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Summary record of the 590th meeting

Topic:
Consular intercourse and immunities

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account in its debate and in taking a decision on article 11 should be guided by the provisions of article 8 of the Vienna Convention.

83. Mr. AGO said that he saw no objection, with regard to career consuls, to the adoption of an article following closely the terms of article 8 of the Vienna Convention. It would, however, be necessary to specify that the provisions of the article did not apply to honorary consuls.

84. He could not agree with the suggestion that restrictions should be placed on the appointment of nationals of the receiving State as employees of the consulate. In that connexion, the provisions of article 8 of the Vienna Convention did not apply to members of the administrative and technical staff or to members of the service staff of diplomatic missions.

85. Mr. YASSEEN emphasized the difference between diplomatic agents and consular officials. It could be safely asserted that a diplomatic agent should in principle be of the nationality of the sending State. It was not quite so obvious that a consular official should necessarily be of the nationality of the sending State. Also, it was easy to understand the strong objections to the idea of a citizen of one State being accredited to it as a diplomatic agent of another State. It would, on the other hand, be admissible for a national of one State to serve within the territory of that State as consular official of another State.

86. For those reasons, he supported article 11 as it stood and saw no reason for extending its provisions to the nationals of a third State.

87. Mr. SANDSTRÖM agreed with the views expressed by the previous speaker.

The meeting rose at 6 p.m.

590th MEETING

Tuesday, 16 May 1961, at 10 a.m.

Chairman: Mr. Grigory I. TUNKIN

Consular intercourse and immunities
(A/4425; A/CN.4/136 and Add.1-10; A/CN.4/137)

[Agenda item 2]
(continued)

DRAFT ARTICLES (A/4425) *(continued)*

ARTICLE 11 (Appointment of nationals of the receiving State) *(continued)*

1. The CHAIRMAN invited the Commission to continue its discussion of article 11 of the draft on consular intercourse and immunities (A/4425). The only specific proposal submitted (589th meeting, para. 83) concerning the article was Mr. Ago's proposal that article 11 should be revised along the lines of article 8 of the Vienna Convention on Diplomatic Relations (A/CONF.20/13).

2. Mr. SANDSTRÖM recalled Mr. Yasseen's and his own proposal (589th meeting, paras. 86 and 87) that article 11 be retained as it stood.

3. Sir Humphrey WALDOCK asked what harm would be done if the article were redrafted along the lines of article 8 of the Vienna Convention.

4. Mr. SANDSTRÖM replied that an important reason for establishing a difference of treatment between diplomatic and consular officials was that a diplomatic officer, unlike a consul, represented the sending State in political matters.

5. Mr. VERDROSS recalled the remark of Mr. François (*ibid.*, para. 79) that there could be no objection to reformulating article 11 along the lines of article 8 of the Vienna Convention if the provisions of the article were not to apply to honorary consuls.

6. The CHAIRMAN said that the chapter of the draft under discussion dealt only with career consuls.

7. Mr. YASSEEN pointed out that, under article 54, paragraph 1, of the draft, the rules laid down in article 11 would apply also to honorary consuls.

8. In reply to Sir Humphrey Waldock, he said that, in view of the political functions entrusted to diplomats, conflicts of allegiance were likely to arise if nationals of the receiving State appointed diplomatic agents of a foreign State to perform their functions in their own country. The position was quite different so far as consuls were concerned, and there was no equally cogent argument for saying that consuls should always be nationals of the sending State.

9. As to the appointment of nationals of a third State as consular officials, there was no need to require the express consent of the receiving State to such appointments, for no conflict of allegiance of concern to the receiving State could arise.

10. For those reasons, article 11 should be retained as it stood. Its provisions were necessary in order to specify that the consent of the receiving State was needed for the purpose of the appointment of one of its nationals as a foreign consul.

11. Sir Humphrey WALDOCK remarked that there was no difference of substance between article 11 and article 8, paragraphs 1 and 2, of the Vienna Convention. In both cases, the express consent of the receiving State was required.

12. It had been his understanding that article 11 applied to career consuls only and on that understanding he saw no harm in adopting the formulation used in article 8 of the Vienna Convention.

13. Mr. LIANG, Secretary to the Commission, submitted that there was very little difference as to substance between article 11 of the draft under discussion and article 8 of the Vienna Convention. The latter represented merely an accentuated version of the same

provision. At the Vienna Conference there had been a strong feeling in favour of imposing restrictions on the appointment of a person who was not a national of the sending State. That sentiment had found its expression in paragraphs 1 and 3 of article 8 of the Vienna Convention.

14. The question at issue was not whether any harm would be done if article 11 were to be formulated along the lines of article 8 of the Vienna Convention. It was rather one of practicability, bearing in mind particularly financial considerations. The size of staff involved in the case of consulates was much larger than in the case of diplomatic missions, and if the sending State were to be required to appoint in principle only its own nationals, that might impose upon it a heavy financial burden. It should be emphasized that that consideration would be valid in regard not only to the appointment of honorary consuls, but also to that of career consular officials.

15. For those reasons, it might be useful to keep article 11 as it stood, particularly since its provisions safeguarded adequately the position of the receiving State by requiring its express consent.

16. Mr. PAL, concurring, observed that if article 11 were to be redrafted along the lines of article 8 of the Vienna Convention, particularly with the inclusion of paragraph 1 of that article, it would mean that the appointment of a person who was a national of the receiving State was rare and exceptional. In the case of consuls, however, he understood that there was nothing exceptional in such appointments.

17. Mr. AGO replied that it was very rare for a career consul to be appointed from among the nationals of the receiving State. If the application of article 11 were to be limited to career consuls, it would be desirable that its provisions should be redrafted along the lines of article 8 of the Vienna Convention. If, however, the intention was to cover also honorary consuls, he would favour the retention of article 11 as it stood.

18. Mr. BARTOŠ pointed out that, in the case of a head of post, the need to obtain an exequatur rendered the provisions of article 11 virtually unnecessary. Those provisions served a purpose only in the case of the consular officials commonly known as subordinate consuls.

19. He did not favour the assimilation of career consuls to diplomats, but he recalled that at the Vienna Conference it had been decided to amend the original draft articles on diplomatic relations so as to require advance notification of the actual appointment of a diplomatic agent. The intention had been to make it possible to ascertain whether the person in question was acceptable before he was even appointed, and not merely before he was sent to the receiving State.

20. Since article 11 was intended to cover not only heads of post, who required an exequatur, but also other consular officials, article 11 should be left as it stood. By requiring the express consent of the receiving State before the actual appointment of one of its nationals, the article rendered a service in practice. In the event of the receiving State's withholding consent, the sending State would simply not make the appointment, instead of having to revoke an appointment already made.

21. Mr. ERIM said that there was an important difference of approach between article 8 of the Vienna Convention and article 11 of the draft. The former specified that, in principle, members of the diplomatic staff of the mission should be of the nationality of the sending State. If a provision of that type were included in the consular draft, it would mean that the receiving State could refuse its consent to the appointment of one of its nationals without giving any reason; it would also mean that the sending State would be required to explain why it was unable to appoint one of its own nationals. That situation would not arise with the existing wording of article 11.

22. For those reasons, he agreed with those speakers who had favoured the retention of article 11. The Commission should take an explicit decision on the question whether it desired to include a provision along the lines of article 8, paragraph 1, of the Vienna Convention.

23. Mr. PADILLA NERVO said that two questions arose in connexion with article 11: whether it applied to honorary consuls or not, and whether it applied only to heads of post or to all consular officials.

24. Under article 9, the appointment of any consul, whatever his nationality, was subject to recognition by the receiving State. In the circumstances, the only meaning which could be placed on article 11 was that it served to emphasize the exceptional character of the appointment of a national of a receiving State.

25. Unless the inclusion of a provision along the lines of article 11 meant that, in principle, a consul should have the nationality of the sending State, there would be no need for the article. All the questions which arose were already settled by the provisions of article 9 and of those articles which in regard to honorary consuls, laid down exceptions regarding certain consular privileges for the case where the honorary consul was a national of the receiving State.

26. Mr. ŽOUREK, Special Rapporteur, said that, as drafted, article 11 had been meant to cover both career and honorary consuls, but in order to facilitate reaching an agreement it was desirable to limit the discussion on article 11 to career consuls at that stage and to reserve the question of honorary consuls.

27. There was not much difference in substance between article 11 of the draft and article 8, paragraphs 1 and 2, of the Vienna Convention. Both texts required the consent of the receiving State to the appointment of one of its nationals and whereas article 8, paragraph 1, of the Vienna Convention expressly provides that members of the diplomatic staff should in principle be of the nationality of the accrediting State, article 11 of the draft implied, in regard to the appointment of consular officials, that, in principle, the person appointed should be a national of the sending State. Also, under both provisions, the receiving State would not be required to give any explanation if it refused to accept the appointment of one of its nationals.

28. The purpose of article 11 was to enable the receiving State to object to such an appointment because of the conflict which would arise between the consular official's duties towards a foreign State and his allegiance to his own country. The position of consular officials in that respect was similar to that obtaining in the case of diplomatic officers.

29. As to Mr. Padilla Nervo's comments, the provisions of article 9 concerned the recognition of a head of post as an organ of the sending State. Article 11 referred to a different question when it specified that the receiving State's express consent was necessary for the appointment of one of its nationals. The Vienna Conference had shown how strong was the feeling in favour of asserting that right of the receiving State.

30. The provisions of article 11 applied only to consular officials, i.e. to persons who belonged to the consular service and exercised a consular function. They did not apply to the employees of the consulate.

31. Lastly, the only difference of substance between the two texts was that relating to the appointment of a national of a third State, which was the subject of article 8, paragraph 3, of the Vienna Convention.

32. Mr. MATINE-DAFTARY pointed out that article 8, paragraph 1, of the Vienna Convention did not apply to the head of mission, but only to members of the diplomatic staff, who were defined in article 1 (d) of the same Convention as the members of the staff of the mission having diplomatic rank. That expression, unlike that of "diplomatic agent" (defined in article 1 (e)) did not include the head of mission. The reason for leaving the head of mission outside the scope of article 8 was that, under article 4 of the Vienna Convention, the sending State was required to make certain that the *agrément* of the receiving State had been given before appointing him, and the *agrément* could always be refused.

33. By contrast, the provisions of article 11 of the draft under discussion applied to all consular officials, including the head of post, who needed an exequatur in order to enter upon his duties.

34. Mr. ŽOUREK, Special Rapporteur, admitted that article 11 was more necessary for subordinate consular officials than for the head of post. Even in the case of the latter, however, it was desirable to specify the need for the express consent of the receiving State to the appointment of one its own nationals; that provision constituted a separate and prior safeguard, distinct from the granting of the exequatur, which applied to any head of consular post.

35. The CHAIRMAN explained that, in the case of the head of a consular post, the sending State did not need the *agrément* of the receiving State before making the appointment. It was, therefore, appropriate to specify that the express consent of the receiving State was necessary in the event of the appointment of one of its nationals.

36. The position with regard to article 11 was that there had been a cleavage of opinion regarding the advisability of redrafting the article along the lines of article 8 of the Vienna Convention. Some members favoured that course, while others preferred to retain article 11 as it stood. As a general rule, a vote was hardly the best means of settling differences of opinion within the Commission: it was generally preferable to seek a compromise formula which could receive unanimous support. In that instance, however, the difference of substance between the two formulations proposed was not very great and it would perhaps be simpler to settle the question by means of a vote.

37. Mr. VERDROSS emphasized that there was a material difference of substance between the two proposed texts. Unlike article 11 of the draft, article 8 of the Vienna Convention dealt, in its paragraph 3, with a question of the appointment of a national of a third State.

38. Mr. PADILLA NERVO also observed that the introduction into article 11 of a provision along the lines of paragraph 8 of the Vienna Convention would represent the injection of a totally new idea. If the Commission intended to deal with the appointment of nationals of a third State, it should draw a distinction between persons who were residents of the receiving State and non-residents. A resident alien was subject to certain obligations vis-à-vis the State in which he lived, and the Commission would have to consider whether, in adopting a provision on the question of the appointment of a national of a third State, it should not draw a distinction between persons who resided in the receiving State and persons who did not.

39. The CHAIRMAN said that the problem of permanent residents had been discussed in the Vienna Conference in connexion with several provisions of the Convention. As far as he could recollect, the question had been mentioned in connexion with article 8, but it had been decided to draw no distinction in that article on the basis of residence.

40. In the case of consuls, it was perhaps all the more desirable to follow that example and not to enter into too much detail.

41. Mr. AGO pointed out that the question raised by Mr. Padilla Nervo was relevant only to honorary consuls. The Commission, however, appeared to be agreed that the application of article 11 should be limited to career consuls.

42. He proposed that the Commission should take two separate votes on the introduction into article 11 of the ideas contained in paragraphs 1 and 3 respectively of article 8 of the Vienna Convention.

43. The CHAIRMAN said that the Commission would vote on the understanding that article 11 dealt only with career consuls and not with honorary consuls. Also, that it dealt not only with the head of the consular post, but also with consular officials.

44. He would put to the vote first the question of maintaining article 11 as it stood. Since the article did not differ materially from article 8, paragraph 2, of the Vienna Convention, its adoption would not preclude a

decision on whether to include or not the ideas contained in paragraphs 1 and 3 of article 8 of the Vienna Convention.

Article 11 was adopted unanimously.

45. The CHAIRMAN put to the vote the proposal that the idea contained in article 8, paragraph 1, of the Vienna Convention should be introduced into article 11.

The proposal was adopted by 11 votes to 4, with 1 abstention.

46. The CHAIRMAN put to the vote the proposal that the idea contained in article 8, paragraph 3, of the Vienna Convention should be introduced into article 11.

The proposal was adopted by 14 votes to 2.

47. The CHAIRMAN said that, if there were no objection, he would take it that the Commission agreed to entrust the Drafting Committee with the drafting of article 11 so as to include: (1) the idea contained in article 8, paragraph 1, of the Vienna Convention; (2) the text of article 11 of the consular draft; and (3) the idea contained in article 8, paragraph 3, of the Vienna Convention.

It was so agreed.

ARTICLE 12 (The consular commission)

48. Mr. ŽOUREK, Special Rapporteur, said that the substance of article 12 had not given rise to any objection; the comments of the Governments of Belgium, the Netherlands, Spain and the United States on the article were mainly of a drafting character.

49. Both the Belgian and the Spanish Governments (A/CN.4/136/Add.6 and Add.8) had pointed out that the expression " full powers " was too wide, since consular functions were clearly limited. The expression had indeed provoked lengthy debate in the Commission, but no better alternative had been found.

50. The Belgian Government had proposed that paragraph 2 should provide for the communication to the government of the receiving State not only of the consular commission, but also of the " similar instrument ".

51. The Netherlands Government (A/CN.4/136/Add.4) had expressed the view that paragraph 2 should apply to heads of post only.

52. The United States Government (A/CN.4/136/Add.3) had made a suggestion concerning the notification of the limits of consular districts; but that suggestion related to article 3, paragraph 2, of the draft rather than to article 12.

53. The Governments of Belgium, Norway, Sweden and the United States had replied in the affirmative to the question posed in paragraph (3) of the commentary whether the general practice was to require the issue of a new commission when a consul was appointed to another post within the territory of the same State. The Belgian Government had added that under Belgian law the head of post was furnished with a new commission on promotion or when the boundaries of his district were changed.

54. Mr. MATINE-DAFTARY said that the expression " full powers " was too broad in the context and should be deleted. The opening passage of paragraph 1 might be redrafted to read: " The head of a consular post shall be furnished by the State appointing him with a commission or similar instrument."

55. Mr. VERDROSS suggested for consideration by the Drafting Committee the following wording: " The head of a consular post shall be furnished by the State appointing him with a document stating his powers."

56. Mr. AGO said that he preferred the wording suggested by Mr. Matine-Daftary to that of Mr. Verdross because it was not for a consular commission to indicate what were the consul's powers. Those powers were determined by rules of international law, bilateral agreements or a multilateral convention of the kind under discussion.

57. Sir Humphrey WALDOCK endorsed Mr. Ago's view.

58. Mr. AMADO suggested that in the interests of uniformity the words " the sending State " should be substituted for the words " the State appointing " throughout the article.

59. The CHAIRMAN observed that, as there appeared to be general agreement that article 12 should be retained, it could be referred to the Drafting Committee together with the comments of governments and those made in the course of the discussion.

It was so agreed.

ARTICLE 13 (The exequatur)

60. Mr. ŽOUREK, Special Rapporteur, explaining the fundamental purpose of article 13, recalled that after lengthy discussion (508th meeting, paras. 55-63, and 509th meeting, paras. 7-27) the Commission had decided, as explained in paragraph (7) of the commentary to article 13, that only the head of post had to obtain an exequatur, and the exequatur automatically covered the members of the consular staff working under him. However, as stated at the end of that comment, there was nothing to prevent the sending State from applying for an exequatur for other officials with the rank of consul.

61. No objection of principle had been raised to the substance of article 13, but the United States Government had proposed that the words " officers of consular posts " be substituted for the words " heads of consular posts "; the amendment would mean that an exequatur would be necessary for each official who exercised consular functions. The Commission should therefore decide whether it wished to retain the basic concept of the rule as set forth in the text as it stood. In his opinion article 13 should stand and its application should be limited to heads of post. The case where, for internal reasons depending on the laws of the sending State, an exequatur had to be obtained for consular officials who were not heads of post could be dealt with by a suitable provision in article 21, though it should be made clear

that such a provision was permissive. That solution would accord with the concept of the consulate as a unit and would be consistent with the law and practice of most countries, e.g. Poland (A/CN.4/136/Add.5), under which the exequatur could be granted only to a head of post.

62. He could accept the Czechoslovak Government's proposal (A/CN.4/136) that the first sentence in paragraph (7) of the commentary should be embodied in the article itself, since that change would make the meaning clearer.

63. In answer to the Finnish Government's question whether, in cases where the sending State asked for an exequatur for officials other than the head of post, those officials could enter upon their duties before the exequatur had been given, he had stated in his third report (A/CN.4/137) that they could do so provided that the head of post had already obtained his exequatur, for the request for an exequatur for consular officials working under a head of post who had already obtained one was an optional and supplementary measure.

64. He would draw attention to the redraft of article 13 which he proposed in his third report.

65. Mr. BARTOŠ said that he agreed with the Special Rapporteur that the exequatur should be granted only to the head of the consular post. Nevertheless, some States took a different view; in unifying international law in the matter, the Commission should consider whether it should insert a supplementary provision to cover the case where the exequatur was required for other consular officials as well. From the practical point of view, if a receiving State required all consular officials who had dealings with the local authorities to obtain the exequatur, that requirement affected consular relations between States, and was not merely a matter of internal law. For example, Yugoslavia had a consul-general in New York who held the internal rank of minister plenipotentiary and had several consuls and vice-consuls working under him; each subordinate consular official who entered into contact with local authorities was obliged to produce evidence of his capacity to act. The Government of Finland had therefore asked a pertinent question, which in fact related to the date on which such officials began to exercise purely consular functions. If the exequatur were required for all consular officials, they might begin to perform their functions at the consulate, which might be regarded as purely internal, upon their arrival, but if they were to act on behalf of the head of post *vis-à-vis* the authorities of the receiving State, the date from which their acts might produce their effects in the receiving State would be that of the grant of the exequatur. The United Kingdom was a case in point; it allowed subordinate consular officials to exercise purely internal functions without an exequatur, but required an exequatur for functions involving contact with the local authorities. In that connexion, some purely practical difficulties might arise. Thus, on one occasion, when the Yugoslav consul in a British possession had died, the vice-consul in the territory had not been in possession of an exequatur. A special application had had to be made to the Foreign Office and a Yugoslav official to whom an exequatur had been granted had been sent from London to perform consular functions, because an exequatur in the United Kingdom was given by the Sovereign, who had been absent at the time.

66. The Special Rapporteur's new text took into account the Czechoslovak Government's suggestion that the first sentence of paragraph (7) of the commentary should be inserted in the body of the article, thus laying down one of the possible systems as a general rule of international law. The Special Rapporteur had said that the practice of requiring the exequatur for subordinate consular officials was optional; in fact, however, the practice was one followed by a number of sovereign States. Accordingly, while he was in favour of unifying parallel systems wherever possible in the draft, he would point out that in the Vienna Convention the form of submitting letters of credence was left to the choice of the Contracting Parties. While that question might be regarded as one of protocol, the relevant rule had certain practical consequences, since it determined the date of the beginning of the functions of a diplomatic agent. In view of the widespread tradition of requiring subordinate consular officials to obtain the exequatur and of the number of States which followed that system, article 13 of the draft under discussion should be recast so as not to imply that one system was compulsory and the other optional.

67. The CHAIRMAN, speaking as a member of the Commission, said that, just as article 12 spoke of the consular commission " or similar instrument ", so a reference to the exequatur " or similar instrument " might be inserted in paragraph 1 of the Special Rapporteur's new draft article 13. Such an addition would, moreover, be more in conformity with existing practice. With regard to the word " recognition ", he agreed with Mr. Gros's remarks on the subject in connexion with article 9 (589th meeting, para. 29). The word was not used in the Vienna Convention and had the disadvantage of being used rather loosely by some jurists. The Drafting Committee should be asked to find a different term.

68. With regard to the Special Rapporteur's proposed paragraph 2, the expression " members of the consular staff " was hardly accurate in article 13, since it was defined in article 1 (k) as meaning the consular officials (other than the head of post) and the employees of the consulate. The employees of the consulate carried out no consular functions and did not require authorization to do their work; those functions might be regarded as covered by the exequatur of the head of post.

69. Finally, he agreed with Mr. Bartos that, although, generally speaking, uniform rules were desirable, in the case under consideration some wording should be found to cover the two existing practices. The Special Rapporteur's paragraph 2 might be redrafted along the following lines:

> " The grant of the exequatur to the head of consular post covers *ipso jure* the consular officials working under his orders and responsibility, unless the legislation of the receiving State requires separate exequaturs for subordinate consular officials."

70. Mr. AGO said that the Chairman's praiseworthy attempt at a compromise solution ran counter to the basic theory, agreed upon by the Commission, that the consent of the receiving State was a condition of the appointment of the head of post himself, and not of that of other consular officials. Article 21 (Appointment of the consular staff) stated quite clearly that the sending State could freely appoint members of the consular staff and for such persons the receiving States had only the possibility of declaring them " not acceptable " under article 23. Under the Vienna Convention also the *agrément* was required as a condition of appointment in respect of the head of the diplomatic mission, and in that Convention, as in the draft under consideration, the receiving State had the option of declaring subordinate officials not acceptable. The express provision that the exequatur, which was a form of consent, could be previously required for the appointment of all officials would upset the structure of the draft. In any case, a choice was necessary. If it offered two different rules, the draft convention would no longer answer the description of a treaty.

71. The comment of the Government of Finland might have been provoked by some looseness in the wording of paragraph (7) of the commentary. The last sentence of that paragraph referred to the sending State's option of obtaining an exequatur for one or more consular officials with the rank of consul, but said nothing about the possibility that the receiving State might require such officials to obtain the exequatur. The Commission should choose which of two rules it would insert in article 13, and that choice should be consistent with the general context of the draft convention.

72. Finally, he doubted the wisdom of inserting in paragraph 2 a provision stating that the grant of the exequatur to the head of post automatically covered the consular officials working under him, for such a provision would obscure the fact that the exequatur was required for the head of post only.

73. Sir Humphrey WALDOCK said that the Chairman's points concerning the word " recognition " and the form of the exequatur were to some extent taken account of in article 1 (d), under which the term exequatur meant the final authorization granted by the receiving State to a foreign consul, whatever the form of such authorization.

74. From the substantive point of view, the Commission was faced with a serious problem, since there was a considerable body of practice requiring the exequatur for subordinate consular officials. He had found such requirements in ten consular conventions signed by the United Kingdom, and no doubt it occurred in a number of others. He was therefore in favour of stating the general rule with the qualifying " unless " clause suggested by the Chairman.

75. Furthermore, if the Commission were to adopt the Special Rapporteur's wording of paragraph 2 without any reference to the municipal law of the receiving State, it would be departing from the principle accepted by it in article 10 that the conditions for granting an authorization for the discharge of consular functions were laid down by municipal law. The Commission ought not therefore to impose on the receiving State the rule proposed by the Special Rapporteur.

76. Mr. LIANG, Secretary of the Commission, drew attention to the difference between consular and diplomatic practice. While the accreditation of the head of a diplomatic mission meant that all the subordinate staff of the mission would have the authority to act under that accreditation, a consul-general was often in charge of a large district, and consuls and vice-consuls who were not heads of post might have to perform consular functions in their own name in order that they should be valid under the law of the receiving State. Some States therefore required exequaturs for subordinate personnel in such situations.

77. Mr. YASSEEN expressed his appreciation of the Chairman's attempt to provide a compromise solution, but thought that it did not quite meet Mr. Ago's objections. He therefore suggested that paragraph 2 be redrafted along the following lines:

> " If the receiving State requires the recognition of consular officials other than the head of post, the recognition of the head of post shall extend automatically to these consular officials, unless this extension conflicts with the law of the receiving State."

78. Sir Humphrey WALDOCK said that in practice the difficulties might not be as great as they seemed, in view of the terms of article 14 (Provisional recognition), under which the head of consular post could begin to exercise his functions pending the granting of the exequatur. Under some consular conventions also consular officials were allowed to exercise functions pending recognition.

79. The CHAIRMAN, summing up the debate on article 13, suggested that the Special Rapporteur's paragraph 1 might be adopted as drafted, subject to the replacement of the word " recognition " by some alternative to be found by the Drafting Committee.

It was so agreed.

80. The CHAIRMAN said that the consensus of the Commission seemed to be that article 13 should contain a formula covering both the existing practices in the matter of the grant of the exequatur. He proposed that the Drafting Committee be instructed to find appropriate wording to cover those situations in the light of the suggestions made during the meeting.

It was so agreed.

The meeting rose at 1 p.m.