

Document:-
A/CN.4/SR.553

Summary record of the 553rd meeting

Topic:
Consular intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
1960 , vol. I

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109. Mr. VERDROSS pointed out that the provision in article 24 was particularly necessary for the effective performance of consular functions by honorary consuls in socialist States, where real property was owned by the State. For the purpose of obtaining premises the honorary consul would be obliged to rely on facilities offered him by the receiving State.

110. The CHAIRMAN called for a vote on the applicability of article 24 (*Accommodation*) to honorary consuls.

It was decided by 12 votes to 2, with 2 abstentions, that article 24 should be applicable to honorary consuls.

The meeting rose at 1.10 p.m.

553rd MEETING

Thursday, 2 June 1960, at 3.30 p.m.

Chairman: Mr. Luis PADILLA NERVO

Consular intercourse and immunities (A/CN.4/131, A/CN.4/L.86) [continued]

[Agenda item 2]

PROVISIONAL DRAFT ARTICLES (A/CN.4/L.86) (continued)

ARTICLE 56 (*Legal status of honorary consul*) (continued)

1. The CHAIRMAN invited the Commission to discuss the question of the applicability to honorary consuls of the principle embodied in article 25 of the draft on consular privileges and immunities.

2. Sir Gerald FITZMAURICE suggested that the Commission should simultaneously consider the applicability of article 25 (*Inviolability of consular premises*), 26 (*Exemption of consular premises from taxation*) and 27 (*Inviolability of the archives and documents*) to honorary consuls. Whatever conclusion was reached in relation to one of those provisions would logically be valid for all, inasmuch as they had in common the essential element of the direct interest of the sending State in the premises and archives in question.

3. Mr. JIMÉNEZ DE ARÉCHAGA thought it would be better to deal with the applicability of the three articles to honorary consuls separately. Those three articles dealt with the most important issues; in addition, in connexion with article 27, the Commission would have to consider paragraph 3 of article 56 in the Special Rapporteur's revised text (551st meeting, paragraph 18).

4. Mr. YOKOTA also thought the applicability of each of the three articles to honorary consuls

should be discussed separately, for various reasons. For example, he considered that the principle of the inviolability of consular premises required some qualification in so far as it was to apply to consulates headed by an honorary consul. Inviolability should attach only to an office used exclusively for the exercise of the consular function and kept separate from the premises used by an honorary consul for his private business.

5. In theory, even where a career consul was in charge, the principle still applied that consular premises should not be used for non-consular purposes. In practice, however, there was seldom occasion to apply that rule to career consuls, whereas honorary consuls were very often engaged in commerce or some other gainful occupation. Accordingly, he thought that a special provision should be added to the effect that consular offices must be kept separate from premises used by an honorary consul for other activities.

6. Mr. YASSEEN said that he was prepared to accept the inviolability of the premises of a consulate in the charge of an honorary consul, with the addition of the following proviso: "if those premises are assigned exclusively for the exercise of consular functions."

7. Mr. MATINE-DAFTARY said that in practice it would be extremely difficult to apply such a provision. It would not be at all easy to check whether a consul who had outside activities did in fact use the consular premises for purposes other than the exercise of consular functions.

8. Accordingly, for practical reasons, he was prepared to accept the applicability of all the provisions of articles 25, 26 and 27 to an honorary consul on condition that the consul was a national of the sending State and did not engage in commerce or in some other gainful occupation in the receiving State.

9. Mr. SANDSTRÖM said that it was immaterial whether from the point of view of their applicability to honorary consuls, articles 25, 26 and 27 were discussed separately or together. The result would be the same in both cases.

10. As to the proviso proposed by Mr. Yasseen, he said the condition which it specified seemed much too strict. A consul might be engaged in research or study which was outside his official duties; if he carried on that research or study in the consular premises there would be no reason to deprive the consulate of inviolability. Perhaps the condition to be laid down should be that the premises must not be used for the conduct of trade. He was not, however, prepared to propose a definite formula at that stage.

11. The CHAIRMAN said that, in view of the differences of opinion, it would be preferable to deal with each article separately. He therefore invited members to discuss the applicability of article 25 to honorary consuls, together with Mr. Yasseen's proposal.

12. Mr. ŽOUREK, Special Rapporteur, sup-

ported the principle embodied in the proviso proposed by Mr. Yasseen, but thought that the proposal would not solve the practical difficulties involved.

13. He explained that, after careful reflection, he had decided not to mention article 25 in his new draft article 56, paragraph 2, because it was very difficult in practice to ascertain whether consular premises were being used by an honorary consul for purposes other than the exercise of his consular duties. After all, an honorary consul could engage in other activities; because of their honorary character, his consular duties were compatible with an outside occupation. In the circumstances, it could easily happen that, under pressure of time, the person concerned might be brought to use the consular premises for his other activities.

14. Mr. FRANÇOIS recalled that the Commission had not yet settled the final text of article 25. It was probable that the Drafting Committee would replace the expression "premises used for the purposes of the consulate" by the words "consular premises". The language used would thus make it clear that the premises should be used exclusively for the purposes of the consulate. A provision such as that proposed by Mr. Yasseen would be necessary if consular and non-consular activities were carried on in the same premises.

15. Mr. TUNKIN said it was important to find out what was the prevailing State practice in the matter. Perhaps those members who belonged to countries making extensive use of honorary consuls might comment on the practice. The Soviet Union had no practice in that field, but from his reading, he had formed the opinion that States were somewhat reluctant to grant inviolability to premises used by honorary consuls; the reason for that reluctance was that the honorary consul was often a citizen of the receiving State and it was difficult for that State to accept the proposition that one of its own citizens should occupy premises which were inaccessible to the local authorities. If the consular draft contained a provision barring access to premises occupied by honorary consuls many States would probably not accept the draft.

16. Sir Gerald FITZMAURICE said that he was quite prepared to accept the condition laid down in the proviso proposed by Mr. Yasseen. In cases where that condition was fulfilled, there was no valid reason why any distinction should be drawn, for the purpose of the inviolability of the premises, between consulates headed by an honorary consul and those headed by a career consul. He recalled, in that connexion, the common practice of entrusting a consulate sometimes to a career officer and sometimes to an honorary consul. Unless the applicability of article 25 to honorary consuls was accepted, the extraordinary situation would result that the same consular premises which were inviolable one day would not be inviolable the next, although the same

functions continued to be performed inside the premises.

17. As to the practice of States, he said that the large number of consular conventions signed by the United Kingdom made little or no distinction, so far as the inviolability of premises was concerned, between consulates headed by honorary consuls and those headed by career consular officers. He had examined the various multilateral treaties and the fourteen bilateral conventions reproduced in the United Nations publication *Laws and Regulations regarding Diplomatic and Consular Privileges and Immunities*¹ and had been unable to find a single one which specified anywhere that consular premises ceased to be inviolable because they were in the charge of an honorary consul. The Treaty between the Philippines and Spain of 1948 dealt only with career consular officers; other conventions covered honorary consular officers as well as career officers, but made no distinction between them with regard to the inviolability of consular premises and archives.

18. The 1924 Consular Convention² between Italy and the Czechoslovak Republic stated (article 1, paragraph 1) that consular officials could be either career or honorary officers and that those who were not career officers could be appointed from among nationals of either — or of neither — of the two States. That Convention did not deal with the inviolability of consular premises but contained provisions (article 9) on the closely related question of the inviolability of consular archives and, in that respect, did not differentiate between consular posts in the charge of honorary consuls and those in the charge of career consuls.

19. Another interesting example was provided by the 1948 Convention between the United States of America and Costa Rica.³ That Convention laid down in paragraph 6 (a) of its article II the inviolability of "the buildings and premises occupied by the sending State for official consular purposes". It was significant that paragraph 7, which provided for the somewhat exceptional privilege of a similar inviolability for the personal residence of a consular officer, limited that privilege to "a consular officer or employee who is a national of the sending State and not a national of the receiving State and is not exercising a private occupation for gain in the receiving State". He pointed out that the distinction drawn in that provision was not based on any differentiation between career officers and honorary consular officers as such but on the nationality or occupation of the person concerned. It would be noted that no distinction of any kind was

¹ United Nations *Legislative Series*, vol. VII (United Nations publication, Sales No. 58.V.3).

² League of Nations *Treaty Series*, vol. XXXIV, No. 876, p. 56.

³ United Nations *Treaty Series*, vol. 70 (1950), No. 896, p. 28.

made in the Convention in the matter of the inviolability of the consular premises themselves.

20. Mr. BARTOŠ said that the premises of a consulate, so long as no other activity was carried on therein, were inviolable. The Commission had already accepted the principle that consular premises should not be used for purposes other than the exercise of the consular function. Subject, therefore, to the condition laid down in the proviso proposed by Mr. Yasseen, consular premises in the charge of an honorary consul should be declared inviolable in the Commission's draft.

21. The principle that the premises used as a consulate, together with the consular archives, were inviolable, went back to the Middle Ages. The earliest consular conventions laid down that inviolability and specified that consular premises and consular archives must be kept separate from business premises and records. It was significant that that ancient tradition related to honorary consuls (*consules electi*).

22. The basic criterion was therefore that of the exclusive use of the premises for the exercise of the consular function. In the absence of such exclusive use, it would be difficult to admit that the premises were inviolable.

23. In Yugoslavia, there were no actual legislative provisions or regulations governing the question of the inviolability of consular premises in which non-consular activities were also carried out. The practice as laid down in instructions was that such premises were not searched without the consent of the Protocol Division of the Ministry of Foreign Affairs. The purpose of the practice was to forestall international friction.

24. From his fifteen years' experience, he could say that other States had always shown the utmost consideration for Yugoslav consulates abroad, which were very often in the charge of honorary consuls. Only in two cases had any search been made of such premises and in both cases the political consequences had been very serious. He could therefore say that the general trend seemed to be in favour of the inviolability of consular premises in the charge of honorary consuls, provided, of course, that the premises in question were used solely for the purpose of carrying out consular functions.

25. For those reasons, the Commission would be well advised to admit the applicability to honorary consuls of the provisions of article 25, paragraph 1, subject to the proviso that the premises concerned were used exclusively for the purpose of carrying out consular functions. For similar reasons, paragraphs 2 and 3 of article 25 should be declared applicable to consulates headed by honorary consuls. Paragraph 3 in particular set forth an obligation of the receiving State which practically went without saying.

26. Mr. LIANG, Secretary to the Commission, pointed out that in the memorandum submitted

by the Ministry of Foreign Affairs of Belgium, concerning the rights, privileges and prerogatives enjoyed by foreign diplomatic and consular officers in Belgium, it was specified in paragraph 14 that the official premises of career consular posts (*postes consulaires de carrière*) were inviolable.⁴ As could be seen, the inviolability of consular premises was laid down in Belgium in the case where the person in charge was a career consular officer.

27. He also drew attention to the formula used in the 1952 Consular Convention between the United Kingdom and Sweden⁵, which differed from that proposed by Mr. Yasseen. Article 10 (3) of that convention, which set forth the inviolability of consular premises by stating that "a consular office shall not be entered by the police or other authorities of the territory except with the consent of the consular officer in charge" added: "The provisions of this paragraph shall not apply to a consular office in the charge of a consular officer who is a national of the receiving State or who is not a national of the sending State." He recalled that, in article 2 (6) it was stated: "A consular officer may be a career officer (*consul missus*) or an honorary officer (*consul electus*)". The Convention thus made no distinction (so far as their treatment was concerned) between honorary consuls and career consuls and, therefore, if an honorary consul in charge of a consulate was not a national of the sending State, the police could enter the consular premises without his consent.

28. The two examples which he had given did not reveal the existence of a uniform State practice in the matter of the inviolability of consular premises in the charge of an honorary consul. From the logical point of view, however, it might seem appropriate to state that where a consular office was maintained by the sending State in the charge of an honorary consul and where the receiving State had been advised of the existence of an independent office, the office in question should be inviolable. Perhaps the Commission might wish to consider the possibility of a formula derived from the language of article 10 (3) of the 1952 Consular Convention between the United Kingdom and Sweden as an alternative to the text proposed by Mr. Yasseen.

29. Mr. ŽOUREK, Special Rapporteur, said that the discussion had shown that it was of vital importance to gather information on State practice in the matter. The wisest course for the Commission might therefore be to request governments for their views, before coming to any

⁴ *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. 24.

⁵ *United Nations Treaty Series*, vol. 202 (1954-1955), No. 2731, p. 158.

decision. However, he advised prudence in accepting the provisions of bilateral conventions as evidence of existing rules of general international law. For example, it would be interesting to see what degree of inviolability would be accorded in the United Kingdom to a consulate in the charge of an honorary consul if the sending State had not signed with that country a convention along the lines of the Anglo-Swedish Convention of 1952. Some conventions, like that entered into by the United States of America and Costa Rica, provided for privileges which went far beyond those recognized by general international law. It was essential to ascertain the practice of States in cases which were not governed by the provisions of a bilateral convention.

30. As to the 1924 Convention between Italy and the Czechoslovak Republic, he said it contained no reference to consular premises. However, in regard to the inviolability of consular archives and documents, set forth in article 9, paragraph 1, of that Convention, the following paragraph of the same article specified that "official books, documents or objects must always be kept separate from private correspondence, books and documents relating to the trade or industry in which consular officers not in the regular consular service may be engaged". Paragraph 5 of the same article laid down that the privilege of receiving and despatching cipher messages in relations with the Government authorities of the sending State belonged solely to heads of consular offices in the regular consular service. It could not therefore be maintained that, in the Convention in question, honorary consuls had been placed on the same footing as career consuls.

31. Mr. MATINE-DAFTARY pointed out to Mr. Bartoš that the legal status of consuls had changed radically since the Middle Ages. One could hardly expect the newly-independent States which were so jealous of their sovereignty to accord to consuls the treatment accorded in earlier centuries. Furthermore, the fundamental changes in international law which had taken place in the twentieth century had to be taken into account.

32. He regretted the division of opinion in the Commission, which was perhaps largely due to its failure to distinguish clearly between the different classes of honorary consuls. He agreed with the view that a receiving State would not accord inviolability to consular premises headed by an honorary consul of its own nationality, and accordingly he thought that the Commission's draft should make allowance for that very natural attitude of the State.

33. Mr. PAL observed that some members now appeared to think that article 25 went beyond what was warranted by practice and bilateral conventions. Such a criticism however, not only came too late but was not quite accurate; it was besides somewhat out of place where the present purpose was concerned. There were at least some bilateral conventions which supported the principle enunciated in the article. So far as it

related to the inviolability of premises, article 10 of the Anglo-Swedish Consular Convention of 1952 contained similar provisions and made no distinction between consulates headed by career consuls and those headed by honorary consuls, and indeed no case had been made out during the discussion for differential treatment of the latter. On the assumption that article 25 correctly stated the rule applicable to consulates in the charge of career consuls it should also be applicable to consulates headed by honorary consuls. The absence of practice should not be over-emphasized, particularly in view of the fact that part of the Commission's task was to promote the progressive development of law. In the same way as a person could be so blinded by the bright light of an ideal as to lose sight of practical matters, a person who forgot ideals altogether in his pursuit of practical achievement would never make his due contribution to progress.

34. Mr. TUNKIN said that the Commission must examine the practice of States in order to determine whether there was any legal distinction between ordinary and honorary consulates. His impression was that a receiving State was not normally prepared to do more than accord inviolability of premises to the latter if the head of post was not a national and if the premises were used exclusively for consular purposes. In the main those two conditions seemed to be generally accepted.

35. Mr. Yasseen's proposal would have to be expanded by reference to the additional criterion of the nationality of the head of post.

36. Mr. BARTOŠ said that Mr. Matine-Daftary seemed to have misunderstood his remarks. He had meant to emphasize that the inviolability of consular premises was a rule of customary law which applied even in the absence of any express provision to that effect in consular conventions. Yugoslavia also had had experience of the system of capitulations, but that was now a matter of the past. His country maintained consular relations with nearly all States and had not encountered difficulty in the application of the rule he had mentioned even vis-à-vis countries with which it had not yet concluded consular conventions.

37. If the Commission were to carry out its task of promoting the progressive development of international law it must recognize that the modern trend was towards an extension of consular privileges. If the institution of honorary consuls were accepted at all, the proper safeguards for the discharge of their functions by honorary consuls must be admitted. Any receiving State was free to refuse an exequatur to one of its own nationals or to revoke such an exequatur without giving reasons. In his opinion, the protection offered in article 25 with the proviso proposed by Mr. Yasseen was indispensable for honorary consuls.

38. Sir Gerald FITZMAURICE pointed out that, in so far as article 10 of the Anglo-Swedish Con-

ular Convention of 1952 differentiated between consular offices, the difference was based on the nationality of the head of post. Though he disagreed with the proposition that inviolability of premises should be refused on the grounds that the head of a post was a national of the receiving State, the distinction could be regarded as a rational one — as was not the case with the distinction based on whether the officer was a career or honorary consul. Mr. Tunkin had rightly observed that in many cases an honorary consul was a national of the receiving State, but he (Sir Gerald Fitzmaurice) had drawn the opposite conclusion from that fact. Surely, rather than interpret that fact as a ground for excluding honorary consuls from the enjoyment of inviolability of premises it should be regarded as proof that the institution of honorary consuls met a real need, particularly of smaller and less prosperous States. He agreed with Mr. Bartoš that the modern trend was towards inviolability, provided that the consular premises were used exclusively for consular purposes, and in that respect the nationality of the head of post was immaterial.

39. The Special Rapporteur had admitted the principle of the inviolability of archives in his new text of article 56. That inviolability could not be secured unless the premises of honorary consuls were also inviolable. It was in the general interest to enable them to perform their functions.

40. If the Commission found that practice varied should it not select those provisions which best met the common need and which were most in accord with latest trends? If governments were dissatisfied with its proposals they would have an opportunity of submitting observations and, at a later stage, of suggesting amendments. He thus adhered to the principle that consular premises of honorary consuls should be inviolable, provided they were used exclusively for consular functions.

41. Mr. JIMÉNEZ DE ARÉCHAGA observed that there seemed to be general agreement that article 25 should apply to honorary consuls with the proviso proposed by Mr. Yasseen. That view was confirmed in article 18 of the Convention regarding Consular Agents adopted at Havana in 1928.

42. Mr. TUNKIN did not think there was enough evidence to substantiate the contention that the modern trend was to grant inviolability of consular premises irrespective of the nationality of the head of post.

43. Mr. SANDSTRÖM said that there were weighty reasons for according inviolability to consular premises even if the consulate was directed by an honorary consul, for without such inviolability consular functions could not be carried out in freedom. The provision contained in article 10 of the Anglo-Swedish Consular Convention was disquieting.

44. Mr. VERDROSS agreed with Mr. Sandström and supported Mr. Yasseen's proposal. A receiving State was not bound to accept an honorary consul of its own nationality, but having accepted him

that State must recognize that the honorary consul had to perform official duties on behalf of the sending State which he could not perform freely unless his consular premises were inviolable. Naturally, it was an implied condition of the enjoyment of the privilege that the premises must not be used for non-consular purposes.

45. Mr. ŽOUREK, Special Rapporteur, suggested that in the light of existing practice the Commission's draft should stipulate that the provisions of article 25 would not apply to premises used by honorary consuls for their consular functions. It had to be remembered that, in the great majority of cases, honorary consuls had no consular premises, in the sense in which that expression was used in the draft, but carried out their consular functions in conjunction with their private occupations.

46. The CHAIRMAN, speaking as a member of the Commission, pointed out that the overriding consideration was the consent of the receiving State to accept an honorary consul. If a government thought that article 25, if applied to consulates in the charge of honorary consuls, was too liberal, that government's course would be simple: it would decline to admit honorary consuls. Moreover, no one could contend that archives, whether in the care of an honorary or a career consul, were not inviolable; in his opinion, the meaning of article 25 was in effect that one of the guarantees of the inviolability of archives and documents was the inviolability of the consular premises, if those were exclusively devoted to consular functions.

47. The only question left outstanding was what was the position of a consulate directed by an honorary consul who was a national of the receiving State and who used the premises exclusively for the performance of consular functions? Opinions seemed to differ on whether the authorities of the receiving State were empowered to enter those premises on the grounds that the honorary consul was a national of that State. His own interpretation of article 10 of the Consular Convention between the United Kingdom and Sweden of 1952 was that the exception mentioned in it was not general, but operated only in cases where asylum was given in a consulate to fugitives from justice. The authorities pursuing the fugitive were, in his opinion, entitled to enter the consulate without the prior consent of the head of post, if the latter was a national of the receiving State; the provision did not, however, lay down a general rule applicable solely to honorary consuls *qua* honorary.

48. Speaking as Chairman, he observed that the Commission seemed to be agreed that the inviolability stated in article 25 applied to honorary consuls, provided that the premises were used exclusively for consular functions. There also seemed to be no difference of opinion on the fact that the consular archives were in all cases inviolable. The only outstanding point seemed to be whether the criterion of nationality should be

introduced, in the form of a proviso concerning the case where the head of post was a national of the receiving State. The Commission might first vote on the proviso concerning the exclusive use of the premises for consular purposes and defer its decision on the proviso concerning nationality, which had not been exhaustively discussed.

49. Mr. PAL said that if article 25 itself were amended as the Chairman had suggested, he would have no objection; but if article 25 were made applicable to consulates headed by honorary consuls, subject to the sole qualification suggested — viz. the exclusive user of the premises for consular purposes, then the consequence would be that the permission of the head of the consular post would not be required to enable the local authorities to enter premises not so qualified, if the head of the post happened to be an honorary consul. He emphasized the fact that, as it stood, the article did not insist on exclusive user, though it did require user for consular purposes. The introduction of such a qualification where honorary consuls were concerned might materially affect the meaning of the article as applied to career consuls.

50. The CHAIRMAN said that he had not suggested any precise wording for that qualification; he had merely recommended the Commission to accept the principle and to defer a decision on the wording of the proviso.

51. Mr. AMADO thought that the Commission would be taking an unduly far-reaching decision in connexion with article 25. The very possibility that a national of the receiving State might be rendered immune from the legislation of that State by his appointment as honorary consul made him extremely uneasy. The results of the Drafting Committee's study and the observations to be made by governments should be awaited before the Commission made any decision on such an important matter.

52. Mr. EDMONDS observed that, in accordance with the Chairman's suggestion, the Commission would have to decide whether article 25 applied to honorary consuls, but should leave aside the question of nationality. In those circumstances, it was difficult for members who believed that the application of article 25 should be general to vote on the proposition as it had been stated.

53. Mr. YOKOTA believed that the Commission could well follow the Chairman's suggestion and vote at once on whether article 25 should be applicable to honorary consuls, with the proviso that the premises must be used exclusively for consular functions. The question whether the premises enjoyed inviolability if the head of post was a national of the receiving State was extremely complex and should be discussed further before any decision was taken.

54. Mr. EDMONDS thought that members who believed that the proviso concerning exclusive use for consular functions was unnecessary would not be given a fair opportunity to express that view.

55. The CHAIRMAN suggested to Mr. Edmonds that he should either vote against the proposition or else submit an amendment to test the opinion of the Commission.

56. Mr. ŽOUREK, Special Rapporteur, pointed out that the problem of nationality was implied in the first proposition on which the Chairman had suggested a vote. The debate had shown that a number of members could not accept the principle of according inviolability to consular premises if the head of post was a national of the receiving State. He agreed with Mr. Amado that the Commission did not yet have enough information at its disposal to decide that the premises of all consular posts headed by honorary consuls were inviolable. There was no need to take a decision on the question immediately, and it could be deferred until observations had been received from governments.

57. The Commission seemed to be agreed that the consular archives were inviolable; in any case, inviolability of archives and documents was provided for in article 27.

58. Mr. VERDROSS agreed with other members that the consular archives were inviolable, whether or not the head of post was an honorary consul or a national of the receiving State. Accordingly, there seemed to be no reason not to extend the inviolability to all consular premises devoted exclusively to consular functions, since such premises constituted nothing but a repository of archives.

59. Mr. ŽOUREK, Special Rapporteur, pointed out that archives might be kept outside the premises of a consular or diplomatic mission.

60. Mr. TUNKIN observed that the authorities of the receiving State could not enter consular premises without special permission in certain cases, but in other cases, where they could enter without such permission, that did not mean that the archives were not inviolable.

61. Mr. YOKOTA urged members to avoid discussion of substance at that stage. A decision should be taken forthwith on the first point defined by the Chairman, particularly since the Commission seemed to be agreed on that point. The question of the nationality of the head of the post might be discussed later if necessary.

62. Mr. MATINE-DAFTARY did not consider that the vote could be divided.

63. The CHAIRMAN thought that a vote on the first point he had mentioned would clarify the views of members. Any member who believed that even premises used exclusively for consular functions should not be inviolable unless the head of post was a national of the sending State would have to vote against the proposition.

64. Sir Gerald FITZMAURICE could not agree with that interpretation. The two questions were entirely separate, since the nationality issue arose equally in the case of honorary and in that of career consuls. If the Commission decided that

consular premises headed by consuls who were nationals of the receiving State did not enjoy inviolability, that decision would apply to both classes of consuls. That was a separate point, and might be decided upon later. The first decision to be taken, however, was whether there was any bar to inviolability on the grounds of the honorary or career status of the head of post.

65. Referring to the remarks of Mr. Edmonds he said that, according to Mr. Yasseen's proposal, the article would apply to consulates headed by honorary consuls in those cases only where the premises were used exclusively for consular functions. Mr. Edmonds could vote against that proposition and, if the Commission adopted that wording, a vote could be taken on whether the article was applicable to honorary consuls on that basis. At that stage, the only outstanding issue would be that of the nationality of the head of post, irrespective of his honorary or career status.

66. Mr. PAL said that his difficulty lay in the fact that the word "exclusively" did not appear in the Special Rapporteur's wording of article 25. From its absence it might be inferred that exclusive use for consular functions was not a necessary condition for the inviolability of premises so long as the head of post was a career consul. He could see no reason for such a distinction and, in those circumstances, he would find it difficult to vote for Mr. Yasseen's proposal.

67. Mr. YOKOTA pointed out that the difference was really one of practice rather than of theory. In theory, no consular premises, whether in charge of a career or an honorary consul, could be used for other purposes, but in practice, honorary consuls often used such premises — or, to be exact, part of such premises — for other activities, while career consuls did not. Accordingly, the insertion of the word "exclusively" was a necessary precaution in cases where the heads of post were honorary consuls.

68. Mr. LIANG, Secretary to the Commission, doubted whether the notion of exclusive use for consular functions applied at all to many consulates. For example, consuls at many posts lived in the buildings in which they had their offices and they might also share the premises with the trade mission of the sending State. Mr. Yasseen's proposal should therefore be amended so as to provide that the inviolability of the consular premises would depend on whether or not private business was conducted on the premises in addition to consular functions.

69. Mr. AMADO recalled that he had originally been agreeable to the idea of making separate provision for the institution of honorary consuls in the draft. Then a strong trend had become apparent in the Commission towards placing honorary and career consuls on the same footing, which constituted in effect an attempt to create a new rule of international law; now objections to that trend were crystallizing, in the light of purely practical considerations. The institution

of honorary consuls was an important part of the general consular system, but the lengthy debates in the Commission had shown that there was a fundamental difference between honorary and career consuls.

70. Mr. MATINE-DAFTARY, commenting on article 10 of the Consular Convention between the United Kingdom and Sweden of 1952, said he did not believe that a general rule of international law could be based on a bilateral agreement, particularly on one concluded between two countries with such similar backgrounds. In any case, he construed that article to mean that the inviolability of consular premises did not apply if the head of post was an honorary consul.

71. Sir Gerald FITZMAURICE assured Mr. Matine-Daftary that the exception provided for in the article he had cited applied to career consuls as well as to honorary consuls.

72. Mr. MATINE-DAFTARY considered that the reference to a consular officer "who is a national of the receiving State or who is not a national of the sending State" was an implicit reference to honorary consuls.

73. Mr. FRANÇOIS considered that any vote taken at that stage would be based on misconceptions. It would be wise to follow the Special Rapporteur's suggestion and for the time being to take no decision on the question of the applicability of article 25 to consulates headed by honorary consuls. The commentary might state that the question had been discussed at length and that opinion had been divided; and governments might be asked to give their views on the question before a final decision was taken.

74. The CHAIRMAN recommended the Commission to adopt Mr. François's suggestion.

It was so agreed.

The meeting rose at 6 p.m.

554th MEETING

Friday, 3 June 1960, at 9.30 a.m.

Chairman: Mr. Luis PADILLA NERVO

Consular intercourse and immunities
(A/CN.4/131, A/CN.4/L.86) [continued]

[Agenda item 2]

PROVISIONAL DRAFT ARTICLES (A/CN.4/L.86)
(continued)

ARTICLE 56 (*Legal status of honorary consuls*)
(continued)

1. The CHAIRMAN invited the Commission to discuss the question of the applicability to hono-