

Document:-
A/CN.4/SR.605

Summary record of the 605th meeting

Topic:
<multiple topics>

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>)*

exact status of consuls had still been the subject of discussion. There were no longer any doubts regarding that status—which was totally different from that of diplomats—and it would therefore be pointless to state in the present draft that no right of asylum existed in the case of consulates.

90. With regard to the suggestion by Mr. Verdross, he pointed out that the text of article 41, paragraph 3, of the Vienna Convention referred to the “other rules of general international law”. The use of the adjective “general” made it necessary to refer also to any special agreements in force between the sending State and the receiving State. Article 53, paragraph 2, however, referred to the “other rules of international law” without the adjective “general”, with the consequence that a reference to special agreements was unnecessary.

91. In conclusion, he did not consider it necessary to adopt a provision on asylum in the context, even though in his third report he offered a draft provision on the point in case the Commission should decide to add such a provision (A/CN.4/137, *ad.* article 53). He could not agree with Mr. Bartoš that the Commission’s commentaries had no force at all: they undoubtedly constituted a guide to the interpretation of the relevant provisions.

92. There was another reason for not including a provision such as that proposed by the Yugoslav Government. If the right of asylum were specifically excluded, it would be necessary to state what would happen if the rule were broken by a consulate. A question of that type could be dealt with in a bilateral convention but hardly in a multilateral convention.

93. Mr. BARTOŠ requested a vote on the Yugoslav proposal.

94. The CHAIRMAN put to the vote the proposal, as formulated by the Special Rapporteur in his third report (A/CN.4/137, *ad.* article 53, sentence to be added to paragraph 2).

The proposal was adopted by 8 votes to 5, with 5 abstentions.

95. Mr. JIMÉNEZ de ARÉCHAGA, explaining his vote, said that he had voted against the proposal because the provision adopted could be held to imply that a consulate should never be used as an extension of a diplomatic mission for the purposes of granting asylum. He recalled the experience of diplomatic asylum during the Spanish Civil War when the representatives of various countries had provided accommodation on consular premises for persons to whom diplomatic asylum had been granted.

96. In addition, the adoption of the proposal conflicted with the Commission’s decision at its twelfth session to defer consideration of the question of asylum to a future session.

97. Mr. GARCÍA AMADOR, explaining his vote, said that he had voted against the proposal for the same reasons as Mr. Jiménez de Aréchaga. The provision adopted was at variance with the practice of Latin American countries and even with that of some European countries in certain special situations, as evidenced

by the experience of the Spanish Civil War. He therefore deplored the hasty decision of the Commission to adopt the additional sentence in question before studying a topic which had been referred to it by a resolution of the General Assembly. When the Commission came to discuss that topic at one of its future sessions, it would find that questions such as that raised by the Yugoslav proposal could not be disposed of so lightly.

98. The CHAIRMAN said that there remained no questions of substance to be decided in connexion with article 53. The Commission appeared to be agreed that the Drafting Committee should be asked to consider whether, in the light of article 65 of the present draft, it was appropriate in article 53 to draw on the language of article 41, paragraph 3, of the Vienna Convention.

99. Sir Humphrey WALDOCK recalled that when the Commission had adopted article 33 on the inviolability of the consular archives, it had been agreed that the Drafting Committee should be asked to consider the inclusion in article 53, paragraph 3, of a reference to the question of the separation of those archives from other papers and documents (596th meeting, paras. 64 and 67).

100. The CHAIRMAN suggested that article 53, as amended by the adoption of the additional sentence, be referred to the Drafting Committee, with instructions to consider the wording of paragraph 2 in the light of article 41, paragraph 3, of the Vienna Convention and also to take into account the point mentioned by Sir Humphrey Waldock.

It was so agreed.

The meeting rose at 1.15 p.m.

605th MEETING

Wednesday, 7 June 1961, at 10 a.m.

Chairman: Mr. Grigory I. TUNKIN

Co-operation with other bodies

(resumed from the 597th meeting)

[Agenda item 5]

1. The CHAIRMAN, welcoming Mr. Hafez Sabek, observer for the Asian-African Legal Consultative Committee, expressed his conviction that the existing co-operation between that Committee and the Commission would be of great benefit to the latter’s work.

2. Mr. SABEK (Observer for the Asian-African Legal Consultative Committee) thanked the Commission for inviting the Committee to be represented at that session.

3. The Committee wished to express its appreciation to the Commission for sending Mr. García Amador as observer to the fourth session of the Committee held

at Tokyo in February 1961. That participation had placed the co-operation between the two bodies on a firm footing.

4. The establishment of the Committee had been one of the consequences of the Bandung Conference of 1955, which had laid down certain basic principles concerning the conduct of Asian-African relations in a spirit of solidarity and mutual understanding. He hoped that the work of the Committee would further strengthen co-operation not only between the countries of Asia and Africa, but also among all countries of the world and that the Committee would be able to make an Asian-African contribution towards the solution of some international problems and towards the codification and development of international law.

5. One of the important functions of the Committee was to examine, from the point of view of Asia and Africa, the questions which were under consideration by the International Law Commission and to arrange for its views to be placed before the Commission.

6. Accordingly, the Committee had established formal relations with the Commission; it had taken appropriate steps to obtain all drafts adopted by the Commission and to furnish it with all important documents of the Committee, including draft articles relevant to the subjects considered by the Committee.

7. The Committee had examined at its first three sessions the subject of diplomatic privileges and immunities and its final report had been submitted to the members of the Sixth Committee of the General Assembly of the United Nations. In addition the Committee had appointed a representative to attend the Vienna Conference on Diplomatic Intercourse and Immunities.

8. The Committee had also considered the topic of arbitral procedure and had discussed at its third session the model rules adopted by the International Law Commission (A/3859, chap. II); the topic would be further discussed at the fifth session.

9. The subject of the law of the sea had been deferred to a future session in view of the Second United Nations Conference on the Law of the Sea. The Committee had also under consideration some other topics of common interest to member States, such as the immunity of States in respect of commercial transactions, extradition, enforcement of foreign judgments in matrimonial matters, legal aid, the law of treaties and consular intercourse and immunities.

10. The fifth session of the Committee would be held at Rangoon for a period of two weeks, between 15 January and 15 February 1962, and the Committee had authorized him to extend an invitation to the Commission to be represented by an observer at that session. Although the agenda for that session had not been finally settled, it was expected to include the following topics: the legality of nuclear tests; state responsibility for maltreatment of aliens; diplomatic protection of citizens abroad; dual nationality; avoidance of double taxation; and arbitral procedure.

11. He hoped that the Commission would be able to accept that invitation so that the existing co-operation

between the two scientific bodies could be strengthened in the interests of mutual understanding and the growth and development of international law.

12. Mr. GARCÍA AMADOR, welcoming Mr. Hafez Sabek, recalled that, at its twelfth session, the Commission had designated him as its observer to attend the fourth session of the Asian-African Legal Consultative Committee (A/4425, para. 43). In pursuance of that decision, he had attended the Tokyo session of the Committee and had submitted a report thereon, which he hoped the Commission would discuss at one of its next meetings.

13. The CHAIRMAN said that, when Mr. García Amador's report was circulated the Commission would, if it so desired, be in a position to discuss its contents.

14. With regard to the kind invitation extended by the Asian-African Legal Consultative Committee, he recalled that the Commission had discussed the question at the 597th meeting. The Commission, however, was rather awkwardly placed, since 1961 was the last year of its existing composition and the fifth session of the Committee would be held after the sixteenth General Assembly, which would decide the Commission's new composition.

15. In the circumstances, the Commission had arrived at the conclusion that it was unfortunately not in a position to send an observer to that session.

16. He thanked the representative of the Asian-African Legal Consultative Committee for his statement.

Consular intercourse and immunities

(A/4425; A/CN.4/136 and Add.1-11, A/CN.4/137)

(continued)*

[Agenda item 2]

DRAFT ARTICLES (A/4425) (continued)

HONORARY CONSULS :

INTRODUCTORY DISCUSSION

17. The CHAIRMAN invited the Commission to resume its consideration of the draft on consular intercourse and immunities (A/4425), taking up chapter III, (Honorary consuls).

18. Mr. ŽOUREK, Special Rapporteur, said that before commencing its discussion of the individual articles 54 to 63, the Commission would do well to consider certain government comments of a general character on the subject of honorary consuls.

19. The United States Government (A/CN.4/136/Add.3) had suggested that the whole of chapter III was perhaps unnecessary. The United States did not appoint honorary consuls and, although it accorded consular recognition to honorary consuls appointed by foreign governments in the United States, it did not grant them any personal privileges and immunities. That government added that honorary consuls who were nationals of or residents in

* Resumed from the previous meeting.

the receiving State should be entitled, in the performance of their official functions and the custody of the archives of the consular post, to whatever rights and privileges other consular officers enjoyed. Except for that, their status should be the same as that of any other national or permanent resident.

20. His view was that the Commission should retain chapter III. Honorary consuls played an important part in relations between States and it was therefore necessary to include provisions governing their status and setting forth their rights and duties.

21. In addition, two governments had commented on the question of the desirability of including a definition of honorary consuls (*cf.* Special Rapporteur's third report (A/CN.4/137). In that connexion, he recalled that, at its eleventh session, the Commission had provisionally adopted definitions of the expression "career consul" and "honorary consul" (A/4425, introductory comments to chapter III, para. (2)). However, at its twelfth session, the Commission had decided, in view of the diversity of State practice in the matter and the considerable differences in national laws with regard to the definition of honorary consul, to omit any such definition (*ibid.*, para. (3)). The Commission had merely adopted the provision in article 1(f) to the effect that consuls could be either career consuls or honorary consuls, leaving States free to define the latter category.

22. The delegation of Greece, in the Sixth Committee of the General Assembly, at the fifteenth session, had expressed its full approval of that decision by the Commission (662nd meeting). The Norwegian Government (A/CN.4/136), on the other hand, had suggested that a definition of honorary consuls should be adopted.

23. A number of countries considered that the privileges and immunities granted in chapter III to honorary consuls exceeded those granted to them by the existing State practice. That view had been expressed in the Sixth Committee by the delegations of the Ukrainian SSR and Indonesia at the fifteenth session of the General Assembly (657th and 660th meetings). He proposed that those general comments should be taken into consideration when the Commission examined the various articles of the chapter, in respect of which a number of governments had submitted comments to the effect that more restrictive provisions should be adopted.

24. Lastly, there had been comments on the structure of chapter III. The Norwegian Government had expressed the view that the system of references and cross references would inevitably lead to difficulties of interpretation, particularly in the case of article 54, paragraph 3. It considered that it would be better to spell out in chapter III all the provisions which applied to honorary consuls, even at the risk of repetition.

26. It would, of course, be possible to spell out all the provisions applicable to honorary consuls, but the work involved would not be justified. In effect, the drafting of a separate convention on the subject of honorary consuls would be involved.

26. In his third report, he proposed that the system adopted by the Commission should be retained subject

to a few changes, including the deletion of paragraph 3 from article 54.

27. Mr. VERDROSS supported the retention of chapter III. Honorary consuls continued to play an important role in State practice. If the Commission did not include provisions on the subject of honorary consuls in the present draft, a special convention would be needed for them.

28. Mr. AMADO said that the subject of honorary consuls had been discussed at great length by the Commission at its twelfth session (549th-550th and 564th meetings), when the members had gone into considerable detail. Mr. François had shown the importance of honorary consuls to a small country like the Netherlands which had far-flung trade and shipping interests. He did not believe that the Commission should devote any prolonged discussion to honorary consuls at that session.

29. He recalled his remark at the twelfth session (549th meeting, para. 47) to the effect that the wide variety of activities carried on by persons who were appointed as honorary consuls added to the difficulty of both enumeration and definition. He had suggested that the best way of avoiding those difficulties might be to retain only the article on the legal status of honorary consuls (draft article 54), which seemed to provide the indispensable minimum.

30. The CHAIRMAN noted that the only proposal before the Commission was that chapter III should be retained with the existing structure. He therefore suggested that the chapter be retained and that the Commission should follow with respect to the subject of honorary consuls the procedure which it had adopted at its previous session.

It was so agreed.

ARTICLE 54 (Legal status of honorary consuls)

31. Mr. ŽOUREK, Special Rapporteur, recalled that the Commission had decided to defer its decision whether article 31 (Inviolability of consular premises) was applicable to honorary consuls until governments had furnished their observations on the matter (article 54, commentary (5)). The Governments of Finland (A/CN.4/136), Norway and Denmark (A/CN.4/136/Add.1) were of the opinion that article 31 should not apply to honorary consuls. The Netherlands (A/CN.4/136/Add.4) and Belgium (A/CN.4/136/Add.6) had expressed the opposite view, maintaining that there should be no difference in the treatment of honorary consuls and career consuls in the matter. Lastly, the Yugoslav Government (A/CN.4/136) considered that, in the case of honorary consuls, article 31 should only apply to premises intended solely for the exercise of consular functions.

32. The Commission might perhaps consider the possibility of rendering article 31 applicable to honorary consuls on the condition specified by the Yugoslav Government. It should be noted that only in rare cases were the consular premises used by honorary consuls exclusively for the performance of consular functions. He did not believe that the majority of States would be

prepared to grant inviolability to consular premises for the benefit of honorary consuls who, in the great majority of cases, carried on a gainful private activity in addition to the exercise of their consular duties.

33. Mr. YASSEEN said that the principle of the inviolability of the premises was indispensable to the consular function, regardless of whether the consulate was in the charge of an honorary consul or of a career consul.

34. It was true that honorary consuls often carried on a private gainful occupation, but the difficulties that might arise from that fact could easily be remedied. He recalled that, at the twelfth session, he had suggested (553rd meeting, para. 6) that the inviolability of the premises of a consulate in the charge of an honorary consul should be accepted subject to the following proviso: "if those premises are assigned exclusively for the exercise of consular functions". He proposed that a provision along those lines be adopted.

35. Mr. FRANÇOIS supported Mr. Yasseen's proposal and drew attention to the Netherlands comment that, even though an honorary consul could engage in private activities, the fact did not alter the nature of his consular work: the honorary or non-honorary status should be regarded as a personal quality of a consular official, which did not affect the status of his official actions and still less that of the consulate.

36. He stressed that there were no "honorary consulates". There were consulates in the charge of honorary consuls, but those consulates did not differ in status from consulates in the charge of career consuls. The inviolability of the consular premises had always been recognized, regardless of the person in charge, subject only to the condition stated in Mr. Yasseen's proposal.

37. Mr. MATINE-DAFTARY said that when the Commission had discussed article 31, he had raised the question of the precise definition of the consular premises, and of their separation from other premises (595th meeting, para. 42). He had then been told that the question would be discussed in connexion with the definitions article.

38. He considered that the proviso proposed by Mr. Yasseen, which was intended to qualify the inviolability of consular premises in the charge of honorary consuls, should actually apply to all consular premises and not merely to those in the charge of an honorary consul.

39. Mr. BARTOŠ said that the Yugoslav proposal did no more than express an existing rule of customary international law. In the case of consulates in the charge of honorary consuls, only the consular premises and archives enjoyed inviolability; it was the duty of the honorary consul to keep those archives separate from other documents and papers.

40. Consular premises in the charge of a career consul were inviolable because those premises were invariably used exclusively for the purpose of consular functions. The position was different so far as honorary consuls were concerned. Quite commonly, for example, an honorary consul also practised as a lawyer. If the inviolability of the premises occupied by him were to be

recognized unconditionally, he would enjoy that privilege not only in respect of the exercise of the consular functions, but also in respect of his activities as a lawyer. For that reason, it was necessary, in the case of honorary consuls, to make the applicability of article 31 to honorary consuls subject to the condition proposed by Mr. Yasseen.

41. Lastly, he stressed the great difference in status between career consuls and honorary consuls. A career consul was, in principle, not allowed to engage in any outside activities. An honorary consul, on the other hand, was as a general rule engaged in a private gainful activity: he could be presumed to have an occupation outside his consular occupation. There was therefore every reason for adopting Mr. Yasseen's proviso in the context of provisions relating to honorary consuls, as distinct from those relating to career consuls. He hoped that those explanatory remarks would satisfy Mr. Matine-Daftary.

42. Mr. GROS said that in his country the situation was much the same as had been described by Mr. Bartoš. For example, Sweden had appointed a number of honorary consuls in some French ports and they conducted their consular and their private business from the same office. Only in relatively few cases were there completely separate consular premises. The inviolability of such premises could only be recognized if the consular archives were segregated from non-consular papers.

43. Mr. ŽOUREK, Special Rapporteur, in answer to Mr. François, said that honorary consulates were mentioned in lists of consulates published in several countries and that in State practice honorary consulates were distinguished from other consulates headed by career consular officials.

44. Although theoretically it would be correct to stipulate that only premises used exclusively for consular purposes were entitled to inviolability, it was by no means easy in practice to enforce and verify the observance of such a condition. For example, it was unlikely that an honorary consul would carefully move from office to office in order to conduct consular business in one room and private business in another.

45. He doubted whether there was a rule of customary law on the matter, as had been contended by Mr. Bartoš; the practice of States certainly did not yield evidence of the existence of any such rule. Since governments had adopted a somewhat non-committal attitude, he hoped that the Commission would be correspondingly cautious.

46. Mr. AMADO endorsed the view expressed by the Swiss Government (A/CN.4/136/Add.11) in the second paragraph of its general comment on chapter III of the draft. Although, as had been pointed out at the twelfth session by members from the Latin American continent, on the whole the countries of that region did not often appoint honorary consuls, they recognized the existence of the institution which was a useful one, particularly for small countries unable for financial reasons to maintain a large corps of career consuls. He agreed that the inviolability of an honorary consul's premises could only be assured if they were used for consular purposes and he would vote in that sense.

47. Mr. ERIM agreed that the proviso proposed by Mr. Yasseen should be embodied in article 54. Moreover, it certainly did happen in practice that honorary consuls conducted their consular business in a separate office or offices.

48. The CHAIRMAN, speaking as a member of the Commission, pointed out that the immunity conferred by article 31, paragraph 3, derived from the fact that the consular premises and their furnishings were usually the property of or rented by the sending State. How could that provision be applicable to honorary consuls who usually owned the premises used by them?

49. Mr. ŽOUREK, Special Rapporteur, agreed with the Chairman and said that, even if the Commission should wish the rule in article 31 to be applicable to honorary consuls, it would have to be adapted so as to take into account the special position of honorary consuls. In the light of the decisions adopted by the Vienna Conference, the Commission might find it desirable to extend the scope of the provision to the consulate's property, in particular its assets and motor vehicles.

50. The CHAIRMAN put Mr. Yasseen's proposal (see para. 34 above) to the vote.

The proposal was adopted by 13 votes to 1, with 4 abstentions.

51. The CHAIRMAN invited the Special Rapporteur to introduce the comments of governments concerning the applicability of article 32 (Exemption of taxation in respect of consular premises) to honorary consuls.

52. Mr. ŽOUREK, Special Rapporteur, said that the Norwegian Government took the view that article 32 should not be applicable to the premises of honorary consuls.

53. He recalled that at the twelfth session the Commission had decided in the opposite sense (554th meeting, para. 8, where the relevant provision was discussed as article 26).

54. Mr. YASSEEN emphasized that exemption from taxation could extend only to premises assigned exclusively to consular purposes.

55. Mr. SANDSTRÖM agreed that the proviso just adopted governing the inviolability of premises was equally applicable to their tax exemption.

56. The CHAIRMAN, speaking as a member of the Commission, considered that the Norwegian proposal was well-founded. The reason for the exemption provided for in article 32 was that consular premises either belonged to or were rented by the sending State, whereas the premises used by an honorary consul either belonged to or were rented by him personally. Accordingly, from the theoretical point of view, there was hardly any justification for extending the exemption to the honorary consul, and for practical reasons it would be difficult to exempt from taxation, say, one room that was used as a consular office by an honorary consul.

57. Mr. EDMONDS said that, although his country did not itself make use of honorary consuls, there were a great many of them in the United States and they frequently combined other occupations with their consular

functions and did not usually have a separate office in which to conduct consular business. The question of the inviolability and exemption from taxation of the premises of honorary consuls raised some extremely thorny practical problems. He was unable to see how inviolability or tax exemption could be accorded to part of an office, and it would probably be inadvisable to do so for the whole office.

58. Mr. MATINE-DAFTARY said that the problem at issue was of no great moment for his country, which did not employ honorary consuls in its own consular service, and there were only a few of them in Iran. Nevertheless, he felt bound to point out that, if article 32 were not made applicable to honorary consuls, it would become difficult to find persons to undertake such functions, since they usually did so because of the privileges and immunities that went with them.

59. He shared the Chairman's doubts concerning the applicability of article 32 to honorary consuls.

60. Mr. JIMÉNEZ de ARÉCHAGA said that the practical difficulties mentioned by the Chairman and Mr. Edmonds were not in reality very serious; moreover, they could arise also in the case of consulates in the charge of a career consul. The Commission should therefore, adhere to the decision adopted at the twelfth session, subject to the addition of the proviso proposed by Mr. Yasseen and adopted by the Commission. The effect would be that only that part of the premises which was used for strictly consular purposes would benefit from the exemption laid down in article 32. The clause to be drafted could either form a separate article or else might be inserted in the definition of consular premises in article 1.

61. The CHAIRMAN pointed out that at the twelfth session, the Commission had been pressed for time and had not always had an opportunity of discussing in sufficient detail the provisions in chapter III. In the circumstances some of its decisions might have been a little hasty.

62. Sir Humphrey WALDOCK agreed with Mr. Jiménez de Aréchaga. A provision exempting from tax buildings or parts of buildings used exclusively for consular purposes appeared in a number of bilateral conventions concluded by the United Kingdom. Such clauses had not given rise to practical difficulties.

63. Mr. ŽOUREK, Special Rapporteur, urged the Commission to bear in mind that the reason for the exemption granted by article 32 was that the premises were the property of or were leased by a foreign State. The exemptions accorded by article 45, paragraph 1(b), were based on the same consideration. By contrast, as the Chairman had pointed out, the situation in regard to premises used by an honorary consul was essentially different. He doubted whether governments would accept the proposition that article 32 should be applicable to honorary consuls and, therefore, endorsed the Norwegian Government's view.

64. The CHAIRMAN, speaking as a member of the Commission, said that references to bilateral consular conventions were unconvincing, since under article 65,

second text, those instruments would in any case remain in force and the immunities which they stipulated would be retained as between the parties thereto. The Commission, however, was drafting a multilateral convention of universal application.

65. Sir Humphrey WALDOCK explained that he had mentioned bilateral conventions, not in order to suggest that they should form the basis of a customary rule, but merely to show that the practical difficulties were not as serious as some members believed; that was the only relevance of bilateral conventions to the Commission's current debate.

66. Mr. JIMÉNEZ de ARÉCHAGA pointed out to the Special Rapporteur that, out of the nineteen governments which had commented on the draft, only one had objected to the applicability of article 32 to honorary consuls.

67. Mr. ERIM said that the reference to article 32 in paragraph 2 of article 54 should stand. Possible practical difficulties, though by no means inconceivable, should not be allowed to influence what was in effect a question of principle. If the premises used by an honorary consul were used also for purposes other than those of the consular function, the onus was on the honorary consul to prove that a certain part of the premises was used exclusively for consular functions. If the premises were rented on behalf of the sending State, the landlord should be told, for the tax position of the premises would be affected. Moreover, since the Commission had decided that the inviolability conferred by article 31 should extend to premises used by honorary consuls for exclusively consular functions, by analogy premises used by honorary consuls for exclusively consular purposes should be exempt from taxation. In practice, no great difficulty should arise, because there would normally be reciprocity between the sending and the receiving States.

68. Mr. AMADO said that a solution of the problem would be facilitated if the term "consular office" was used instead of "consular premises", as had been proposed at the twelfth session (554th meeting, paras. 4-8). Moreover, the revenue authorities of the receiving State could certainly be trusted to do their utmost to prevent abuses. He could not agree with Mr. Matine-Daftary's assumption that honorary consuls assumed their functions out of a desire to take advantage of the privilege which attached to the function; Brazil, for example, appointed many of its most highly-respected citizens as honorary consuls. Finally, the Chairman's and the Special Rapporteur's references to practical difficulties seemed greatly exaggerated.

69. The CHAIRMAN, speaking as a member of the Commission, said that he had no such strong feelings on the subject as Mr. Amado had inferred. The Soviet Union neither sent nor accepted honorary consuls, and the question was purely academic as far as he was concerned.

70. Speaking as Chairman, he observed that the opinions of members seemed to differ whether or not a reference to article 32 should be retained in article 54, paragraph 2. He would therefore put the question to the

vote, on the understanding that the article would refer to the "consular office" and not to "consular premises".

It was decided by 17 votes to 1, with 1 abstention, that a reference to article 32 should be retained in article 54, paragraph 2.

71. Mr. MATINE-DAFTARY said that he had voted in favour of the applicability of article 32 to honorary consuls because the word "office" had been substituted for "premises".

72. Mr. ŽOUREK said that he had cast a negative vote for the reasons which he had given during the debate.

73. The CHAIRMAN invited the Special Rapporteur to introduce article 54 as a whole.

74. Mr. ŽOUREK, Special Rapporteur, said that some of the comments received showed that a number of governments had misunderstood the purport of article 54, paragraph 3. Thus, the Government of Finland had proposed that the reference to article 42, paragraph 2, should be deleted and the Belgian Government had suggested that the reference to article 45 should be included in paragraph 2 and deleted from paragraph 3. In view of those misunderstandings, he had proposed in his third report (A/CN.4/137) that paragraph 3 should be deleted, a step which would considerably facilitate the Commission's work.

75. Mr. JIMÉNEZ de ARÉCHAGA supported the Special Rapporteur's proposal and suggested that paragraph 3 should be consigned to the commentary.

76. Mr. SANDSTRÖM considered that the question was mainly one of drafting and that the Special Rapporteur's proposal should be referred to the Drafting Committee for more careful study.

77. Mr. AGO observed that, while there was considerable merit in the Special Rapporteur's proposal, the deletion of paragraph 3 without any substitution would give the impression that only the articles enumerated in paragraph 2 applied to honorary consuls and that all the remaining articles were entirely inapplicable to them. On second thoughts, therefore, the Special Rapporteur's proposal might be regarded as unduly drastic.

78. Mr. ERIM agreed that the misunderstanding of paragraph 3 by certain governments was due to the drafting of that provision. The Drafting Committee might be instructed to clarify the text.

79. Mr. SANDSTRÖM thought that the institution of honorary consuls might be clearer if articles 55 to 62 were mentioned first, to be followed by those articles relating to career consuls which should also be applicable to honorary consuls. Paragraph 3 was superfluous.

80. Mr. PAL agreed with Mr. Ago that some provision along the lines of paragraph 3 should be included in article 54. Article 1(f) stated that a consul might be a career consul or an honorary consul. Accordingly, honorary consuls were *prima facie* contemplated in all the provisions of the draft wherever the term consul was used. The mere enumeration in the first article of chapter III of the provisions which were applicable to honorary consuls, might not thus suffice to exclude

the articles not enumerated therein from being applicable to honorary consuls.

81. The CHAIRMAN, speaking as a member of the Commission, thought that the Drafting Committee might be instructed to divide the draft into two parts, the first relating to career consuls and the second to honorary consuls. The second part might refer specifically to the provisions of the first part which were applicable to honorary consuls.

82. Mr. MATINE-DAFTARY did not consider that there would be much practical difficulty in adopting the Special Rapporteur's proposal. It seemed unnecessary to specify the articles which were not applicable to honorary consuls.

83. Sir Humphrey WALDOCK endorsed the Chairman's suggestion, but considered that the draft should be divided into three parts. Chapter I, containing general provisions, applied to both career and honorary consuls, whereas chapter II dealt with career consuls and chapter III with honorary consuls. If that system were adopted, the Special Rapporteur's proposal would be fully acceptable.

84. Mr. ŽOUREK, Special Rapporteur, supported Sir Humphrey Waldock's suggestion, which seemed to clarify the Commission's intention and was in keeping with the structure of the draft as conceived at the twelfth session. If that suggestion were approved, the existing paragraph 3 of article 54 might be placed in the commentary.

85. Mr. AGO also supported Sir Humphrey Waldock's suggestion, but thought, with regard to the wording of article 54, that paragraph 1 should enumerate the articles applicable to honorary consuls, whereas paragraph 2 should refer to articles 55 to 62 and also to the articles enumerated in the existing paragraph 3. He was fully aware, however, that that was a drafting point only.

86. The CHAIRMAN suggested that the Drafting Committee be instructed to revise the draft in the light of Sir Humphrey Waldock's suggestion, and to consider whether a paragraph along the lines of the existing paragraph 3 of article 54 would correspond to the general economy of the draft.

It was so agreed.

87. Mr. ŽOUREK, Special Rapporteur, said that the Spanish Government (A/CN.4/136/Add.8) had entered a reservation concerning the applicability of paragraph 2 of article 42 (Liability to give evidence) to honorary consuls. He had proposed in his third report that the reference to article 42, paragraph 2, in article 54, paragraph 2, should be replaced by a reference to article 42, paragraph 3; he agreed with the Spanish Government that the provision went too far where honorary consuls were concerned, since they were usually persons dealing mainly with professional and private business and devoted only part of their time to consular functions.

88. The same government had entered a reservation concerning the applicability of article 52 (Obligations of third States) to honorary consuls. So far as that objection was concerned, he would point out that at

the twelfth session it had been argued that honorary consuls were sometimes asked to proceed to the sending State and hence should have the same facilities as career consuls in respect of transit through the territory of a third State (574th meeting, paras. 59-70). In view of that argument alone, the Commission had mentioned article 52 among those applicable to honorary consuls.

The meeting rose at 1 p.m.

606th MEETING

Thursday, 8 June 1961, at 10.10 a.m.

Chairman: Mr. Grigory I. TUNKIN

Consular intercourse and immunities

(A/4425; A/CN.4/136 and Add.1-11, A/CN.4/137)

(continued)

[Agenda item 2]

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

ARTICLE 54 (Legal status of honorary consuls)

(continued)

1. The CHAIRMAN invited the Commission to continue its consideration of article 54 of the draft on consular intercourse and immunities (A/4425).

2. Mr. ŽOUREK, Special Rapporteur, drew attention to the proposal in his third report (A/CN.4/137, *ad* article 54) that the reference to article 42, paragraph 2, in article 54, paragraph 2, should be replaced by a reference to article 42, paragraph 3. Since the date of his report, the Government of Spain (A/CN.4/136/Add.8) had sent comments in which it expressed a reservation concerning the applicability of article 42, paragraph 2, to honorary consuls.

3. The CHAIRMAN suggested that, if there were no objections, the Special Rapporteur's proposal should be accepted.

It was so agreed.

4. Mr. ŽOUREK, Special Rapporteur, referred to the Belgian Government's amendment (A/CN.4/136/Add.6) to article 54 to the effect that a reference to article 45, paragraph 3 (presumably paragraph 2 was meant) should be added in article 54, paragraph 2, and that the reference to that provision should be omitted from article 54, paragraph 3. The Belgian amendment would have the effect of extending tax exemption to the private staff of honorary consuls, which in his opinion was inadmissible. The tax exemption of honorary consuls themselves was dealt with separately in article 58. He advised against acceptance of the Belgian amendment.