

Document:-
A/CN.4/SR.582

Summary record of the 582nd meeting

Topic:
Consular intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
1961 , vol. I

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

582nd MEETING

Wednesday, 3 May 1961, at 10 a.m.

Chairman: Mr. Grigory I. TUNKIN

Consular intercourse and immunities

(A/4425; A/CN.4/136 and Add.1-9, A/CN.4/137)

[Agenda item 2]

DRAFT ARTICLES (A/4425)
INTRODUCTORY DISCUSSION

1. The CHAIRMAN invited the Commission to consider the topic of consular intercourse and immunities in the light of the comments from governments (A/CN.4/136 and Add.1-9) and the Special Rapporteur's third report (A/CN.4/137).
2. Mr. ŽOUREK, Special Rapporteur, introducing his third report, recalled that, in conformity with articles 16 and 21 of its statute, the Commission had transmitted its draft articles on consular intercourse and immunities (A/4425) to governments for their comments. At the fifteenth session of the General Assembly, although the draft articles had been submitted for information only, an exchange of views on the draft as a whole had taken place in the Sixth Committee (657th, 660th and 662nd meetings). In general, the draft had been favourably received as conforming to the practice and meeting the requirements of States, and several delegations had paid a tribute to the Commission's work. Since the articles had been submitted to governments for their comments, the delegations had not as a rule commented on the text. Some delegations, however, had voiced an opinion on certain articles of the draft, and he had therefore summarized in his third report the views expressed.
3. A very large majority of delegations in the Sixth Committee of the General Assembly had approved the Commission's decision to prepare a draft which would provide a basis for the conclusion of a multilateral convention on the subject.
4. Comments had been received from a number of governments and probably more would arrive in the course of the session. In addition, the Government of Niger had stated that it had no comments to make and the Government of Chad had indicated that it was not in a position to submit comments.
5. On the whole, the draft articles were regarded by the governments as an acceptable basis for the conclusion of a multilateral convention. The Government of Guatemala had actually indicated its readiness to accept the draft as it stood, but the other governments had made a number of comments on the various articles of the draft. In his report (Introduction, para. 5), he had subdivided the comments into four groups: (1) proposals for the deletion of certain articles, (2) proposed amendments or additions, (3) proposals for new articles, (4) comments giving particulars requested by the Commission.
6. In the light of the comments of governments, he had made new proposals which he hoped would facilitate the Commission's task. He had refrained from taking up a position in regard to government proposals for the deletion of certain articles — merely reproducing the arguments set forth by governments — though he would, of course, discuss those proposals in connexion with the various articles.
7. One general conclusion could be drawn from the comments: the Commission could consider the draft as forming the basis of a multilateral convention, confirming its decision taken at its twelfth session (*ibid.*, para. 24).
8. With regard to procedure, he suggested that consideration of article 1 be postponed until the other articles had been drafted in final form. In the first place, some comments had arrived only recently and others would certainly be received during the discussions; secondly, the Commission was familiar with the terminology as defined in article 1 and would find it convenient in practice to use that terminology for the time being; thirdly, not until the end of the consideration of the other articles would it be possible to settle the most suitable definitions.
9. A question of procedure also arose in regard to the proposals for the deletion of certain articles. It might perhaps be more logical for the Commission to deal with all proposals for deletion before considering the draft article by article, since the deletion of a particular article might well affect not only the articles which followed it, but also some articles which preceded it. If, however, the Commission preferred to take the draft article by article, that procedure would be quite acceptable to him.
10. Lastly, it was only after the preparation of his third report that he had been able to examine the text of the Vienna Convention on Diplomatic Relations (A/CONF.20/13). He considered that so far as appropriate the Commission should take the terms of that Convention into account. Of course, in view of the differences between the status of diplomatic and of consular officers, the text of the Vienna Convention would not always influence the wording of the corresponding articles concerning consuls, but, in particular with regard to customs and fiscal exemption, much of the work done at Vienna would be of great value to the Commission in that it showed how far governments were prepared to go.
11. The CHAIRMAN said that if there were no objection, he would take it that the Commission agreed to postpone consideration of article 1 until the other articles of the draft had been disposed of.
It was so agreed.
12. The CHAIRMAN invited comments on whether the proposals for the deletion of certain articles should be considered by the Commission before it studied the draft article by article.
13. Mr. SANDSTRÖM expressed a preference for an immediate discussion of the draft article by article.

14. Mr. EDMONDS said that there was much to be said for the method of taking up the question of deletions first. Once the Commission had decided which articles it wished to delete, it could set to work on the main body of the remaining articles and on the suggestions and proposals concerning them.

15. Mr. VERDROSS said that it was more logical to discuss the articles in sequence.

16. Mr. AGO feared that the immediate consideration of proposed deletions might lead to hasty decisions without a thorough inquiry into all the questions involved.

17. Mr. BARTOŠ said that the whole structure of the draft might be affected by a decision *ab initio* to delete specific articles. The most constructive method would be to consider each specific proposal for the deletion of a particular article at the time when that article came under discussion. In fact, even if in the course of its discussion of the draft article by article the Commission were to decide to delete a particular article, it would still have to consider whether some of the ideas contained in that article should not be included elsewhere in the draft.

18. The CHAIRMAN said that the Commission appeared to be in general agreement not to consider the question of deletions first. If there were no objection, he would therefore take it that the Commission agreed to consider the draft article by article, commencing with article 2.

It was so agreed.

ARTICLE 2 (Establishment of consular relations)

19. Mr. ŽOUREK, Special Rapporteur, said that there were two categories of comment on article 2. First, those concerning the existing text of the article. Secondly, those relating to the proposed paragraph 2, on which at the twelfth session the Commission had reserved its decision (576th meeting, para. 44).¹ He proposed to deal separately with the question of paragraph 2 and to deal at that stage only with the observations regarding paragraph 1.

20. The Government of Norway (A/CN.4/136) proposed the deletion of article 2, mainly because it objected to the use of the expression "consular relations", which in its opinion had no precise meaning in international law; it stated that legal consequences followed from the unilateral or mutual consent to establish one or more specific consulates. The Norwegian Government further proposed that the expression "consular relations" be deleted in all other articles where it was used.

21. As a matter of fact, both in State practice and in the writings of learned authors, the expression "consular relations" was well established; it described the relationship which arose between States as a result of the exercise of consular functions within the territory

of the receiving State by bodies of the sending State. He referred to the passage in his report (A/CN.4/137, section II, paras. 1 and 2) dealing with that particular point. Article 2 should be retained as it stood.

22. Mr. SANDSTRÖM said that the arguments of the Norwegian Government left him unconvinced. However, too much stress might have been laid on the need for mutual consent; perhaps it had not been sufficiently appreciated that such mutual consent could be quite informal and result merely from the fact that a consulate had been established.

23. Mr. YASSEEN said that article 2 should stand. The expression "consular relations" aptly described the relations between States in the matter. He could not accept the suggestion that such relations could be established by unilateral action; the consent, albeit tacit, of the States was essential for their establishment, as was the consent of the receiving State for the establishment by the sending State of a consulate.

24. Mr. PAL said that in addition to the Norwegian proposal that article 2 should be deleted, which he could not support, there had been some comments on the proposed paragraph 2. Czechoslovakia (A/CN.4/136) and the Union of Soviet Socialist Republics (A/CN.4/136/Add.2) had favoured the inclusion of such a provision; the Netherlands, on the other hand (A/CN.4/136/Add.4) had not. A case had not been made for the proposed additional paragraph and it should be dropped.

25. Mr. AMADO observed that in the French text the word "mutuel" in the expression "accord mutuel" was redundant. However, there could be no doubt that the consent of the States concerned was an essential element in the establishing of consular relations, which fact was admitted by the Norwegian Government, so that its suggestion was largely concerned with drafting. The expression "consular relations" had become well established by usage.

26. Mr. BARTOŠ pointed out that the Norwegian comment, which seemed to imply that consular relations could be established by unilateral action through the establishment of a consulate by a decision of the sending State or by consent of the States concerned, i.e. either on a contractual basis or on a unilateral, non-contractual basis, was at variance with the recognized principles of existing international law, which required the contractual basis, regardless of the form of consent. The Commission had been perfectly correct in stating that the mutual consent — or simply consent — of the States concerned was necessary for the establishment of consular relations.

27. Mr. LIANG, Secretary to the Commission, said that in the course of a discussion which had been both useful and necessary, there had been perhaps some misconception regarding the language of the Norwegian comment. The Norwegian Government had never suggested that a consulate could be established by unilateral action on the part of the sending State.

28. He recalled that at the Vienna Conference on Diplomatic Intercourse and Immunities proposals had been made to delete the word "mutual", as being

¹ For summary records of the twelfth session (526-579th meetings), see *Yearbook of the International Law Commission, 1960*, vol. I (United Nations publication, Sales No.: 60.V.1, vol. I).

redundant, in the expression "mutual consent" used in article 2 of the Vienna Convention on Diplomatic Relations. The expression, however, had been retained as it stood. Legal technicalities, even in empty form, tended to survive. In regard to that expression, at least in English and American treatises on the law of contract, the expression "mutuality of consent" was often used.

29. A government might well consent to the establishment of consulates by another country without requiring that country to consent to the opening of consulates on its territory by the consenting government. In theory and in practice, the engagement to establish consular relations in a treaty and the establishment of consulates in fact were not coeval. There was some analogy in private law which, for example, recognized two separate types of contract: the contract to sell and the contract of sale. The text of article 2 was quite satisfactory, particularly in its use of the expression "consular relations". Further legal consequences could, and would in fact, follow from the engagement to establish consular relations, and not only from the actual establishment of a consulate.

30. Mr. YASSEEN said that, whereas the expression "mutual consent" was satisfactory in English, in French the word "*mutuel*" was redundant in the expression "*accord mutuel*".

31. Mr. AGO suggested that the Drafting Committee should be asked to examine carefully the English and French texts of article 2, with a view to bringing them into line with the corresponding texts of the Vienna Convention on Diplomatic Relations. In the French text of article 2 of that Convention, the expression used was "*consentement mutuel*" and not "*accord mutuel*".

32. The CHAIRMAN said that the Commission appeared to be unanimous in its desire to retain article 2. If there were no objection, he would therefore consider paragraph 1 of the article as adopted.

It was so agreed.

33. The CHAIRMAN invited the Commission to consider the proposed paragraph 2.

34. Mr. ŽOUREK, Special Rapporteur, said that at the eleventh session, owing to lack of time the Commission had been unable to take a decision on article 2, paragraph 2 (498th meeting, para. 13). At its twelfth session, and for the same reason, it had reserved its decision (576th meeting, para. 44).

35. In the course of the discussions in the Sixth Committee of the General Assembly and in written comments, some governments had supported and some had opposed the proposed paragraph. Indonesia, the Ukrainian SSR,² the Union of Soviet Socialist Republics (A/CN.4/136/Add.2), Czechoslovakia (A/CN.4/136) and Belgium (A/CN.4/136/Add.6) had expressed themselves in favour of the inclusion of paragraph 2. The United States (A/CN.4/136/Add.3) had objected to that inclusion, without giving specific grounds; the

Netherlands (A/CN.4/136/Add.4) had opposed paragraph 2 on the grounds that it did not consider that the establishment of diplomatic relations automatically included that of consular relations.

36. In that connexion, he drew attention to article 3, paragraph 2, of the Vienna Convention on Diplomatic Relations: "2. Nothing in the present convention shall be construed as preventing the performance of consular functions by a diplomatic mission."

37. Since the Vienna Conference had thus recognized the possibility of consular functions being performed by a diplomatic mission, it would be appropriate to provide in the draft under discussion that the establishment of diplomatic relations included the automatic establishment of consular relations. In that regard, a clear distinction should be drawn between the functions of consuls on the one hand and the ways and means by which those functions were exercised on the other.

38. The rule set forth in the proposed paragraph 2 did not imply in any way that the sending State had the right to establish consulates without the consent of the receiving State. Such an interpretation of the paragraph would be completely at variance with the provisions of article 3, paragraph 1, which explicitly stated: "No consulate may be established on the territory of the receiving State without that State's consent." Nor did the proposed paragraph 2 mean that a diplomatic mission would *ipso facto* have the right to deal directly with the local authorities. Obviously, if a diplomatic mission exercised consular functions, it had to conform with the local legislation and usage. Some countries admitted the possibility of the mission in that case dealing direct with the local authorities, whereas others did not. Moreover, it was a rule of international law, recognized both in State practice and by learned writers, that the severance of diplomatic relations did not *ipso facto* involve the severance of consular relations; the Commission had confirmed that rule by approving article 26 of the draft (572nd meeting, para. 31). Unless it were agreed that the establishment of diplomatic relations included that of consular relations, it was difficult to see how the latter could survive the former. Lastly, in the course of two years of research he had not been able to trace a single case in State practice that argued against the terms of the proposed paragraph 2.

39. Mr. VERDROSS recalled that at the eleventh session he had expressed doubt concerning paragraph 2 (497th meeting, para. 17). However, since the adoption of the Vienna Convention on Diplomatic Relations and the terms of its article 3, paragraph 2, the position had materially altered.

40. In principle, the establishment of diplomatic relations meant that certain consular functions could be exercised. That fact, however, did not imply that all consular functions could be exercised without the special authorization of the receiving State. Paragraph 2 was therefore acceptable, subject perhaps to the inclusion of a proviso safeguarding any provisions of the local legislation which might require a special permission for the performance of certain consular functions.

41. Mr. AGO said that during the Vienna Conference

² 657th and 660th meetings of the Sixth Committee, cited in A/CN.4/137, *ad* article 2.

he had opposed article 3, paragraph 2 of the Convention on Diplomatic Relations because of its ambiguity. It merely specified that nothing in the Convention should be construed as preventing the performance of consular functions by a diplomatic mission. The Commission, however, was expected to decide specifically whether the receiving State's consent was required for the exercise of consular functions by a diplomatic mission.

42. In practice, it was generally recognized that ambassadors exercised certain consular functions; those functions could, however, also be considered as diplomatic functions and, in fact, all the examples cited in support of article 3, paragraph 2 of the Vienna Convention fell into that class. It was also generally agreed that there were certain consular functions, such as the registration of marriages, which could not be performed by an ambassador without the express consent of the receiving State. It would, of course, be easy for the Commission to adopt a formula such as that adopted by the Vienna Conference, which really left the question completely open. Preferably, however, the Commission should state clearly what the position actually was, *viz.* that certain consular functions could be exercised when once diplomatic relations had been established, but that not all consular functions could be so exercised.

43. He did not find the argument based on article 26 very convincing, since the rule embodied in that article — that the severance of diplomatic relations did not necessarily include that of consular relations — in fact showed that the two types of relations were independent of each other.

44. In conclusion, it would not be wise for the Commission to take a decision on the basis of the existing text, which did not satisfy many of the members. It would also be a mistake not to include any provision on the subject. He therefore suggested that members should have more time to work out an improved formula which might prove more generally acceptable.

45. Mr. AMADO said that nothing would convince him that the establishment of diplomatic relations necessarily included that of consular relations. In fact, the contrary was true in many cases. The establishment of consular relations very often preceded, and prepared the ground for, that of diplomatic relations. Admittedly, according to the modern trend the establishment of diplomatic relations often carried with it that of consular relations, and frequently consular sections were established in embassies. He therefore agreed that an improved formula should be sought to reflect accurately the existing position. Lastly, in paragraph 1 the expression "mutual consent" (*consentement mutuel*) was indispensable.

46. Mr. BARTOŠ, recalling that at the twelfth session he had opposed the inclusion of paragraph 2 (576th meeting, paras 33-37) said that article 3, paragraph 2 of the Vienna Convention had not materially altered the situation. In fact, the formula devised by the Drafting Committee at the Vienna Conference was a neutral one designed to secure majority support in the face of the opposition aroused by the Spanish delegation's proposal

that consular functions should be mentioned among the normal functions of a diplomatic mission.

47. However, the Special Rapporteur's text might eventually prove acceptable if a provision were inserted concerning the legal status of consular sections of diplomatic missions, since the general trend was to form consular sections inside the embassies. The rules governing such sections differed from one receiving State to another; some required the head of section to obtain the *exequatur*, whereas others only required that the name of the head of section be notified to the Ministry of Foreign Affairs.

48. He agreed that more time was needed for reflection and that the Commission should proceed with caution in deciding whether or not to follow the modern trend in its task of promoting the progressive development of law.

49. Mr. FRANÇOIS said that he had little to add to the arguments expounded by Mr. Ago and Mr. Amado. If the Special Rapporteur's thesis was correct, the proper place for the provision contained in his proposed paragraph 2 would have been the Vienna Convention: but that solution had been explicitly rejected at the Vienna Conference. The unhappy wording of article 3, paragraph 2 of the Vienna Convention could certainly not be construed to support the Special Rapporteur's thesis, since it did no more than indicate that States were not debarred from concluding an agreement allowing their respective diplomatic missions to perform consular functions. It had never been suggested that diplomatic functions automatically comprised consular ones. He was quite unable to follow Mr. Verdross's reasoning that certain consular functions were implicit in diplomatic functions, and he could not support the deduction from that premise that the establishment of diplomatic relations included the establishment of consular relations. Admittedly, because they lay within the diplomatic field certain consular functions could be performed by diplomatic missions without the express consent of the receiving States; but others were exercisable exclusively by consuls or consular officials.

50. Similarly, he failed to see the force of the Special Rapporteur's argument concerning the severance of diplomatic relations which he had put forward in support of the principle enunciated in his proposed paragraph 2. He did not consider that, because the severance of diplomatic relations did not necessarily result in the severance of consular relations, it was proved that consular functions necessarily formed part of diplomatic functions.

51. Mr. MATINE-DAFTARY said that at the Vienna Conference he had had considerable doubts about the wisdom of the text finally adopted in article 3, paragraph 2 of the Vienna Convention, but had eventually voted in its favour because it did not state that the establishment of diplomatic relations included the establishment of consular relations, but simply indicated that consular functions could be performed by a diplomatic mission, *i.e.* duality of function was permissible, a statement which was consistent with the practice of many

countries of including a consular section in a diplomatic mission primarily with the object of reducing expense.

52. At the Commission's eleventh session (497th meeting, para. 20), he had doubted the usefulness of paragraph 2 as proposed by the Special Rapporteur and nothing had occurred since then to remove his doubt. What purpose would be served by such a provision? In particular, what was meant by the word "includes"? If it meant that the establishment of diplomatic relations *ipso facto* implied the establishment of consular relations, the clause might be construed as suggesting that consulates could be established anywhere in the receiving State, which was patently incorrect, for that State's special consent was required in each case, as was provided in the following article of the draft.

53. Like Mr. François, he interpreted draft article 26 to mean the opposite of what the Special Rapporteur thought it meant. Diplomatic and consular relations were quite distinct from each other. If it was assumed that the Special Rapporteur's proposed article 2, paragraph 2 stated a correct principle, then it would follow that the severance of diplomatic relations necessarily caused consular relations to be severed. The Commission should give the matter careful thought before reaching a decision.

54. The CHAIRMAN, speaking as a member of the Commission, explained that the text of article 3, paragraph 2 of the Vienna Convention was the outcome of a compromise. The exercise of consular functions by a diplomatic mission had been regarded as a matter regulated by customary law and no one had denied that it was a general practice. There were many instances of States not establishing consulates at all. For example, there were no consulates in Moscow and many countries had not established them elsewhere within the Soviet Union. Consular sections, however, had been set up in the diplomatic missions. To endorse the theory that the exercise of consular functions by diplomatic missions needed the express consent of the receiving State would be to create an unnecessary obstacle to the discharge of such functions. Whereas he knew of no case where objections had been raised to consular functions being carried out by diplomatic missions, he appreciated that the manner in which those functions were performed varied from one country to another.

55. In fact, the establishment of consular relations became an issue in those cases only where no diplomatic relations existed between the two States concerned; in those cases specific agreements were, of course, required, but even they did not automatically entitle the sending State to establish consulates within the territory of the receiving State. Indeed, many bilateral agreements which provided for the establishment of consular relations expressly stipulated that the establishment of consulates required the receiving State's consent.

56. It would appear, then, that in modern practice the establishment of diplomatic relations, which were more far-reaching, included the establishment of consular relations. In the interests of the progressive development of international law, the Commission should

accordingly adopt paragraph 2 as proposed by the Special Rapporteur. Nevertheless, as there was still some divergence of view, he was prepared to support Mr. Ago's suggestion (para. 44 above) that the decision on the additional paragraph should be postponed so that members could have time for further reflection and informal discussion.

57. Mr. ŽOUREK, Special Rapporteur, said that not a single instance of practice deviating from the rule laid down in his proposed paragraph 2 had been cited during the discussion. In the course of his extensive researches he had not come across any cases where the special consent of the receiving State was required for the purpose of enabling a diplomatic mission to exercise consular functions. In some States, it was true, the head of a consular section or an official of a diplomatic mission responsible for performing consular functions could not approach the local authorities unless he held an *exequatur* (A/CN.4/137, *ad* article 2, para. 6).

58. As examples of the modern practice he cited first the position in Paris, where consular functions were performed by eighty-one diplomatic missions and consulates. Of that number, thirty-two were diplomatic missions performing consular functions as a regular part of their duties, twenty-two were consulates directed by consulates directed by a consul. In Brazil, diplomatic official on the diplomatic list, and twenty-seven were consulates directed by a consul. In Brazil, diplomatic missions normally performed consular functions and were allowed to deal direct with the local authorities, though not with the courts (which had to be approached through the Ministry of Foreign Affairs). In Italy, the special consent of the receiving State was required only if a foreign diplomatic agent exercising consular functions wished to approach the local authorities. At Prague, all the diplomatic missions exercised consular functions without having to obtain the special consent of the Government of Czechoslovakia, and only one State had established a consulate only and was not represented by a diplomatic mission. It was true that some receiving States required the Ministry of Foreign Affairs to be notified if a consular section of a diplomatic mission exercised consular functions, but that was a matter of procedure which did not affect the principle on which paragraph 2 was based. Those examples were indicative of the prevailing trend, which should be given due weight if the Commission intended in its draft to promote the progressive development of international law. The fact that in some instances diplomatic missions did not carry out all consular functions was not an argument for rejecting paragraph 2. Besides, in the absence of diplomatic relations between two States, consulates sometimes did not perform all consular functions, but even in those cases consular relations indubitably existed. The Commission should not confuse the establishment of consular relations with the scope of consular functions.

59. He would be interested to know what cases Mr. François had had in mind in saying that certain specific consular functions were exercisable in law exclusively by consuls and never by a diplomatic mission; for his part he knew of none.

60. In answer to Mr. Matine-Daftary's question as to the purpose of paragraph 2, he said that its inclusion was important for theoretical and practical reasons because without the clause the draft would be too narrow in that it would then apply solely to the activity of consulates proper, not to that of consular sections of diplomatic missions.

61. His contention that the provisions in article 26 concerning the severance of diplomatic relations argued in favour of including paragraph 2 had not been rebutted. For instance, if State A had established in State B a diplomatic mission performing consular functions, and if State B had established in State A both a diplomatic mission and a consulate, then, in the event of the severance of diplomatic relations between the two, could it really be maintained that State B would continue to perform consular activities, whereas State A, whose mission would have been closed, would be compelled to discontinue them? The problems raised by such a case merited consideration. In the case in question, a solution observing the equality of States would seem to be called for.

62. With regard to Mr. Verdross's suggestion (para. 40 above), such a proviso already existed in article 4 and it would suffice to make reference to it in the commentary to article 2.

63. Mr. PAL considered that the proper place for a provision in the categorical form currently proposed by the Special Rapporteur as paragraph 2 of article 2 would have been the Vienna Convention. Any implication in that respect ascribed to article 3, paragraph 2 of the Convention was not tenable under any canon of construction applicable to that paragraph. If a provision on the lines of that contained in article 3, paragraph 2 of that Convention were acceptable, an analogous provision might perhaps be inserted in article 4 of the draft. He too considered that the Commission should not take a hasty decision.

64. Mr. ERIM said that he still remained to be convinced of the need for the paragraph 2 proposed by the Special Rapporteur and asked for a further explanation of its precise purport. He noted that article 3, paragraph 2 of the Vienna Convention referred to the exercise of consular functions, whereas the Special Rapporteur's paragraph 2 spoke of the establishment of consular relations.

65. In cases where neither diplomatic nor consular relations existed between two States, the establishment of the former surely did not necessarily entail establishment of the latter. If the meaning of paragraph 2 was that diplomatic missions could sometimes perform consular functions, he would have thought such a statement superfluous since that had never been in doubt. But from the legal point of view there was a great difference between the exercise of consular functions where consular relations already existed and the establishment of such relations, for which a specific and separate agreement between the two States was necessary.

The meeting rose at 1 p.m.

583rd MEETING

Thursday, 4 May 1961, at 10 a.m.

Chairman: Mr. Grigory I. TUNKIN

Consular intercourse and immunities (A/4425; A/CN.4/136 and Add.1 to 9, A/CN.4/137)

[Agenda item 2]
(continued)

DRAFT ARTICLES (A/4425) (continued)

ARTICLE 2 (Establishment of consular relations) (continued)

1. The CHAIRMAN invited the Commission to continue its consideration of article 2 as proposed by the Special Rapporteur (A/CN.4/137).

2. Mr. VERDROSS, referring to the remarks of Mr. François (582nd meeting, para. 49) said that in his capacity as President of the Vienna Conference he had had to preside only at plenary meetings and had therefore not been present when article 3, paragraph 2 of the Vienna Convention on Diplomatic Relations (A/CONF.20/13) had been discussed in the Committee of the Whole and in the Drafting Committee of the Conference; he had nothing to add to what the Chairman had said (582nd meeting, para. 54) about the final compromise that had been reached. He understood the provision to mean that the Convention did not debar a diplomatic mission from exercising consular functions and that an express agreement between the two States for the purpose was not required. Conversely, however, it followed that, since the exercise of certain consular functions by diplomatic missions might conflict with the usage or legislation of the receiving State, the provision in article 3, paragraph 2 did not exclude such restrictions.

3. Mr. ŽOUREK, Special Rapporteur, replied in the affirmative to Mr. Erim's question (*ibid.*, paras. 64 and 65) whether the discharge of consular functions by a diplomatic mission *ipso facto* implied the establishment of consular relations. The right of a diplomatic mission to exercise such functions was indisputable and if consular functions could be performed, then by definition consular relations must exist, just as *mutatis mutandis* diplomatic relations existed if diplomatic functions could be performed. The principle was a fundamental one, because if neither diplomatic nor consular relations existed, there was no legal basis for the exercise of either diplomatic or consular functions.

4. He could not agree with Mr. Ago (*ibid.*, para. 42) that certain acts performed by diplomatic agents could be described as consular functions. That the two types of function were intrinsically distinct was proved by the difference between diplomatic and consular protection. For example, if rights under an international labour convention concerning the workers of the sending State