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Summary record of the 617th meeting

Topic:
Consular intercourse and immunities

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83. The language of article 3, paragraph 2, of the Vienna Convention was well suited to an instrument on diplomatic relations, but in the draft on consular intercourse it would be necessary to be more explicit; a purely negative formula of that type would not meet the case and would seem strange in a multilateral convention dealing specifically with consular relations and immunities.

84. Mr. BARTOŠ said that he had no objection to article 2 *bis*, but considered that it would have been desirable to make the question of the exercise of consular functions by diplomatic missions the subject of a separate section.

The meeting rose at 1.10 p.m.

617th MEETING

Friday, 23 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): SECOND READING *(continued)*

ARTICLE 2*bis* (Exercise of consular functions) *(continued)*

1. The CHAIRMAN invited the members to continue the debate on article 2 *bis*.[1]

2. Mr. YASSEEN said that in connexion with article 2 *bis* two points had to be settled: first, whether a diplomatic mission could exercise all consular functions; secondly, whether that exercise of consular functions was normal, in other words whether it was admissible at all times and without any conditions.

3. So far as the first point was concerned, State practice showed that diplomatic missions performed all consular functions without distinction. Indeed, from the practical point of view, it would be difficult to draw any distinction between the various consular functions for that purpose. So far as the second point was concerned, he believed that the exercise of consular functions by diplomatic missions was normal. He therefore supported the deletion of the word "normally" from the first sentence. However, he felt that that whole sentence was unnecessary; it was unnecessary to state the obvious truth that consular functions were exercised by consulates. Article 2 *bis* might consist simply of a provision stating that consular functions "may be exercised" (*pourront être exercées*) by a diplomatic mission.

4. Mr. MATINE-DAFTARY supported the suggestion for the deletion of the phrase "within the limits of their competence". He also noted that the English and French versions of that phrase differed, the French word *attributions* being rendered in English by "competence". Moreover, the term *attributions* was far too vague and would give rise to difficulties of interpretation.

5. Sir Humphrey WALDOCK said it was difficult to render the French term *attributions*. The phrase was intended to mean that, if a diplomatic mission exercised consular functions, it was acting within its province and within the limits of its duties.

6. The suggestion of Mr. Yasseen raised a more general question. It was necessary to avoid any clash with the compromise formula embodied in article 3, paragraph 2, of the Vienna Convention on Diplomatic Relations. A simple statement to the effect that a diplomatic mission could exercise consular functions might be open to the interpretation that such a mission could exercise consular functions without restriction throughout the territory of the receiving State. From the point of view of substance, it should be made clear to what extent the exercise of consular functions by a diplomatic mission was controlled by the provisions of the draft concerning consular intercourse.

7. The CHAIRMAN, speaking as a member of the Commission, said that he could not support Mr. Yasseen's suggestion for the deletion of the first sentence. It was true that, with the omission of the word "normally" the sentence stated a more or less obvious fact, but it was quite usual to express a self-evident fact as an introduction to another provision logically connected with that fact. The first sentence was rendered necessary by the presence of the second sentence of article 2 *bis*.

8. With regard to the concluding phrase, he was inclined to consider that it could perhaps be best omitted.

9. Mr. PADILLA NERVO said that if article 2 *bis* were put to the vote as it stood he would vote against it.

10. The provisions of article 2 *bis* were intimately connected with those of article 2 on the establishment of consular relations and also with those of article 52 *bis* on members of diplomatic missions responsible for the exercise of consular functions. He recalled that when the Commission had discussed article 52 *bis*, he had raised the question whether its provisions were intended to cover only the cases where consular functions were performed in the capital city, or also the exercise of those functions at a place outside the capital (611th meeting, para. 66).

11. It was essential to limit the scope of the statement in the second sentence of article 2 *bis*, which in its Spanish version at least, stated without any qualification that consular functions could be exercised by diplomatic missions and that such exercise came within the scope of the powers or faculties of those missions (*dentro de la esfera de sus atribuciones*).

12. Some contrast should be established between consular functions as exercised by consulates and the same functions as exercised by diplomatic missions. Some reference should be made to the fact that they were exercised by the consular section of the diplomatic mission concerned; it should also be made clear that the

[1] Text in summary record of 616th meeting, para 71.

provisions of the draft articles as a whole applied to such a consular section. Otherwise, article 2 *bis* should be omitted.

13. Lastly, if article 2 *bis* were omitted altogether from the draft, that omission would not interfere with the practice regarding consular sections of embassies.

14. Mr. PAL recalled that the Commission's prolonged discussion on article 52 *bis* had been inconclusive (611th meeting, paras. 1-69). The Commission had merely referred article 52 *bis* to the Drafting Committee with the members' comments. The Chairman had also indicated that the intention was that the article should deal only with the consular section of the diplomatic mission; consular functions could not be carried out by diplomatic agents elsewhere than at the seat of the mission, unless the receiving State agreed otherwise.

15. Since the Drafting Committee had not yet prepared the final text of article 52 *bis* and since the provisions of that article were related to those of article 2 *bis*, he proposed that further discussion on article 2 *bis* be deferred until the Commission had seen the final text of article 52 *bis*.

16. Mr. MATINE-DAFTARY said that the provisions of article 3, paragraph 2, of the Vienna Convention would suffice as a statement of the proposition that a diplomatic mission could perform consular functions. Accordingly, article 2 *bis* was unnecessary in the draft under discussion.

17. The Commission could, of course, decide to introduce at the end of article 4 (Consular functions) an additional paragraph along the lines of article 3, paragraph 2, of the Vienna Convention. Perhaps the provision might be framed in positive terms, so as to state that diplomatic missions could, by mutual agreement between the two States concerned, perform all or some of the various functions specified in article 4.

18. Mr. AMADO said that the discussion on article 2 *bis* illustrated the truth of what he had said at the 615th meeting: it took days to formulate even one provision of a draft that was to represent codification of existing international law.

19. The Commission might perhaps now take a vote on article 2 *bis*.

20. The CHAIRMAN said that Mr. Pal had proposed that further consideration of article 2 *bis* should be deferred until the Commission had before it the text of article 52 *bis*. If there were no objection, he would take it that the Commission accepted the proposal.

It was so agreed.

ARTICLE 3 (Establishment of a consulate)

21. The CHAIRMAN said that the Drafting Committee had prepared the following text for article 3.

"1. A consulate may be established in the territory of the receiving State only with that State's consent.

"2. The seat of the consulate and the consular district shall be determined by mutual agreement between the receiving State and the sending State.

"3. Subsequent changes in the seat of the consulate or in the consular district may be made by the sending State only with the consent of the receiving State.

"4. The consent of the receiving State shall also be required if the consulate desires to open a vice-consulate, an agency or an office in a locality other than that in which the consulate itself is established."

Paragraph 1 was adopted.

Paragraph 2 was adopted.

Paragraph 3 was adopted.

22. Mr. BARTOŠ asked what was the meaning of the word "office" as used in paragraph 4.

23. Mr. ŽOUREK, Special Rapporteur, said that a consulate might find it necessary to open an office in another locality for the convenience of its nationals. The presence of a large number of nationals in a particular locality might be a seasonal phenomenon.

24. Mr. BARTOŠ said that he could not accept the idea of an office being opened elsewhere than at the seat of the consulate if the status of the consular "office" in question was not defined.

25. It would be appropriate for a consulate-general or a consulate to open, with the consent of the receiving State, a vice-consulate or a consular agency at another locality in its consular district, for the status of a vice-consulate (or a consular agency) was well known. But it was not clear what privileges attached to a consular "office" and whether the person in charge of it was deemed to be a head of post.

26. The fact that the consent of the receiving State was required was not sufficient. It was undesirable to create conditions likely to complicate international relations. A sending State might ask permission to open consular offices in a number of villages and the receiving State's refusal to permit those offices to be opened could result in unnecessary friction between the two States concerned.

27. The CHAIRMAN, speaking as a member of the Commission, said that Mr. Bartoš had raised a very real point. Unless some indication were to be given of the legal status of the "office" under discussion, it would be better to drop the term altogether.

28. Mr. AMADO thought that the whole of the last phrase of paragraph 4 should be omitted ("Or an office . . . is established").

29. The concept of a consular "office" was unknown in consular practice. No such term existed in consular terminology and he found it strange that it should be suggested that a consulate, more or less like a bank, should be able to open branch offices.

30. Mr. ŽOUREK, Special Rapporteur, did not agreed. The position was similar to that obtaining in the case of diplomatic missions. He pointed out that article 12 of the Vienna Convention on Diplomatic Relations provided for the possible establishment of an office of the diplomatic mission in a locality other than that in which the mission itself was established.

31. Sir Humphrey WALDOCK said that the whole rule was based on the consent of the receiving State. That State had therefore complete control over the opening of the office in question, in the same manner as

in regard to the opening of a vice-consulate or a consular agency.

32. Perhaps the Commission might consider adopting paragraph 4 as it stood and introducing an explanatory provision in the article dealing with consular premises.

33. Mr. MATINE-DAFTARY said that there was no analogy with the situation contemplated in article 12 of the Vienna Convention. A diplomatic mission constituted a single and indivisible unit; normally, there could be no question of any separate offices. The intention of article 12 was to cover the exceptional case in which, mainly for reasons of climate, for example, embassies moved to another city for part of the year.

34. In the case of consulates, it was not clear what the term "office" implied in the context and it was therefore preferable to delete it.

35. Mr. YASSEEN said that any reference to an office, in the sense of an extension of the premises of the consulate, should appear, not in paragraph 4, which mentioned vice-consulates and consular agencies, but in another article, that dealing with consular premises.

36. The CHAIRMAN, speaking as a member of the Commission, pointed out that article 12 of the Vienna Convention referred to the establishment of "offices forming part of the mission in localities other than those in which the mission itself is established".

37. The legal status of the offices in question was established. It was completely settled by the statement that they formed part of the diplomatic mission.

38. In article 3 of the draft under discussion, on the other hand, the "office" appeared to be a separate institution; hence the difficulties to which the provision had given rise. Accordingly, he suggested that the passage "or an office. . . is established" should be deleted and that an additional sentence, similar to the relevant portion of article 12 of the Vienna Convention, should be inserted in paragraph 4 on the following lines: "A like consent shall be required if a consulate proposes to establish an office forming part of the consulate in a locality other than that in which the consulate is itself established."

39. Mr. TSURUOKA considered that the reference to a consular "office" should preferably be omitted. If the States concerned were in agreement, an office of the type envisaged could always be set up.

40. Mr. ŽOUREK, Special Rapporteur, accepted the Chairman's amendment which would remove all possible misunderstanding. There was a difference between the opening of an office and the establishment of a vice-consulate or of a consular agency. A vice-consulate or a consular agency would constitute separate consular posts whose head would require a separate exequatur, whereas the offices under discussion formed part of the existing consulate.

41. Sir Humphrey WALDOCK supported the Chairman's amendment. There was a real difference between the establishment of a consular agency and the opening of an office as envisaged in paragraph 4. It was not uncommon for a consul to be required to cover a very large area and to need to rent a room in a town where he spent only one or two days of the week. The office in question did not constitute a separate institution but an extension of the consulate.

42. It was particularly important to enable arrangements of that kind to be made because they resulted in a considerable saving of money for the sending State. By way of example, he mentioned that some of the foreign consuls at Strasbourg performed consular functions at Nancy and perhaps other industrial cities of France and might find it necessary to maintain offices in some of those cities in order to carry out their duties effectively.

43. The CHAIRMAN put to the vote his amendment to paragraph 4.

The amendment was adopted unanimously.

44. Mr. PADILLA NERVO observed that the word "consulate" used in paragraph 4 was defined in article 1, paragraph 1 (a) as meaning any consular post, including a vice-consulate or a consular agency. It was hardly likely that either of the last two mentioned would ever open a vice-consulate or agency in a locality other than that in which it was itself established. Accordingly, paragraph 4 should have a narrower meaning.

45. Mr. ŽOUREK, Special Rapporteur, said that probably only a consulate or a consulate-general would have the power to open a vice-consulate or agency. The point might be made clear in the paragraph.

46. The CHAIRMAN suggested that the words "consulate-general or consulate" be used. The final drafting might be left to the Drafting Committee.

Paragraph 4, as amended, was adopted, subject to final drafting.

Article 3 (Establishment of a consulate) as amended, was adopted, subject to final drafting.

ARTICLE 4 (Consular functions)

47. The CHAIRMAN said that the Drafting Committee had prepared the following redraft for article 4:

"Consular functions consist more especially of:

"(a) Protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;

"(b) Promoting trade and furthering the development of economic, cultural and scientific relations between the sending State and the receiving State;

"(c) Ascertaining conditions and developments in the economic, commercial, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;

"(d) Issuing passports and travel documents to nationals of the sending State, and visas or other appropriate documents to persons wishing to travel to the sending State;

"(e) Helping and assisting nationals of the sending State;

"(f) Acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature;

" (g) Safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causa* in the territory of the receiving State;

" (h) Safeguarding the interests of minors and persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;

" (i) Serving judicial documents or executing letters rogatory in accordance with conventions in force or, in the absence of such conventions, in any other manner compatible with the laws of the receiving State;

" (j) Exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels used for maritime or inland navigation, having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

" (k) Extending necessary assistance to vessels and aircraft mentioned in the previous sub-paragraph, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping ships' papers and conducting investigations into any incidents which occurred during the voyage;

" (l) Settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws of the sending State".

48. Mr. VERDROSS, referring to paragraph (a), said that, according to article 3 (b) of the Vienna Convention, the protection of nationals was one of the functions of a diplomatic mission, and diplomatic missions might also exercise consular functions in certain cases. There might be some confusion between diplomatic and consular protection unless it was specified in the draft under discussion that consular protection was exercised vi-à-vis the local authorities.

49. Mr. ŽOUREK, Special Rapporteur, replied that the difficulty was how to define the meaning of " local authorities". At the twelfth session there had been considerable debate on the question whether a consul might also address central authorities if the laws of the State of residence so permitted (*cf.* debate on article 30, Communication with authorities of the receiving State, in 533rd and 572nd meetings). When the Drafting Committee had discussed the matter anew, it had decided that it could not retain article 4, paragraph 2, in the form given in the report on the twelfth session. All that it would be possible to do in the present case was to explain the difficulty in the commentary. The fact that the matter had been raised was a further argument in favour of including article 2 *bis* in the draft. The difference between consular protection (whether by a consulate or by a diplomatic mission) and diplomatic protection was that consuls were entitled to protect nationals by representations to local authorities of first instance or, in States where some services were centralized, sometimes even to the central authorities (e.g. patent and inventions office, immigration office, etc.), but not at the inter-State level, whereas diplomatic protection was exercisable only after the aggrieved national had exhausted all local remedies, when the matter would be taken up between the States concerned through the diplomatic channel. He would explain that in the commentary.

50. The CHAIRMAN, speaking as a member of the Commission, said that, while he appreciated the point raised by Mr. Verdross, the draft convention must be taken as a whole. All the remaining articles referred to the ways in which consulates exercised their functions, as distinct from diplomatic missions, and thereby met Mr. Verdross's point.

51. Mr. MATINE-DAFTARY thought that Mr. Verdross had raised a valid point. The Special Rapporteur had said that it was not easy to define " local authorities" for the purposes of the draft. The distinction to be drawn, however, was between governments and authorities. For example, a court of cassation had full competence, but was not the government. Diplomatic missions addressed themselves to the government, to ministries, whereas consuls approached authorities subordinate to ministries.

52. Mr. VERDROSS said that he agreed entirely with the Special Rapporteur and would accept his suggestion that the explanation be given in the commentary.

53. Sir Humphrey WALDOCK thought that the point had been largely met by inserting the phrase "within the limits permitted by international law", which was also used in article 3, paragraph 1 (b), of the Vienna Convention.

54. Mr. FRANÇOIS observed that the description of the other consular functions in article 4 showed clearly that they could not be functions of a diplomatic mission. It was impossible to include in paragraph (a) everything that was covered by the following paragraphs and articles.

55. Mr. PADILLA NERVO noted that article 3, paragraph 1 (b), of the Vienna Convention did not contain the phrase specifying that " nationals " meant both individuals and bodies corporate. He wondered whether the inclusion of the phrase in article 4 (a) of the draft under discussion would raise the same objections as had been raised at the Vienna Conference.

56. Mr. LIANG, Secretary to the Commission, replied that the question had been raised in the Committee of the Whole in connexion with article 3, paragraph 1 (b), of the final text of the Convention. The Swedish representative had asked whether bodies corporate were included in addition to natural persons. After consultation with the delegations, the representative of the Secretary-General had said that bodies corporate were included in the term. No disagreement had been expressed in the Committee of the Whole. That fact had been stated in the report of the Conference.

57. Mr. PADILLA NERVO remarked that if that view had been accepted by the Vienna Conference, he could not see any particular reason to spell out the definition of "nationals" in the draft, especially as it had been agreed that the draft should follow the Vienna Convention as closely as possible in order to obviate unnecessary discussion at the future consular conference.

58. Mr. LIANG, Secretary to the Commission, replied that he thought it would be more useful to include the

phrase in the draft in order to avoid similar discussions at the future conference of plenipotentiaries. As every international lawyer knew, the doctrine of *travaux préparatoires* was accepted by certain States and doubted by others. It would therefore be preferable to retain the phrase rather than refer to the matter later on in the form of further explanations.

Article 4 (a) to (i) was adopted.

59. Mr. ŽOUREK, Special Rapporteur, referring to article 4 (j), pointed out that the phrase "having the nationality of the sending State" might not cover all cases. The matter had arisen during the discussion of the term "vessel" (614th meeting, paras. 11-41) in connexion with a draft of article 1. In certain cases the phrase might be too narrow, because a vessel registered in State A might be chartered by a national of State B for a short period. The vessel would therefore have the nationality of State A but would be entitled to fly the flag of State B. Perhaps a paragraph should be added stating that the expression "vessels of the State" meant vessels used for maritime or inland navigation, flying the flag of the State in question and, in the case of vessels not entitled to fly any flag, vessels or craft having the nationality of the sending State. He would include the term "craft" because there were small craft which, in accordance with the laws and regulations of certain States, did not fly a flag but still had the nationality of the State of registry.

60. The CHAIRMAN observed that the question had been very fully discussed and the Commission had decided (*ibid.*, para. 41), for the sake of simplicity, to accept merely a reference to the nationality of the sending State, leaving the details to be settled in specific conventions.

61. Mr. BARTOŠ said that there was no need to re-open the discussion as the point about the nationality of vessels had been settled by the 1958 Geneva Convention on the High Seas (A/CONF.13/L.53). He was satisfied with the wording of paragraph (j). It correctly stated that the rights of supervision and inspection were exercised under the laws and regulations of the sending State, not by virtue of international conventions. It was the duty of the State which had accorded the nationality to ensure that those rights were exercised.

62. The CHAIRMAN observed that the Special Rapporteur had not made any specific proposal.

Article 4 (j) was adopted.

Article 4 (k) was adopted.

63. Mr. BARTOŠ, referring to paragraph (l), said that he was satisfied with the intention of the provision but considered that the vessel should be mentioned. The provision did not apply to disputes between masters and seamen who were of a nationality different from that of the flag State.

64. Sir Humphrey WALDOCK observed that it had been his impression that the Drafting Committee had decided to merge paragraphs (k) and (l) and to define the nationality of the vessel in paragraph (j) in order to avoid the repetition of a rather long phrase.

65. Mr. ŽOUREK, Special Rapporteur, agreed; that was why the phrase had not been repeated in paragraph (l).

66. The CHAIRMAN said that paragraph (l) would be eliminated and the sentence in it would be added to paragraph (k). The point raised by Mr. Bartoš would thus be covered.

On that understanding, article 4 was adopted.

ARTICLE 4 *bis* (Exercise of consular functions in a third State)

67. The CHAIRMAN said that the Drafting Committee had prepared the following text for the article:

"The sending State may, after notifying the States concerned, entrust a consulate established in a particular State with the exercise of consular functions in a third State, unless there is express objection by one of the States concerned."

Article 4 bis was adopted.

ARTICLE 4 *ter* (formerly article 7) (Exercise of consular functions on behalf of a third State)

68. The CHAIRMAN said that the Drafting Committee had prepared the following text for the article:

"With the prior consent of the receiving State and at the request of the third State a consulate established in the first State may exercise consular functions on behalf of that third State."

Article 4 ter was adopted.

ARTICLE 5 (formerly articles 9 and 10) (Appointment and admission of heads of consular post)

69. The CHAIRMAN drew attention to the Drafting Committee's text of article 5, which read:

"Heads of consular post are appointed by the sending State and are admitted to the exercise of their functions by the receiving State."

70. Mr. YASSEEN observed that the article did not refer to the idea expressed in article 10 (Competence to appoint and recognize consuls) of the 1960 draft (A/4425), although the Commission had not decided to exclude that concept. He thought that the article should specify that the competence to appoint consuls and the competence to grant recognition to consuls were governed by the municipal law of the sending State and by that of the receiving State, respectively.

71. Mr. ŽOUREK, Special Rapporteur, said that, in the interests of the structure of the draft, the Drafting Committee had devoted a special article (article 9) to the essential rule mentioned by Mr. Yasseen.

72. Mr. YASSEEN thought that, so far as the appointment of heads of consular post was concerned, article 5 laid down a rule which was absolutely self-evident and hence probably unnecessary.

73. The CHAIRMAN observed that the article meant that two separate actions, one by the sending State and the other by the receiving State, were required for the appointment and admission of heads of consular posts.

Article 5 was adopted.

ARTICLE 6 (formerly article 8)
(Classes of heads of consular post)

74. The CHAIRMAN said that the Drafting Committee had prepared the following text of the article:

" 1. Heads of consular post are divided into four classes: (1) Consuls-general; (2) Consuls; (3) Vice-consuls; (4) Consular agents.

" 2. The provision of the foregoing paragraph in no way restricts the power of the Contracting Parties to fix the designation of the consular officials other than the head of post. "

Paragraph 1 was adopted.

75. Mr. MATINE-DAFTARY doubted whether the English word "designation" was equivalent to the French *dénomination.*

76. Sir Humphrey WALDOCK said that the Drafting Committee had had some difficulty in deciding on the term to be used. However, one of the meanings of the English word "designation" was very close to that of the French word *dénomination.*

77. He pointed out that paragraph 2 did not correspond to any provision of the 1960 draft.

78. The CHAIRMAN said that the purport of the paragraph was not quite clear.

79. Mr. ŽOUREK, Special Rapporteur, said that the paragraph had been added at the insistence of certain members, who had pointed out that the commentary to the article would not be retained in the final text. Paragraph (7) of the commentary to former article 8 stated that the article in no way purported to restrict the power of States to determine the titles of the consular officials and employees who worked under the direction of the head of post; the provision of article 6, paragraph 2, was therefore useful, in that it made it clear to States that they would not be obliged to revise the whole structure of their consular service in order to comply with paragraph 1 of the article.

80. Mr. YASSEEN considered that paragraph 2 was quite unnecessary, since paragraph 1 referred only to the head of post and not to any subordinate officials. Moreover, the corresponding article of the Vienna Convention (article 14) contained no similar provision. In strict logic, paragraph 1 did not exclude the possibility of giving any title to a subordinate consular official.

81. Mr. AMADO said he shared Mr. Matine-Daftary's doubts concerning the English word "designation".

82. He also shared Mr. Yasseen's doubts concerning paragraph 2. In a draft codifying rules of international law and the practice of States, it seemed almost frivolous to ask States to subscribe to a provision which was self-evident.

83. Mr. MATINE-DAFTARY, referring to Mr. Yasseen's and Mr. Amado's remarks, said that, in practice, a consulate-general might be composed of a consul-general as the head of post and a number of consuls, vice-consuls and consular agents. If article 6 consisted of the first paragraph only, the provision might be read to mean that a head of post could bear one of the four titles mentioned, while other consular officials at the same post could not bear those titles. He did not think that the paragraph would do any harm, but, on the contrary, would emphasize the existing practice in the matter.

84. Mr. YASSEEN drew Mr. Matine-Daftary's attention to the possibility that diplomatic agents bearing the title of ministers plenipotentiary were not heads of post.

85. He proposed formally that paragraph 2 of article 6 should be deleted.

86. Mr. ŽOUREK, Special Rapporteur, agreed with Mr. Matine-Daftary that under the regulations of a number of consular services it was possible for vice-consuls and consular agents to serve in a consulate, in addition to a consul-general. Paragraph 2 was therefore necessary in that it avoided the interpretation to which Mr. Matine-Daftary had referred. He agreed with Mr. Yasseen that the paragraph added no new rule to the draft. Since the four classes of heads of posts were being proposed for codification for the first time, however, some States might hesitate to accept the classification without the assurance that it would not involve a revision of the structure of their consular services.

87. Mr. LIANG, Secretary to the Commission, pointed out that there were a number of other appellations, such as, for example, *élève-consul,* which did not apply to heads of post.

88. He believed that the word " designation " was perfectly correct in the context.

89. Mr. MATINE-DAFTARY thought furthermore that the phrase " of whatever designation " which the Drafting Committee had added in article 13 [2] was clearer and should be retained.

90. The CHAIRMAN, speaking as a member of the Commission, said that the statements made by the Special Rapporteur and Mr. Matine-Daftary had convinced him of the need to retain paragraph 2.

91. Speaking as Chairman, he put Mr. Yasseen's proposal to the vote.

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

92. Mr. BARTOŠ said that, though in favour of the provision in principle, he had been obliged to abstain because paragraph 2 as worded by the Drafting Committee did not state that consular officials other than the head of post could bear the titles listed in paragraph 1. He would have been prepared to vote against Mr. Yasseen's proposal if that addition had been made.

Article 6 as a whole was adopted, subject to drafting changes.

ARTICLE 7 (formerly article 12)
(The consular commission)

93. The CHAIRMAN drew attention to the following text submitted by the Drafting Committee for article 7:

[2] For text see summary record of the 618th meeting, para. 8.

" 1. The head of a consular post shall be furnished by the sending State with a document certifying his capacity in the form of a commission or similar instrument, made out for each appointment, and showing, as a general rule, the full name of the head of post, his category and class, the consular district, and the seat of the consulate.

" 2. The sending State shall communicate the commission or similar instrument through the diplomatic or other appropriate channel to the government of the State in whose territory the head of consular post is to exercise his functions.

" 3. If the receiving State so accepts, the commission or similar instrument may be replaced by a notice to the same effect, addressed by the sending State to the receiving State".

94. Mr. BARTOŠ did not think that the French word *acte* was synonymous with the English word " instrument " since an *acte* could mean both an instrument and a *negotium juris.*

95. Sir Humphrey WALDOCK said that, although the two words might not be absolutely synonymous, they both conveyed the meaning of a formal document and corresponded very closely.

96. Mr. EDMONDS suggested that the construction of paragraph 1 might be improved by transferring the words "certifying his capacity" to follow the phrase "made out for each appointment".

97. Sir Humphrey WALDOCK, speaking as a member of the Drafting Committee, accepted that change.

Article 7 was adopted, subject to drafting changes.

ARTICLE 8 (formerly article 13) (The exequatur)

98. The CHAIRMAN said that the Drafting Committee proposed the following text for article 8:

" 1. The head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State termed an exequatur, whatever the form of this authorization.

" 2. Subject to the provisions of articles 10 and 12, the head of a consular post may not enter upon his duties until he has received an exequatur."

Article 8 was adopted.

ARTICLE 9 (new article) (Formalities of appointment and admission)

99. The CHAIRMAN said that the Drafting Committee had prepared the following text for article 9:

" Subject to the provisions of articles 7 and 8, the formalities for the appointment and the admission of the head of a consular post are determined by the law and usage, respectively of the sending and of the receiving State."

100. Mr. ŽOUREK, Special Rapporteur, explained that, according to the Drafting Committee's understanding, the term " formalities " also covered the questions which organs of the sending State were competent to appoint the head of a consular post and which organs of the receiving State were competent to admit him.

101. The CHAIRMAN, speaking as a member of the Commission, said that the purport of the article was not clear to him. It was self-evident that, except as otherwise provided in the draft or in other rules of international law, States were free to act as they pleased. He was not at all sure whether the article was necessary.

102. Mr. ŽOUREK, Special Rapporteur, said that the article in fact reproduced article 10 of the 1960 draft in a different form. The usefulness of the rule lay in the fact that the formalities of appointment and admission differed widely from one country to another; under the laws and regulations of some countries, appointments of consuls were made by the head of State, the government, the Ministry of Foreign Affairs, or even by consuls themselves. In the past it had been asserted in doctrine and even in practice that all appointments should be made by the head of State. The draft must cover cases of consuls appointed to countries holding those views concerning appointment. In connexion with article 10 of the 1960 draft, some members had criticized the language of the provision on the grounds that it might be construed as granting competence to appoint consuls. That difficulty had now been removed. As articles 7 and 8 contained provisions relating to the appointment and admission of consuls, an appropriate saving clause had had to be added in the article.

103. Mr. MATINE-DAFTARY observed that the Drafting Committee had discussed article 9 in connexion with article 5. It might therefore be advisable to place the two articles more closely together. In article 7, reference was made to " a commission or similar instrument ", while article 8 referred to " an authorization . . . termed an exequatur, whatever the form of this authorization ". Thus, the consular commission and the exequatur were the classical forms of appointment and admission, but in actual fact authorizations contained in a letter from the Ministry of Foreign Affairs might replace the exequatur in some countries. Articles 5, 7, 8 and 9 seemed to be complementary, but article 6 was out of place.

104. Mr. AMADO said that, if he had not read the commentary to article 10 of the 1960 draft very carefully, he would not have realized that the word " formalities " referred to modes of appointing consuls. Abstract words should be used very carefully in a legal text. Moreover, he was not sure that article 9 was really necessary.

105. Mr. AGO said that article 10 of the 1960 draft had been bad. The new article 9 was harmless in that it stated nothing which was not true; nevertheless, he had some doubts as to its usefulness. Article 8, paragraph 1, already stated that a head of post was admitted by an authorization from the receiving State, whatever the form of that authorization, and a similar provision was included in article 7, paragraph 1, so far as the sending State's authorization was concerned. All contingencies therefore seemed to be provided for.

106. Mr. ŽOUREK, Special Rapporteur, said that, if the article were omitted, it would be impossible to find a legal basis for settling disputes between countries

in cases in which one, the sending state, had appointed a consul by means of a commission signed by the Minister for Foreign Affairs and in which the receiving State declined to admit the consul on the ground that the document should be signed by the head of State.

107. The CHAIRMAN, speaking as a member of the Commission, said that the debate had convinced him of the usefulness of the article.

108. Mr. BARTOŠ also supported the Special Rapporteur's views. Some States whose consular commissions were always signed by the head of State declined to accept commissions not signed by the Head of State of the sending State, on grounds of hierarchical symmetry.

Article 9 was adopted.

The meeting rose at 1.5 p.m.

618th MEETING

Monday, 26 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) : SECOND READING (*continued*)

ARTICLE 10 (formerly article 14) (Provisional admission)

1. The CHAIRMAN invited the Commission to continue its second reading of the draft on consular intercourse and immunities.

2. The Drafting Committee had submitted the following draft of article 10:

" Pending delivery of the exequatur, he head of a consular post may be admitted on a provisional basis to the exercise of his functions and to the benefit of the present articles. "

Article 10 was adopted.

ARTICLE 11 (formerly article 15) (Obligation to notify the authorities of the consular district)

3.The CHAIRMAN said the Drafting Committee proposed the following text for article 11:

" As soon as the head of a consular post is admitted to the exercise of his functions, the receiving State shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of the consular post to carry out the duties of his office and to have the benefit of the provisions of the present articles."

Article 11 was adopted.

ARTICLE 12 (formerly article 16) (Temporary exercise of the functions of head of a consular post)

4. The CHAIRMAN said that the Drafting Committee proposed the following text for article 12:

" 1. If the position of head of post is vacant, or if the head of post is unable to carry out his functions, an acting head of post may act provisionally as head of the consular post. He shall as a general rule be chosen from among the consular officials or the diplomatic staff of the sending State. In the exceptional cases where no such officials are available to assume this position, the acting head of post may be chosen from among the members of the administrative and technical staff.

" 2. The name of the acting head of post shall be notified, either by the head of post, or, if he is unable to do so, by any competent authority, to the Ministry of Foreign Affairs of the receiving State or to the authority designated by it. As a general rule, this notification shall be given in advance.

" 3. The competent authorities shall afford assistance and protection to the acting head of post and admit him, while he is in charge of the post, to the benefit of the present articles on the same basis as the head of the consular post concerned."

Paragraph 1 was adopted.

5. Mr. ERIM said that the words " by any competent authority" as used in paragraph 2 were not sufficiently precise. It should be stated that the authorities in question were those considered competent by the sending State. Otherwise it might be thought that the receiving State could dispute the competence of the authorities notifying it of the name of the acting head of post.

6. Mr. AGO said that Mr. Erim's remark was correct and suggested that the passage in question should be amended to read: " by any competent authority of the sending State ".

It was so agreed.

7. The CHAIRMAN said that, at the Vienna Conference, on the suggestion of the United Kingdom delegation, the expression " Ministry for Foreign Affairs " had been adopted in preference to " Ministry of Foreign Affairs ". He therefore suggested that the expression adopted at Vienna should be used in the draft under discussion.

It was so agreed.

Paragraph 2 was adopted as amended.

Paragraph 3 was adopted.

Article 12, as amended, was adopted as a whole.

ARTICLE 13 (formerly article 17) (Precedence)

8. The CHAIRMAN said that the Drafting Committee proposed the following text for article 13:

" 1. Heads of consular posts shall rank in each class according to the date of the grant of the exequatur.

" 2. If, however, the head of the consular post, before obtaining the exequatur, is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the pro-