

Document:-
A/CN.4/L.79

Proposals and comments submitted by Mr. Alfred Verdross regarding the draft provisional articles on consular intercourse and immunities (A/CN.4/108)

Topic:
Consular intercourse and immunities

Extract from the Yearbook of the International Law Commission:-
1959, vol. II

*Downloaded from the web site of the International Law Commission
(<http://www.un.org/law/ilc/index.htm>)*

Consular intercourse and immunities

[Agenda item 2]

DOCUMENT A/CN.4/L.79

Proposals and comments submitted by Mr. Alfred Verdross regarding the draft provisional articles on consular intercourse and immunities (A/CN.4/108)¹

[Original text : English]
[13 March 1959]

Article 1

In paragraph 1, it would be preferable to use the words "Every sovereign State" instead of "Every State".

Article 3

In paragraph 1 (4), there is no need for maintaining the class of consular agents.

Article 13

In case the majority of the members of the International Law Commission vote for the second variant, I should like to make the following comments :

The consular representatives do not represent the economic and legal interests of their States, but those of the nationals of their States. The States are represented by diplomatic representatives. The duties of consular representatives, moreover, do not cover the support of cultural relations, unless a bilateral consular agreement includes such a provision.

With regard to paragraph 8, it should be mentioned that the consular representatives shall not be entitled to register persons who are refugees either in the sense of the Convention on the Status of Refugees or according to international law.

Article 17

States are entitled to declare a diplomatic representative to be *persona non grata* without giving reasons. There should, therefore, be no provision in paragraph 2 concerning the withdrawal of the *exequatur* of a consular representative that is more rigorous than those for diplomatic representatives. There should be no legal duty to communicate the reasons for the withdrawal to the sending State.

Article 20

In paragraph 2, it would be preferable to restrict the term "consular staff". It should be somehow explained

that the expression "consular staff" does not cover typists, clerks or chauffeurs of the consular representative.

Article 22

It should be expressly prohibited to fly the national flag on vehicles for mass-transportation. Furthermore, the aircraft identification marks (nationality and registration mark) should not collide with the right of consular representatives to fly their national flag.

Article 23

The words "in time of peace" should be omitted.

Article 25

An article saying that official consular mail should be kept separate from private mail would be useful. Many bilateral consular agreements contain such an article.

Article 27

An article should be considered, saying that the principle of immunity from the jurisdiction of the State of residence should not be applied in such cases as : when the sending State expressly asks for a proceeding, when the sending State agrees to a proceeding, or when the consular representative expressly or tacitly consents to a proceeding. Furthermore, it should be considered to grant immunity only for those official acts which take place in rooms belonging to the consular office.

Article 28

It should be considered not to apply the exemption from taxation to incomes derived from craft and service trade as well as from employment. I propose the following addition to paragraph 2: "The exemption shall furthermore not apply to taxes and dues on income derived from any profession or employment exercised within the State of residence".

In connexion with this article, one might envisage the adoption of an article saying that the acquisition and possession of real estate for consular use should be exempted from payment of tax on possession and ownership of real estate, as well as of tax on acquisition of real estate.

¹ For the text of the draft provisional articles on consular intercourse and immunities, see *Yearbook of the International Law Commission 1957* (United Nations publication, Sales No. : 1957.V.5, Vol. II), vol. II, p. 83.

Article 31

I propose to amend this article to read as follows: "The State of residence shall grant exemption from all obligations under its social security legislation to consular representatives of the sending State and to members of the consular staff, if they are nationals of the sending State". Reference to the domicile would complicate the article.

Article 32

I recommend to omit paragraph 5. While normally in the draft provisional articles the phrase "State of residence" is used, paragraphs 1 and 2 of this article use the term "country of residence".

Article 33

It should be mentioned in the comment that the term "jurisdiction" covers both the jurisdiction of courts of law and that of administrative authorities.

Article 37

In paragraph 2, the necessity to keep consular mail apart from private mail of honorary consuls should be clearly pointed out. It seems inappropriate to refer to article 32 without qualification. It should at least be stated that the honorary consul can be forced to appear in court and give evidence in cases which are not concerned with his official activities.

Article 38

Comment will be given orally at the session.

General Statement

In the draft provisional articles the terms "consulate" and "consular office" are used alternately. I propose always to use the same expression.