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Summary record of the 623rd meeting

Topic:
Consular intercourse and immunities

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of consular functions. The text of article 41, paragraph 3, of the Vienna Convention provided an excellent model.

71. Mr. BARTOŠ supported the Drafting Committee's text. Consulates should be given more freedom than diplomatic missions, since the latter enjoyed complete inviolability as representing States. A consulate, however, might be engaged in many activities which were not strictly part of the consular function, so long as they were not incompatible with it. The Drafting Committee had correctly stated the existing practice. It would therefore be impossible to retain the language of the Vienna Convention, for a diplomatic mission was not at all in the same position as a consulate, and the other institutions or agencies installed in the consular premises had a legal status differing from that of the consulate, as stated in paragraph 4.

72. Mr. AMADO said that, in any case, he could not accept paragraph 4 because it was quite impossible to dictate to the owners of a large block of offices how they should use it. Paragraph 4 would apply only if the building was owned by the consulate.

73. The CHAIRMAN drew Mr. Amado's attention to the definition of consular premises in article 1(j) (616th meeting, para. 50), which referred to the buildings or parts of buildings used for the purposes of the consulate. Paragraph 4 might indeed be deleted, as the point was covered in the definition.

74. Mr. AGO said that if paragraph 2 stipulated that the consular premises should be used exclusively for the exercise of consular functions, paragraph 4 would be needed; but if paragraph 2 were modelled on article 41, paragraph 3, of the Vienna Convention, paragraph 4 would not be needed.

75. Mr. SANDSTRÖM asked what would be the effect on the inviolability of the consulate in either case and whether it would disappear if the provisions of article 51 were infringed.

76. Mr. ŽOUREK, Special Rapporteur, replied that the point was dealt with in commentary (3) on article 53 of the 1960 draft, and the Commission had accepted that commentary.

77. Paragraph 4 should be retained owing to the definition of consular premises. If consular premises were used by an agency which was not the consulate, express provision must be made.

78. He had from the outset had doubts about the advisability of changing the wording of the 1960 text, which was also used in the Vienna Convention. If paragraph 2 was to be unduly restrictive, another paragraph would then be required allowing exceptions, e.g. allowing office space to be used by an official mission of the sending State to an international intergovernmental organization or by an *ad hoc* diplomatic mission. In his opinion, the wording of the 1960 text and the Vienna Convention was, therefore, preferable by far.

79. Mr. JIMÉNEZ de ARÉCHAGA said that the discussion of paragraph 2 had been complicated by references to paragraph 4. Paragraph 4 should be retained, whatever the formulation used in paragraph 2, since

it served a different purpose. If Mr. Ago's formula (para. 74 above) was adopted, it would be necessary to define what was meant by "consular premises" as used in paragraph 2. If the 1960 text was retained, it would have to be explained that the premises used by the other agencies referred to in paragraph 4 did not enjoy inviolability. The word "exclusively" in paragraph 2 was unduly restrictive and would require a long list of exceptions, which the Commission had not the time to compile. The wording of the Vienna Convention should therefore be retained in paragraph 2 and the 1960 text for paragraph 4.

80. The CHAIRMAN said that the decision on article 51 would be deferred until the following meeting.

Message to Mr. Gros

81. Mr. AGO said that he had paid a visit in hospital to Mr. Gros, who had been hurt in a motoring accident that morning. Mr. Gros had not been badly hurt, but had preferred to go to Paris for hospitalization and had expressed his regret that he would be unable to attend during the remainder of the session.

82. The CHAIRMAN suggested that he should be authorized to convey the Commission's sympathy to Mr. Gros and its best wishes for his speedy recovery.

It was so agreed.

The meeting rose at 1.5 p.m.

623rd MEETING

Monday, 3 July 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)

1. The CHAIRMAN invited the Commission to continue its second reading of the draft articles prepared by the Drafting Committee.

ARTICLE 51 (formerly article 53) (Respect for the laws and regulations of the receiving State) (continued)

2. The CHAIRMAN, referring to the discussion at the previous meeting, said that as some doubts had been expressed about the advisability of redrafting paragraph 2 on the lines of articles 41, paragraph 3, of the Vienna Convention on Diplomatic Relations and of omitting paragraph 3 he would put the proposal for such amendment to the vote.

The proposal was adopted by 6 votes to 2, with 5 abstentions.

Paragraph 4 was adopted.

3. Mr. PADILLA NERVO asked whether he was right in thinking that the institutions or agencies referred to in paragraph 4 must be those of the sending State.

4. Mr. ŽOUREK, Special Rapporteur, said that the Drafting Committee had not wished to mention the sending State in paragraph 4 because to mention that State might imply that it referred to institutions and agencies of the State, whereas in fact in most cases they would be private ones. However, it was true that in most cases they would be bodies constituted according to the law and having the nationality of the sending State, and hence subject to its law.

5. Mr. SANDSTRÖM said that that interpretation was borne out by the proviso at the end of the first sentence of the paragraph.

6. Mr. BARTOŠ said that the Special Rapporteur's statement did not correspond to practice. The institutions or agencies in question had to be registered in the receiving State and were subject to its legislation. It would be undesirable to enter into the thorny problem of their nationality, but it was clear from the text that they would be bodies such as travel agencies or cultural organizations, concerned to promote the interests of the sending State. The important point was that they could not enjoy immunity from the jurisdiction of the receiving State.

7. Mr. ŽOUREK, Special Rapporteur, emphasized that the sole link of the bodies in question with the sending State might be that the parent body was constituted according to the law of that State. A subsidiary situated in the receiving State was, of course, subject to that State's laws and regulations. But contrary to what Mr. Bartoš thought, the bodies in question were not necessarily formed as subsidiaries. They might well be undertakings of the sending State itself. He doubted very much whether it would be possible to render the text more specific.

8. Mr. PADILLA NERVO observed that the point should be clarified at least in the summary record because paragraph 4 contained an exception to the rule stated in paragraph 2. As it stood, paragraph 4 did not necessarily exclude offices of institutions or agencies of a third State being installed in a consular building or premises.

9. The CHAIRMAN considered that all members who had taken part in the discussion were agreed that such institutions or agencies should have some connexion with the sending State but in any case the premises assigned to the offices in question would not be entitled to the benefit of any privileges or immunities.

Article 51, as amended, was adopted, subject to drafting changes.

ARTICLE 51 *bis* (formerly article 63) (Optional character of the institution of honorary consular officials)

10. The CHAIRMAN said that the Drafting Committee proposed the following text for article 51 *bis*:

" Each State is free to decide whether it will appoint or receive honorary consular officials."

11. Sir Humphrey WALDOCK suggested that the question where the important general provision contained in article 51 *bis* should be placed in the draft might be left to the Drafting Committee.

It was so agreed.

Subject to the settlement of the question of its position in the draft, article 51 bis was adopted.

ARTICLE 52 (formerly article 54)
(Provisions applicable to honorary consular officials)

12. The CHAIRMAN said that the Drafting Committee proposed the following text for article 52:

" 1. Articles 25, 26, 30, 31, 32, 33, 34, 35, 36, 38, paragraph 3, articles 39, 40, 41, paragraph 3, article 45 (with the exception of paragraph 1 (b)) and article 49 of chapter II concerning the facilities, privileges and immunities of career consular officials and consular employees shall likewise apply to honorary consular officials.

" 2. In addition, the facilities, privileges and immunities of honorary consular officials shall be governed by the subsequent articles of this chapter."

13. Mr. MATINE-DAFTARY said that he would prefer the word *statut* to the word *régime* in the French text of the title.

14. Sir Humphrey WALDOCK said that the article dealt with the general régime governing consulates directed by honorary consuls rather than with the status of such officials.

15. Mr. ŽOUREK, Special Rapporteur, explained that the title had been chosen by the Drafting Committee because paragraph 1 of the former article 54 of the 1960 draft had been dropped.

16. Sir Humphrey WALDOCK suggested that nevertheless the Drafting Committee might be requested to review the title of the article.

It was so agreed.

Subject to reconsideration of the title, article 52 was adopted.

ARTICLE 53 (formerly article 54 *ter*)
(Inviolability of the consular premises)

17. The CHAIRMAN said that the Drafting Committee proposed the following text for article 53:

" The premises of a consulate headed by an honorary consul shall be inviolable, provided that they are used exclusively for the exercise of consular functions. In this case, the agents of the receiving State may not enter the premises except with the consent of the head of post."

Article 53 was adopted.

ARTICLE 54 (formerly article 54 *quatuor*)
(Exemption from taxation of consular premises)

18. The CHAIRMAN said that the Drafting Committee proposed the following text for article 54:

" 1. The sending State and the head of post shall be

exempt from all national, regional and communal dues and taxes of any kind in respect of consular premises used exclusively for the exercise of consular functions, whether the premises are owned or leased by them, except in the case of dues or taxes representing payment for specific services rendered.

" 2. The exemption from taxation provided for in paragraph 1 of this article shall not apply to such dues and taxes payable under the law of the receiving State by the person who has contracted with the sending State or with the head of the consular post."

19. Mr. EDMONDS said that as he had stated before (596th meeting, para. 10) it was the property of the sending State that was exempt from taxation, not the sending State or the head of post. The wording of paragraph 1 did not conform to the practice of the United States of America.

Article 54 was adopted.

ARTICLE 55 (Inviolability
of consular archives and documents)

20. The CHAIRMAN said that the Drafting Committee proposed the following text for article 55:

" The consular archives and documents of a consulate headed by an honorary consul shall be inviolable at any time and wherever they may be, provided that they are kept separate from the private correspondence of the head of post and of any person working with him, and also from the materials, books or documents relating to their profession or trade."

Article 55 was adopted.

ARTICLE 56 (Special protection)

21. The CHAIRMAN said that the Drafting Committee proposed the following text for article 56:

" The receiving State is under a duty to accord to an honorary consular official special protection by reason of his official position."

22. Mr. EDMONDS criticized the expression " special protection " as excessively vague.

23. Mr. ŽOUREK, Special Rapporteur, explained that, as in the case of career consuls, the special protection in question was greater than that normally accorded by the receiving State to all residents. In particular, the article meant the protection accorded during times of tension or civil disturbance, when the life or dignity of an honorary consul might be threatened by the mere fact of his official position. He had suggested to the Drafting Committee that the article should be amplified in that sense, but the Committee had decided against any special mention of emergency situations, in order that the provision should not convey the impression that such cases were normal occurrences in the course of the exercise of consular functions.

24. Mr. AMADO deplored the use of such vague language which was bound to provoke controversy and doubt. The protection in question was due to the honorary consul by virtue of his official position, and that should be made clear in the text.

25. Mr. ŽOUREK, Special Rapporteur, said that he had sought to explain what was meant by special protection in paragraph (2) of the commentary to the 1960 text of article 39 which dealt with the same matter but in regard to career consuls. It was not easy to be more precise, as the kind of situation in which special protection would be needed could not be foreseen.

26. Mr. SANDSTRÖM observed that diplomatic agents and consular officials were entitled to such additional protection as having guards posted in front of their premises; besides, heavier penalties were imposed on persons who disturbed the peace outside such buildings. The point had been discussed at length in connexion with the draft on diplomatic intercourse.

27. The CHAIRMAN suggested that the Drafting Committee be requested to review the text of article 56 for purposes of rendering it more specific.

It was so agreed.

ARTICLE 57 (Exemption from obligations in the matter
of registration of aliens and residence permits)

28. The CHAIRMAN said that the Drafting Committee proposed the following text for article 57:

" Honorary consular officials, with the exception of those who carry on a gainful private activity, shall be exempt from all obligations imposed by the laws and regulations of the receiving State in the matter of registration of aliens and residence permits."

Article 57 was adopted.

ARTICLE 58 (Exemption from taxation)

29. The CHAIRMAN said that the Drafting Committee proposed the following text for article 58:

" An honorary consular official shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions."

Article 58 was adopted.

ARTICLE 59 (Exemption from personal services
and contributions)

30. The CHAIRMAN said that the Drafting Committee proposed the following text for article 59:

" The receiving State shall exempt honorary consular officials from all personal services and from all public service of any kind whatever and also from military obligations such as those connected with requisitioning, military contributions and billeting."

Article 59 was adopted.

ARTICLE 60 (formerly article 60 *bis*)
(Obligation of third States)

31. The CHAIRMAN said that the Drafting Committee proposed the following text for article 60:

" Third States shall accord to the correspondence and other official communications of honorary consular officials the same freedom and protection as are accorded to them by the receiving State."

32. The CHAIRMAN, speaking as a member of the Commission, observed that article 60 might be interpreted as going further than article 32 (the corresponding article concerning career consuls) and accordingly proposed the substitution of the words "of consulates headed by honorary consular officials" for the words "of honorary consular officials".

That amendment was adopted.

Article 60 as amended was adopted.

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

33. The CHAIRMAN said that the Drafting Committee proposed the following text for article 61:

"Without prejudice to their privileges and immunities, it is the duty of honorary consular officials to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State and not to abuse their official position for the purpose of securing advantages in any private activity in which they may engage."

34. Mr. YASSEEN observed that the duty to respect the laws and regulations of the receiving State and not to interfere in its internal affairs was the same as that imposed on career consuls. The special obligation of honorary consuls laid down at the end of the article applied equally to career consuls who engaged in a private gainful activity, and that should be clearly brought out.

35. Mr. ŽOUREK, Special Rapporteur, pointed out to Mr. Yasseen that since career consuls who carried on a private gainful activity were assimilated to honorary consuls, the obligation laid down in article 61 accordingly applied to them.

36. Mr. YASSEEN observed that it would nevertheless be desirable to make that point clear in the commentary at least, since the assimilation affected privileges and immunities. Article 61 referred not to privileges and immunities but to duties.

37. Mr. ŽOUREK, Special Rapporteur, said that such a statement should even be made in the text itself.

38. Mr. EDMONDS suggested that the word "use" would be better than "abuse" in the second sentence.

39. Mr. ŽOUREK, Special Rapporteur, explained that the word "abuse" had been inserted partly in deference to the Netherlands Government's comment (A/CN.4/136/Add.4) that an honorary consul might not always be able to avoid using his official position to his private advantage.

40. The CHAIRMAN suggested that Mr. Edmonds' point might be referred to the Drafting Committee.

41. Mr. PADILLA NERVO said that more than a drafting point was involved. It would be difficult to judge whether or not an honorary consul was using his official position improperly for private purposes.

42. Sir Humphrey WALDOCK said that in some cases it would be very difficult to draw the line. For example, an honorary consul who was also a shipping agent might

obtain some additional private business thanks to his consular activities. Was he really to be prohibited from doing so?

43. After further discussion, the CHAIRMAN suggested that in the English text the word "abuse" be replaced by the word "misuse".

It was so agreed.

Article 61, as amended, was adopted.

ARTICLE 62 (formerly article 54bis) (Special provisions applicable to career consular officials who carry on a private gainful activity)

44. The CHAIRMAN said that the Drafting Committee proposed the following text for article 62:

"The provisions applicable to career consular officials who carry on a private gainful activity in the receiving State shall, so far as facilities, privileges and immunities are concerned, be the same as those applicable to honorary consular officials."

45. Mr. EDMONDS said that the article was unobjectionable but should be transferred to chapter II (Facilities, privileges and immunities of career consular officials). A provision would then have to be inserted in chapter III (Facilities, etc. of honorary consular officials) indicating that the article was also applicable to honorary consuls.

46. Mr. ŽOUREK, Special Rapporteur, suggested that Mr. Edmond's point would be met if the title of chapter III were modified so as to mention also career consuls who carried on a gainful private activity, since the Commission had decided to assimilate that category to that of honorary consuls (610th meeting, para. 48).

47. Mr. MATINE-DAFTARY urged that the commentary should explain what was meant by private gainful activity: not all forms of lucrative work should be regarded as a ground for withholding privileges and immunities.

48. Mr. ŽOUREK, Special Rapporteur, said that he would endeavour to provide some explanation on the point in the commentary. Clearly, such activities as giving paid courses at a university or editing a learned publication would not be regarded as a private gainful occupation.

49. Mr. PADILLA NERVO drew attention to the provisions of article 51, paragraph 4, under which the offices of other institutions or agencies (such as a travel agency) could be installed in the consular building or premises. Article 51 was placed in chapter II and therefore applied to consulates in the charge of career consular officials.

50. Article 51 was not applicable to honorary consuls. Moreover, article 53 specified that the premises of a consulate headed by an honorary consul would be inviolable provided that they were "used exclusively for the exercise of consular functions".

51. It would therefore seem that if a consulate was in the charge of an honorary consul, an office such as a travel agency could not be installed in the consular building or premises. By virtue of article 62, the same would be true if the consulate was in the charge of a career consul carrying on a private gainful occupation.

52. Mr. ŽOUREK, Special Rapporteur, said that it was clear from the provisions of article 53 that the premises of a consulate headed by an honorary consul enjoyed inviolability only if used exclusively for the exercise of consular functions. That condition would not be fulfilled if the offices of a travel agency were installed in the consulate's premises and were not separated from the premises used by the consulate. If they were separate, those offices did not form part of the consular premises. All the provisions of chapter I, including those of article 51, applied equally to honorary consuls.

53. The CHAIRMAN, speaking as a member of the Commission, said that, as he understood it, article 62 referred only to the privileges and immunities enjoyed by the consular officials themselves.

54. Mr. PADILLA NERVO said that he could not understand why the whole status of a consulate should be affected because a member of the consulate was permitted to engage in an outside gainful occupation. In particular, there appeared to be no reason why part of the premises should not be assigned to an institution such as a travel agency, particularly since, by virtue of article 51, paragraph 4, inviolability did not apply to that part of the premises.

55. Sir Humphrey WALDOCK said that inevitably the status of the consular officials would affect the status of the consulate. Otherwise there might be a strong temptation to give an honorary consul the nominal title of career consul, while allowing him to engage in private activities, with the aim of ensuring that the consulate entrusted to him would enjoy the full measure of facilities, privileges and immunities.

56. The rule should be that the status of the consulate was governed by that of the head of post. If the head of post engaged in a private gainful occupation, the consulate should be given the same treatment as a consulate in the charge of an honorary consul.

57. The CHAIRMAN suggested that the Drafting Committee be asked to re-draft article 62 so as to state:

(i) That, where the head of post carried on a private gainful occupation in the receiving State, the facilities and privileges of the consulate would be governed by chapter III; and

(ii) That career consular officials who carried on a private gainful occupation in the receiving State would enjoy the facilities, privileges and immunities of honorary consular officials.

It was so agreed.

ARTICLE 63 (formerly article 50) (Members of the consulate, members of their families and members of the private staff who are nationals of the receiving State)

58. The CHAIRMAN said that the Drafting Committee proposed the following text for article 63:

"1. Unless additional privileges and immunities have been accorded by the receiving State, consular officials who are nationals of the receiving State shall enjoy only personal inviolability and immunity from jurisdiction in respect of official acts performed in the

exercise of their functions and the privilege provided for in article 41, paragraph 3, of these articles. So far as these persons are concerned, the receiving State shall likewise be bound by the obligation laid down in article 39.

"2. Other members of the consulate, members of their families and members of the private staff who are nationals of the receiving State shall enjoy privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over these persons in such a way as not to hinder unduly the performance of the functions of the consulate."

59. Mr. SANDSTRÖM questioned whether the Commission had in fact intended to extend wider privileges in the article than those conferred in article 38, paragraph 1, of the Vienna Convention according to which inviolability was only enjoyed in respect of official acts performed in the exercise of diplomatic functions.

60. Mr. ŽOUREK, Special Rapporteur, pointed out that the privilege provided for in article 41, paragraph 3, of the draft under discussion, did not arise in the case of diplomatic agents, for they were exempt from the duty to give evidence. Article 63 of the draft in fact diverged from article 38 of the Vienna Convention only in respect of the matter dealt with in the second sentence of paragraph 1. That provision had been introduced because the Drafting Committee thought that the sending State should be notified when a consular official who was a national of the receiving State was arrested or detained, since such measures would directly affect the functioning of the consulate.

61. Mr. YASSEEN considered that the wording of article 38, paragraph 1, in the Vienna Convention brought out more clearly that the inviolability was granted only in respect of official acts.

62. Mr. ŽOUREK, Special Rapporteur, said that the Drafting Committee's intention had been to stipulate that both the personal inviolability and the immunity from jurisdiction were accorded only in respect of official acts; that was why, of course, there was no objection to transposing the order of the sentence and bringing it into line with the Vienna text.

63. Sir Humphrey WALDOCK said that he would have no objection to that change and suggested the substitution of the word "including" for the word "and" after the word "functions" in paragraph 1, which would remove any impression that the text conferred greater privileges than those of article 38 in the Vienna Convention.

64. The CHAIRMAN suggested that the Drafting Committee be requested to revise paragraph 1 so as to make it concord exactly with paragraph 1 in article 30 of the Vienna Convention and to incorporate the amendment suggested by Sir Humphrey Waldoack.

It was so agreed.

Article 63 as a whole was adopted, subject to drafting changes.

ARTICLE 64 (Non-discrimination)

65. The CHAIRMAN said that the Drafting Committee proposed the following text for article 64:

“ 1. In the application of the present articles, the receiving State shall not discriminate as between the States parties to this convention.

“ 2. However, discrimination shall not be regarded as taking place where the receiving State, on a basis of reciprocity, grants privileges and immunities more extensive than those provided for in the present articles.”

Article 64 was adopted.

ARTICLE 65 (Relationship between the present articles and conventions or other international agreements)

66. The CHAIRMAN said that the Drafting Committee proposed the following text for article 65:

“ The provisions of the present articles shall not affect conventions or other international agreements in force as between States parties to them.”

Article 65 was adopted.

ARTICLE 66 (formerly article 52 *bis*)

(Exercise of consular functions by diplomatic missions)

67. The CHAIRMAN said that the Drafting Committee proposed the following text for article 66:

“ 1. The provisions of articles 4, 4 *ter*, 33, 34 and 36 of the present articles apply also to the exercise of consular functions by a diplomatic mission.

“ 2. The names of members of a diplomatic mission entrusted with the exercise of consular functions shall be notified to the Ministry for Foreign Affairs of the receiving State.

“ 3. In the exercise of consular functions members of a diplomatic mission may address the Ministry for Foreign Affairs and, if the local law and usages so permit, other authorities in the receiving State.

“ 4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 shall continue to be governed by the rules of international law concerning diplomatic relations.”

68. He recalled the decision of the Commission (617th meeting, para. 20) to defer further consideration of article 2 *bis* (Exercise of consular functions) until the Commission had before it the text of article 66 (formerly article 52 *bis*) in the Special Rapporteur's third report (A/CN.4/137). The Commission would therefore deal with both articles, and he wished to know whether the Drafting Committee still considered that article 2 *bis* was necessary, in view of the text of article 66.

69. Mr. ŽOUREK, Special Rapporteur, said that article 2 *bis* was necessary because it was the general practice for diplomatic missions to exercise consular functions. Also, article 2, paragraph 2, as adopted by the Commission (616th meeting, para. 70) stated that the consent given to the establishment of diplomatic relations between two States implied, unless otherwise stated, consent to the establishment of consular relations. It

was therefore appropriate to state that diplomatic missions exercised consular functions within the limits of their normal competence.

70. Mr. BARTOŠ said that, particularly since 1919, it had become fairly general practice to set up consular sections in embassies. However, he could not accept the suggestion that such a consular section could exercise consular functions throughout the territory of the receiving State, notwithstanding the grant of an exequatur to a consul for a particular consular district.

71. In that connexion, he cited the example of Switzerland, which did not admit the exercise of consular functions by the Yugoslav Embassy at Berne in respect of the city of Basle because an exequatur had already been granted to an honorary consul for that city.

72. Mr. ŽOUREK, Special Rapporteur, said that the consular district of a diplomatic mission — if one could call it that — covered the whole territory of the receiving State. As a general rule, diplomatic missions did not exercise their consular functions in the consular districts assigned to consulates of the sending State. But it was very rare for the sending State to have so many consulates in the receiving State that their districts covered that State's entire territory. It was not possible to formulate a rule on the basis of an exceptional case.

73. Mr. FRANÇOIS shared the doubts of Mr. Bartoš and expressed regret at the mingling of diplomatic and consular functions.

74. He objected particularly to paragraph 3, under the provisions of which it would be possible for a First Secretary in charge of the consular section of his embassy to address the Ministry of Foreign Affairs. As First Secretary of an embassy, the diplomatic agent concerned was not entitled to address the Ministry; as a consul, he was not entitled to do so either. It was hard to see how, because he combined the two functions, he would be able to address the Ministry.

75. The CHAIRMAN, speaking as a member of the Commission, said that in practice, the members of a diplomatic mission would deal with officials of the appropriate rank in the Ministry of Foreign Affairs of the receiving State.

76. He proposed, in order to overcome the difficulty mentioned by Mr. François, the deletion from paragraph 3 of the words: “ members of ”; the provision would thus state that, in the exercise of consular functions, a diplomatic mission could address the Ministry of Foreign Affairs.

77. Mr. ŽOUREK, Special Rapporteur, accepted the Chairman's amendment.

78. He pointed out that the diplomatic mission's communication with the Ministry of Foreign Affairs in consular matters raised no problem; he drew attention to article 41 of the Vienna Convention, which specified that diplomatic missions must conduct their business with the Ministry of Foreign Affairs of the receiving State. That was therefore also the normal channel for the consular section of an embassy. In the practice of many States, the consular section dealt with the more important consular

matters concerning the entire territory of the receiving State, even if the sending State had one or more consulates in that State. The article did not lay down a rule concerning that question.

79. Mr. PADILLA NERVO placed on record his opposition to article 2 *bis* for the reasons he had given before (616th meeting, para. 79 and 617th meeting, paras. 9 to 13).

80. As to article 66, he recalled the answer given to him by the Chairman (611th meeting, para. 67) that the intention was that the article should deal only with the consular section of a diplomatic mission and that, accordingly, consular functions could not be carried out by diplomatic agents elsewhere than at the seat of the mission, unless the receiving State agreed otherwise.

81. The wording of article 66 did not make that intention clear and he suggested that it should be adjusted in order to do so.

82. It would be correct to state in paragraph 3, as suggested by the Chairman, that the embassy could address the Ministry of Foreign Affairs. In fact, that provision, in order to be consistent with article 41, paragraph 2, of the Vienna Convention, should be supplemented by the words "or such other Ministry as may be agreed". The paragraph should not, however, make my reference to "other authorities in the receiving State" as was done in the proposed text. A general statement of that type would suggest that the consular section of the embassy was entitled to approach the local authorities throughout the territory of the receiving State—something which was not allowed in a great many countries.

83. Mr. AMADO recalled his objections to the text of article 2 *bis* (616th meeting, para. 78).

84. He found article 66 unsatisfactory, particularly paragraph 3. The provisions of that paragraph would imply, for example, that whereas the consul-general of a foreign Power at the very busy city of São Paulo could not address the Ministry of Foreign Affairs of Brazil, it would be possible for the Third Secretary of an embassy to address that Ministry on some minor question relating to consular affairs in a small town.

85. Another point which puzzled him was the fact that a consul-general who was permanently entrusted with consular functions would not have the right to address the Ministry of Foreign Affairs, but a diplomatic agent who was only occasionally in charge of consular affairs would be free to do so under the draft.

86. Mr. AGO, speaking as Chairman of the Drafting Committee, said that article 66 dealt only with the case where consular functions were exercised by the diplomatic mission itself at the seat of the central government of the receiving State. If a diplomatic agent were to be assigned to a consulate situated outside the capital, he would become a consular official and lose his diplomatic capacity.

87. In view of the general practice of setting up consular sections in embassies, article 66 was necessary. The provisions of paragraph 3 were useful particularly because they constituted a limitation. A diplomatic mission did

not need an *exequatur* in order to exercise consular functions; it was therefore appropriate to specify that it should deal with the Ministry of Foreign Affairs. It should not deal with other authorities of the receiving State unless the law and usage of that State so permitted.

88. Mr. AMADO pointed out that the text of article 66 did not make it clear that its provisions were limited to the case where the consular functions were exercised by the diplomatic mission itself in the capital.

89. Mr. BARTOŠ accepted paragraph 3 with the amendment proposed by the Chairman. He also accepted the explanation given by Mr. Ago. He could not, however, accept the interpretation given by the Special Rapporteur that it might be possible for the consular section of an embassy to deal with important consular matters relating to consular districts outside the capital.

90. He was opposed to the idea that consular functions could be exercised in respect of one and the same area both by the consul competent for the consular district concerned and by the consular section of the embassy of the sending State. Claims which had been made in that regard by certain States had invariably been rejected.

91. The existing practice was to admit that a diplomatic mission could exercise consular functions for the whole territory of the receiving State, except for those districts which were already covered by the letters patent and *exequatur* of the competent consuls.

92. Of course, a diplomatic mission could make diplomatic representations in a case where a consul had been unsuccessful. In a case of that type, however, the diplomatic mission was fulfilling its normal diplomatic functions and not exercising supervision over the consular functions exercised by the consulates of the sending State.

93. Mr. PADILLA NERVO proposed that paragraph 2 be amended so as to state that the name of the member of a diplomatic mission in charge of the consular section of the mission should be notified to the Ministry of Foreign Affairs of the receiving State. In that manner, paragraph 2 would make it clear that the provisions of the article referred exclusively to the consular section of an embassy and not to a diplomatic agent assigned to consular functions outside the capital.

94. He further proposed the deletion of paragraph 3. There was no need to state that a diplomatic mission could address the Ministry of Foreign Affairs. That Ministry had always been the channel of communication for diplomatic missions and would remain so regardless of the provisions of the draft.

The meeting rose at 6.15 p.m.