*

*Commentary to article 38 (Exemption from customs duties)*

17. Mr. AGO said that the enumeration of objects exempt from customs duties (paragraph 1) was too restricted and suggested that it should be expanded.

*It was so agreed.*

*The commentary to article 38 was adopted, subject to that revision.*

*Commentary to article 39 (Exemption from personal services and contributions)*

*The commentary to article 39 was adopted.*

*Commentary to article 40 (Liability to give evidence)*

18. Mr. AGO suggested that some explanation of the purpose of paragraph 2 of article 40 should be added to the commentary.

19. Mr. ŽOUREK, Special Rapporteur, agreed.

20. Sir Gerald FITZMAURICE considered that the language of the last sentence in paragraph 2 of the commentary was too categorical in view of the fact that according to the terms of article 40, paragraph 3, members of a consulate could decline to give evidence concerning matters connected with their official functions or to produce official correspondence and documents relating thereto. Admittedly they should not decline to produce documents of the kind mentioned in the last sentence of paragraph 2 of the commentary, but the sentence should be brought into line with the wording of the article. He suggested that the words "should not" should be substituted for the word "cannot" before the word "decline".

*It was so agreed.*

*The commentary to article 40, as amended, was adopted.*

*Commentary to article 41 (Acquisition of nationality)*

21. Mr. BARTOŠ said that cases other than those mentioned in the commentary could occur. In certain countries of South America, nationality could be acquired by virtue simply of prolonged residence.

22. Mr. ŽOUREK, Special Rapporteur, doubted whether prolonged residence was enough to confer nationality without some formal expression of will on the part of the person concerned. He was prepared to indicate that the cases described in the commentary were not exhaustive by inserting the words "more particularly" in the first sentence.

*That amendment was approved.*

23. Mr. AGO expressed doubts about paragraph 1 (a), which appeared to ignore the case where one parent was a national of the receiving State.

24. Mr. ŽOUREK, Special Rapporteur, explained that he had understood the Commission's intention to be that the article should prevent the automatic acquisition of the nationality of the receiving State in cases where neither of the parents was a national of that State.

25. Mr. AGO observed that it would be surprising if the article were interpreted to mean that the

son of a foreign consul and of a woman having the nationality of the receiving State would automatically acquire the mother's nationality.

26. Mr. TUNKIN said that the Commission would be ill-advised at that stage to attempt to resolve the very complicated problems connected with the acquisition of nationality. The law varied greatly from country to country, and the text of the article refrained from stating a general rule.

27. Mr. AGO agreed with Mr. Tunkin, but pointed out that paragraph 1 of the commentary seemed to place an unacceptable interpretation on article 41.

28. Mr. YASSEEN considered that the meaning of article 41 was perfectly clear: it stipulated that a member of the consulate or a member of his family belonging to his household could not acquire the nationality of the receiving State even if the municipal law of that State provided otherwise.

29. Mr. AGO observed that Mr. Yasseen's interpretation was certainly not borne out by the commentary.

30. Mr. LIANG, Secretary to the Commission, said that he had pointed out during the earlier discussion that article 41 was at variance with The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws, 1930, and with the law of certain *jus soli* countries such as the United States and, he believed, the United Kingdom (543rd meeting, paragraph 18). He regretted that the Special Rapporteur had not followed his suggestion to emphasize in the commentary the progressive character of the article. Unless that fact were brought out, the article would cause considerable surprise.

31. Mr. ŽOUREK, Special Rapporteur, said that he had not been very much in favour of the parallel article in the draft on diplomatic intercourse (article 35) and had sought to press for a different formulation, but after lengthy discussion the Drafting Committee had decided to follow the said article 35.

32. He could not agree with Mr. Ago that there was a contradiction between the terms of the article itself and the commentary. The case mentioned in paragraph 2 of the commentary was excluded from the scope of the article. As Mr. Tunkin had indicated, the Commission offered an incomplete rule stipulating that if neither of the parents was a national of the receiving State their child would not acquire the nationality of that State, even though the latter's nationality law was based on *jus soli*. The case where one parent only was a national of the receiving State and the other was a national of the sending State or of a third State was different. He considered that the commentary as it stood correctly explained the position.

33. Mr. BARTOŠ proposed that paragraph 3 of

the commentary be deleted because it conflicted with the Convention on the Nationality of Married Women concluded under the auspices of the United Nations in 1957.<sup>1</sup>

34. Mr. AGO said that he could not accept the Special Rapporteur's interpretation of article 41 which was so much at variance with that given by several members of the Commission. He could, however, agree with Mr. Tunkin that the Commission should not commit itself. He would, therefore, suggest that sub-paragraphs (a) and (b) be deleted, and that it should be simply indicated in paragraph 1 that the purpose was to prevent the automatic acquisition of the nationality of the receiving State by reason of birth, marriage, prolonged residence, etc.

35. Mr. ŽOUREK, Special Rapporteur, did not consider that such a change would be particularly illuminating. As Special Rapporteur he had simply sought to explain the Commission's intention.

36. In answer to Mr. Bartoš' criticism, he pointed out that paragraph 3 could not conflict with the Convention on the Nationality of Married Women, for in all cases where that convention applied as between the sending State and the receiving State the marriage of a woman member of a consulate would not automatically produce a change of nationality, and consequently such cases did not come within the scope of article 41.

37. Mr. BARTOŠ emphasized that the latter part of the commentary to article 35 in the draft on diplomatic intercourse conflicted with the Convention on the Nationality of Married Women. The Secretary should be requested to bring that fact to the attention of the 1961 conference on diplomatic intercourse and immunities.

38. He proposed that paragraph 3 of the commentary to article 41 of the consular draft should be deleted.

39. Mr. TUNKIN said he could see no conflict between paragraph 3, which dealt with the acquisition of nationality by members of the family forming part of the household of a member of the consulate, and the Convention cited by Mr. Bartoš, which dealt with an entirely different question.

40. Mr. ŽOUREK, Special Rapporteur, said that, in order to meet Mr. Ago's objection, he was prepared to withdraw paragraph 2. He added that he would prepare a detailed commentary on article 41.

41. Mr. AGO stated that he would be satisfied with the omission of paragraph 2.

42. Mr. ŽOUREK, Special Rapporteur, said that, in order to give satisfaction to Mr. Bartoš, he would amend paragraph 3 to state that in the case mentioned in that paragraph article 41 had lost a good deal of its force in view of the terms of

<sup>1</sup> United Nations *Treaty Series*, vol. 309, p. 65.

the Convention on the Nationality of Married Women, 1957.

*The commentary to article 41, as amended by the Special Rapporteur, was adopted.*

*Commentary to article 42 (Members of the consulate, members of their families and members of the private staff who are nationals of the receiving State)*

43. Mr. TUNKIN proposed that the words "in conformity with the practice of States" should be omitted from the first sentence of paragraph 1, lest the passage should be misinterpreted as meaning that the general state practice was to appoint employees of the consulate without the consent of the receiving State.

*It was so agreed.*

*The commentary to article 42, as amended, was adopted.*

*Commentary to article 43 (Duration of consular privileges)*

*The commentary to article 43 was adopted.*

*Commentary to article 44 (Estate of a member of the consulate or of a member of his family)*

*The commentary to article 44 was adopted.*

*Commentary to article 45 (Obligations of third States)*

*The commentary to article 45 was adopted.*

*Commentary to article 46 (Respect for the laws and regulations of the receiving State)*

44. Sir Gerald FITZMAURICE considered that the last sentence in paragraph 3 should be omitted. There was no need to single out the rare case of consular premises being used for asylum; other ways of misusing consular premises were far more frequent.

45. Mr. ŽOUREK, Special Rapporteur, said that he had included that sentence because Mr. Erim's amendment to article 25 had been withdrawn on the express understanding that the matter would be mentioned in the commentary to article 46 (572nd meeting, paragraph 18). Besides, many consular conventions stipulated that consular premises must not be used as asylum.

*The commentary to article 46 was adopted.*

*Commentary to article 48 (Obligations of the receiving State in certain special cases)*

*The commentary to article 49 was adopted.*

*Commentary to article 49 (Termination of a consul's functions)*

46. Mr. LIANG, Secretary to the Commission, recalled that the Commission had decided (546th

meeting, paragraph 24) that article 49 would deal with the modes of termination of a consul's functions. He suggested that the first sentence of paragraph 1 of the commentary, which spoke of "the causes which terminate the functions" should be amended to bring it into line with that decision.

47. Mr. TUNKIN said that the title of the article itself should likewise be amended.

48. Mr. ŽOUREK, Special Rapporteur, said that he would make the necessary alterations to take into account the remarks of Mr. Tunkin and the Secretary.

49. Mr. EDMONDS proposed the deletion of paragraph 3. He saw no reason for making the statement that article 49 should be regarded as codifying the existing international law. That statement was true not only of article 49 but of all the articles of the draft.

50. Mr. ŽOUREK, Special Rapporteur, agreed to the deletion of paragraph 3.

*With those amendments, the commentary to article 49 was adopted.*

*Commentary to article 50 (Maintenance of consular relations in the event of the severance of diplomatic relations)*

51. Mr. LIANG, Secretary to the Commission, suggested that the term "universally" be replaced by "generally".

52. Mr. YOKOTA said that the note which referred to article 2, paragraph 2, would have to be amended in view of the Commission's decision not to include that provision in the draft articles but to refer to the matter in the commentary.

53. Mr. ŽOUREK, Special Rapporteur, accepted both suggestions and said that, in an amended form, the note would become the second sentence of the commentary to article 50.

*With those amendments the commentary to article 50 was adopted.*

*Commentary to article 51 (Right to leave the territory of the receiving State and facilitation of departure)*

54. Mr. LIANG, Secretary to the Commission, said that it was not clear whether the second sentence of paragraph 1 referred to the last phrase of the first sentence, or to the whole of that sentence.

55. Mr. ŽOUREK, Special Rapporteur, said that the second sentence referred only to the case of armed conflict. He would insert in that sentence the words "in the case of armed conflict" in order to avoid any ambiguity.

*With that amendment, the commentary to article 51 was adopted.*

*Commentary to article 52 (Protection of consular premises and archives and of the interests of the sending State)*

*The commentary to article 52 was adopted.*

*Commentary to article 53 (Non-discrimination)*

56. Sir Gerald FITZMAURICE proposed that the last part of paragraph 3 should be expanded so as to state more explicitly the Commission's reason for not including in article 53 a provision along the lines of paragraph 2 (a) of article 44 of the draft on diplomatic intercourse. The reason was that the Commission, after discussion (548th and 549th meeting), had doubted whether the provision should have been included in the diplomatic draft itself, but was no longer in a position to alter that draft.

57. Mr. ŽOUREK, Special Rapporteur, accepted Sir Gerald Fitzmaurice's proposal.

*With that amendment, the commentary to article 53 was adopted.*

*Introduction to the chapter relatively to honorary consuls*

58. Sir Gerald FITZMAURICE criticized the last phrase of paragraph 3 of the introduction. The Commission had not, to the best of his recollection, decided "to leave States free to choose" criteria for defining honorary consuls. He suggested that the last phrase of the paragraph should be replaced by the words "but to insert in article 1 a provision to the effect that the term 'consul' covered both career and honorary consuls".

59. If a reference were to be made to the choice of criteria for defining honorary consuls, it would have to be specified that it was for the sending State to choose the criteria in question. Otherwise, if the sending State and the receiving State did not adopt the same criteria, the result might be that the same consul might be considered an honorary consul by the one and a career consul by the other — a result which was clearly impossible.

60. Mr. TUNKIN said that the appointment of an honorary consul rested with the sending State, but the definition of the institution of honorary consuls could not be left to that State. The description of the institution was an objective matter.

61. He suggested that the last phrase of paragraph 3 should be deleted.

62. Mr. BARTOŠ supported that suggestion.

63. For his part, he could not accept the idea that the choice of criteria lay with the sending State. Since the honorary consul was appointed by the sending State but had to be accepted by the receiving State, both States were called upon to pronounce themselves on the criteria in question. The fact was that the criteria applied

by both the States concerned would have to be taken into consideration cumulatively.

64. Mr. ŽOUREK, Special Rapporteur, agreed to the deletion proposed by Mr. Tunkin.

*With that amendment, the introduction to the chapter relating to honorary consuls was adopted.*

*Commentary to article 56 (Legal status of honorary consuls)*

65. Sir Gerald FITZMAURICE said that in view of the strong statement in paragraph 4 regarding the opinion of certain members of the Commission that the privileges and immunities granted to honorary consuls under the draft far exceeded those granted to them in state practice, a short sentence should be added to say that the majority of the Commission thought otherwise.

66. Mr. EDMONDS suggested the deletion, in paragraph 5, of the words "until governments had expressed their views on the matter". The Commission should not suggest that it would be bound by the views which might be expressed in the replies of governments.

67. Mr. SCELLE said that he was also dissatisfied with the expression criticized by Mr. Edmonds.

68. Mr. LIANG, Secretary to the Commission, suggested that the words cited by Mr. Edmonds be replaced by "until governments had furnished their observations". Those observations would include not only government views but also information on state practice.

69. Such an amendment would largely meet Mr. Edmonds' objection.

70. Mr. ŽOUREK, Special Rapporteur, accepted the amendments to paragraphs 4 and 5 suggested by Sir Gerald Fitzmaurice and the Secretary respectively.

*With those amendments, the commentary to article 56 was adopted.*

*Commentary to article 56 a (Inviolability of the official correspondence, archives and documents of the consulate)*

71. Mr. SCELLE proposed the deletion of the word "only" in the first sentence.

72. Sir Gerald FITZMAURICE proposed that in the second sentence the word "most" should be replaced by "many", and that the word "gainful" be inserted before the words "private activity". The intention was to facilitate the examination of documents for the purposes of tax inspection and therefore the condition referred to did not apply to private activities which were not of a gainful character.

73. Mr. ŽOUREK, Special Rapporteur, accepted the amendments proposed by Mr. Scelle and Sir Gerald Fitzmaurice.

*With those amendments, the commentary to article 56 a was adopted.*

*Commentary to article 56 b (Special protection)*

*The commentary to article 56 b was adopted.*

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

*The commentary to article 56 c was adopted.*

*Commentary to article 56 d (Exemption from taxation)*

74. Mr. AGO proposed the insertion of the word "Nevertheless" at the beginning of the last sentence of the commentary.

75. Mr. ŽOUREK, Special Rapporteur, accepted that amendment.

*With that amendment, the commentary to article 56 d was adopted.*

*Commentary to article 56 e (Exemption from personal services and contributions)*

*The commentary to article 56 e was adopted.*

*Commentary to article 56 f (Liability to give evidence)*

76. Mr. TUNKIN proposed that the words "He may decline to attend as a witness" in the second sentence be replaced by: "He may decline to give evidence".

77. Mr. MATINE-DAFTARY said that the commentary should specify, like the commentary to article 40, that the consul should not decline to give evidence or to produce documents concerning evidence which came to his notice in his capacity as registrar of birth, marriages and deaths.

78. Mr. ŽOUREK, Special Rapporteur, accepted the amendments proposed by Mr. Tunkin and Mr. Matine-Daftary.

*With those amendments, the commentary to article 56 f was adopted.*

*Commentary to article 56 g (Respect for the laws and regulations of the receiving State)*

*The commentary to article 56 g was adopted.*

*Commentary to article 57 (Precedence)*

*The commentary to article 57 was adopted.*

*Commentary to article 57 bis (Optional character of the institution of honorary consuls)*

79. Mr. AGO proposed that the commentary should be amended to read:

"This article, taking into consideration the practice of States which do not appoint, or do not accept to receive, honorary consuls. . . ."

80. Sir Gerald FITZMAURICE supported the

amendment, with the addition of the word "those" before the word "States".

81. Mr. ŽOUREK, Special Rapporteur, accepted those amendments.

*With those amendments the commentary to article 57 bis was adopted.*

*Commentary to article 59 (Relationship between these articles and bilateral conventions)*

82. Mr. YOKOTA did not think that paragraph 3 reflected the opinions expressed in the Commission. Some members had held that the draft articles laid down fundamental principles of international law in the matter (576th meeting, para. 7); that should be made clear in the commentary.

83. Mr. YASSEEN suggested that paragraph 3 should be amended to read:

"During the discussion of this matter in the Commission, some members held that article 59 should state that the convention set forth fundamental principles of consular law, which should prevail over pre-existing bilateral agreements and from which subsequent bilateral agreements should not derogate."

84. Mr. ŽOUREK, Special Rapporteur, agreed to Mr. Yasseen's amendment to paragraph 3.

85. Mr. AGO thought it would be more logical to follow the order of the alternative texts for the article in the commentary. Accordingly, the order of paragraphs 1 and 2 should be reversed.

86. Mr. LIANG, Secretary to the Commission, thought that the allusion to amendments accepted by the Drafting Committee should be deleted from paragraph 1, since that was the only reference to the Drafting Committee in the whole commentary. With regard to paragraph 2, he did not think that the adjective "opposite" was quite accurate and suggested that it should be omitted.

87. Mr. ŽOUREK, Special Rapporteur, agreed with Mr. Ago's suggestion to reverse the order of the first two paragraphs: that would involve some consequential drafting changes.

88. He could not, however, agree with the Secretary that the ideas contained in the alternative were not opposite. Under one alternative, all earlier bilateral agreements would be maintained automatically, without any action on the part of the State, while under the other the assumption was that earlier conventions were automatically abrogated unless the parties decided to maintain them in force. Those two views were absolutely contrary to each other, both in theory and in practice. He had proposed his original text in the belief that, while it would be very desirable for States to review their whole system of consular conventions, they were hardly likely to shoulder such a heavy burden.

89. Mr. AGO observed that the Secretary's objection would in any case be covered by the

consequential changes entailed by the reversal of the order of the two paragraphs.

*The commentary to article 59, as amended, was adopted.*

90. Mr. AGO hoped that the Special Rapporteur would review the whole text of the commentaries carefully, since there were some passages in the commentaries to articles 35 and 36 which might need re-drafting. Moreover, the draft should be scrutinized with a view to ensuring that the non-applicability of certain articles to consular officials who were nationals of the receiving State was observed.

*Appendix to be inserted in the commentary to article 4 (Consular functions)*

91. Mr. ŽOUREK, Special Rapporteur, said he had drafted the appendix in pursuance of the Commission's decision (564th meeting, paras. 44 and 45) to make no recommendation at that stage on his proposed additional article. He had placed the provision in the commentary to article 4 because it related to forms of the exercise of consular functions.

92. Mr. AGO thought that the Commission's views on the powers to be granted to a consul under the additional article should be explained clearly in the commentary. Otherwise, governments might be struck by the fact that consuls were entrusted with powers very similar to those of attorneys.

93. Mr. ŽOUREK, Special Rapporteur, said that he would make it clear that the powers in question were provisional, to be exercised in the absence of the national of the sending State.

*The appendix to the commentary to article 4 was adopted, on the understanding that the Special Rapporteur would amend it in the manner indicated.*

94. The CHAIRMAN observed that the Commission had as yet taken no decision on paragraphs 1 to 21 of chapter II of its draft report (A/CN.4/L.92/Add.2).

*Paragraphs 1 to 21 of chapter II of the draft report were adopted.*

95. The CHAIRMAN, recalling that the Commission had adopted the actual text of the draft articles on consular intercourse and immunities at earlier meetings, asked the Commission to vote on chapter II of its draft report as a whole.

*Chapter II of the Commission's draft report, as a whole, as amended, was adopted, subject to drafting changes.*

96. The CHAIRMAN invited the Commission to vote on the report as a whole, as amended in debate.

97. Sir Gerald FITZMAURICE asked that a reservation, worded in the following terms, should be incorporated as a footnote to the report:

"Sir Gerald Fitzmaurice said that in voting in favour of the report, he must reserve his position in regard to paragraph 7 of the commentary to

article 29, since in his view the provisions of the various telecommunications conventions have no relation to the use of what is known as the diplomatic wireless."

98. The CHAIRMAN said that the reservation would be recorded.

99. Mr. ŽOUREK, Special Rapporteur, said that his vote in favour of the report should not be interpreted as a change of opinion with regard to certain matters relating to honorary consuls.

100. Mr. BARTOŠ said that his vote in favour of the report should not be held to mean that the views he had expressed in connexion with the Commission's treatment of *ad hoc* diplomacy had in any way changed.

101. Mr. TUNKIN said that, although he would vote in favour of the report, that did not mean that he abandoned his views concerning various parts of the draft that had been adopted.

*The Commission's report covering the work of its twelfth session, as a whole, as amended, was adopted unanimously, subject to drafting changes.*

#### Closure of the session

102. The CHAIRMAN thanked the Commission for the honour it had done him in electing him. The obligation to follow arguments most attentively had given him a greater opportunity than ever before to appreciate and learn from the opinions of his distinguished colleagues. The Commission had done extremely useful work in completing its drafts on consular intercourse and immunities and on *ad hoc* diplomacy. It was always encouraging at sessions of the Commission to see what fruitful and harmonious deliberations could be held, despite differences of opinion, background and nationality. It was to be hoped that the influence of that harmonious atmosphere would in time pervade other endeavours at the international level.

103. Sir Gerald FITZMAURICE observed that the Commission's successful conclusion of one of its most arduous sessions, in which it had completed over forty articles of the draft on consular intercourse and immunities, was due largely to the qualities of authority and firmness, combined with tact and courtesy, that the Chairman had shown in his leadership. The session might be described as an historic one, since the topic of consular law had been codified and developed for the first time in a broadly international body. The Commission, the United Nations and the whole world would owe the Chairman and the Special Rapporteur a great debt of gratitude.

104. Mr. GARCÍA AMADOR, Mr. MATINE-DAFTARY, Mr. SCELLE, Mr. YOKOTA, Mr. TUNKIN, Mr. PAL, Mr. YASSEEN, Mr. EDMONDS, Mr. AGO, Mr. BARTOŠ and

Mr. SANDSTRÖM associated themselves with Sir Gerald Fitzmaurice's remarks.

105. Mr. ŽOUREK said he likewise wished to thank the Chairman for the impartiality and patience with which he had guided the Commission's proceedings. He was grateful to all speakers who had expressed themselves in such kind terms concerning his contribution to the codification of the international law relating to consular intercourse and immunities. He wished to explain that, as the consideration of the articles proposed by the Drafting Committee had finished only three days before the close of the session, his time had been almost fully taken up with work in the Commission and in the Drafting Committee; as a consequence, he had been able to prepare only provisional commentaries, which he hoped to supplement at the next session. Lastly, he wished to thank the officers of the Commission and the secretariat for their assistance.

106. The CHAIRMAN thanked the members of the Commission for their kind words and expressed his gratitude to the officers of the Commission, the special rapporteurs and the secretariat.

107. Mr. BARTOŠ proposed that the Commission should send a telegram to Mr. Faris el-Khoury, one of the original members of the Commission, who had unfortunately been prevented by illness from attending the twelfth session. Mr. el-Khoury should be told that the Commission had greatly missed his wise counsel during the session and hoped that his health would soon improve.

*It was so decided.*

108. The CHAIRMAN declared the twelfth session of the International Law Commission closed.

The meeting rose at 12.25 p.m.

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