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A/CN.4/L.82

Proposals and comments submitted by Mr. Georges Scelle 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

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Consular intercourse and immunities

[Agenda item 2]

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[Original text : French]
[14 May 1959]

Article 1

In paragraph 2 (i), insert the word “normally” before the word “includes”;

(ii) add the following text at the end of the paragraph:

“; but consular relations may subsist in the case of severance of diplomatic relations and may be established in the case of the non-recognition or *de facto* recognition of the receiving State without implying *de jure* recognition”.

Add the following new paragraph:

“4. Consular officers are officials of the Governments by which they are sent”.

Article 8

(i) Delete the words “without giving reasons for its refusal”.

(ii) Add the sentence: “If the *exequatur* is refused, the reasons for the refusal shall, as far as possible, be

stated, and the *exequatur* cannot be refused systematically.”

Article 13

I prefer the second variant.

Article 14

Replace the text of the article by the following:

“The receiving and the sending States may, where appropriate, if the sending State has no diplomatic mission in the receiving State, agree with each other to entrust to the consuls a mission of a diplomatic nature, such agreement to be without prejudice to the question of recognition.”

Article 17

In paragraph 1, insert after the words “of that State’s laws” the words: “or of the international obligations attaching to his office”.

Add the following new paragraph:

“3. The withdrawal of the *exequatur* shall be regarded as an individual measure only and in no case as a measure taken for the purpose either of modifying the stipulations of the consular convention, or of obstructing the normal discharge of consular functions. Consequently, the withdrawal of the *exequatur* cannot be a wholesale measure”.

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.