

Document:-  
**A/CN.4/SR.516**

**Summary record of the 516th meeting**

Topic:  
**Consular intercourse and immunities**

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course and immunities. Thereafter, it would be essential in his view to spend two or three weeks on the topic of State responsibility and then continue with the law of treaties.

38. The remaining problem was the topic of *ad hoc* diplomacy. Since the Special Rapporteur on that topic expected to have a draft ready before the beginning of the session (see para. 5 above), members would be in a position to discuss it. However, much depended on the action that would meanwhile have been taken by the General Assembly.

39. Mr. LIANG, Secretary to the Commission, said that *ad hoc* diplomacy was a new subject and that members might wish to have more time to study the Special Rapporteur's draft. Apart from that technical matter of reproducing the draft several months in advance of the session, there were other conditions which were difficult to foresee, and he did not think that it would be wise to take a firm decision on the matter at the present time.

40. Mr. SANDSTRÖM, speaking as the Special Rapporteur on *ad hoc* diplomacy, did not think that his subject would require much time. However, in view of the uncertainties, he suggested that it should be placed on the agenda of the twelfth session provisionally. The Commission could decide at the beginning of that session whether or not to take it up.

41. Mr. EDMONDS said that, while he did not feel strongly about the Commission's method of work, he thought that better results would be achieved if the Commission continued with one item until it was completed. He suggested that discussion might be expedited if the rule were adopted that a member could not speak a second time on a particular question until every other member had had an opportunity to speak. Such a rule might encourage members to say what they had to say in a single statement, or at least to keep their second statement short.

42. Mr. YOKOTA thought that everyone was in agreement that the first item at the next session should be consular intercourse and immunities. The other items should be placed on the agenda, but there was no need to take a decision regarding their order. The General Assembly might, in the meantime, express an opinion on the question of priorities, or some unforeseen circumstance might force the Commission to change any order of discussion decided upon at the present time.

43. Apart from the topic of consular intercourse and immunities, which should be completed, he would be inclined to complete the remaining articles of part I of the Special Rapporteur's draft on the law of treaties (A/CN.4/101), and to discuss the general principles of the question of State responsibility with a view to deciding on the scope of the project. When State responsibility had first been discussed, the Commission had decided to deal with the responsibility of States for injuries to aliens, but since then some members had indicated that the Commission should first take up the question of State responsibility in general.

44. Mr. MATINE-DAFTARY thought that the question of *ad hoc* diplomacy should appear on the agenda of the twelfth session. To do so would encourage the Special Rapporteur and would be in accord with General Assembly resolution 1289 (XIII).

45. The CHAIRMAN agreed that, in view of the Commission's experience at the current session, a rigid order should not be established. However, he thought that members should have some provisional idea of the

order in which items would be discussed, and accordingly he suggested that all four items should be placed on the agenda in the following provisional order: (1) consular intercourse and immunities; (2) State responsibility; (3) law of treaties; and (4) *ad hoc* diplomacy. The order did not necessarily indicate the amount of time that would be spent on each item.

*It was so agreed.*

The meeting rose at 6 p.m.

## 516th MEETING

*Tuesday, 16 June 1959, at 9.45 a.m.*

*Chairman:* Sir Gerald FITZMAURICE

### Consular intercourse and immunities (A/CN.4/108, A/CN.4/L.79, A/CN.4/L.80, A/CN.4/L.82) (continued)

[Agenda item 2]

#### DRAFT PROVISIONAL ARTICLES ON CONSULAR INTER-COURSE AND IMMUNITIES (A/CN.4/108, PART II) (continued)

##### ARTICLES 14 AND 15

1. Mr. ZOUREK, Special Rapporteur, introduced article 14 (*Extension of consular functions in the absence of a diplomatic mission of the sending State*), and drew attention to the commentary. It should be stressed, of course, that the performance of isolated diplomatic acts could never confer diplomatic status on the consul under international law. A provision similar to article 14 of the draft appeared in the Havana Convention of 1928 regarding Consular Agents (article 12), and provisions enabling consuls to perform diplomatic acts in certain circumstances were embodied in the national law of some countries, as stated in paragraph 3 of the commentary.

2. Since article 12 (*Consular relations with unrecognized States and Governments*) had been withdrawn in deference to the wishes of the majority (see 513th meeting, para. 35), the scope of article 14 had become wider, as it dealt both with countries which were recognized and those which were not. In principle, however, the question of recognition should not be raised in connexion with article 14.

3. He had no objection in principle to Mr. Scelle's amendment (A/CN.4/L.82) but thought it was more relevant to a different situation, that covered by article 15, which related to diplomatic functions that might be performed permanently by consuls-general, whereas article 14 dealt only with occasional diplomatic acts which would otherwise be performed by diplomatic missions. Mr. Scelle might have meant that article 15 should be deleted, but his amendment did not state that.

4. The CHAIRMAN suggested that, in Mr. Scelle's absence, his amendment might be discussed in connexion with article 15.

5. Mr. BARTOŠ said that there was no existing rule in international law providing for the performance of diplomatic functions by consuls, nor was it necessary to propose such a rule *de lege ferenda*. On the contrary, he believed that consuls could not perform dip-

lomatic functions except with the prior agreement of the States involved. As recently as 1958, the United States Government had sent a circular to foreign missions stating that persons with consular status could not perform any diplomatic functions in the United States and could not even act as representatives to the United Nations. It was true that consuls had performed such functions formerly in countries in which the system of capitulations had applied, but those countries were now bitterly opposed to the practice. Yugoslavia had consuls in countries in which it maintained no diplomatic mission, but they could not perform any diplomatic acts, except serve as a channel for diplomatic notifications on behalf of the Yugoslav Government. A provision referring to the combination of consular and diplomatic functions was neither necessary nor desirable in a codification of the law on consular intercourse.

6. Mr. SANDSTRÖM said that, since article 14 dealt rather with diplomatic intercourse, it seemed to be out of context in a draft on consular intercourse. It was evident, of course, that any two States were free to arrange by agreement for the extension of consular functions in the circumstances contemplated in the article.

7. The CHAIRMAN thought that in view of the similarity of articles 14 and 15, they might well be combined.

8. Mr. ZOUREK, Special Rapporteur, explained that article 14 dealt with exceptional acts performed only in cases of need, not with the regular diplomatic function. Such acts in no way changed the representative's legal status. On the other hand, article 15 dealt with the case in which, aside from the consular function, the consul performed a permanent diplomatic function, entitling him to diplomatic privileges and immunities. He would have no objection to combining the two articles if the Commission so wished, but he would prefer to keep them separate, as they dealt with different situations in law.

9. The CHAIRMAN suggested that the Commission should at any rate discuss articles 14 and 15 together.

*It was so agreed.*

10. Mr. TUNKIN agreed with the Special Rapporteur that the situations in articles 14 and 15 were entirely distinct. The articles might be discussed together, but should not be combined.

11. Article 14 covered an existing practice. The Union of Soviet Socialist Republics at one time had maintained a consul-general in the Union of South Africa who had in some instances been entrusted with certain diplomatic acts performed purely incidentally, as long as no objection had been raised by the Government of the receiving State. Cases occurred where it was really necessary to entrust a consul with performing certain diplomatic acts from time to time. The question was whether that practice should be reflected in the draft. Articles 14 and 15 were not *jus cogens*, but explanatory, and expressed the view that the situation was in no way extraordinary. The articles should be retained in the draft on consular intercourse, even though they dealt incidentally with acts of diplomatic intercourse, for the acts in question were performed by consuls and so came within the scope of consular intercourse.

12. Mr. MATINE-DAFTARY agreed with the Chairman's suggestion that articles 14 and 15 be combined. Article 14 as it stood was too ambiguous and

loosely worded. Some countries still harboured bitter memories of diplomatic, and even political, activities carried on by consuls. The Special Rapporteur had said that article 14 covered acts performed only in certain cases, but it was not clearly stated whether the authorization to perform those acts was intended to be provisional or, as in article 15, permanent. The cases cited in the commentary were not relevant. Against the case of the Commonwealth of Australia could be set the case of India before it had achieved independence. At that time, India had not been able to receive ambassadors or ministers, but only consuls-general, but they had in fact acted as ministers. The Australian precedent was in fact relevant to article 15, not article 14. The cases of Haiti, Monaco and the Republic of San Marino were also not relevant, since those countries could hardly be regarded as Powers and few countries would be likely to send them plenipotentiary diplomatic agents. If article 14 were retained, it should be worded more explicitly in order to prevent consuls from engaging in diplomatic or even political activities in the State of residence.

13. Mr. PADILLA NERVO said that article 15 dealt with diplomatic functions conferred on consuls by the sending Government in cases where consuls-general performed all diplomatic functions, whereas article 14 merely empowered a consul to approach the central Government if he failed to receive satisfaction from the local authorities and if there was no diplomatic mission of the sending State. Articles 11 and 12 of the Havana Convention of 1928 contained provisions similar to those of article 14 of the present draft. Articles 14 and 15 of the draft differed from each other in substance. The two articles should preferably be kept separate and, even if article 14 was not retained, article 15 should be, since its substance appeared in many consular conventions.

14. Mr. EL-KHOURI observed that articles 14 and 15 both provided a special solution for special circumstances and might well be amalgamated, with drafting changes. He did not agree with Mr. Sandström that the articles were more concerned with diplomatic intercourse and immunities. Indeed, they might appear both in the draft on diplomatic intercourse and immunities and in the draft on consular intercourse and immunities; in the latter they would explain in what special circumstances a consul might perform diplomatic functions, and in the latter they would show how the absence of a diplomatic mission might, in certain circumstances, be remedied.

15. Mr. EDMONDS said that for practical considerations article 14 was needed, but it might be combined with article 15, even though the situations were rather different. With regard to the Havana Convention of 1928, he pointed out that Venezuela had entered a particular reservation that such provisions were foreign to its tradition;<sup>1</sup> furthermore, other States denied all diplomatic functions to consular officers. The provision should be drafted with some care, since, according to article 3 of the draft articles on diplomatic intercourse and immunities (A/3859, chapter III) one of the diplomatic mission's functions was to protect in the receiving State the interests of the sending State and of its nationals. If article 13 of the present draft was

<sup>1</sup> League of Nations, *Treaty Series*, vol. CLV (1934-1935), No. 3582, p. 302.

not adopted and article 14 was, the net effect might be that the functions of consular officers might in the particular circumstances be confined to protecting the interests of the sending State in the receiving State.

16. Mr. YOKOTA thought that article 14 should be retained in the draft on consular intercourse and immunities, and not moved to the draft on diplomatic intercourse and immunities. Inasmuch as the establishment of diplomatic relations did not necessarily imply the establishment of a diplomatic mission, it was quite possible that there was no diplomatic mission, although diplomatic relations had been established. But a provision concerning the manner in which diplomatic functions were to be performed in that case had not been laid down. Therefore there was no reason why a provision such as article 14 should be inserted in the draft on diplomatic intercourse. On the other hand, as that article allowed the consul to perform certain diplomatic functions, it was important that it should appear in the draft on consular intercourse and immunities.

17. Mr. ERIM suggested that Mr. Matine-Daftary's point might be met by using the negative formulation employed in article 16 in order to place the emphasis on the need for the permission of the Government of the State of residence. Articles 14 and 15 might well be amalgamated, although they dealt with different situations.

18. Mr. VERDROSS agreed with the Special Rapporteur that articles 14 and 15 corresponded to international practice, and he considered that the provisions should be included in the draft on consular intercourse, because they related to cases in which consuls exercised diplomatic functions as an exceptional measure. He did not think that article 14 was open to abuse in the manner indicated by Mr. Matine-Daftary; the express requirements of the consent of the Government of the State of residence and the implication of a special agreement between the two States concerned constituted adequate safeguards.

19. Mr. ALFARO thought that the inclusion of articles 14 and 15 was justified, but that their present wording suggested that both contemplated the same situation. It should be made perfectly clear in article 14 that the diplomatic action concerned would be transitory, and it might perhaps be advisable to add a cross-reference to article 14 in article 15. The Drafting Committee could no doubt revise the articles in order to stress the contrast between them.

20. Mr. ZOUREK, Special Rapporteur, observed that the Commission seemed to be agreed in principle. He shared Mr. Alfaro's view that the accidental and transitory character of article 14 should be stressed.

21. Mr. BARTOŠ said he would have no objection to the adoption of Mr. Erim's suggestion.

22. The CHAIRMAN suggested that articles 14 and 15 should be referred to the Drafting Committee for redrafting in the light of the discussion.

*It was so agreed.*

#### ARTICLE 16

23. Mr. ZOUREK, Special Rapporteur, introducing article 16, (*Discharge of consular functions on behalf of a third State*), said that cases of discharge of consular functions on behalf of a third State were not infrequent in practice. He referred to the provision requiring the express permission of the State of residence. As was pointed out in the commentary, the situation covered by

article 16 might arise in two different sets of circumstances: either where the third State had no consul on the spot, as under the provisions of article VI of the Caracas Convention of 18 July 1911, or where consular relations had been broken off, but the need to retain certain consular functions was still felt. Since similar provisions were included in the legislation of many countries, he had thought it necessary to include the article in the draft.

24. The CHAIRMAN thought that the principle was scarcely open to question. It might, however, be more appropriate to move the article nearer to the Special Rapporteur's new article 2, paragraph 5 (see 505th meeting, para. 10), which had a certain relationship with article 16. He suggested that the article should be referred to the Drafting Committee.

*It was so agreed.*

#### ARTICLE 17

25. Mr. ZOUREK, Special Rapporteur, introducing Article 17 (*Withdrawal of the exequatur*), said that the right to withdraw the exequatur was recognized by doctrine and by practice and was provided for in many international treaties, including article 8 of the Havana Convention of 1928.

26. One point which might prove controversial was whether the text should be retained in its present form or whether the second clause in paragraph 1 limiting the right ("but, except . . .") should be deleted. In his opinion, the text should be kept in its present form. Mr. Verdross had stated in his comments on article 17 (A/CN.4/L.79) that there should be no provision in paragraph 2 concerning the withdrawal of the exequatur of a consular representative that was more rigorous than those for diplomatic representatives. He (the Special Rapporteur) believed, however, that the withdrawal of the exequatur was a more serious act than that of declaring a diplomatic agent *persona non grata*, for the consul's position was very different; consuls exercised a wide variety of functions requiring daily contacts with the State of residence. It would be going too far to admit that that State had unqualified power to withdraw the exequatur. He thought that the article achieved a balance: all the necessary guarantees were provided for the State of residence in the first clause of paragraph 1, and the modest qualification in the second clause had been introduced to prevent arbitrary withdrawals.

27. Another question that might be controversial was whether the State of residence should be obliged to give reasons for withdrawal. He recalled that, in the case of article 8 (*Refusal of the exequatur*), he had taken the view that the draft could not lay down an obligation to give reasons for the refusal (see 509th meeting, para. 29). In the present instance, however, since the withdrawal of official recognition given by the State of residence was bound to have serious effects on the operation of the consulate, he believed that reasons for the decision should be given. Nevertheless, he reserved his final position on the matter.

28. Turning to Mr. Scelle's amendments to article 17 (A/CN.4/L.82), he said he had no objection in principle to the addition of the proposed phrase to paragraph 1, although he did not consider it strictly necessary. With regard to the proposed paragraph 3, he thought that the guarantee given in paragraph 1 was enough and that Mr. Scelle's new paragraph might be placed in the commentary. In any case, decisions on

those points should be postponed until Mr. Scelle could be present to introduce his amendments.

29. Mr. VERDROSS did not think that the Special Rapporteur had given enough reasons in the commentary for such a wide differentiation between diplomatic relations and consular offices. The exercise of consular functions, like that of diplomatic functions, presupposed the receiving State's confidence in the person concerned. There might be sufficient grounds for withdrawing the exequatur even if the officer concerned was not guilty of an infringement of the laws of the receiving State. Accordingly, he believed that, in order to reflect the existing practice, the provision should be drafted in the same way as the corresponding article of the draft on diplomatic intercourse and immunities.

30. The CHAIRMAN drew attention to the relevant provisions of the Havana Convention of 1928 (article 8), the Convention of Friendship and Consular Relations of 18 July 1903 between Denmark and Paraguay<sup>2</sup> (article VIII), the Consular Convention between Italy and Czechoslovakia of 1 March 1924<sup>3</sup> (article 1, paragraph 7), the Convention between the United States of America and Costa Rica of 12 January 1948<sup>4</sup> (article I, paragraph 4), the Consular Convention between the United Kingdom and Sweden of 14 March 1952<sup>5</sup> (article 5, paragraph 3) and the Consular Convention between the United Kingdom and Italy of 1 June 1954<sup>6</sup> (article 5, paragraph 3). Those provisions reflected the existing practice in the matter and showed that, although certain qualifications were made concerning the modalities of the withdrawal of the exequatur, none of them contained any such express conditions as that proposed by the Special Rapporteur in the first clause of paragraph 1. In fact, most of those provisions were concerned with the question whether or not the consular officer had given cause for complaint.

31. Mr. EDMONDS agreed that the provision of the first clause of paragraph 1 was too narrow and was not in conformity with existing practice.

32. Mr. ZOUREK, Special Rapporteur, said that since the practice in the matter was not uniform, he had drafted the article as a proposal *de lege ferenda*. It was true that certain consular treaties contained more flexible provisions on the subject; thus, under the Consular Convention between the United Kingdom and France of 31 December 1951<sup>7</sup> (article 4, paragraph 5), the receiving State could not refuse or revoke an exequatur "except for grave reasons". If any member of the Commission wished to propose a different formula he would be prepared to accept it. He further drew attention to the Consular Convention between the United States of America and the United Kingdom of 6 June 1951<sup>8</sup> (article 5, paragraph 3), which provided that "the receiving State may revoke the exequatur or other authorization of a consular officer whose conduct has given serious cause for com-

plaint" and that "the reason for such revocation shall, upon request, be furnished to the sending State through diplomatic channels". That article provided an alternative solution to the problem of the obligation to furnish reasons for the withdrawal of the exequatur; however, he believed that the provision in paragraph 2 would suffice.

33. Mr. MATINE-DAFTARY agreed with speakers who had criticized the first clause of paragraph 1 as being too narrow. A broader formula should be found to cover all types of cases where the conduct of consular officers left much to be desired. Referring to paragraph 2, he said he saw no reason why States should be obliged to communicate the reasons for the withdrawal of the exequatur; if, however, the majority of the Commission wished to retain that provision, it should be stated, either in the article itself or in the commentary, that the reasons would be furnished for information only. Such a provision would make it possible to avoid disputes with regard to withdrawals.

34. Mr. YOKOTA agreed with the previous speakers who had criticized the article on the grounds that it limited the withdrawal of the exequatur to cases of infringement of local laws. He pointed out that article 8, paragraph 1, of the draft on diplomatic intercourse and immunities did not limit the right of the receiving State to declare a diplomatic agent *persona non grata*. Since the results of such a declaration would far more seriously affect subsequent relations between the States concerned than would the withdrawal of a consul's exequatur, he failed to see why a consular officer should be better protected than a diplomatic agent.

35. Nor could he agree to the requirement in paragraph 2 of article 17 that reasons for the withdrawal of the exequatur should be given. He recalled that a similar provision had been suggested by the Special Rapporteur on diplomatic intercourse and immunities and that the Commission had ultimately decided not to include it. Admittedly there was a difference between the position of a diplomatic agent and that of a consular officer, but he did not think that it was so great as to impose the obligation to give reasons. He therefore suggested that paragraph 2 should be deleted.

36. Mr. SANDSTRÖM supported the views of Mr. Verdross and Mr. Yokota.

37. The CHAIRMAN was of the same opinion. The practical effect of paragraph 1 might be to make it impossible for the State of residence to withdraw the exequatur, since it was unusual for the consul to infringe the laws of that State. In his view it would be better either to follow the model of the corresponding article in the draft on diplomatic intercourse and immunities, or to replace the words "in the event of his being guilty of an infringement of that State's laws" by the words "for serious cause".

38. Mr. PADILLA NERVO said that he had similar reservations with regard to the article under consideration. He suggested that paragraph 1 of article 17 should provide that the Government of the State of residence could withdraw the exequatur of a consular officer who had ceased to be *persona grata* or acceptable to the State of residence. Paragraph 2 should reflect the second clause of the Special Rapporteur's text of paragraph 1, and provide that, except in urgent cases, the State of residence should not resort to that measure without previously endeavouring to secure the consular officer's recall by his sending State. Those two para-

<sup>2</sup> See *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities*, United Nations Legislative Series, vol. VII (United Nations publication, Sales No.: 58.V.3), p. 430.

<sup>3</sup> *Ibid.*, p. 437.

<sup>4</sup> *Ibid.*, p. 452.

<sup>5</sup> *Ibid.*, p. 467.

<sup>6</sup> Cmd. 9193 (London, Her Majesty's Stationery Office).

<sup>7</sup> Cmd. 8457 (London, His Majesty's Stationery Office).

<sup>8</sup> United Nations, *Treaty Series*, vol. 165 (1953), No. 2174, p. 128.

graphs would cover all the possibilities that might arise in practice.

39. Usually there was an exchange of views between the Governments concerned for the purpose of avoiding formal action and of maintaining good relations. That being so, paragraph 2 of article 17 was unnecessary, since the reasons for requesting a consul's recall would have been alluded to during the exchange of views.

40. Mr. LIANG, Secretary to the Commission, pointed out that in the ordinary intercourse between States matters did not go so far as the wording of article 17 would indicate. Under paragraph 1, the conviction of a consul in judicial proceedings would be necessary. In practice, where a consul misconducted himself, the matter was dealt with more discreetly with a view to avoiding a worsening of relations between the States concerned. Even where there was a strong case for a consul's conviction, the State of residence would ordinarily not bring him to trial but either seek his recall or revoke his exequatur. One of the reasons for that practice was that, even in the event of acquittal, the consul would find himself in an awkward position if he decided to continue in his post, although he would have a perfect right to do so. Thus, in either eventuality, the cause of friendly relations between the States concerned would not be served by bringing a consul to trial, nor did he think that it would be served by any provision in the draft which might encourage such a practice.

41. Mr. ZOUREK, Special Rapporteur, pointed out that the right to withdraw the exequatur was qualified in most recent consular conventions, including those between the United Kingdom and France (1951), between the United Kingdom and the United States of America (1951), between the United Kingdom and Sweden (1952), and between the United Kingdom and Norway (1951). He therefore felt that some kind of limitation should be indicated in article 17.

42. He agreed that a consul might become undesirable to the State of residence without violating its laws; accordingly, he would have no objection to amending paragraph 1 by replacing the words in question by the words "for serious cause", as had been suggested by the Chairman, or by the clause, which was found in consular conventions, "if his conduct has given serious cause for complaint." He also agreed with Mr. Padilla Nervo that the second clause of paragraph 1 should be retained and perhaps be made more explicit.

43. It was true that in practice that clause would mean that the reasons for requesting a consular officer's recall would be given, and it was also true, as the Secretary had indicated, that ordinarily the question of a consul's misconduct was dealt with in a discreet manner. However, there were exceptions in which a State of residence did not follow such a procedure and simply withdrew the exequatur without communicating in advance with the sending State. An unexpected withdrawal of an exequatur without any communication of reasons was bound to cause tension between the States concerned, and in his view the Commission would contribute to better international understanding if it created an obligation to give reasons. He was therefore in favour of retaining paragraph 2.

44. Mr. ERIM drew attention to another consideration. If the present draft became a treaty, it would be a law-making treaty embodying the rules of international law respecting consular activities. He was not

in favour of requiring the State of residence to give reasons for withdrawing a consul's exequatur, but if the Commission were to take the opposite view, he thought it would be better to indicate in paragraph 1 that the exequatur could be withdrawn in the event of the consul's being guilty of an infringement of international law, rather than of the laws of the State of residence, since some of those laws might be contrary to international law.

45. The CHAIRMAN felt that there was at least one question of substance that should be settled first. The General Assembly might well ask why the Commission's treatment of consular officers had been more liberal than that of diplomatic officers. It seemed to him that the Commission should first decide whether any formula was needed in article 17 other than that in the corresponding article in the draft on diplomatic intercourse and immunities.

46. Mr. PADILLA NERVO agreed with the Chairman. Conceivably, cases could occur in which a consul had not violated either international law or the domestic law of the State of residence but his conduct had been such as to make him unacceptable. There had been cases in which the attitude or behaviour of a consul had not been in keeping with the dignity of his office or in which he had abused certain privileges. Accordingly, he suggested that the corresponding article on diplomatic officers should be used as a model, but he felt that it would be useful to retain the provision in the second clause of paragraph 1 of the Special Rapporteur's draft, after deleting the words "except in urgent cases". As so amended, the article would encourage a more discreet treatment of consular misconduct and at the same time imply, without saying so expressly, that reasons should be given.

47. Mr. ZOUREK, Special Rapporteur, said that withdrawing of a consul's exequatur was a more serious measure than declaring a diplomat *persona non grata*. He agreed with Mr. Padilla Nervo that the words "except in urgent cases" might be omitted.

48. Mr. EL-KHOURI pointed out that the functions of consular officers and diplomatic agents were quite different. A consular officer had limited functions relating to the enforcement of the sending State's laws. He could easily be hampered in his proper activities by misguided local functionaries and was therefore in more need of protection than a diplomatic agent.

49. Mr. AGO was in favour of the Chairman's idea of following the model of article 8 of the draft on diplomatic intercourse and immunities as closely as possible. He asked the Special Rapporteur if he would not agree to reversing the order of the ideas in article 17. The article might begin with a first paragraph stating that the State of residence could at any time inform the sending State that it intended to withdraw the exequatur of a consul because his conduct had given serious cause for complaint, and request the recall of the consul in question. A second paragraph might then provide that if the sending State refused to recall the consul, the State of residence could withdraw the exequatur without the consent of the sending State. Such a formulation would be parallel to that of the corresponding article on diplomatic officers and would constitute a more "diplomatic" approach to the question of the withdrawal of the exequatur.

50. Mr. ZOUREK, Special Rapporteur, welcomed Mr. Ago's suggestion, which was similar to that of

Mr. Padilla Nervo and would probably be acceptable to the Commission. He would prepare a redraft of article 17 along those lines.

51. Mr. TUNKIN supported the solution that had now been accepted by the Special Rapporteur. In his view, the position of a consular officer, so far as acceptability to the receiving State was concerned, was to some extent analogous to that of a diplomatic agent. A consul performed official functions in the territory of the State of residence and the text should not be capable of being construed as providing possible grounds for litigation between the States concerned if the State of residence no longer considered the consul *persona grata* and asked the sending State to recall him. The position was, *mutatis mutandis*, the same as that covered by article 8 of the draft on diplomatic intercourse and immunities.

52. He suggested that the Special Rapporteur's redraft of article 17 should be submitted direct to the Drafting Committee.

*It was so agreed.*

#### ARTICLES 18 AND 19

53. The CHAIRMAN suggested that, in keeping with the precedent of the draft on diplomatic intercourse and immunities, articles 18 and 19 of the present draft, both of which related to the termination of consular functions, should be discussed in connexion with a later chapter.

54. Mr. ZOUREK, Special Rapporteur, agreed to that course.

The meeting rose at 1 p.m.

### 517th MEETING

*Wednesday, 17 June 1959, at 9.55 a.m.*

*Chairman:* Sir Gerald FITZMAURICE

#### Consular intercourse and immunities (A/CN.4/108, A/CN.4/L.79, A/CN.4/L.80, A/CN.4/L.82) (continued)

[Agenda item 2]

#### DRAFT PROVISIONAL ARTICLES ON CONSULAR INTERCOURSE AND IMMUNITIES (A/CN.4/108, PART II) (continued)

##### ARTICLE 13 (continued)\*

1. The CHAIRMAN drew attention to the revised text of article 13, with two variants, submitted by the Special Rapporteur.

##### *"Consular functions"*

##### *"FIRST VARIANT"*

"1. The task of a consulate is to defend, particularly in relations with the authorities of the consular district, the rights and interests of the sending State and of its nationals and to give assistance and relief to the nationals of the sending State, as well as to exercise other functions specified in the relevant conventions or entrusted to the consulate by the sending State, without prejudice to the laws of the State of residence.

"2. Without prejudice to the consular functions deriving from the preceding paragraph, a consulate may perform the undermentioned functions (among others:

##### *"1. Functions concerning trade and shipping"*

"1. To protect and promote trade between the sending State and the State of residence, and to foster the development of economic relations between them;

"2. To render all necessary assistance to ships and merchant vessels flying the flag of the sending State which are in a port within its consular district;

"3. To render all necessary assistance to aircraft registered in the sending State;

"4. To render assistance to vessels owned by the sending State, and particularly its warships, which visit the State of residence;

##### *II. Functions concerning the protection of nationals*

"5. To see that the sending State and its nationals enjoy all the rights accorded to them under the laws of the State of residence and under the existing international conventions and to take appropriate steps to obtain redress if these rights have been infringed;

"6. To propose, where necessary, the appointment of guardians or trustees for nationals of the sending State, to submit nominations to courts for the Office of guardian or trustee, and to supervise the guardianship of minors and the trusteeship for insane and other incapable persons who are nationals of the sending State and who are in the consular district;

"7. To represent in all cases connected with succession, without producing power of attorney, the interests of absent heirs-at-law who have not appointed special agents for the purpose, to approach the competent authorities of the State of residence in order to arrange for the compilation of an inventory of assets and for the winding up of estates, and to settle disputes and claims covering the estates of deceased nationals of the sending State;

##### *"III. Administrative functions"*

"8. To perform or record acts of civil registration (births, deaths, marriages) in so far as it is authorized to do so under the laws of the sending State, without prejudice to the obligation of declarants to make whatever declarations are necessary in pursuance of the laws of the State of residence;

"9. To solemnize marriages in accordance with the laws of the sending State, where this is not contrary to the laws of the State of residence;

"10. To serve judicial documents or take evidence on behalf of courts of the sending State, in the manner specified by existing conventions or in any other manner compatible with the laws of the State of residence;

##### *"IV. Notarial functions"*

"11. To receive any statements which nationals of the sending State may have to make; to draw up, attest and receive for safe custody wills and deeds-poll executed by nationals of the sending State and indentures the parties to which are nationals of the sending State or nationals of other States, provided that they do not relate to immovable property or to rights *in rem* in connexion with such property;

\* Resumed from the 514th meeting.