

Document:-
A/CN.4/SR.622

Summary record of the 622nd meeting

Topic:
Consular intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
1961 , vol. I

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622nd MEETING

Friday, 30 June 1961, at 10 a.m.

Chairman : Mr. Grigory I. TUNKIN

Consular intercourse and immunities
(A/4425; A/CN.4/136 and Add.1-11; A/CN.4/317)
(resumed from the 619th meeting)

[Agenda item 2]

DRAFT ARTICLES (A/4425): SECOND READING (*continued*)

ARTICLE 13 (formerly article 17) (Precedence)

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

2. The Drafting Committee proposed the insertion of the following paragraph 5 after paragraph 4 of article 13 as adopted at the 618th meeting (para. 14):

"5. Honorary consuls who are heads of post shall rank in each class after career heads of post, in the order and according to the rules laid down in the foregoing paragraphs."

3. The last paragraph of the article would then be renumbered as paragraph 6.

The proposal was adopted.

ARTICLE 42 (formerly article 43) (Exemption from obligations in the matter of registration of aliens and residence and work permits)

4. The CHAIRMAN pointed out that the language of the articles proposed by the Drafting Committee occasionally departed from that of the corresponding provision of the Vienna Convention on Diplomatic Relations. Sometimes the English text coincided with the Vienna text but the French did not; in other places, the reverse was the case.

5. He proposed that the Commission should instruct the Drafting Committee to compare the English and French texts and ensure that they both corresponded to the Vienna text.

The proposal was adopted.

6. The CHAIRMAN said that the Drafting Committee proposed the following text for article 42:

"1. Members of the consulate, members of their families forming part of their households and their private staff shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

"2. The persons referred to in paragraph 1 of this article shall be exempt from any obligations in regard to work permits imposed either on employers or on employees by the laws and regulations of the receiving State concerning the employment of foreign labour."

Article 42 was adopted.

ARTICLE 43 (formerly article 44)
(Social security exemption)

7. The CHAIRMAN said that the Drafting Committee

proposed the following text for article 43:

"1. Subject to the provisions of paragraph 3 of this article, the members of the consulate shall with respect to services rendered for the sending State be exempt from social security provisions which may be in force in the receiving State.

"2. The exemption provided for in paragraph 1 of this article shall apply also to members of the private staff who are in the sole employ of members of the consulate, on condition.

"(a) That they are not nationals of or permanently resident in the receiving State; and

"(b) That they are covered by the social security provisions which are in force in the sending State or a third State.

"3. Members of the consulate who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall be subject to the obligations which the social security provisions of the receiving State impose upon employers.

"4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State."

8. Mr. EDMONDS said that he could not understand the purpose of paragraph 2 (b). Surely, it was immaterial to the receiving State whether members of the private staff were covered by the social security provisions in force in the sending State or in a third State.

9. The CHAIRMAN explained that the provision in question was similar to the corresponding one in article 33 of the Vienna Convention.

Article 43 was adopted.

ARTICLE 44 (formerly article 45)
(Exemption from taxation)

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

"1. Members of the consulate, with the exception of the service staff, and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, save

"(a) Indirect taxes normally incorporated in the price of goods or services;

"(b) Dues and taxes on private immovable property situated in the territory of the receiving State, unless held by a member of the consulate on behalf of the sending State for the purposes of the consulate;

"(c) Estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject, however, to the provisions of article 46 concerning the succession of a member of the consulate or of a member of his family;

"(d) Dues and taxes on private income having its source in the receiving State and capital taxes relating to investments made by them in commercial or financial undertakings in the receiving State;

"(e) Charges levied for specific services rendered;

"(f) Registration, court or record fees, mortgage due;

and stamp duty, subject to the provisions of article 28.

"2. Members of the service staff and members of the private staff who are in the sole employ of members of the consulate shall be exempt from dues and taxes on the wages which they receive for their services."

Article 44 was adopted.

ARTICLE 45 (formerly article 46)
(Exemption from customs duties)

11. The CHAIRMAN said that the Drafting Committee proposed the following text for article 45:

"1. The receiving State shall, under the conditions laid down by its laws and regulations, permit entry of and grant exemption from all customs duties, taxes and related charges other than charges for storage, cartage and similar services, on:

"(a) Articles for the official use of a consulate of the sending State;

"(b) Articles for the personal use of consular officials and of members of their families forming part of their households, including articles intended for their establishment.

"2. Members of the administrative and technical staff shall enjoy the immunities specified in paragraph 1 of this article in respect of articles imported at the time of first installation."

12. The CHAIRMAN, speaking as a member of the Commission, proposed that paragraph 1 be brought into line with the corresponding paragraph of article 36 of the Vienna Convention. He saw no reason for replacing the words "The receiving State shall, in accordance with such laws and regulations as it may adopt" by the somewhat broader language: "The receiving State shall, under the conditions laid down by its laws and regulations." The change actually affected the substance of the provision.

13. He was also concerned with the absence of a provision on the subject of articles the import or export of which was prohibited by the law or controlled by the quarantine regulations of the receiving State. A reference to that question had been included in article 36 of the Vienna Convention in the form of an exception to the rule set forth in paragraph 2 that the personal baggage of a diplomatic agent was exempt from customs inspection. The main provision did not, of course, occur in the draft under study because the personal baggage of consuls enjoyed no such exemption. Unfortunately, in dropping the main provision, the Drafting Committee had also dropped the reference to prohibited imports or exports.

14. Mr. PAL pointed out that if the Chairman's proposal for the amendment of paragraph 1 were adopted, the words "in accordance with such laws and regulations as it may adopt" would cover the question of prohibited exports or imports. The receiving State could adopt laws and regulations prohibiting certain imports or exports.

15. Mr. AGO, speaking as the Chairman of the Drafting Committee, explained that the Committee had found

the language of article 36, paragraph 1, of the Vienna Convention unsatisfactory, particularly in French, and had therefore tried to improve upon it. He suggested that the improved language be retained and that, in order to meet the point raised by the Chairman, the words "and subject to the limitations" be inserted between the words "the conditions" and "laid down by its laws".

16. Mr. BARTOŠ explained that the purpose of the provisions of paragraph 1 of article 36 of the Vienna Convention was to draw a distinction between customs duties and taxes proper, from which the diplomatic agent was exempt, and charges for, e.g., storage and cartage from which the diplomatic agent was not exempt.

17. Article 36, paragraph 2, of the Vienna Convention had been introduced at the request of the delegations of the United States of America and of a number of countries of Asia and Africa interested in the suppression of the illicit traffic of drugs and works of art.

18. He agreed with the Chairman that there was no valid reason for departing from the text adopted at Vienna.

The Chairman's proposal was adopted.

19. Mr. ŽOUREK, Special Rapporteur, said that the expression "members of the administrative and technical staff" which occurred in paragraph 2 was not used anywhere else in the draft. Since that expression was not defined in article 1, he proposed that it should be replaced by a reference to "consular employees other than members of the service staff".

20. The CHAIRMAN suggested that article 45 should be referred back to the Drafting Committee with instructions to bring paragraph 1 into line with the corresponding provision of the Vienna Convention and to amend paragraph 2 as proposed by the Special Rapporteur.

It was so agreed.

ARTICLE 46 (formerly article 47) (Estate of a member of the consulate or of a member of his family)

21. The CHAIRMAN said that the Drafting Committee proposed the following text for article 46:

"In the event of the death of a member of the consulate or of a member of his family, the receiving State

"(a) Shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the country the export of which was prohibited at the time of his death;

"(b) Shall not levy estate, succession or inheritance duties on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consulate or as a member of the family of a member of the consulate."

Article 46 was adopted.

ARTICLE 47 (formerly article 48)
(Exemption from personal services and contributions)

22. The CHAIRMAN said that the Drafting Committee proposed the following text for article 47:

"The receiving State shall exempt members of the consulate, other than the service staff, and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting."

23. Mr. ŽOUREK, Special Rapporteur, said that the expression "public service," the meaning of which was clear in English, had been rendered in the French text of the draft as *service d'intérêt général* in preference to the term *service public* used in article 35 of the Vienna Convention. The reason for the change was that the term *service public* had a very definite meaning in French public law, quite different from that in which it was used in the article. It could not be used to denote for example the services required of citizens in cases of fire and other disasters.

24. Mr. AMADO said that the words *intérêt général* did not convey the required meaning.

25. The CHAIRMAN said that, since the words *service public* were used in the French text of the Vienna Convention, known to be a translation of the original English text on which the Drafting Committee of the Vienna Conference had worked, there was no reason to depart from that text.

26. Sir Humphrey WALDOCK suggested that the French text of article 47 should be brought into line with the corresponding provision of the Vienna Convention; it would be explained in the commentary that the Commission would have preferred to use another French expression but had decided to adhere to the Vienna text. For the purpose of the interpretation of the draft both the French and the English texts could be consulted, and the English would make the intention clear.

27. The CHAIRMAN said that, if there were no objection, he would consider that the Commission wished to adopt article 47, amended in the French text as suggested by Sir Humphrey Waldock.

Article 47, as amended, was adopted.

ARTICLE 48 (formerly article 49) (Question of the acquisition of the nationality of the receiving State)

28. The CHAIRMAN said that the Drafting Committee proposed the following text for article 48.

"Members of the consulate and members of their families forming part of their households shall not, solely by the operation of the law of the receiving State acquire the nationality of that State."

Article 48 was adopted.

ARTICLE 49 (formerly article 51)
(Beginning and end of consular privileges and immunities)

29. The CHAIRMAN said that the Drafting Committee proposed the following text for article 49:

"1. Every member of the consulate shall enjoy the privileges and immunities provided in the present articles from the moment he enters the territory of the receiving State on proceeding to take up his

post, or if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or to the authority designated by that Ministry.

"2. Persons who are members of the family forming part of the household or of the private staff of a member of the consulate shall enjoy the privileges and immunities provided in the present articles from the moment they enter the territory of the receiving State. If they are in the territory of the receiving State at the time of joining the household or entering the service of a member of the consulate, privileges and immunities shall be enjoyed from the moment when the name of the person concerned is notified to the Ministry for Foreign Affairs or to the authority designated by that Ministry.

"3. When the functions of a member of the consulate have come to an end, his privileges and immunities together with those of the persons referred to in paragraph 2 of this article shall normally cease at the moment when the persons in question leave the country, or on the expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. The same provision shall apply to the persons referred to in paragraph 2 above, if they cease to belong to the household or to be in the service of a member of the consulate.

"4. However, with respect to acts performed by a member of the consulate in the exercise of his functions, his personal inviolability and immunity from jurisdiction shall continue to subsist without limitation of time.

"5. In the event of the death of a member of the consulate, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them, until the expiry of a reasonable period enabling them to leave the territory of the receiving State."

30. After a discussion concerning the use of the term *foyer* in the draft (rather than *ménage*, which was used in the Vienna Convention), the CHAIRMAN suggested that article 49 should be adopted as drafted and that the commentary should explain why the Commission's draft differed from the Vienna Convention in that respect.

It was so agreed.

ARTICLE 50 (formerly article 52)
(Obligations of third State)

31. The CHAIRMAN said that the Drafting Committee proposed the following text for article 50:

"1. If a consular official passes through or is in the territory of a third State, which has granted him a visa if a visa was required, while proceeding to take up or return to his post or when returning to his own country, the third State shall accord to him the personal inviolability and such other immunities provided for by these articles as may be required to ensure his transit or return. The third State shall accord like treatment to the members of his family enjoying privileges and immunities who are accom-

panying the consular official or travelling separately to join him or to return to their country.

"2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the transit through their territory of other members of the consulate or of members of their families.

"3. Third States shall accord to correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as are accorded by the receiving State. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord.

"4. The obligations of third States under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to *force majeure*."

32. Mr. ŽOUREK, Special Rapporteur, said that he had some doubts about the wisdom of combining in paragraph 1 what had been two separate paragraphs in the 1960 text, for the second sentence might be misinterpreted to mean that members of a consular official's family were entitled to personal inviolability while in transit through a third State. Some drafting changes were probably needed.

Article 50 was adopted, subject to drafting changes.

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

33. The CHAIRMAN said that the Drafting Committee proposed the following text for article 51:

"1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities 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.

"2. The consular premises shall be used exclusively for the exercise of consular functions as specified in the present articles or in other rules of international law. In particular, they shall not be used as asylum for persons convicted or prosecuted by the authorities of the receiving State.

"3. The rule laid down in paragraph 2 of this article shall not exclude the possibility of the offices of an official mission of the sending State to an international intergovernmental organization being installed in the consular premises.

"4. Similarly, the rule laid down in paragraph 2 above shall not exclude the possibility of offices of other institutions or agencies being installed in the consular building or premises, provided that the premises assigned to such offices are separate from those used by the consulate. In that event, the said offices shall not, for the purposes of these articles be deemed to form part of the consular premises."

34. Mr. JIMÉNEZ de ARÉCHAGA said that he could

only agree to the second sentence in paragraph 2 on the understanding that it would not prejudice the use of consular premises for the purpose of lodging persons who had been duly accorded diplomatic asylum.

35. Mr. ŽOUREK, Special Rapporteur, suggested that it might not be advisable to include the second sentence in paragraph 2, which could raise serious objections and also lead to misinterpretation, since the matter of asylum was not dealt with in the Vienna Convention.

36. The CHAIRMAN, speaking as a member of the Commission, said that he had voted in favour of the inclusion of that sentence (604th meeting, para. 94) and as to substance he continued to support it. But it would be preferable not to depart from the Vienna Convention and not to deal with the question of asylum in the convention, in order to avoid possible misinterpretation.

37. Mr. PADILLA NERVO agreed with the Chairman. The language of the first sentence was strong enough and it was not necessary to single out one of the possible misuses of consular premises for special mention.

38. Mr. AGO considered that the second sentence in paragraph 2 had become redundant in consequence of the amendment of the first: it should therefore be deleted.

39. Mr. BARTOŠ disagreed. He was convinced that the omission of the sentence in question would constitute a serious obstacle for some States to ratification. He would prefer the Commission not to pronounce on the question and either to include the sentence in square brackets in the article itself or to specify in the commentary that opinion on the matter had been divided.

40. Mr. AMADO said that he was unable to agree with Mr. Bartoš's suggestion as he fully shared the views expressed by the speakers who had preceded him.

41. In Latin American countries, when there was no room in the premises of a diplomatic mission to provide asylum for victims of political persecution, consular premises were sometimes used for the purpose.

42. Mr. YASSEEN agreed with the reasons given by the Chairman for the deletion of the sentence but thought there would be no harm in mentioning the problem in the commentary.

43. Mr. MATINE-DAFTARY asked whether there existed any provision in Latin American regional conventions allowing consular premises to be used for purposes of giving asylum.

44. Mr. PAL said it would be preferable not to mention the question of asylum and to frame the first sentence of paragraph 1 in the negative form on the model of article 41, paragraph 3, of the Vienna Convention.

45. Mr. AGO said that the wording of article 41, paragraph 3, was by no means satisfactory and the prohibition of improper use should be expressed in far stronger language in the case of consular premises because the possibility of abuse was greater than in that of the diplomatic mission's premises.

46. Mr. GARCÍA AMADOR said, in reply to Mr. Matine-Daftary, that the judgments of the International Court of Justice in the Asylum case (*Colombia v. Peru*),¹ had been severely criticised on the ground that the Court had relied too much on conventional law. The rules of asylum were governed by several conventions, some of a general character, between Latin American countries, and by practice which for humanitarian reasons tended to be very liberal. Different places were used to provide asylum for victims of persecution, and he would be opposed to any provision incompatible with a liberal practice which was becoming more and more universal in the continent where even European embassies and legations were providing asylum. The need for asylum would continue as long as régimes of terror existed.

47. Mr. SANDSTRÖM thought it preferable to make no mention of the problem of asylum which, in any event, had been chosen by the General Assembly as a topic for codification and would presumably, at some stage, be considered by the Commission (A/4425, chapter IV, para. 39).

48. The CHAIRMAN, speaking as a member of the Commission, suggested that the second sentence in paragraph 2 should be deleted for the sake of conformity with the Vienna Convention. An explanation could be inserted in the commentary as to the two opposing views voiced in the Commission.

49. Mr. JIMÉNEZ de ARÉCHAGA supported the deletion of the second sentence in paragraph 2.

50. In reply to the question of Mr. Matine-Daftary, he stated that under existing conventions political asylum could be given in the premises of diplomatic missions, sometimes in warships and in military establishments. The inference was, therefore, that political refugees could not be given asylum in consular premises. The Havana Convention regarding consular agents² precluded any form of asylum in consulates.

51. There was however, a body of opinion which favoured an extension of the right of asylum so that it could be granted by consuls and that view was not only held by Latin American lawyers but had also been put forward in the Institute of International Law by Sir Eric Beckett in 1950. It had not as yet found expression in any international instrument.

52. The reason for his objection to the second sentence of paragraph 2 was that consular premises were quite frequently used to accommodate political refugees who had been granted asylum by a diplomatic agent. That was particularly true in cases where there was a large number of such refugees, not necessarily in the capital of the country. For example, during the Spanish Civil War asylum had been granted on the authority of heads of diplomatic missions but provided in consular premises at Barcelona. As drafted, the second sentence in para-

graph 2 would rule out that perfectly legitimate application of the principle of diplomatic asylum, and since the Commission had decided not to deal with the problem it would be preferable to make no mention of it.

53. Sir Humphrey WALDOCK, Mr. BARTOŠ and Mr. ERIM agreed with the course suggested by the Chairman (para. 48 above).

The second sentence of article 51, paragraph 2 was deleted, on the understanding that the commentary would explain that opinion in the Commission had been divided.

54. Mr. FRANÇOIS observed that the substance of paragraph 3 had not appeared in the original draft of article 53 in the 1960 text. It might perhaps be included in paragraph 4. To give the offices of an official mission of the sending State to an international intergovernmental organization a form of inviolability might prejudice the future regulation of the subject.

55. Mr. ŽOUREK, Special Rapporteur, explained that the addition had seemed necessary because the Drafting Committee — despite his objection — had altered the text of article 53, paragraph 2, of the 1960 draft. The text of article 41, paragraph 3, of the Vienna Convention had reproduced the 1960 text, with the addition of the phrase “or by any special agreements in force between the sending and receiving State”. The new paragraph was required because, especially in New York and Geneva, consuls might be appointed to represent the sending State vis-à-vis international organizations. That was not, however, strictly a consular function, and in the absence of an express provision, it might appear that the consular premises could not be used for that purpose, in view of the stipulation that they were to be used exclusively for the exercise of consular functions (new article 51, paragraph 2).

56. Mr. FRANÇOIS replied that it seemed unnecessary to make special provisions for such circumstances. The provision in paragraph 4 might well apply to them.

57. Sir HUMPHREY WALDOCK observed that he had understood that the provision concerning representation in an international intergovernmental organization was to be inserted in article 14 (Performance of diplomatic acts by the head of a consular post).

58. Mr. ŽOUREK, Special Rapporteur, said that the Drafting Committee had indeed suggested an additional paragraph for draft article 14, reading:

“A head of consular post or other consular official may act as representative of the sending State to any international organization.”

59. The reason why the same restriction (“provided that...”) was not stipulated in paragraph 3 as in paragraph 4 was that, whereas the activity referred to in paragraph 3 was not strictly part of the consular function, it would be unreasonable to demand that a separate room be reserved for it; by contrast, the activities described in paragraph 4 were not activities of the consulate but of other institutions or agencies, such as travel agencies, which were quite distinct from the consulate. The legal situation was therefore quite different

¹ ICJ Reports 1950, pp. 266 *et seq.* and 1951, pp. 71 *et seq.*

² *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. 422.

in the two cases. It might, however, be better to defer further consideration of paragraph 3 for the moment and to consider it in connexion with the additional paragraph for draft article 14.

60. The CHAIRMAN, speaking as a member of the Commission, complained that the Drafting Committee had unnecessarily complicated the matter. It had not been fully discussed by the Commission, which had merely suggested that the Drafting Committee should consider how the draft article might be brought into line with article 41, paragraph 3, of the Vienna Convention. If that idea were accepted, paragraph 3 would be unnecessary because representation in an international intergovernmental organization was not incompatible with the exercise of consular functions. If, however, paragraph 2 stated that the consular premises should be used exclusively for the exercise of consular functions, further provisions would be required. It would, therefore, be preferable to delete paragraphs 2 and 3 and substitute for them an adaptation of article 41, paragraph 3, of the Vienna Convention.

61. Mr. AMADO also thought that the expression "must not be used in any manner incompatible" should be used in paragraph 2. The provision in paragraph 3 was of doubtful value, if not actually dangerous.

62. Sir Humphrey WALDOCK observed that paragraph 3 had been prepared by the Drafting Committee before it had considered the additional paragraph for draft article 14. The Drafting Committee had decided that representation in an international intergovernmental organization should be dealt with at that place as a function analogous to the performance of diplomatic acts by the head of a post. If the additional paragraph for draft article 14 was adopted, draft article 51, paragraph 3, would be unnecessary. The Special Rapporteur might reconsider the matter when the Commission had considered the new proposal for draft article 14. There had, in fact, been a lengthy discussion on the question of the word "incompatible" and some dismay had been expressed because it had been found to lend itself to varying interpretations. Mr. Ago had tried to remove the ambiguity. That was the more necessary because the opportunities for abuse were far greater in the case of consulates than in the case of diplomatic missions.

63. The CHAIRMAN, speaking as a member of the Commission, said that he doubted the advisability of deferring consideration of paragraph 3, since the Commission had still a great deal of work before it. There seemed to be no good reason for departing from the formulation in article 41, paragraph 3, of the Vienna Convention, unless there were additional points to be covered; but that was not so. Any departure from the Vienna Convention might be dangerous.

64. Mr. JIMÉNEZ de ARÉCHAGA supported the proposal to return to the language used in the Vienna Convention. Although paragraph 2 was now unambiguously worded, it might be too restrictive. It even raised the question whether a consul might sleep on the consular premises.

65. Mr. FRANÇOIS supported Mr. Ago's objection to the term "incompatible". A consulate might have several functions. It would be best to defer a decision until the Commission had discussed the additional paragraph proposed for article 14.

66. Mr. PAL considered that the wording of the Vienna Convention should be used, which was in any case very close to that of article 53, paragraph 2, of the 1960 text. He did not remember that the wording of that article had given rise to any particular comment and could not, therefore, see why the question was being raised at that stage.

67. Sir Humphrey WALDOCK observed that there had been considerable discussion on the word "incompatible" in connexion with article 54 (formerly article 53), paragraph 2, on a point raised by Mr. Ago (606th meeting, paras. 28 *et seq.*). It had been only at the end of that discussion that he had suggested (*ibid.*, para. 39) that the Drafting Committee should be asked to make the text of article 53, paragraph 2, more explicit.

68. Mr. AGO said that the question had been raised and discussed at length and the whole system had now been based on a much stricter rule, which stated that the consular premises should be used for the exercise of consular functions exclusively, not merely in any manner incompatible with consular functions. If that notion were abandoned, much more serious difficulties would arise in connexion with the clauses relating to honorary consuls. In that case, it would have to be stipulated that the consular office must be completely separate from all the other offices on the premises and inviolability would apply solely to the room used exclusively for the exercise of consular functions. It would be wrong to introduce differences between ordinary and honorary consuls. There were many activities that were not incompatible with consular functions: "incompatible" did not simply mean "other". The case of embassies covered by the Vienna Convention was quite different from that of consulates.

69. The CHAIRMAN, speaking as a member of the Commission, said that it might be possible to accept the term "exclusively" in connexion with honorary consuls, whose position differed in many ways from that of career consuls. He did not see the need to cover any points not covered by the wording of the Vienna Convention. "Incompatible" might not be the best possible word, but if members of the Commission were asked what other points had been covered by the departure from the wording of the Vienna Convention, they would be hard put to it to answer. It was not clear whether the intention was to impose greater restrictions on consulates. If so, special provisions would be required to cover representation in international organizations or at conferences, or even sleeping on the premises.

70. Mr. AMADO said that the Chairman had expressed his own firm view that the word "incompatible" was the appropriate one. A diplomatic mission might come, for instance, to a city where there was a consulate and meet on the premises. It could not do so, however, if those premises had to be used exclusively for the exercise

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.