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Summary record of the 607th meeting

Topic:
Consular intercourse and immunities

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being inviolable. That point might be left to the Drafting Committee.

60. On the other hand, the Commission itself would have to decide the question raised by the Belgian Government, viz. whether the text should refer to other persons working in an honorary capacity in a consulate headed by an honorary consul; but he thought that such cases were rare.

61. He recommended that article 55 should stand and that the Drafting Committee should be instructed to review the wording in the light of government comments.

62. Mr. BARTOŠ said that assistants would probably receive a salary from the honorary consul; the fact that they were not paid by the sending State could not form the basis of a claim to privileges and immunities.

63. Mr. VERDROSS observed that the Netherlands proposal would only be acceptable if article 33 were amended so as to require that private correspondence must be kept separate from consular archives and documents.

64. Mr. ŽOUREK, Special Rapporteur, in reply to Mr. Bartoš, said that the Belgian Government was clearly not suggesting that subordinate staff working in an honorary consulate without pay should be accorded the same privileges and immunities, but was simply anxious to ensure that, if any such persons did assist an honorary consul in the exercise of his consular functions, the consular archives would be kept separate from their private correspondence.

65. Mr. AGO suggested that the Commission would have to give some thought to the possible situation where the sending State, perhaps for reasons of economy, decided to appoint an honorary consul head of a consulate previously under a career consul. In that instance, the premises and their furnishings would presumably be the property of the sending State and, consequently, immune from search, requisition, attachment or execution.

66. The CHAIRMAN, speaking as a member of the Commission, said that suitable drafting changes, possibly the use of the expression " honorary consular official " as suggested by the Netherlands Government, might provide the answer to the Belgian comment concerning the correspondence of unpaid staff.

67. The point raised by Mr. Ago related to matters discussed at the 605th meeting in connexion with article 54.

68. Mr. AGO said that he had brought up the matter because certain governments had mentioned consular property other than archives in their comments on article 55.

69. Mr. ŽOUREK, Special Rapporteur, recalled that it had been agreed at the 605th meeting to draft a provision concerning the applicability of article 31 to honorary consuls so as to take into account their special position. The possibility to which he had drawn attention would be borne in mind by the Drafting Committee.

70. The CHAIRMAN suggested that article 55 should be referred to the Drafting Committee for review in the light of the comments made during the discussion and the comments by governments.

It was so agreed.

ARTICLE 56 (Special protection)

71. Mr. ŽOUREK, Special Rapporteur, said that the Netherlands Government had drawn attention to a discrepancy between the English and French texts of article 56.

72. The Japanese Government (A/CN.4/136/Add.9) had proposed an addition, taken from the commentary to article 56, which would undoubtedly make for greater precision. He saw no real need for such an amplification, but it was unobjectionable.

73. Mr. GARCÍA AMADOR proposed that the Drafting Committee be instructed to use the same term for special protection in article 31, paragraph 2, article 39 and article 56. The term " special duty " used in article 31 was not a familiar one in international law and should be avoided.

74. Mr. TSURUOKA believed that other governments shared the view expressed by Japan that the obligation imposed on the receiving State in article 56 should be stated explicitly.

75. The CHAIRMAN suggested that article 56 be referred to the Drafting Committee which should be instructed to bring the English text into line with the French.

It was so agreed.

The meeting rose at 1 p.m.

607th MEETING

Friday, 9 June 1961, at 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 57 (Exemption from obligations in the matter of registration of aliens and residence and work permits)

1. The CHAIRMAN invited the Commission to consider article 57 of the draft on consular intercourse and immunities (A/4425).

2. Mr. ŽOUREK, Special Rapporteur, summarizing the comments by governments, said that he could not agree with the Belgian Government's criticism (A/CN.4/136/Add.6) of the phrase " outside the consulate "; the phrase was necessary in order to make the intentions of the article clear. The Spanish Government (A/CN.4/136/Add.8) had found the article acceptable. The Govern-

ments of Denmark and Japan (A/CN.4/136/Add.1 and Add.9) considered that the article should be deleted, and the Government of Switzerland (A/CN.4/136/Add.11), pointing out that in Switzerland honorary consuls did not enjoy the exemptions specified in article 57, considered the article unacceptable as drafted.

3. His conclusion from the comments and from the information supplied about practice was that the Commission had gone too far in proposing the exemptions provided for in article 57 and that the provision should be deleted.

4. Mr. YASSEEN observed that, as it stood, article 57 contained an inconsistency, for it could be construed to mean that an honorary consul not engaged in a gainful private activity had no need for a work permit. There seemed to be little justification for the article, particularly so far as it related to work permits, but if the Commission decided otherwise at least it should follow the wording of article 43.

5. Mr. VERDROSS said the article would be unobjectionable if redrafted in the sense intended by the Commission, namely that an honorary consul did not need a work permit for the exercise of consular functions. Of course, it was self-evident that members of his family who carried on a gainful private activity outside the consulate must comply with the regulations of the receiving State in regard to work permits.

6. Mr. MATINE-DAFTARY considered that with the deletion of the reference to work permits the article could be retained.

7. Mr. TSURUOKA said that perhaps some explanation was needed of the Japanese Government's laconic comment on article 57. It had probably been prompted by reluctance to accept such a liberal provision because in Japan foreign honorary consuls and their families were subject to the regulations concerning registration and residence in the same way as all aliens. Work permits were not required in Japan; hence the provision concerning such permits was probably not the reason for the Japanese Government's criticism.

8. Since the article was relatively unimportant, he would be prepared to associate himself with the majority view.

9. Mr. AGO said that the comments of governments clearly showed that the article was ambiguous. Mr. Verdross had correctly interpreted the Commission's intention. Obviously, members of an honorary consul's family who worked outside the consulate would be subject to the local regulations concerning work permits, but the article reflected the Commission's opinion that it was necessary to stipulate expressly that for work in the consulate such permits should not be required. Accordingly, the inconsistency mentioned by Mr. Yasseen was more apparent than real.

10. As the Commission had decided (602nd meeting, para. 20) to amend article 43, perhaps its decision on article 57 should be deferred until it had considered the redraft of article 43.

11. Mr. YASSEEN accepted the interpretation of article 57 given by Mr. Verdross and Mr. Ago, but suggested that the article should refer solely to the members of an honorary consul's family. Clearly, the honorary consul himself should not have to obtain a work permit for his consular functions.

12. Mr. ŽOUREK, Special Rapporteur, agreed with Mr. Yasseen that an honorary consul did not need a work permit to exercise his consular functions, since the obligations imposed on the receiving State in regard to the granting of the exequatur applied also in the case of honorary consuls. On the other hand, so far as he could ascertain from his study of practice, members of the family of a foreign honorary consul were usually subject to the regulations applicable to resident aliens, and consequently States were unlikely to agree to an exemption in their case.

13. Perhaps the best course would be to limit severely the scope of the article to a provision stating that members of an honorary consul's family who worked in the consulate were exempt from the local legislation regarding work permits.

14. Mr. BARTOŠ said that article 57 posed a general problem, which also arose for members of the family of diplomatic officials. For example, there had been a long dispute between the United Kingdom and Yugoslavia as to whether members of the family of diplomatic officials who undertook domestic work in a diplomatic mission required residence and work permits, and finally it had only proved possible to settle the question on a reciprocal basis. That was indicative of the strict approach adopted by some States in the matter. If certain privileges were granted to honorary consuls there would seem to be some need for article 57, but its scope ought to be limited; otherwise, it would be better to delete the provision.

15. Mr. AGO said that if the Commission adopted the Netherlands Government's amendment (A/CN.4/136/Add.4) to substitute the words " honorary consular official " for the words " honorary consul " the Commission would have to consider whether that category could enjoy the exemptions granted in article 57. If, however, the article were to be limited to members of a consul's family, the rule was the simple one stated by the Special Rapporteur.

16. Mr. ERIM pointed out that under article 37 of the Vienna Convention on Diplomatic Relations (A/CONF. 20/13) certain privileges and immunities were extended to members of the family of a diplomatic agent on the condition that they formed part of his household. He believed the Commission would have to adopt the same language if difficulties of interpretation were to be avoided.

17. Presumably any member of an honorary consul's family who began to engage in a gainful private activity outside the consulate would cease to be eligible for the privileges and immunities conferred under article 57 and others.

18. Mr. ŽOUREK, Special Rapporteur, referring to the Netherlands Government amendment, said that it had presumably been prompted by the fact that an honorary consul might in exceptional cases require assistance in the execution of his duties. Though exceptional, the case could occur. If the person concerned was a permanent

resident of the receiving State, was he entitled to the exemptions provided for in article 57? That question might be considered when the Commission discussed the Drafting Committee's redraft of the entire text.

19. He felt bound to emphasize that, by reason of the special position of honorary consuls, the adoption of the Netherlands amendment should not be interpreted as meaning that the sending State could appoint an unlimited number of honorary consular officials. Article 21 applied. Normally, honorary consuls would obtain such assistance as they needed from the subordinate staff they employed in their private activity.

20. The CHAIRMAN suggested that the Drafting Committee should be instructed to submit a new draft of article 57 in the light of comments made by governments and by members of the Commission and taking into account the new text of article 43 and the terms of article 37 of the Vienna Convention.

It was so agreed.

ARTICLE 58 (Exemption from taxation)

21. Mr. ŽOUREK, Special Rapporteur, introducing the discussion on article 58 said that as the Commission had rejected the Belgian Government's amendments to article 54 (606th meeting, para. 5), it was not necessary to consider that government's proposal that article 58 be omitted.

22. The Spanish Government had stated that article 58 would be acceptable provided that it did not apply to honorary consuls who were nationals of the receiving State. That condition was fulfilled by the insertion of article 50 in the draft and in any case it was laid down in the second sentence of the commentary. The Chilean Government (A/CN.4/136/Add.7) had suggested that the condition should be laid down in the body of the article. Similarly, the Swiss Government had urged that the exemption should not apply to nationals of the receiving State.

23. In addition, the Swiss Government considered that the exemption should not apply to salary paid by the sending State, since it would be difficult for the income tax authorities to segregate that salary from income derived from gainful private activity. In other words the exemption should apply only to sums paid to the honorary consul as reimbursement of expenses. That proposal would certainly have to be considered. Usually honorary consuls did not receive a salary, but were reimbursed for expenses incurred in the use of premises, for the services of subordinate staff and for other expenses. Such reimbursement might take the form of a lump sum.

24. Mr. ERIM said that the Swiss Government's argument was not convincing. Surely, it would not be difficult for the tax authorities of the receiving State to find out what salary was being paid by the sending State. He would prefer to leave the article unchanged.

25. On the other hand, he agreed with the Chilean Government that the article itself should specify that it did not apply to honorary consuls who were nationals of the receiving State.

26. Mr. VERDROSS said that article 58 should stand; he could see no force in the Swiss Government's objection. There could be no technical difficulty in ascertaining what proportion of an honorary consul's income constituted payment by the sending State.

27. Mr. BARTOŠ said that difficulties could and did arise in practice where a consul, applying for the transfer of sums collected as charges, refused to submit consular accounts to scrutiny by tax authorities on the grounds that such accounts might reveal confidential information. Indeed, if it were made obligatory for consuls to produce their accounts, a serious blow would have been struck at the principle of the inviolability of consular correspondence and documents. If the provision contained in article 58 were inserted in the draft, some reliance would have to be placed on the honesty of the persons concerned to make truthful returns.

28. Mr. JIMÉNEZ de ARÉCHAGA said that there would be no need to follow the Chilean Government's suggestion if the Drafting Committee worded the article in more explicit terms so as to make it clear that it did not apply to nationals of the receiving State.

29. With regard to the Swiss Government's proposal, any sums paid to the honorary consul by the sending State, whether as salary or otherwise, must be exempt from taxation in the receiving State. He did not think the possibility mentioned by Mr. Bartoš was a serious one, for it would be in the honorary consul's own interest to declare any sums received from the sending State, for which he could claim tax exemption, whereas all other income would be taxable.

30. Mr. FRANÇOIS remarked that the Swiss proposal would greatly complicate the situation, since it was extremely difficult to draw a sharp distinction between an allowance for expense and a salary.

31. Mr. PAL observed that the specific decision adopted at the twelfth session (558th meeting, para. 6) concerning exemption from taxation had not been clearly reflected in the text of article 58. The Commission had decided that the exemption would not extend to honorary consuls who were national of the receiving State.

32. Mr. MATINE-DAFTARY said that the Swiss Government's proposal had probably been prompted by the use of the word " emoluments " in the article. Perhaps the problem could be solved by using suitable wording to indicate that any sums paid by the sending State to an honorary consul were exempt from taxation.

33. Mr. GROS did not think there could be any problem for the tax authorities, for not only would the person concerned make a return of his total income, but in addition, the sending State might certify what was the nature and amount of the payment. In his opinion, the article was acceptable.

34. The word " emoluments " had been well chosen because the methods of remuneration varied widely. It would suffice to add some suitable explanation in the commentary.

35. The CHAIRMAN suggested that the Drafting Committee should consider what kind of clause should be

inserted to indicate which of the provisions of chapter III did not apply to nationals of the receiving State.

36. When considering the suitability of the wording used in article 37, paragraph 3, of the Vienna Convention, the Drafting Committee should bear in mind that the English text correctly referred to " emoluments ", but that the French text was faulty. The Drafting Committee might consider whether it was necessary to mention " remuneration " as well as " emoluments " in the article.

37. He suggested that, with those indications, article 58 be referred to the Drafting Committee for consideration in the light of the discussion.

It was so agreed.

ARTICLE 59 (Exemption from personal services and contributions)

38. Mr. ŽOUREK, Special Rapporteur, said that governments had commented on three main points. The first question was whether exemption from personal services should be extended to members of the families of honorary consuls and other honorary consular officers. The Belgian Government considered that only honorary consuls themselves were entitled to the exemption and pointed out that in Belgium even members of the families of career consuls did not enjoy the exemption. The Spanish Government also considered that the benefits of the article should not extend to members of the families of honorary consuls. The second point related more particularly to requisitioning, and the Belgian Government considered that the exemption should be enjoyed only by honorary consuls who were nationals of the sending State and did not carry on a gainful private activity. Thirdly, several governments wanted nationals of the receiving State to be excluded from the benefits of the article. Thus, the Government of Yugoslavia (A/CN.4/136), actually proposed that paragraph (2) of the commentary should be inserted in the article itself as paragraph (c), and the Japanese Government and the Chilean Government had made similar suggestions. The Spanish Government considered that the article should be confined to honorary consuls who were not nationals of the receiving State.

39. It emerged from those comments that the principal concern of the governments was that honorary consuls who were nationals of the receiving State should be excluded from the benefit of the exemption. As the commentary would not appear in the final convention, it might be desirable to add an express proviso to that effect in the article itself. He had pointed out, however, that the proviso stipulated in article 50 of the draft would apply to many articles of the draft and that it might therefore be preferable to mention it in article 1. That seemed to be a drafting rather than a substantive point, and might be referred to the Drafting Committee.

40. With regard to the applicability of the article to members of the families of honorary consuls, he considered that the exclusion of those persons would facilitate acceptance of the article at the plenipotentiary conference.

41. Mr. MATINE-DAFTARY said that the comments received from governments had vindicated the attitude that he had taken on the subject of honorary consuls at the twelfth session (551st meeting, paras. 34-36). Article 59 went much too far; there seemed to be no reason to exempt honorary consuls, who were usually residents of the receiving State and enjoyed its hospitality, from all public service. To extend the exemption to members of the families of honorary consuls was quite wrong. Even if it were specified that the provision related to members of the families of honorary consuls forming part of their household — an expression used in the Vienna Convention for the families of diplomatic agents — it would in many cases cover the entire family of an honorary consul residing in the receiving State, and there seemed to be no reason to exempt distant relatives of an honorary consul from public service, especially military service. It might be justifiable to exempt vehicles used exclusively for consular business from requisitioning, but he could not agree that honorary consuls, who were often wealthy persons, should not be subject to requisitioning, military contributions, and billeting. The Drafting Committee should be instructed to restrict the scope of the article as far as possible.

42. Mr. VERDROSS observed that, so far as the distinction between an honorary consul and his family was concerned, there was a certain difference in scope between sub-paragraphs (*a*) and (*b*). Under sub-paragraph (*a*), he could see no reason why, for instance, the son or daughter of an honorary consul should not be called upon to perform civil defence service, but the contributions referred to in sub-paragraph (*b*) affected not so much persons as things, and in that connexion no distinction could be made between the honorary consul and his family, because it was impossible to distinguish between the rooms occupied by the consul and by his family if they formed one and the same household. His view was that the first exemption should be enjoyed by the honorary consul only, but that sub-paragraph (*b*) should also be extended to members of his family forming part of his household.

43. Mr. YASSEEN said that personal exemption of the honorary consul from all public services was justified by the interests of consular functions, which would be interrupted if he were obliged to perform such services. On the other hand, sub-paragraph (*a*) should not be applicable to members of the consul's family, because their absence on public service would not affect the functioning of the consulate, although he agreed with Mr. Verdross that sub-paragraph (*b*) would apply to the honorary consul's immediate family. The article might be revised so as to make it clear that the exemption should be accorded only to the extent to which it was essential for the regular functioning of the consulate.

44. Mr. AMADO said that he had always been in favour of according to honorary consuls a minimum degree of privileges and immunities and of not assimilating them to career consuls. In the case of article 59, it seemed excessive to grant the exemption to honorary consular officials; the purposes of the draft would be best served by limiting the provision to honorary consuls only. Moreover, he criticized the expression " honorary consular officials " as being self-contradictory and meaningless.

45. Mr. SANDSTRÖM observed that the application of the article would in any case be very limited, since the majority of honorary consuls were nationals of the receiving State. If a provision excluding nationals of the receiving State from the exemption in question were inserted in the article itself or elsewhere in the draft, he would find article 59 acceptable.

46. The CHAIRMAN, speaking as a member of the Commission, said he had some misgivings concerning the wording of the article. Even if nationals of the receiving State were excluded from the exemption, honorary consuls might be nationals of the sending State or of a third State who were domiciled in the receiving State; it was hardly justifiable to grant to such persons the same privileges as to career consuls, when they usually had their own principal occupation and devoted only a part of their time to consular functions. There seemed to be no reason why a permanent resident of the receiving State should be placed in an exceptional position as soon as he assumed the functions of an honorary consul. He therefore agreed with Mr. Matine-Daftary and Mr. Amado that the scope of the article should be substantially restricted.

47. Sir Humphrey WALDOCK said that the Chairman's point would be met if the passage " who are not nationals of or permanently resident in the receiving State ", used in several articles of the Vienna Convention, were included in article 59.

48. The CHAIRMAN observed that Sir Humphrey Waldock's suggestion might be usefully applied to other articles in chapter III.

49. Mr. PADILLA NERVO drew attention to the debate on the applicability of the article on exemption from personal services to honorary consuls during the Commission's twelfth session (558th meeting, paras. 18-20, where discussed as article 39). The text provisionally adopted by the Drafting Committee had excluded nationals of the receiving State from the exemption. At that time, Sir Gerald Fitzmaurice had suggested that the article should apply to honorary consuls as it stood, pointing out that it would be most undignified if a person received in the capacity of an honorary consul could be required to furnish personal services and contributions by the receiving State. Mr. Sandström had supported that suggestion. He himself also endorsed those views, and thought that the exception in respect of nationals of the receiving State should be maintained.

50. Mr. ERIM said he could not support Sir Humphrey Waldock's suggestion. The Commission had seen fit to extend certain exemptions to honorary consuls solely in the interests of the regular functioning of the consulate. If the exemption provided for in article 59 was not granted to honorary consuls, the exercise of consular functions might be affected — though such cases would be exceptional. The interests of the receiving State would of course be the paramount consideration if the honorary consul was a national of that State; all citizens should be subject to some kind of public service. But if the honorary consul was not a national of the receiving State, the interests of the sending State must be regarded as the overriding consideration, even if the person concerned was a permanent resident of the receiving State.

51. The exemption should not, however, be extended to members of the families of honorary consuls. He was sure that many participants in the plenipotentiary conference would agree with him that it would be inadmissible to allow, for example, the son of an honorary consul who was of military age to avoid military or other service. The purpose of according privileges and immunities to a consul's family was in fact to help the consul himself to perform his functions, by maintaining his peace of mind; in the case at issue, an extension of the privilege seemed to be unjustifiable.

52. Mr. FRANÇOIS said he shared Mr. Erim's doubts concerning Sir Humphrey Waldock's suggestion. The difficulty lay in determining the exact meaning of the expression " permanently resident ". An honorary consul who was a national of the sending State would naturally establish his permanent residence in the receiving State. Would the passage suggested by Sir Humphrey Waldock relate to nationals of the sending State who took up residence in the receiving State on their appointment as honorary consuls, or would it apply to persons who had been settled in the receiving State for some time? The fact that an honorary consul had spent a long period in the receiving State should not be a reason for denying to him the benefit of the article. He was not in favour of imposing undue restrictions on honorary consuls who were nationals of a sending State because, when the receiving State accepted an honorary consul, it accepted *ipso facto* the consequences of such an appointment and had to treat the honorary consul as an official of the sending State. He would even go so far as to say that an honorary consul who was a national of the receiving State might be exempt from taxes and dues on emoluments received in his capacity as honorary consul; the Commission's opinion cited in the last sentence of the commentary to article 58 had not been unanimous. Sir Humphrey Waldock's suggestion was therefore, in his opinion, far too restrictive.

53. Mr. ŽOUREK, Special Rapporteur, said that it was particularly important for the Commission, when considering the draft on second reading, to take into consideration the treatment actually extended to honorary consuls in State practice. The United States Government had indicated (A/CN.4/136/Add.3) that, in accordance with its practice, honorary consuls who were nationals of or residents in the receiving State should be entitled to consular privileges only within the limits of the performance of their official functions and the custody of the archives of the consular post. Except for that, their status and that of their families should be the same as that of any other national or permanent resident.

54. In order to make the text more acceptable to governments, he suggested that the reference to the members of the family should be deleted, at least in sub-paragraph (a). In addition, it would be wise to treat persons permanently resident in the receiving State on a par with nationals of that State. As to the interpretation of the term " permanent resident ", it

could only mean a person who had been resident in the receiving State before being appointed honorary consul. Such a resident alien would continue his previous private activities in the receiving State and it was unlikely that many States would be prepared to extend to him the same privileges as to a person who entered the country on appointment. It had been suggested that the number of persons involved would be small; that might be so, but in his opinion a principle was at stake. The application of the local law to resident aliens involved the exercise of sovereign rights which States were very reluctant to renounce.

55. Mr. PADILLA NERVO recalled that at the twelfth session the Commission had adopted the provision omitting the reference to permanent residence by a very large majority (558th meeting, para. 37). The Commission had then been greatly impressed by Sir Gerald Fitzmaurice's argument that if a receiving State accepted a person as consul of the sending State, it would be acting inconsistently with that acceptance if it were to hamper him in the exercise of the consular functions by imposing upon him, for example, the contributions specified in article 59 (*ibid.*, para. 26).

56. At the time Sir Gerald Fitzmaurice had urged that an honorary consul, even if a national of the receiving State, should be exempted from personal services and contributions which would interfere with the exercise of his duties. The argument was all the stronger when applied to persons who were not nationals of the receiving State but merely resided in that State.

57. The CHAIRMAN put to the vote the proposal that persons who were permanently resident in the receiving State should be excluded from the benefit of article 59.

The proposal was rejected by 11 votes to 3, with 2 abstentions.

58. Mr. YASSEEN, explaining his vote against the proposal, said that there were compelling reasons for not extending to a national of the receiving State the exemption specified in the article. The exemption would, if applied to a national, be a departure from the principle of the equality of all citizens in respect of public burdens. No such compelling reasons existed in the case of aliens who were permanently resident in the receiving State.

59. The CHAIRMAN suggested that article 59 be referred to the Drafting Committee on the understanding:

(1) that its provisions would not apply to nationals of the receiving State;

(2) that the exemption specified in sub-paragraph (a) would apply to honorary consuls but not to members of their families;

(3) that the exemption specified in sub-paragraph (b) would apply only to matters connected with the honorary consul's official duties and to the residence occupied by him and his family.

It was so agreed.

ARTICLE 60 (Liability to give evidence)

60. Mr. ŽOUREK, Special Rapporteur, recalled that the Commission had decided (606th meeting, para. 3) to include article 42, paragraph 3, in the list of provisions rendered applicable to honorary consuls by paragraph 2 of article 54. Since article 42, paragraph 3, dealt with the liability to give evidence, article 60 became redundant and he proposed that it should be omitted.

It was so agreed.

ARTICLE 61 (Respect for the laws and regulations of the receiving State)

61. Mr. ŽOUREK, Special Rapporteur, recalled the Commission's decision (*ibid.*, para. 37) in connexion with the inclusion in article 54 of a reference to the various paragraphs of article 53. The Commission had decided that paragraph 3 of article 53 was not applicable to honorary consuls. It had thereby disposed of the Belgian Government's comment on that point, which related to both article 54 and article 61.

62. The Commission had instructed the Drafting Committee to revise article 61 by adapting the provisions of article 53, paragraph 1, to honorary consuls; it had also decided to prepare an additional provision — which could either be a separate paragraph of article 61 or a separate article — embodying the rule set forth in article 53, paragraph 2, adapted to the needs of honorary consuls.

63. There appeared therefore to be no need to discuss the substance of article 61 but he drew attention to the Netherlands comment, which suggested that the prohibition contained in article 61 went perhaps too far.

64. Mr. FRANÇOIS said that he agreed with the Netherlands comment but thought the remedy proposed by the Netherlands Government unsatisfactory. It would not be appropriate to speak of " unreasonable advantages ". The Netherlands objection could be met by means of a drafting change which would make article 61 state that the consul had the duty not to " abuse " his official position for purposes of internal politics or private advantage.

65. Mr. AGO suggested that the drafting of article 61 could be improved by replacing the reference to paragraph 1 of article 53 by the actual words of that paragraph, adapted to the position of honorary consuls.

66. Mr. ŽOUREK, Special Rapporteur, said that he would not object to article 61 being so redrafted.

67. The CHAIRMAN suggested that article 61 should be referred to the Drafting Committee with the drafting suggestions made by Mr. François and Mr. Ago.

It was so agreed.

ARTICLE 62 (Precedence)

68. Mr. ŽOUREK, Special Rapporteur, said that the Belgian comment on article 62 actually concerned article 54, paragraph 3, which had already been considered.

69. There were two government comments on the substance of article 62. Finland (A/CN.4/136), in reply to the request for information on State practice made in the commentary, had stated that the rule contained in article 62 was observed by Finland. The Swiss Government had indicated that it made no distinction in matters of precedence between career consuls and honorary consuls, but had added that the system embodied in article 62 seemed preferable to the Swiss system.

70. In the circumstances, there being no objection from governments to the article, he suggested that it be adopted as it stood.

It was so agreed.

ARTICLE 63 (Optional character of the institution of honorary consuls)

71. Mr. ŽOUREK, Special Rapporteur, said that there had been no government comments on the substance of article 63, which could therefore be adopted as it stood. The Netherlands Government had proposed, as in the case of other articles, a change of terminology (replacement of " honorary consul " by " honorary consular official ").

72. Mr. MATINE-DAFTARY expressed his complete agreement with Mr. Amado's criticism of the expression " honorary consular official " (para. 44 above). The use of the term in order to cover a few rare cases would broaden its scope.

73. Mr. AGO observed that it would be interesting to find out whether, in State practice, use was made of honorary consular officers other than honorary consuls who were heads of post.

74. Mr. BARTOŠ pointed out that it was by no means rare for a private citizen, usually a merchant or shipping agent, to be appointed honorary consul at a place where there existed a career consul or consul-general of the sending State. He could cite a number of examples of that practice in relation to his country both as sending State and as receiving State. The honorary consular officer so appointed would give the career officer the benefit of his local experience and his knowledge of trade and shipping matters.

The meeting rose at 1.5 p.m.

608th MEETING

Monday, 12 June 1961, at 3 p.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 63 (Optional character of the institution of honorary consuls) (*continued*)

1. The CHAIRMAN invited the Commission to continue the debate on article 63 of the draft on consular intercourse and immunities (A/4425).

2. Mr. YASSEEN, with reference to the Netherlands proposal (A/CN.4/136/Add.4), said that there were honorary consular officers other than the honorary consul head of post. He could cite a case where the honorary consul-general was assisted by his son, who acted in the capacity of honorary vice-consul. When the honorary consul-general was absent, his son replaced him.

3. Mr. PADILLA NERVO, in reply to the question asked by Mr. Ago (607th meeting, para. 73), said that Mexican law mentioned honorary consular officers. Article 78 of the regulations governing the Mexican consular service specified the method of compensating the services rendered by " honorary consular staff, which includes the categories of consul and vice-consul ".

4. In addition, Mexican law permitted the appointment of honorary consular agents by a consul-general, on condition that the Mexican Foreign Ministry was advised of the appointment.

5. Article 1(f) of the draft under discussion defined " consul " as any person appointed to exercise consular functions " as consul-general, consul, vice-consul or consular agent ". The term " honorary consul " used in article 63 therefore covered not only honorary consuls heads of post, but also the subordinate consuls serving in an honorary capacity.

6. Mr. ŽOUREK, Special Rapporteur, said that, although there existed some honorary consular officers other than heads of post, he thought it might be preferable to leave the expression " honorary consul " in article 63 and in the other articles of chapter III of the draft and to prepare a new provision stating that the expression meant any honorary consular official, whether head of post or not. Such a provision would make it possible to use the expression in question, which had been current for a very long time.

7. The CHAIRMAN suggested that the Drafting Committee be instructed to examine the terminology used in article 63 and to decide whether the term