

# **United Nations Conference on Consular Relations**

Vienna, Austria  
4 March – 22 April 1963

Document:-  
**A/CONF.25/L.4 and Add.1**

**Amendments to the draft articles on consular relations  
prepared by the International Law Commission**

Extract from Volume II of the *Official Records of the United Nations Conference on Consular Relations*  
(*Annexes, Vienna Convention on Consular Relations, Final Act, Optional Protocols, Resolutions*)

## DOCUMENT A/CONF.25/L.4 &amp; ADD.1

## Amendments to the draft articles on consular relations prepared by the International Law Commission

Transmitted in accordance with operative paragraph 2 of General Assembly resolution 1813 (XVII) of 18 December 1962<sup>1</sup>

## NOTE BY THE SECRETARY-GENERAL

1. In order to facilitate the work of the Conference, the General Assembly decided in resolution 1813 (XVII) of 18 December 1962 to invite "States which intend to participate in the Conference to submit to the Secretary-General as soon as possible, and in any event not later than 10 February 1963, for circulation to Governments, any amendments which they may wish to propose in advance of the conference to the draft articles prepared by the International Law Commission".
2. In this connexion the Sixth Committee stated in its report to the General Assembly (A/5343) that: (1) such preliminary amendments will be presented for information purposes and will not be formally before the Conference; (2) their nature, priority and subsequent action upon them will depend on the rules of procedure adopted by the Conference; (3) the word "amendment" also includes new proposals; (4) the reason for the time-limit for submission—not later than 10 February 1963—is to enable the Secretary-General to circulate the amendments to Governments in good time; (5) amendments received by the Secretary-General after that date will be communicated directly to the Conference; (6) the possibility of submitting such preliminary amendments in no way detracts from the right of the participating States to propose amendments during the Conference.
3. In accordance with resolution 1813 (XVII) the Secretary-General has the honour to transmit herewith amendments submitted by the following States: Austria, Canada, Federal Republic of Germany, Finland, Japan, Netherlands, United Kingdom of Great Britain and Northern Ireland, Belgium and Switzerland.

## 1. Austria

[Original: English]  
[8 February 1963]

## DRAFT AMENDMENTS

## Article 5:

Amend the system and the wording of this article as follows:

"1. The consular functions consist *inter alia* in:

"(a) As it stands now as sub-paragraph (a) of the draft;

"(b) As it stands now as sub-paragraph (b) of the draft;

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

"2. Exercising these functions the consular officials may particularly:

"(a) Issue passports ... (unchanged sub-paragraph (d) of the draft);

"(b) Help and assist ... (unchanged sub-paragraph (e) of the draft);

"(c) Act as notary and civil registrar and in capacities of a similar kind, and perform certain functions of an administrative nature if the laws of the receiving State do not provide for the opposite;

"(d) Safeguard the interests of nationals ... (unchanged sub-paragraph (g) of the draft);

"(e) Safeguard the interests of minors ... (unchanged sub-paragraph (h) of the draft);

"(f) Represent nationals ... (unchanged sub-paragraph (i) of the draft);

"(g) In civil and commercial matters, serve judicial documents or execute letters rogatory ... (unchanged sub-paragraph (j) of the draft);

"(h) Exercise rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels used for maritime or inland navigation being listed in the register of the sending State or being otherwise entitled to show flag of the sending State, and of aircraft registered in that State, and in respect of their crews;

"(i) Extend necessary assistance to vessels and aircraft mentioned in the previous sub-paragraph, and to their crews, take statements regarding the voyage of a vessel, examine and stamp ships' papers, and, without prejudice to the powers of the receiving State, conduct investigations into any incidents which occurred during the voyage, and settle disputes of any kind between the master, the officers and the

<sup>1</sup> Official Records of the General Assembly, Seventeenth Session, Supplement No. 17 (A/5217).

seamen in so far as this may be authorized by the law of the sending State ;

“(j) Pass on to the entitled persons any benefits, pensions or compensation due to them in accordance with their national laws or with international conventions, in particular under social security legislation ;

“(k) Receive payment of pensions or allowances due to nationals of the sending State not duly represented from the State of residence ;”.

**Article 11 :**

Add a new paragraph worded as follows :

“3. As regards consular agents, the formal exequatur may be replaced by an informal admission by the receiving State.”

**Article 23 :**

Add a new paragraph worded as follows :

“4. In all the cases mentioned in paragraphs 1 and 3 the receiving State is not obliged to explain its decision.”

**Article 30 :**

Add the following words at the end of paragraph 1 :

“... or the consent of the head of the respective diplomatic mission.”

**Article 32 :**

Delete the words : “... and documents...”

**Article 37 :**

Add the following words at the end of sub-paragraph (a) :

“and, as soon as possible, to transmit a certificate of death ;”

The first part of sub-paragraph (c) should read as follows :

“(c) If a vessel used for maritime or inland navigation, being listed in the register of the sending State or being otherwise entitled to show the flag of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State ...”.

**Article 44**

At the beginning of the second sentence of paragraph 2, replace the words : “In particular it shall” by : “it may ...”.

**Article 56 :**

Amend the title and the wording of this article as follows :

“Exclusion of private gainful occupation for career consular officials

“Consulars officials and members of their families forming part of their households shall not in the receiving State practise, for personal profit, any professional or commercial activity.”

**Article 58 :**

Add the following words at the end of the article :

“... or the consent of the head of the respective diplomatic mission.”

**Article 60 :**

Delete the words : “... and documents ...”.

**Article 62 :**

Delete the words :

“... with the exception of those who carry on a gainful private occupation, ...”.

**Article 71 :**

Amend the wording of this article as follows :

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

**2. Canada**

[Original : English]  
[11 February 1963]

**Article 1, sub-paragraph (a) :**

“‘Consular post’ means a consulate general, a consulate, a vice-consulate, a consular agency, or any other consular establishment.”

**Article 1, sub-paragraph (c) :**

“Means any person charged by the sending State with the duty of acting in that capacity”.

**New article 9 :**

1. Head of consular posts are divided into four classes :

- (1) Consuls-General ;
- (2) Consuls ;
- (3) Vice-Consuls ;
- (4) Consular agents.

2. A head of consular post must be appointed to one of the above classes and be recognized in that capacity by the receiving State.

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

**Article 15 — Last sentence of sub-paragraph 1 :**

“In the exceptional cases where no such officials are available to assume this position, a consular employee may, with the consent of the receiving State, be designated by the sending State to be in charge of the current administrative affairs of the consular post.”

**Article 17 — sub-paragraph 1 :**

“1. In a State where the sending State has no diplomatic mission, a *consular official* may, with the

consent of the receiving State, *and without affecting his consular status*, be authorized to perform diplomatic acts."

*Article 36, sub-paragraph (b) :*

"The competent authorities shall inform any person in prison, custody or detention of his right to communicate with the consular officials of the sending State, and that person shall be allowed to do so if he wishes. A person in prison, custody, or detention shall have the right to communicate freely with the consular officials of the sending State. Where a person in prison, custody, or detention appears to be incapable by reason of physical or mental incapacity, of communicating with the consular officials of the sending State, the authorities of the receiving State shall so notify the relevant consular officials."

*Article 63 (a) :*

Delete in article 57, paragraph 1 "49, with the exception of paragraph 1 (b)"

Add new article 63 A

*"Exemption from duties and taxes on imports*

"1. The receiving State shall in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage, and similar services, on articles exclusively for the official use of a consular post headed by an honorary consular official.

"2. The articles referred to in paragraph 1 are coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by the sending State to the consulate."

An alternate wording, in more general terms, of this article might be to delete paragraph 2 and to add the following phrase after "and similar services", in paragraph 1:

"on office supplies or equipment supplied by the sending State for the exclusive official use of a consulate headed by an honorary consular official".

*Article 61 :*

"The receiving State is under a duty to accord to an honorary consular official such additional protection as he may require by reason of his official position."

*Article 69 :*

Insert the words "or permanent resident of" after "nationals" in paragraphs 1 and 2.

*Article 69, sub-paragraph 2 :*

"2. Other members of the consulate who are nationals or permanent residents of the receiving State shall enjoy immunity from jurisdiction and personal inviolability in respect of official acts per-

formed in the exercise of their functions, and the privilege provided for in article 44, paragraph 3, of these articles. Members of the family forming part of the household of a consular official who are nationals of the receiving State, members of the family forming part of the household of a member of the consulate who is a national or permanent resident of the receiving State, members of the family forming part of the household of a member of the consulate other than a consular official who are nationals of or permanent residents of the receiving State, and members of the private staff who are nationals of or permanent residents of the receiving State shall enjoy privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over these persons in such a way as not to hinder unduly the performance of the functions of the consulate."

### 3. Federal Republic of Germany

[Original : English]

[7 February 1963]

The Government of the Federal Republic of Germany has carefully studied the text of the draft articles adopted by the International Law Commission at its thirteenth session. It gives its general acceptance to the proposed draft which it considers a useful and appropriate basis for the adoption of a convention on consular intercourse and immunities.

In its wish to contribute to the improvement of the draft articles the Government of the Federal Republic of Germany submits the following observations :

*Article 1, paragraph 1, sub-paragraph (d) :*

The Government of the Federal Republic of Germany proposes to amend the definition in this sub-paragraph as follows :

"Consular officer (in French : consul) means any person duly appointed by the sending State, whether in the capacity of a career consular officer or of an honorary consular officer and admitted as such by the receiving State to the exercise of consular functions."

Paragraph 1, sub-paragraph 1, should be amended by adding the words "including the residence of the head of consular post". This amendment is due to the fact that in several countries the residence of the head of consular post is owned or leased by the sending State.

*Article 41 :*

It is proposed to draft this article as follows :

"A consular officer may not be taken into custody without proper authorization of the competent judicial authority save in the case that :

"(a) he is detected in the course of committing an offence ;

"(b) he is suspect of having committed a grave crime or ;

"(c) he is suspect of having committed any other crime and not able to prove his identity.

"He must be released or turned over to the competent judicial authority at the latest during the day following his arrestation. The competent judicial authority can order the detention of the consular officer only in the case of a grave crime.

"For the purpose of this article an offence shall be considered to be a grave crime, if for its commission a maximum sentence of at least four years imprisonment or a more severe punishment is imposed by the law of the receiving State."

#### Article 70 :

It would be preferable to follow the precedent of article 47 of the Vienna Convention on Diplomatic Relations and to amend paragraph 2 in order to apply the convention restrictively, where appropriate, on a reciprocal basis.

The Government of the Federal Republic of Germany wishes to reserve its right to make further observations and express its views on the draft articles during the Vienna conference beginning on 4 March 1963.

#### 4. Finland

[Original : English]  
[8 February 1963]

In article 44, paragraph 1, delete the last sentence beginning : "Nevertheless ...".

#### 5. Japan

[Original : English]  
[11 February 1963]

#### Article 1 :

1. At the end of sub-paragraph (d) of paragraph 1, add the following words : "a consular official may be a career consular official or an honorary official ;"

2. Delete sub-paragraph (f) of paragraph 1.

[Note : Where necessary, the expression "consular officials and employees" may be used.]

3. Delete sub-paragraph (g) of paragraph 1.

[Note : Where necessary, "consular officials other than the head of post and consular employees" may be used.]

4. In sub-paragraph (i) of paragraph 1, replace the words "Members of the private staff" by the words "Private servant".

5. At the end of sub-paragraph (j) of paragraph 1, add the following words : "including the residence of the head of post".

6. Delete paragraph 2.

7. Delete paragraph 3.

#### Article 3 :

Delete the whole article.

#### Article 4 :

1. Delete paragraph 4.

2. Replace paragraph 5 by the following :

"The sending State may, with the prior express consent of the receiving State, establish branch offices of a consulate within its consular district."

#### Proposal to add a new article between articles 4 and 5 of the draft articles

Add the following new article between articles 4 and 5 of the draft articles :

"Consular functions are performed by a consular official within the consular district of the consulate to which the official is appointed. A consular official may, upon notification to and in the absence of objections from the receiving State, perform consular functions outside the said consular district."

#### Article 5 :

1. In paragraph (a), delete the words "both individuals and bodies corporate,".

2. In paragraph (c), after the word "Ascertaining", add the words "by all lawful means".

3. In paragraph (g), delete the words "both individuals and bodies corporate," and add the words "in accordance with the law of the receiving State" at the end of the paragraph.

4. In paragraph (h), insert the words "in accordance with the law of the receiving State," between the words "nationals of the sending State," and "particularly where ...".

5. In paragraph (j), replace the words "executing letters rogatory" by the words "taking depositions."

6. In paragraph (k), replace the words "in respect of vessels used for maritime or inland navigation, having the nationality of the sending State," by the following : "in respect of vessels and seamen, having the nationality of the sending State.". Also, replace the words "and in respect of their crews ;" at the end of the paragraph by the words "and their crews ;".

7. In paragraph (l), delete the words from "taking statements ..." to the end of the paragraph.

#### Article 8 :

Delete the whole article.

#### Article 11 :

Replace the whole article by the following :

"1. The receiving State shall, on presentation of the consular commission or other notification of appointment of the head of a consular post, grant as soon as possible an exequatur or other authorization to perform consular functions. Subject to the provisions of article 13, he may not enter upon his duties until he has received an exequatur or other authorization.

"2. The receiving State may refuse to grant an exequatur or other authorization. However, the reason

for such refusal shall be communicated to the sending State by the receiving State.”

*Article 17 :*

In paragraph 1, replace the words “the head of a consular post” by “a consulate”. Also, make this paragraph an independent article to be placed in chapter IV of the draft articles.

*Article 19 :*

Delete paragraph 2.

*Article 22 :*

Delete the whole article.

*Article 30 :*

1. Replace paragraph 1 by the following :

“The consular premises shall not be entered by the police or other authorities of the receiving State, except with the consent of the responsible consular official or, if such consent cannot be obtained, pursuant to appropriate writ or process and with the consent of the Minister for Foreign Affairs of the receiving State. The consent of the responsible consular official shall be presumed in the event of fire or other disaster or in the event that the authorities of the receiving State have reasonable cause to believe that a crime involving violence to persons or property has been, or is being, or is about to be committed in the consular premises.”

2. Replace paragraph 2 by the following and make it an additional new paragraph to be placed in article 40 of the draft articles :

“The receiving State shall afford special protection to consular premises.”

3. Delete paragraph 3.

4. Add the following new paragraph to this article :

“The consular premises shall not be used to afford asylum to fugitives from justice. If a consular official refuses to surrender a fugitive from justice on the lawful demand of the authorities of the receiving State, such authorities may, in accordance with the procedure referred to in paragraph 1 of this article, enter the consular premises to apprehend the fugitive.”

*Article 32 :*

Replace the whole article by the following :

“1. The consular archives shall be kept in a place entirely separate from the place where the private papers of members of the consulate are kept. This provision does not require the separation of diplomatic from consular archives when a consular office forms part of the diplomatic mission.

“2. The consular archives shall at all times be inviolable, and the authorities of the receiving State may not, under any pretext, examine or detain them.”

*Article 35 :*

1. In paragraph 1, replace the words “including diplomatic or consular couriers” by the words “including diplomatic couriers”.

2. Replace paragraph 5 by the following :

“Diplomatic couriers may be entrusted with the transmission of a consular bag.”

*Article 36 :*

In sub-paragraph (b) of paragraph 1, replace the first sentence by the following :

“The competent authorities of the receiving State shall, at the request of a national of the sending State who is committed to prison or to custody pending trial or is detained in any other manner in the receiving State, inform the competent consulate of the sending State.”

*Article 38 :*

Replace the whole article by the following :

“In the exercise of the functions specified in article 5, consular officials may address the local appropriate authorities of the receiving State. They may also address the central government of the receiving State with the consent of the latter.”

*Article 40 :*

Delete the second sentence of this article.

*Article 43 :*

1. Add the following sentence at the end of this article :

“However, a consular official or employee shall be subject, with respect to the exercise of consular functions referred to in paragraphs (g), (h) and (i) of article 5, to the jurisdiction of the judicial or administrative authorities of the receiving State.”

2. Add the following new paragraph to this article :

“All vehicles, vessels and aircraft owned by a consular official or employee shall be adequately insured against third party risks with an insurance company authorized to do, and actually carrying on, business in the receiving State.”

*Article 44 :*

1. Delete the second sentence of paragraph 1.

2. Add the following sentence to paragraph 3 :

“They are also entitled to decline to give evidence as an expert witness with regard to the laws of the sending State.”

*Article 45 :*

Replace paragraph 2 by the following :

“The waiver shall be communicated to the receiving State in writing through the diplomatic channel.”

*Article 46 :*

Delete the words “and their private staff” in paragraph 1.

*Article 48 :*

1. In paragraph 1, delete the words "and members of their families forming part of their households" from the beginning part of the paragraph.

2. In paragraph 2, delete the words "and members of the private staff".

*Article 50 :*

1. Delete the words "or of a member of his family forming part of his household" from the beginning part of the article.

2. Delete the words "or as a member of the family of a member of the consulate" at the end of paragraph (b).

*Article 52 :*

Delete the whole article.

*Article 53 :*

In the first sentence of paragraph 2, delete the words ", and members of his private staff".

*Article 54*

1. Replace paragraphs 1 and 2 by the following :

"If consular officials and employees, or members forming part of their families pass through a third State, which has granted visas if visas were required while proceeding to take up or return to their post or when returning to their own country, the third State shall not hinder the transit through their territory."

2. In paragraph 3, add the word "official" between the words "accord to" and "correspondence" in the first sentence, and delete the whole second sentence.

*Articles 56 to 67 :*

Replace articles 56 to 67 of the draft articles by the following new article :

"1. Consular officials or employees who are :

"(a) not full-time officials or employees of the sending State, or

"(b) appointed by the sending State as honorary consuls, or

"(c) engaged in any private occupation for gain in the receiving State

shall not be accorded privileges and immunities provided for in articles 41, 44, paragraph 2, 46, 47, 48, 49, paragraphs 1 (b) and 2, 50, 51 and 54, paragraphs 1 and 2.

"2. The premises of a consulate of which the head of the post is a person who falls under the categories referred to in the preceding paragraph shall not be accorded privileges and immunities provided for in articles 30 and 31.

"3. Privileges and immunities provided for in article 46 shall not be accorded to :

"(a) members of the family of those consular officials or employees who fall under the categories referred to in paragraph 1, or

"(b) those members of the family of a consular official or employee who are engaged in private occupation for gain in the receiving State."

*Article 69 :*

1. In the first sentence of paragraph 1, add the words ", or permanently resident in," between the words "who are nationals of" and "the receiving State".

2. In the first sentence of paragraph 2, replace the words "Other members of the consulate, members of their families and members of the private staff who are nationals of the receiving State" by the following words :

"Consular employees who are nationals of, or permanently resident in, the receiving State and also members of the families of those consular officials and employees or those members of the family of a consular official or employee who are nationals of, or permanently resident in, the receiving State".

**6. Netherlands**

[Original : English]

[7 February 1963]

*Article 1 :*

Insert under (f) the words "consular officials and" after "all the".

*Explanatory note :* this amendment is proposed in order to remedy an omission in the English text. The French text is correct.

*Article 5 :*

Replace this article by the following text :

"1. The task of consuls is to protect, within the limits of their 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 in accordance with international law. In addition, the task of consuls is to exercise other functions specified in the relevant international agreements in force or entrusted to them by the sending State, the exercise of which is compatible with the laws of the receiving State.

"2. Nothing in this article shall affect the relationship between the sending State and its nationals".

The object of paragraph 2 is to make it clear that the nationals of the sending State cannot claim by virtue of paragraph 1 a right to consular protection.

*Article 30 :*

Read paragraph 3 as follows :

"The premises of the consulate, their furnishings and other property thereon shall be immune from any search, requisition, attachment or execution".

Add the following paragraph : "The means of transport of the consulate shall be immune from any requisition".

**Article 32 :**

Delete the words "and documents".

*Explanatory note :* the words "and documents" seem to be superfluous and confusing when taken in conjunction with the definition of archives as it now stands in article 1 (k).

**Article 35 :**

Insert between paragraph 5 and 6 the following paragraph :

"The sending State may designate consular couriers *ad hoc*. In such cases the provisions of paragraph 5 of this article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge".

*Explanatory note :* The proposed new paragraph is corresponding to article 27, paragraph 6, of the 1961 Vienna Convention on Diplomatic Relations.

**Article 41 :**

Replace the word "may" in paragraph 1 by "shall".

**Article 46 :**

Add after paragraph 2 a new paragraph reading as follows :

"Paragraph 2 of this article shall not apply to the employment outside the consulate of persons belonging to the families of members of the consulate".

*Explanatory note :* It does not seem justified to exempt persons belonging to the families of members of the consulate, who are employed outside the consulate, from obligations which the law of the receiving State imposes on aliens in regard to work permits.

**Article 48 :**

Replace this article by the following text :

"1. Members of the consulate shall be exempt in the receiving State from all national, regional or municipal taxes or charges whatsoever, in respect of any official emoluments, salary, wages or allowances received by them as compensation for their services.

"2. Consular officials shall also be exempt in the receiving State from all national, regional or municipal taxes or charges whatsoever in respect of :

"(a) income derived from sources outside the receiving State and already taxed or charged elsewhere ;

"(b) the use of their residence and of the movable property installed therein ;

"(c) the purchase, ownership or use of a motor vehicle."

*Explanatory note :* Especially as far as fiscal privileges are concerned it does not seem to be necessary to put members of the consulate on a par with members of the diplomatic mission. The proposed text is based on a system in which the liability to taxation of members of the consulate is made a primary consideration.

**Article 52 :**

Replace the text by the following wording :

"Members of the consulate and members of their families forming part of their households shall not solely by residence or birth within the territory of the receiving State acquire the nationality of the receiving State, without their consent."

**Article 58 :**

Replace the word "consul" by "consular official".

**Article 60 :**

Replace the word "consul" by "consular official".

**Article 69 :**

Insert in paragraphs 1 and 2 between the words "who are nationals of" and "the receiving State" the following words "or permanently resident in".

*Explanatory note :* In the 1961 Vienna Convention on Diplomatic Relations members of the mission who are permanently resident in the receiving State are put on a par with nationals of the receiving State.

**Article 71 :**

Insert between the words "agreements" and "in force" the following words : "both present and future".

*Explanatory note :* Although it was presumably not the intention of the drafters of the present text to preclude departure from the rules given in the convention by subsequent agreements, any uncertainty in that respect should be avoided.

## 7. United Kingdom of Great Britain and Northern Ireland

{*Original : English*]  
[7 February 1963]

Her Majesty's Government in the United Kingdom, in accordance with General Assembly resolution 1813 (XVII) of 18 December 1962 wishes to submit to the Secretary-General of the United Nations the following amendments to the draft articles on Consular Relations prepared by the International Law Commission at its thirteenth session. It is, of course, understood that, in the course of the Conference at Vienna, the delegation of the United Kingdom may submit further amendments.

**Article 17, paragraph 2 :**

Add the following sentence at the end of the paragraph :

"A consular officer\* acting in such a capacity shall be entitled to enjoy any privileges and immunities normally accorded to such a representative,

\* The United Kingdom will also propose that the expression "consular officer" should be substituted for "consular official" throughout the Convention, as being more consistent with current usage.



except that no claim to immunity from jurisdiction other than that of a consular officer under the present Convention shall be made on his behalf in respect of the performance by him of any consular function."

*Article 30, paragraph 1 :*

Amend this paragraph to read as follows :

"Subject to the provisions of this article that part of the consular premises which is used exclusively for the purposes of the work of the consulate shall be inviolable and may not be entered by the agents of the receiving State without the consent of the head of post. In the absence of such consent it may only be entered by the agents of the receiving State on the authority of the Minister for Foreign Affairs of the receiving State or such other Minister as may be agreed, or in case of fire or other disaster, or if there is reasonable cause to believe that a crime of violence to person or property is being or is about to be or has been committed there."

Add two new paragraphs, to be numbered 4 and 5, in the following terms :

"4. Nothing in this article shall prevent an entry into the consular premises by any person entitled to enter by virtue of any contract or other private right.

"5. Consular premises shall not be used to afford asylum to fugitives from justice."

*Article 31, paragraph 1 :*

Replace the words "the head of post" with the words "any person in whose name property is owned or leased for consular purposes on behalf of the sending State".

*Article 32 :*

Amend this article to read as follows :

"The consular archives shall be inviolable at all times and wherever they may be. They shall be kept separate from any document or object relating to the private affairs of a consular officer or employee".

*Article 41, paragraph 1 :*

Redraft this paragraph to read as follows :

"If a consular officer is taken into custody in respect of an offence, he shall, upon the establishment of his identity, be released pending trial. However, this provision shall not apply if the consular officer is charged with a grave offence or if the sending State consents to his continued detention, provided that he shall not be detained for more than 48 hours except in pursuance of a decision by the competent judicial authority".

Add a new paragraph, to be numbered 4, in the following terms :

"For the purposes of this article the expression 'grave offence' means any offence punishable with a maximum penalty of at least four years' imprisonment under the law of the receiving State".

*Article 43 :*

Add to this article two new paragraphs as follows :

"2. The provisions of paragraph 1 of this article shall not, however, apply in respect of a civil action either :

"(i) arising out of a contract concluded by a consular officer or consular employee in which he did not contract expressly or impliedly as agent of the sending State ; or

"(ii) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

"3. A consular officer or consular employee shall comply with any requirement imposed by the law of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft."

*Article 44 :*

*Paragraph 1 :* Delete the second sentence.

*Paragraph 2 :* Redraft this paragraph to read as follows :

"In such event, all reasonable measures shall be taken to avoid interference with the work of the consulate and, in the case of a consular officer, arrangements shall, wherever possible and permissible, be made for the taking of the evidence, orally or in writing, at his office or residence".

*Article 46 :*

Redraft the text of the article to read as follows :

"1. Consular officers and consular employees and members of their families forming part of their households 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 provisions of paragraph 1 of this article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who is engaged in a private occupation for gain in the receiving State or who is a member of the service staff, or to any member of the family of any such employee".

## 8. Belgium

[Original : French]  
[6 February 1963]

### *Introduction*

Pursuant to resolution 1813 (XVII) of 18 December 1962 adopted by the General Assembly of the United Nations at its seventeenth session, the Belgian Government has the honour to submit to the Secretary-General of the United Nations the following comments on the first part of the draft articles on consular relations prepared by the International Law Commission of the United Nations (thirteenth session, Geneva, 1 May to 7 July 1961).

### *General comments*

The expression "*les membres de leur famille vivant à leur foyer*" appearing in the French text of several

articles of the draft, in particular articles 24, 26, 46, 48, 49, 50, 51, 52, 53, 54 and 69, should be replaced by the formula used in the Vienna Convention on Diplomatic Relations, namely "*les membres de leur famille faisant partie de leur ménage*".

The Belgian Government considers that it would be desirable to use, in that connexion, the same expression in both conventions.

*Article 1 :*

It would be desirable to profit by the experience gained the Vienna Conference on Diplomatic Intercourse and Immunities, 1961, particularly as regards the definitions of the different categories of persons employed by consulates.

Accordingly, the Belgian Government proposes that paragraphs (c) to (i) should be redrafted to read :

"(c) 'Head of consular post' means the person charged by the sending State with the duty of acting in that capacity ;

"(d) 'Members of the consulate' means the head of the consular post and the members of the staff of the consulate ;

"(e) 'Members of the staff of the consulate' means the consular officials, the consular employees and the members of the service staff of the consulate ;

"(f) 'Consular official' means any person, including the head of the consular post, entrusted with the exercise of consular functions in a consulate ;

"(g) 'Consular employee' means any person required to perform administrative or technical tasks in a consulate ;

"(h) 'Members of the service staff' means the members of the staff of the consulate in the domestic service of the consulate ;

"(i) 'Private servant' means a person employed exclusively in the private service of a member of the consulate who is not an employee of the sending State."

*Article 13 :*

The Belgian Government considers that it would be more correct to draft this article in the following terms :

"Pending delivery of the *exequatur*, the head of consular post may be admitted on a provisional basis to the exercise of his functions. In that case, the provisions of this Convention shall apply to him."

The second sentence, as so drafted, would make it absolutely clear that the present Convention will apply to a consular official, as regards both rights and obligations, as from the moment when he is admitted on a provisional basis to the exercise of his functions.

*Article 15 :*

*Paragraph 1 :*

The Belgian Government wishes once again to draw attention to the fact that there is a considerable difference between diplomatic agents and consular officials. It prefers the former wording of paragraph 1, which appeared in article 16 of the text prepared by the International Law Commission at its twelfth session.

That text said :

"If the position of head of post is vacant, or if the head of post is unable to carry out his functions, an acting head of post may act provisionally as head of the consular post."

What is specified in the present text of article 15, paragraph 1, has no legal value at all, since it has been thought necessary to stipulate that this choice will be made "as a general rule".

The Belgian Government would therefore like the last two sentences of paragraph 1 to be deleted, particularly since in Belgium the Minister for Foreign Affairs has complete freedom in the choice of an acting head of post. If these provisions were retained, the Belgian Government would be obliged to enter an express reservation.

*Paragraph 2 :*

This paragraph should be amended to read :

"The name of the acting head of post shall be notified in advance, either by the head of post or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by it. The receiving State may make the admission of the acting head of post conditional on its consent."

The acting head of post would thus be treated in the same manner as the titular consular official.

*Paragraph 3 :*

It would be advisable to add at the end of this paragraph, a sentence in the following terms :

"The receiving State shall not, however, be obliged, under this paragraph, to grant to a person acting in a temporary capacity, the facilities, privileges and immunities which the consular official whom he replaces enjoys subject to specific conditions which the said person does not fulfil."

The effect of this sentence would be that the acting head of post would not enjoy advantages to which he would not be entitled under the present Convention if he were the titular head of post.

*Paragraph 4 :*

The Belgian Government suggest that the following words should be added at the end of this paragraph :

"... if the receiving State gives its consent".

*Article 31 :*

The Belgian Government has pointed out on a previous occasion that paragraph 1 of this article was open to misinterpretation.

In Belgium, a head of consular post does not enjoy exemption from taxes charged on immovable property unless such property is acquired on behalf of the sending State, which becomes the owner of the property.

In order to avoid misunderstanding on this point, the Belgian Government considers that the opening words of paragraph 1 should be amended to read :

"The sending State and any individual or body corporate acting on behalf of the sending State shall be exempt ..."

*Article 36*

The Belgian Government has previously stressed that paragraph 1 (c) of this article ought to provide for the right [of consular officials] not merely to visit and converse with a national of the sending State who is in custody or in prison, but also to write to such a person.

As re-drafted, paragraph 1 (c) would then read :

“(c) Consular officials shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse with and write to him and to arrange for his legal representation. They shall also have the right ...”.

**9. Switzerland**

[Original : French]  
[8 February 1963]

*Article 5 :*

Replace the opening sentence of paragraph 1 by the following text :

“The functions of consular posts, which shall be exercised within the limits of the consular district, consist, in so far as the legislation of the receiving State does not provide otherwise, more especially of :”

*Article 19 :*

Delete paragraph 2.

*Article 23 :*

Replace paragraph 1 by the following provision :

“The receiving State may at any time, and without having to explain its decision, inform the sending State that the person concerned is no longer acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his functions with the consulate.”

*Article 28 :*

Insert, at the end of this paragraph, the following words : “in accordance with the usage in force in the receiving State.”

*Article 35 :*

In paragraph 1, delete from the second sentence the words “and the other consulates” and “wherever situated”. As so amended, the provision would then read :

“1. The receiving State shall permit and protect free communication on the part of the consulate for all official purposes. In communicating with the Government and with the diplomatic missions of the sending State, the consulate may employ all appropriate means, including diplomatic or consular couriers, the diplomatic or consular bag and messages in code or cipher. However, the consulate may install and use a wireless transmitter only with the consent of the receiving State.”

*Article 36 :*

Insert a new paragraph 2 reading as follows (the present paragraph 2 would then become paragraph 3) :

“The application of the provisions of sub-paragraphs (b) and (c) above shall, however, be subject to the freely expressed wish of the national of the sending State who is in prison, custody or detention.”

*Article 37 :*

Insert, at the end of the provision in sub-paragraph (b), the following sentence :

“This provision shall, however, be without prejudice to the legislative provisions of the receiving State regarding the execution of such measures.”

*Article 41 :*

In paragraph 1, replace the words “in the case of a grave crime” by the words “in the case of a serious offence”.

*Article 46 :*

In paragraph 1, after the words “members of their families forming part of their households”, delete the phrase “and their private staff”. [The comma after “consulate” should be replaced by the word “and”.]

*Article 48 :*

Replace the provision in paragraph 1 (a) by the following text :

“(a) Indirect taxes incorporated in the price of goods or services whether invoiced separately or not.”

*Article 66 :*

Add a paragraph 2 in the following terms :

“The premises of a consular post headed by an honorary consul shall not be used in a manner incompatible with the consular functions as laid down in the present articles or in other rules of international law.”