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Comments by Governments on the draft articles concerning consular intercourse and immunities provisionally adopted by the International Law Commission at its twelfth session, in 1960

Topic:

Consular intercourse and immunities

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to the members of the Commission. A general discussion of the matter was accordingly held at the 614th, 615th and 616th meetings. Attention is invited to the summary records of the Commission containing the full discussion on this question.

III. Co-operation with other bodies

42. The Asian-African Legal Consultative Committee was represented at the session by Mr. H. Sabek, who, at the 605th meeting, made a statement on behalf of the Committee.

43. The Commission's observer to the fourth session of the Committee, Mr. F. V. García Amador, at the 621st meeting, presented his report (E/CN.4/139) and the Commission took note of it.

44. At its 621st meeting, the Commission further decided to request its Chairman to act as its observer at the fifth session of the Asian-African Legal Consultative Committee to be held at Rangoon, Burma, in the beginning of 1962, or, if he should be unable to attend, to appoint another member of the Commission, or its secretary, to represent the Commission at that meeting.

45. The Inter-American Juridical Committee was represented at the session by Mr. J. J. Caicedo Castilla, who, on behalf of the Committee, addressed the Commission at the 597th meeting.

46. The Commission, at the 613th meeting, heard a statement by Professor Louis B. Sohn of the Harvard Law School on the draft convention on the international responsibility of States for injury to aliens, prepared as part of the programme of international studies of the Law School.

IV. Date and place of the next session

47. The Commission decided to hold its next (fourteenth) session in Geneva for ten weeks from 24 April until 29 June 1962.

V. Representation at the sixteenth session of the General Assembly

48. The Commission decided that it should be represented at the next (sixteenth) session of the General Assembly, for purposes of consultation, by its Chairman, Mr. Grigory I. Tunkin.

ANNEX I

Comments by governments [a] on the draft articles concerning consular intercourse and immunities adopted by the International Law Commission at its twelfth session, in 1960 [b]

CONTENTS

1. BELGIUM

Transmitted by a letter dated 11 April 1961 from the Permanent Representative of Belgium to the United Nations

[*Original: French*]

INTRODUCTION

The Belgian Government has studied with interest the draft articles prepared by the International Law Commission and is able to express its agreement with them in principle.

In view of the development of international relations, it seems desirable to unify a branch of public international law which is of increasing interest to governments.

Nevertheless, it appears indispensable to the Belgian Government to specify expressly, in a manner to be considered by the Commission, that the proposed convention codifies only rules unanimously accepted by the States concerned and that, accordingly, the convention does not represent an exhaustive regulation of consular law.

Thus, as regards the problems not settled by the draft in question, it will be impossible to rule out reliance, first, on the general principles of international law and on the rules of international usage, and, secondly, on the provisions of municipal law.

[a] Originally circulated as document A/CN.4/136 and Add.1-11.

[b] *Official Records of the General Assembly, Fifteenth Session, Supplement No. 9* (A/4425), para. 28.

The provisions of the draft are on the whole in conformity with the law in force and with the usages observed in Belgium.

However, the Belgian Government has the following comments to make on particular articles.

Article 1

1. Sub-paragraph (*f*) provides that "The term 'consul', except in article 8, means any person duly appointed by the sending State to exercise consular functions in the receiving State as consul-general, consul, vice-consul or consular agent, and authorized . . ."

In Belgium, consular agents are appointed not by the sending State but by their administrative superiors.

On this subject, article 48, paragraphs 2 and 3, of the royal order of 15 July 1920 provides:

"Consular agents shall be appointed by the consuls and vice-consuls who are heads of post, and for this purpose the heads of post must first request and obtain, through the regular channels, the authorization of the Minister for Foreign Affairs.

"The form of the certificates to be conferred upon consular agents shall be specified by a ministerial order."

2. The Belgian Government does not regard the present wording of sub-paragraphs (*h*) to (*k*) as very satisfactory.

The plethora of definitions in sub-paragraphs (*f*) to (*k*) will be a source of difficulty in the application of this instrument and for this reason the definitions ought to be simplified.

The Belgian Government accordingly suggests:

(*a*) That sub-paragraphs (*h*) and (*i*) should be deleted;

(*b*) That the present aub-paragraph (*j*) should be replaced by the following text:

"(*j*) The expression 'employee of the consulate' means any person working in a consulate who:

"1. Not being a consul, performs executive, administrative or technical functions; or

"2. Performs the functions of messenger, driver, caretaker or any other like function;"

(*c*) That sub-paragraph (*k*) should be replaced by the following text:

"(*k*) The expression 'members of the consulate' means the consuls and the employees of the consulate;"

By means of these amendments all the categories of persons involved would be defined, while the definitions would not be unnecessarily numerous.

The new definitions would be more in keeping with the later articles concerning the privileges and immunities to be granted to members of consulates.

3. The Belgian Government considers that article 1 should begin with definitions of "sending State" and "receiving State", which might be worded as follows:

"The expression 'sending State' means the contracting party which appoints the consul;

"The expression 'receiving State' means the contracting party in whose territory the consul exercises his functions;"

4. Lastly, the Belgian Government proposes that the sub-paragraphs of this article should be rearranged as follows:

(*a*) The expression "sending State" means . . .

(*b*) The expression "receiving State" means . . .

(*c*) The term "consulate" means . . .

(*d*) The expression "consular district" means . . .

(*e*) The expression "consular premises" means . . .

(*f*) The expression "consular archives" means . . .

(*g*) The term "consul" means . . .

(*h*) The term "exequatur" means . . .

(*i*) The expression "head of consular post" means . . .

(*j*) The expression "employee of the consulate" means . . .

(*k*) The expression "members of the consulate" means . . .

(*l*) The expression "private staff" means . . .

5. Accordingly, the Belgian Government considers that article 1 should read as follows:

Article 1: Definitions

For the purposes of this draft:

(*a*) The expression "sending State" means the contracting party which appoints the consul;

(*b*) The expression "receiving State" means the contracting party in whose territory the consul exercises his functions;

(*c*) The term "consulate" means any consular post, whether it be a consulate-general, a consulate, a vice-consulate or a consular agency;

(*d*) The expression "consular district" means the area within which the competence of the consulate is exercised in relation to the receiving State;

(*e*) The expression "consular premises" means any building or part of a building used for the purposes of a consulate;

(*f*) The expression "consular archives" means all the chancery papers, as well as any article of furniture intended for their protection or safe keeping;

(*g*) The term "consul", except in article 8, means any person duly appointed by the sending State to exercise consular functions in the receiving State as consul-general, consul, vice-consul or consular agent, and authorized to exercise those functions in conformity with articles 13 or 14 of this draft; a consul may be a career consul or an honorary consul;

(*h*) The term "exequatur" means the final authorization granted by the receiving State to a foreign consul to exercise consular functions on the territory of the receiving State, whatever the form of such authorization;

(*i*) The expression "head of consular post" means any person appointed by the sending State to take charge of a consulate;

(*j*) The expression "employee of the consulate" means any person working in a consulate who

1. Not being a consul, performs executive, administrative or technical functions; or

2. Performs the functions of messenger, driver, caretaker or any other like function;

(*k*) The expression "members of the consulate" means the consuls and the employees of the consulate;

(*l*) The expression "private staff" means the persons employed in the private service of members of the consulate.

6. The Belgian Government considers that if the article as so amended is adopted, the other articles of the convention in which the expression "consular official" and "member of the consular staff" occur should be brought into line with this re-draft.

Article 2

The Belgian Government is in favour of the Special Rapporteur's proposal, reproduced in paragraph 3 of the commentary, that consular relations are deemed to have been established in cases where diplomatic relations already exist.

Article 3

In paragraph 4, the introductory phrase " Save as otherwise agreed " seems superfluous, since this proviso is covered by the condition, laid down at the end of the same clause, that the consent of the receiving State is required in each specific case.

Article 4

1. The Belgian Government would like paragraph 1 of the article to be replaced by paragraph 1 of the alternative text reproduced in paragraph 11 of the commentary. The first sentence should end with the words " relevant international agreements in force ".

A second sentence might be added to specify expressly that consuls may exercise all the functions entrusted to them by the sending State, subject only to the proviso that the exercise of those functions must not involve any conflict with the law of the receiving State or that the receiving State has no objection to the exercise of those functions.

The new text would consequently read as follows:

" 1. The task of consuls is to defend, within the limits of their consular districts, 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, as well as to exercise other functions specified in the relevant international agreements in force.

" In addition they have the task of exercising the functions entrusted to them by the sending State, provided that those functions do not involve any conflict with the law of the receiving State and that this State has no objection to the exercise of those functions."

2. Paragraph 2 of this article would consist of an enumeration of some of the functions exercised by consuls; and the present sub-paragraphs (*a*) and (*b*) would be omitted, since they are already reproduced in the new paragraph 1.

The new paragraph 2 would be worded as follows:

" 2. Without prejudice to the consular functions deriving from the preceding paragraph, consuls may perform the undermentioned functions:

" (*a*) To act as notaries and as registrars of births, marriages and deaths, and to exercise other functions of an administrative nature;

" (*b*) To extend necessary assistance to vessels and boats flying the flag of the sending State and to aircraft registered in that State;

" (*c*) To further trade and promote the development of commercial and cultural relations between the sending State and the receiving State;

" (*d*) To acquaint themselves with the economic, commercial and cultural life of their district, to report to the government of the sending State, and to give information to any interested persons."

3. The present paragraph 2 would then become paragraph 3.

4. Paragraph 12 of the commentary on article 4 refers to an additional article proposed by the Special Rapporteur concerning the consul's right to represent nationals of the sending State.

The Belgian Government is in favour of such an additional article. Indeed, a provision to this effect appears in all the bilateral consular conventions concluded by Belgium.

Article 5

Sub-paragraph (*a*) of this article deals with the subject of the estate of a deceased national of the sending State, but not with the question of the consul's intervention in the case of the death of a national of the receiving State who leaves an estate in which a national of the sending State has an interest.

Provision should be made for this case also, and the Belgian Government proposes that for this purpose a new sub-paragraph (*b*) should be inserted in the following terms:

" (*b*) To inform the competent consulate without delay of the existence within the consular district of assets forming part of an estate in respect of which a consul may be entitled to intervene; "

If this proposal should be accepted, the present sub-paragraphs (*b*) and (*c*) would become sub-paragraphs (*c*) and (*d*).

Article 6

In the opinion of the Belgian Government, paragraph 1 (*c*) of this article should provide for the consul's right to address correspondence to nationals of the sending State who are in custody or imprisoned.

Furthermore, the second sentence of paragraph 1 (*c*) should be somewhat amended.

Paragraph 1 (*c*) should then read as follows:

" (*c*) The consul shall be permitted to visit a national of the sending State who is in custody or imprisoned, to converse and communicate with him and to arrange for his legal representation. The consul shall have the same rights with respect to any national of the sending State who is imprisoned in his district in pursuance of a judgement."

Article 8

In response to the request made in paragraph 4 of the commentary on this article, the Belgian Government gives below some particulars regarding the appointment and powers of consular agents:

1. *Appointment*

Article 48, paragraph 2, of the royal order of 15 July 1920 governing the organization of the consular corps, and article 29, paragraph 4, of the royal order of 14 January 1954 on the organization and operation of the ministry of foreign affairs and external trade contain the following provision:

" Consular agents shall be appointed by the consuls and vice-consuls who are heads of post, and for this purpose the heads of post must first request and obtain, through the regular channels, the authorization of the minister for foreign affairs."

In addition, article 48, paragraph 3, of the royal order of 15 July 1920 governing the organization of the consular corps further provides:

" The form of the certificates to be conferred upon consular agents shall be specified by a ministerial order."

Consular agents, who are in all cases honorary agents, are furnished with a certificate signed by the head of post concerned and are themselves regarded as heads of post, though working under the direction of the agent by whom they were appointed.

2. *Powers*

Consular agents have only limited powers.

On this subject, article 71 of the royal order of 15 July 1920 governing the organization of the consular corps provides as follows:

" Consular agents act under the responsibility of the appointing consul. They may not discharge the functions of registrar of births, marriages and deaths, notary or magistrate except by virtue of powers expressly delegated in respect of each document

by, and under the responsibility of, their immediate superior; the documents which such an agent receives, in his capacity of registrar or notary, by virtue of a delegation of powers by the appointing consul must contain a reference to this delegation of powers and mention the reason for the delegation. The consular agent may in no case delegate these powers himself. He is competent to legalize signatures, carry out the usual clearance formalities for merchant ships and act as arbitrator in the cases specified in articles 17 and 18 of the Act of 31 December 1851. With regard to all matters arising in connexion with his functions, he shall apply to the consul on whose behalf he is acting."

Articles 17 and 18 of the Consuls and Consular Jurisdiction Act of 31 December 1851 contain the following provisions:

"*Article 17*

" The consul shall arbitrate disputes arising between Belgians in his district if such disputes are referred to him.

" *Article 18*

" He shall also arbitrate disputes which are referred to him regarding:

" 1. The wages of seamen who are members of the crews of his country's merchant vessels,

" 2. The performance of obligations entered into between the seamen, the master and other ships' officers and between them and the passengers, in cases where no third party is involved."

The competence of the consular agents is confined to the area in which the consular agency has its office. The consular agents are useful in places remote from the consulate where the presence of a consular official is desirable but where the establishment of a larger post is not justified.

In recent years the institution of consular agencies in the strict sense has tended to play a dwindling part in Belgium's consular representation abroad.

Article 9

The language used at the end of this article departs from that employed consistently in the other articles of the convention. The expression " receiving State " should be used.

Article 10

1. The matters dealt with in article 10 may conceivably be governed not only by the internal law of the States, but also by custom and usage.

The closing passage of paragraph 1 should therefore read:

" . . . is governed by the internal law and usages of the sending State."

2. Since the problems to which article 10 relates are also dealt with in articles 12 *et seq.*, the text of paragraph 2 should be amended to read:

" 2. Competence to grant recognition to consuls, and, except as otherwise provided by the present articles, the form of such recognition, are governed by . . ."

Article 11

The rule stated in this article is unknown in Belgium.

Accordingly, the Belgian Government would prefer a more elastic formula to express the idea underlying the article.

The new text should therefore read:

" The appointment of consuls from amongst the nationals of the receiving State may be declared by that State to be subject to its express consent."

Article 12

1. The heads of consular post referred to in paragraph 1 are not all furnished with full powers in the form of a consular commission or similar document.

Consular agents who are in charge of a consular agency are also heads of post and, at least under Belgian law, are not furnished with full powers in the form of a consular commission or similar instrument.

2. As pointed out above with reference to article 9, the same expressions should be used to express the same ideas in all articles of the draft.

In paragraph 1, therefore, the expression " the State appointing them " should be replaced by " the sending State ", which is the accepted expression in consular law.

3. Paragraph 1 says that heads of consular posts shall be furnished " with full powers ".

This phrase is not quite accurate, since the consul exercises only the functions conferred upon him by the sending State within the limits of internal law, treaty law and public international law.

4. In paragraph 2, the expression " the State appointing a consul " should be replaced by the expression " the sending State "; and the expression " the State on whose territory the consul is to exercise his functions " by the expression " the receiving State ".

5. Paragraph 2 should provide for the communication to the government of the receiving State not only of the consular commission but also of the " similar instrument ".

6. In the French text of paragraph 2, the present tense and not the future should be used.

In the light of these comments, paragraph 2 should be amended to read:

" 2. The sending State shall communicate the commission or similar instrument through the diplomatic or other appropriate channel to the government of the receiving State."

7. The Belgian Government is of the opinion that paragraph 3 of this article might be amended to read as follows:

" 3. If the receiving State so agrees, the commission or other similar instrument may be replaced . . ."

8. In paragraph 3 of the commentary, the Commission asks for information as to whether a consul appointed to another post must be furnished with a new commission, even if the new post is in the territory of the same State.

The Belgian Government wishes to report that this is the policy followed in Belgium.

Furthermore, under the provisions of Belgian law, a head of consular post is furnished with a new commission:

(*a*) If he is promoted to a higher grade and the rank of the post is raised at the same time, or

(*b*) If his consular district is modified, or

(*c*) If the head office of the consulate is transferred.

Article 13

For the sake of terminological consistency, the phrase " of the State in which they are to exercise them " should be replaced by the phrase " of the receiving State ".

Article 15

The Belgian Government considers that, in the French text it would be more accurate to say " s'acquitter des devoirs de sa charge " than " . . . du devoir de sa charge ".

Article 16

1. In the French text, the expression " chef de consulat " (head of consulate) is used in paragraph 1 because it would be difficult, in the context of this article, to use the expression mentioned in article 1.

Nevertheless, the Belgian Government proposes that, for the sake of consistency, the following wording, which uses the expression mentioned in article 1 of the draft, should be adopted:

" 1. If the head of consular post is unable to carry out his functions, or if the position is vacant, the direction of the consulate . . ."

This wording keeps strictly to the expression " head of consular post " included in the definitions given in article 1.

2. The Belgian Government has no objections to the first part of paragraph 2, but must make some reservations regarding the second part.

Under Belgian internal law, the acting head of post is not entitled to the tax privileges mentioned in articles 45, 46 and 47 of the draft if he does not fulfil the conditions laid down in those articles.

Article 17

1. The rule stated in paragraph 2 does not exist in Belgian internal law. The only deciding factor in this connexion is the granting of the *exequatur*.

2. The words " leurs lettres de provision " at the end of paragraph 3 in the French text should be corrected to " leur lettre de provision."

3. The rule in paragraph 3 does not take into account the position of consuls who are not heads of posts, in whose case, since they are not, under Belgian internal law at any rate, furnished with a commission or similar instrument, a simple notice of appointment is sufficient.

The Belgian Government therefore suggests that the end of paragraph 3 should be amended to read as follows: " the order of precedence as between them shall be determined according to the date on which their commission or similar instrument was presented or on which notice was given of their appointment."

The idea of the notice of appointment having thus been introduced, the text of the paragraph will cover the possibility mentioned in article 12, paragraph 3.

4. The Belgian Government considers that the rule laid down in paragraph 4 should be applicable even where there is a difference of class.

The present text should, therefore, be amended to read:

" Heads of post, whatever their class, have precedence . . ."

Article 19

The Belgian Government is opposed to the provisions of this article and is afraid that a new category of consuls with a hybrid status might be established.

The introduction of this complication seems the less justified since it is only very rarely that cases of the kind envisaged occur in practice.

If, however, there were to be a majority in favour of this article, the Belgian Government would be prepared to accept such a provision in a spirit of compromise, provided that no new rank of consul-general-*chargé d'affaires* is created. It would like the second half of the article to be amended as follows: " in which case he shall enjoy diplomatic privileges and immunities."

Article 21

1. For the sake of conformity with the amendments proposed to article 1, the Belgian Government suggests the following wording for article 21:

" Subject to the provisions of articles 11, 22 and 23, the sending State may freely appoint consuls who are not heads of post and the employees of the consulate."

The Belgian Government further considers that employees of the consulate may make use of this title only if they are authorized by the receiving State to exercise their functions. The following clause should therefore be added to the text: " . . . and employees of the consulate, who, on notification of their appointment, are authorized to exercise their functions."

Article 22

The Belgian Government would like this article to be deleted.

The question with which it deals is governed exclusively by the internal law of States and should be settled by bilateral agreement between the States concerned in a spirit of mutual understanding.

Article 25

1. To concord with the definitions given in article 1, the beginning of paragraph 1 of this article should read as follows:

" 1. The functions of the head of consular post shall be . . ."

2. The Belgian Government considers that two fairly frequent causes of cessation — resignation and death — should be added to the modes of termination.

The new paragraph might therefore be worded as follows:

" 1. The functions of the head of consular post shall be terminated in the following events, amongst others:

" (*a*) His resignation or death;

" (*b*) His recall or discharge;

" (*c*) The withdrawal of his *exequatur*; and

" (*d*) The severance of consular relations."

3. In view of the amendments to paragraph 1, the first sentence of paragraph 2 should read:

" 2. Except in the case referred to in paragraph 1 (*c*) of this article, the functions of consuls other than heads of post shall be terminated on the same grounds. In addition . . ."

Article 27

1. The Belgian Government considers that the expression " as soon as they are ready to leave " used in paragraph 2 does not altogether serve the purpose described in paragraph 2 of the commentary.

The text would probably be more adequate if the paragraph were amended to read:

" 2. The receiving State shall grant to all the persons referred to in paragraph 1 of this article the necessary facilities for leaving its territory, and shall protect them up to the moment of their departure, which shall take place within a reasonable period. If need be, the receiving State shall place at their disposal the necessary means of transport for themselves and their personal effects."

2. The Belgian Government believes that paragraph 3 might be amended to read as follows:

" 3. The provisions of paragraph 2 of this article shall not apply where a member of the consulate who has been locally appointed or engaged by the sending State is discharged."

Article 29

It should be mentioned in paragraph 1 of this article that it is the coat-of-arms of the sending State which is meant.

Article 31

1. The Belgian Government considers that a provision relating to expropriation might usefully be included in article 31.

A new paragraph might stipulate that:

" The consular premises may be expropriated only for reasons of national defence or public utility and in return for adequate compensation."

2. This article should also cover the case where inviolability is claimed for purposes unconnected with the exercise of the consular functions.

A paragraph worded as follows might therefore be included:

" If documents and articles relating to a gainful private activity carried on by a consul or by a member of the consulate, or the goods which are the object of that activity, are deposited in the consular premises, the consul or member of the consulate shall take the necessary steps to ensure that the application of the laws in force in the receiving State relating to such gainful private activity is in no way hindered by the operation of the provisions of the present article."

Article 32

1. In Belgium, exemption from the land tax and from the related national emergency tax is subject to the condition that the premises belong to a foreign State. This condition may be deemed to be fulfilled if a building is acquired by a head of post who is recognized as acting on behalf of the sending State, which thus becomes the owner. The principle is, therefore, that the exemption may be granted only to the foreign State.

Furthermore, article 45, paragraph 1 (*b*), seems to deal satisfactorily with cases in which immovable property used for the purposes of the consulate has been acquired in the name of the head of post but on behalf of the sending State.

Lastly, an exemption from the taxes chargeable on the acquisition of immovable property cannot possibly be granted in cases where the property belongs to an individual, whoever he may be. In such cases also, the head of post should be acting on behalf of the sending State.

2. The words " or the countervalue of local public improvements " should be added at the end of this article.

This expression would cover, for example, the improvement of the street, of public lighting, the installation of water mains, sewerage, etc.

3. The Belgian Government suggests that a similar tax exemption might be provided in respect of the furnishings of the consular premises, to which reference is also made in article 31, paragraph 3.

A paragraph 2 on this subject might read as follows:

" The sending State shall enjoy a similar exemption in respect of the ownership or possession of the furnishings of the consular premises."

Article 36

1. In paragraph 6 of the commentary, the Commission indicates that it has insufficient information concerning the practice of States in the matter of communications.

On this subject, the Belgian Government wishes to say that under Belgian law neither consuls nor diplomatic missions enjoy preferential rates for the sending of correspondence or telegrams or the use of telephones.

2. The Belgian Government feels it should draw attention to the fact that the principle expressed in paragraph 2 of this article is not absolute.

According to usage, the authorities of the receiving State may open the consular bags if they have serious reasons for their action, but they must do so in the presence of an authorized representative of the sending State.

The Belgian Government would like this usage to be mentioned in the commentary on article 36, as was done in the case of article 25 of the draft articles on diplomatic intercourse and immunities.

Article 37

1. The Belgian Government considers that the well-established principle of international law referred to in paragraph 1 of the commentary — that consuls, in the exercise of their functions, may apply only to the local authorities, i.e., to the authorities of their consular district — should be repeated in the body of the article.

The Belgian Government wishes to point out in this connexion that under Belgian consular law consuls are never entitled to approach either the central authorities or local authorities outside their consular district, except in the case referred to in paragraph 2 of the article.

2. The Belgian Government considers that the procedure to be observed by consuls in communicating with the authorities of the receiving State, referred to in paragraph 3, is a matter within the exclusive jurisdiction of the receiving State and does not come under international law.

This paragraph should therefore be deleted.

Article 38

In response to the request for information made in paragraph 4 of the commentary on this article, the Belgian Government wishes to say that only instruments executed at the consulate between private persons and intended to produce effects in the receiving State are liable to the taxes and dues provided for by the legislation of the receiving State.

Article 40

1. In paragraph 1, the expression " pending trial " applies both to " arrest " and to " detention ", so as to exclude administrative arrest (maximum 24 hours), to which even consuls are liable if the circumstances arise.

2. The Belgian Government prefers the text of paragraph 1 as it stands to the alternative given in square brackets.

3. It should be explained that the expression " an offence punishable by a maximum sentence of not less than five years' imprisonment " in paragraph 1 includes offences punishable by a maximum term of five years' imprisonment but referred to a correctional court (and hence punishable by a shorter term).

4. The Belgian Government would like the words " at least two years " in paragraph 2 to be deleted. The two-year limit is unknown in Belgian law, and the execution of a final sentence is always possible.

The Belgian Government further suggests that the end of this paragraph should be amended slightly to read: " ... save in execution of a final sentence of ' principal ' imprisonment."

In this way the eventualities mentioned in paragraph (14 (*c*)) of the commentary on this article are ruled out, and in particular arrest for the purpose of executing a sentence of " subsidiary " imprisonment imposed for failure to obey an order to pay damages, especially in traffic cases.

5. The Belgian Government thinks the expression " any other restriction upon their personal freedom " used in paragraph 2

may rule out custody and protection in case of insanity. It must not be made impossible to adopt such measures in the case of consular officials.

Article 42

The Belgian Government considers that the word " office " at the end of paragraph 2 of this article should be replaced by the accepted expression " the consulate "

Article 43

1. The Belgian Government is prepared to agree to the provisions of this article, provided, however, that the exemption in question is granted only to those members of the families of members of the consulate who do not carry on any gainful private activity.

2. The Belgian Government would add that in Belgium the only private persons who qualify for the exemption referred to in the present article are those employed exclusively in the service of consuls.

Article 45

1. If the suggestions made in the Belgian Government's comments on article 32 are adopted, the phrase " subject to the provisions of article 32 " should be deleted in paragraph 1 (*f*).

2. The words " or as the countervalue of local public improvements " should be added at the end of paragraph 1 (*e*).

3. The Belgian Government considers that provision should be made in this article for the case in which a member of the consulate carries on a gainful private activity and at the same time works in the consulate. The phraseology employed in article 58 might usefully be taken as a model for a paragraph worded as follows:

" Even if they carry on a gainful private activity, members of the consulate shall be exempt from taxes and dues on the remuneration and emoluments which they receive from the sending State in payment of the work they perform in the exercise of their consular functions."

Article 47

The Belgian Government wishes to point out that sub-paragraph (*a*) of this article conflicts with a provision of Belgian law under which money and securities passing to heirs resident abroad may not, in principle, be transferred before a deposit has been made to guarantee payment of the duties payable in Belgium on the estate of a person who had the status of inhabitant of the kingdom.

Article 48

The Belgian Government is prepared to accept sub-paragraph (*a*), although in consequence it will have to modify its practice so far as members of the families of members of the consulate are concerned.

It cannot go beyond that, however, and would like members of the private staff to be excluded from the benefit of this article.

Article 50

1. The Belgian Government considers that paragraph 1 ought to provide that all the members of the consulate should enjoy immunity from jurisdiction in respect of official acts performed in the exercise of their functions.

In practice, the consular functions are exercised in part by subordinate staff, as for example when an administrative document is drawn up.

Paragraph 1 should therefore read as follows:

" 1. Members of the consulate who are nationals of the receiving State . . ."

This is the more important since in most cases it will be exceptional for consuls, apart from honorary consuls, to be nationals of the receiving State, whereas the subordinate staff will often be recruited locally.

2. Provision should also be made in paragraph 1 for the immunity provided for in article 42, i.e., the immunity from liability to give evidence.

The following should therefore be added to the first sentence of paragraph 1: " . . . . the exercise of their functions, and they may refuse to give evidence on matters connected with the exercise of their functions and to produce the correspondence and official documents relating thereto."

3. The amendments proposed in 1 and 2 above would involve the deletion of the first words of paragraph 2, which would then begin with the words: " Members of the families of members of the consulate, members of the private staff, . . ."

Article 51

1. The Belgian Government wishes to point out that the provision appearing at the end of paragraph 1 is not in keeping with the practice followed in Belgium. In this country the commencement of the consular privileges and immunities of a member of a consulate who is already in the territory dates not from the time when notice of his appointment is given to the Ministry of Foreign Affairs or a similar authority, but from the time of recognition by the receiving State.

It seems logical that the receiving State should first have to signify its agreement, since the persons concerned are in many cases nationals of that State.

2. In paragraph 3, provision should be made for the cessation of privileges and immunities in the case of persons who remain in the territory of the receiving State.

For this purpose the following sentence might be added after the first sentence of paragraph 3:

" If such persons remain in the territory of the receiving State, their privileges and immunities shall cease at the same time as their functions as members of the consulate."

Article 53

Paragraph 2 refers to consular functions. Since, however, this convention deals only with consular immunities and relations, it was rightly considered that the expression " consular functions " should not be defined.

It would therefore be preferable to amend this paragraph slightly so as to make it read as follows:

" 2. The consular premises shall be used exclusively for the purposes of the exercise of the consular functions as specified in the present articles or in other rules of international law."

Article 54

1. The Belgian Government suggests that article 45 should be added to the list of references in paragraph 2, as was proposed in the comments on that article, and deleted from the list of references in article 54, paragraph 3.

In consequence of this amendment article 58 would become superfluous.

2. In reply to the question asked in paragraph 5 of the commentary on article 54, the Belgian Government wishes to state that the consular premises of a career consulate and those of an honorary consulate are treated in exactly the same way.

In the case of an honorary consulate, however, a house search is permitted if ordered by the court and authorized by the ministry of foreign affairs of the receiving State.

Article 55

1. The Belgian Government wishes to point out that the article seems to ignore the fact that in an honorary consulate there are, in addition to the honorary consul himself, members of the consulate working on the same terms, i.e., without salary.

Accordingly a formula should be worked out which provides that the private correspondence, not only of the honorary consul but also of all other members of the consulate, including, for example, the consulate's secretary, should be kept separate from the consular archives.

2. Similarly, it might be useful to mention not only the books and documents relating to a gainful private activity, but also the goods involved.

The clause might therefore read as follows:

"... and from the books, documents and goods connected with any gainful private activity..."

Article 57

The Belgian Government wishes to make the same comments as on article 43.

Furthermore, it is not sure that the phrase " outside the consulate ", which occurs here for the first time, ought to be used.

Under Belgian law, if a member of the family of the honorary consul, or of the consular staff of the honorary consulate, carries on a gainful private activity, even at the consulate (e.g., as private chauffeur of the honorary consul), he will be treated in the same way as any member of the private staff and will not be eligible for the exemptions provided for in article 57.

Article 58

The Belgian Government considers that this article might be omitted, provided, however, that the amendments suggested *ad* article 54 are accepted.

Article 59

1. There are no provisions of Belgian law corresponding to the terms of sub-paragraph (*a*).

Only the honorary consuls themselves are entitled to the exemption referred to in this sub-paragraph, and it should be pointed out that in Belgium even members of the families of career consuls do not enjoy the exemption in question.

2. The comments in 1 above apply also the exemption referred to in sub-paragraph (*b*).

3. As regards requisitioning more particularly, Belgian law provides that only those honorary consuls are exempt who fulfil the following conditions:

(*a*) They must be nationals of the sending State, and

(*b*) They must not carry on a gainful private activity.

Article 60

The Belgian Government considers that the provisions of this article do not add anything to the stipulations of article 42.

Moreover, since the article does not mention members of the consulate who carry on a gainful private activity, persons in this category might claim the benefit of the provisions of article 42 and in that way would secure better treatment than the honorary consuls themselves.

Perhaps article 60 should be deleted and article 42 amended accordingly.

In fact, on a careful reading the provisions of paragraphs 1 and 2 of article 42 seem to be applicable both to honorary consuls and career consuls.

All that would be necessary would be to add a short passage to paragraph 1:

"... no coercive measure may be applied with respect to them unless they carry on a gainful private activity."

Article 42 would then have to be included, without distinguishing between the paragraphs, among the references given in article 54, paragraph 2, and deleted from the list given in article 54, paragraph 3.

Article 61

In the opinion of the Belgian Government, a study of this article seems to indicate that article 53, paragraphs 2 and 3, should be applicable to honorary consuls and should therefore be included in the list of references given in article 54, paragraph 2, leaving paragraph 1 of article 53 in the list of references given in article 54, paragraph 3. Article 61 itself would remain unchanged.

Article 62

The Belgian Government is of the opinion that this article should not be mentioned among those enumerated in article 54, paragraph 3, since the subject with which it deals is governed by chapter I of the draft convention referred to in article 54, paragraph 1.

Article 54, paragraph 3, would then have to be amended as follows: "... articles 55 to 61 shall apply to honorary consuls."

Article 65

The Belgian Government expresses its preference for the second text and considers that a statement should be included either in the preamble or in the convention itself to the effect that the convention reproduces only the fundamental and universally accepted principles of international consular law which are applicable in the absence of any regional or bilateral agreement.

2. Chile

Transmitted by a note verbale dated 25 April 1961 from the Permanent Mission of Chile to the United Nations

[*Original: Spanish*]

In general, the provisional draft articles on consular intercourse and immunities prepared by the United Nations International Law Commission are in keeping with the practice of the Chilean Government and with the case-law of Chile's courts. The draft satisfies needs arising from the general development of international relations by giving not only the rules generally recognized by international law, but also many new provisions intended to settle questions or problems not provided for in existing conventions or agreements. These new rules are skilfully conceived, are based on much research, and reflect the lessons of past experience.

With regard to this second point, the comments given below follow the sequence of the Commission's report, or simply the " report ", as it is called in the report of the International Law Commission on the work of its twelfth session (document A/CN.4/132, of 7 July 1960). (The second point mentioned in this paragraph is concerned with the question whether the articles are in keeping with the Chilean Government's views and practice in consular matters).

" *Article 2: Establishment of consular relations*

" The establishment of consular relations takes place by mutual consent of the States concerned."

The Special Rapporteur had proposed, as stated in paragraph 3 of the commentary on the article, that a second paragraph

reading as follows should be added: " The establishment of diplomatic relations includes the establishment of consular relations."

The Government of Chile considers that there would be no advantage in accepting the proposed addition, and no disadvantage in rejecting it. Accordingly, it seems advisable that States should retain complete freedom to maintain diplomatic and consular relations simultaneously or either diplomatic or consular relations separately, as their political or economic interests may indicate.

" *Article 4: Consular functions*

" 1. A consul exercises within his district the functions provided for by the present articles and by any relevant agreement in force, and also such functions vested in him by the sending State as can be exercised without breach of the law of the receiving State. The principal functions ordinarily exercised by consuls are:

" (*a*) To protect the interests of the nationals of the sending State, and the interests of the sending State itself;

" (*b*) To help and assist nationals of the sending State;

" (*c*) To act as notary and civil registrar and to exercise other functions of an administrative nature;

" (*d*) To extend necessary assistance to vessels and boats flying the flag of the sending State and to aircraft registered in that State;

" (*e*) To further trade and promote the development of commercial and cultural relations between the sending State and the receiving State;

" (*f*) To acquaint himself with the economic, commercial and cultural life of his district, to report to the government of the sending State, and to give information to any interested persons.

" 2. Subject to the exceptions specially provided for by the present articles or by the relevant agreements in force, a consul in the exercise of his functions may deal only with the local authorities."

During the discussion of this article, the Commission considered at length whether a general definition of the consular functions should be adopted or whether it would be preferable to replace the definition by an enumeration of the various consular functions (Report, commentary to article 4). The Government of Chile considers that a general definition would be preferable to an enumeration of functions which could hardly be complete.

" *Article 11: Appointment of nationals of the receiving State*

" Consular officials may be appointed from amongst the nationals of the receiving State only with the express consent of that State."

In the Spanish text, the expression " más que " in the phrase " más que con el consentimiento expreso de éste " should be replaced by " salvo ".

" *Article 23: Persons deemed unacceptable*

" 1. The receiving State may at any time notify the sending State that a member of the consular staff is not acceptable. In that event, the sending State shall, as the case may be, recall the person concerned or terminate his functions within the consulate.

" 2. If the sending State refuses or fails within a reasonable period to carry out its obligations under paragraph 1 of this article, the receiving State may refuse to recognize the person concerned as a member of the consular staff."

The words " not acceptable " in paragraph 1 should be replaced by the words *persona non grata*, which is the phrase generally used in international law.

" *Article 24: Notification of the arrival and departure of members of the consulate, members of their families and members of the private staff*

" 1. The Ministry of Foreign Affairs of the receiving State, or the authority designated by that ministry, shall be notified of:

" (*a*) The arrival of members of the consulate after their appointment to the consulate, and their final departure or the termination of their functions with the consulate;

" (*b*) The arrival and final departure of a person belonging to the family of a member of the consulate and, where appropriate, the fact tot a person joins the family or leaves the household of a member of the consulate;

" (*c*) The arrival and final departure of members of the private staff in the employ of persons referred to in sub-paragraph (*a*) of this paragraph and, where appropriate, the fact that they are leaving the employ of such persons.

" 2. A similar notification shall be given whenever members of the consular staff are locally engaged or discharged."

The Chilean Government would like some explanation of the expression " después de su destinación al consulado " (" after their appointment to the consulate ") in paragraph 1 (*a*). As it stands, it is meaningless. Unless, therefore, some explanation is given to justify its use, the expression should be deleted.

" *Article 25: Modes of termination*

" 1. The functions of the head of post shall be terminated in the following events, amongst others:

" (*a*) His recall or discharge by the sending State;

" (*b*) The withdrawal of his *exequatur*;

" (*c*) The severance of consular relations.

" 2. Except in the case referred to in paragraph 1 (*b*), the functions of consular officials other than the head of post shall be terminated on the same grounds. In addition, their functions shall cease if the receiving State gives notice under article 23 that it considers them to be terminated."

The words " or discharge " in paragraph 1 (*a*) should be deleted, since for international purposes " recall " is sufficient, whatever may be the reason for it (discharge, retirement, transfer, etc.). Discharge is an administrative penalty the effects of which are governed by the internal law of each State, and there is no point in giving it international effects which would tend to displace the effects of recall.

" *Article 27: Right to leave the territory of the receiving State and facilitation of departure*

" 1. Subject to the application of the provisions of article 40, the receiving State shall allow the members of the consulate whose functions have terminated, the members of their families and the private staff in their sole employ, to leave its territory even in case of armed conflict.

" 2. The receiving State shall grant to all the persons referred to in paragraph 1 of this article the necessary facilities for their departure as soon as they are ready to leave. It shall protect them up to the moment when they leave its territory. If need be, the receiving State shall place at their disposal the necessary means of transport for themselves and their personal effects.

" 3. The provisions of paragraph 2 of this article shall not apply where a member of the consulate is discharged locally by the sending State."

For the reasons given in the comments on article 25, it would be advisable to delete article 27, paragraph 3, which imposes an international penalty on an official who has been discharged.

There seems to be no reason in justice why an official who is discharged should suffer — besides the penalties to which he is liable under the administrative regulations of his country — this additional penalty, which affects, moreover, the members of his family, who are in no way responsible for the acts of the culpable official.

" *Article 32: Exemption from taxation in respect of the consular premises*

" The sending State and the head of post shall be exempt from all taxes and dues levied by the receiving State or by any territorial or local authority in respect of the consular premises, whether owned or leased, other than such as represent payment for specific services rendered."

The text reproduced above is not consistent with paragraph 2 of the commentary on the article. The article says textually that " *The sending State and the head of post* shall be exempt from all taxes and dues . . . in respect of the consular premises, whether owned or leased . . ."

Paragraph 2 of the commentary, on the other hand, says that the exemption affects " *the actual building* " acquired or leased by the sending State " or by the head of consular post, for otherwise the owner could charge the tax to the sending State or to the head of post under the contract of sale or lease.

If this interpretation is correct, the text of article 32 should be amended so as to bring it into line with paragraph 2 of the commentary. For this purpose, the article might be re-drafted to read: " Consular premises owned or leased by the sending State or by the head of post shall be exempt from all taxes levied by the receiving State or by any territorial or local authority, other than taxes or dues which represent payment for specific services rendered."

" *Article 37: Communication with the authorities of the receiving State*

" 1. In the exercise of the functions specified in article 4, consuls may address the authorities which are competent under the law of the receiving State.

" 2. Nevertheless, consuls may not address the Ministry of Foreign Affairs of the receiving State unless the sending State has no diplomatic mission to that State.

" 3. The procedure to be observed by consuls in communicating with the authorities of the receiving State shall be determined by the relevant international agreements and by the laws and usages of the receiving State."

Paragraph 1 provides that in the exercise of their functions consuls may address the authorities which are competent under the law of the receiving State.

Paragraph 2 prohibits consuls from addressing the Ministry of Foreign Affairs of the receiving State unless the sending State has no diplomatic mission to that State.

It may, however, happen that in the receiving State the ministry of foreign affairs is the competent authority to which paragraph 1 refers, and, as such, may be approached by the consul. The Government of Chile considers that if the decisive criterion is to be what the local law provides, then the provisions of that law ought to govern the consul's relations with the authorities of the receiving State; consequently, paragraph 2 of the article should be deleted.

" *Article 40: Personal inviolability*

" 1. Consular officials who are not nationals of the receiving State and do not carry on any gainful private activity shall not be liable to arrest or detention pending trial, except in the case of an offence punishable by a maximum sentence of not less than five years' imprisonment [alternatively: " except in the case of a grave offence]."

" 2. Except in the case specified in paragraph 1 of this article, the officials referred to in that paragraph shall not be committed to prison or subjected to any other restriction upon their personal freedom save in execution of a final sentence of at least two years' imprisonment.

" 3. In the event of criminal proceedings being instituted against a consular official of the sending State, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case referred to in paragraph 1 of this article, in a manner which will hamper the exercise of the consular function as little as possible.

" 4. In the event of the arrest or detention, pending trial, of a member of the consular staff or of criminal proceedings being instituted against him, the receiving State shall notify the head of the consular post accordingly. Should the latter be himself the object of the said measures, the receiving State shall notify the diplomatic representative of the sending State."

The Chilean Government considers that the text of paragraph 1 should be accepted as it stands, and that the alternative, " except in the case of a grave offence " should be deleted. The phrase " grave offence " is vague and open to conflicting interpretations, whereas the definition of the penalty in terms of years of imprisonment provides an objective and stable basis for the application of the rule which the paragraph contains.

The rest of the article does not call for comment.

" *Article 42: Liability to give evidence*

" 1. Members of the consulate are liable to attend as witnesses in the course of judicial or administrative proceedings. Nevertheless, if they should decline to do so, no coercive measure may be applied with respect to them.

" 2. The authority requiring the evidence of a consular official shall take all reasonable steps to avoid interference with the performance of his official duties and shall, where possible and permissible, arrange for the taking of such testimony at his residence or office.

" 3. Members of the consulate may decline to give evidence concerning matters connected with the exercise of their functions and to produce official correspondence and documents relating thereto. In this case also, the authority requiring the evidence shall refrain from taking any coercive measures with respect to them."

According to the generally accepted principles regarding the immunity of consular officials from jurisdiction, the immunity is applicable only in respect of the exercise of the consular functions. Article 41 of the draft also accepts this principle.

Consequently, in matters not related to the exercise of his functions, a consular official is subject to the ordinary jurisdiction of the receiving State. Hence there is no reason why a consular official should be able to decline to give evidence in an ordinary matter that is unconnected with the exercise of the consular functions. Furthermore, since the authorities of the receiving State are under the obligation to facilitate and not to hamper the exercise of the consular functions, they will in each case, according to the circumstances, take such action as the law permits to comply with this obligation by arranging for the evidence to be given in a way that does not interfere with the consular functions.

The Chilean Government therefore considers that paragraphs 1 and 2 should be deleted, since they conflict with the principle that, except in respect of acts forming part of their functions, consular officials should be subject to the ordinary jurisdiction of the receiving State.

The provisions of paragraph 3, on the other hand, are acceptable, for they follow logically from the immunity by which the acts of consular officials are protected.

The last sentence of paragraph 3 should be deleted, for if, in declining to give evidence in the case in question, the official exercises a right, he cannot of course be penalized or subjected to coercive action in any way on account of the decision he has taken.

" *Article 45: Exemption from taxation*

" 1. Members of the consulate and members of their families, provided they do not carry on any gainful private activity, shall be exempt from all taxes and dues, personal or real, levied by the State or by any territorial or local authority, save

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

" (*b*) Taxes and dues on private immovable property, situated in the territory of the receiving State, unless held by a member of the consulate on behalf of his government 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 47 concerning the succession of a member of the consulate or of a member of his family;

" (*d*) Taxes and dues on private income having its source in the receiving State;

" (*e*) Charges levied for specific services furnished by the receiving State or by the public services;

" (*f*) Registration, court or record fees, mortgage dues and stamp duty, subject to the provisions of article 32.

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

Paragraph 1 (*a*) provides that officials must pay indirect taxes " incorporated in the price of goods or services."

The indirect tas may be included in the price of goods or services so as to form a total, or the total price may be shown as consisting of the price of the goods or services plus the amount of the tax. Whether the tas is included in the price or is shown separately, it is still an indirect tax and, as such, is payable by whoever buys the goods or requests the services.

The Chilean Government therefore considers that the concluding phrase " incorporated in the price of goods or services " should be deleted.

In paragraph 1 (*b*), the word " private " in the expression " private immovable property " is unnecessary. The drafting of the Spanish text might be improved if the expression " que radiquen " were replaced by the word " situados ".

The following sentence should be added at the end of paragraph 2: " This provision shall not apply to persons who are nationals of the receiving State." This sentence, which appears in paragraph 5 of the commentary on this article, would undoubtedly be worth including in the text, so as to remove all doubt.

" *Article 49: Question of the acquisition of the nationality of the receiving State*

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

In order to avoid any possible conflict between this provision and the provisions of the Chilean Constitution regarding nationality, a reservation would have to be made to the effect that Chile will apply this article without prejudice to the provisions of article 3 of its political constitution.

" *Article 51: Beginning and end of consular privileges and immunities*

" 1. Each member of the consulate shall enjoy the privileges and immunities provided by the present articles as soon as he enters the territory of the receiving State on proceeding to take up his post, or if already in its territory, as soon as his appointment is notified to the ministry of foreign affairs or to the authority designated by that ministry.

" 2. The privileges and immunities of persons belonging to the household of a member of the consulate shall be enjoyed as soon as such persons enter the territory of the receiving State, whether they are accompanying the member of the consulate or proceeding independently. If such a person is in the territory of the receiving State at the moment of joining the household of the member of the consulate, privileges and immunities shall be enjoyed as soon as the name of the person concerned is notified to the ministry of foreign affairs or to the authority designated by that ministry.

" 3. When the functions of a member of the consulate come to an end, his privileges and immunities, and those of the members of his household, shall normally cease at the moment when the persons in question leave the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. The privileges and immunities of a member of the consulate who is discharged by the sending State shall come to an end on the date on which the discharge takes effect. However, in respect of acts performed by members of the consulate in the exercise of their functions, immunity from jurisdiction shall continue to subsist without limitation of time."

In paragraphs 1 and 2 of the Spanish text, the expression " en cuanto penetra al territorio " should be replaced by the expression " desde que entran en el territorio ". The idea usually conveyed by the word " penetrar " is that of one body entering another by force of violence, and the word " entrar " should therefore be used instead.

In paragraph 3, the Chilean Government suggests that the penultimate sentence, relating to the cessation of the privileges and immunities of officials who have been discharged, should be deleted. As has already been pointed out in connexion with article 25, discharge is a purely administrative penalty, which is applied differently under the law of different countries. There seems to be no strictly legal reason why the effects of this penalty should be internationalized.

In international law, discharge is the penalty which the State concerned has considered adequate for the act or omission in question; and since the act or omission is thereby punished according to law, the addition of another penalty hardly seems equitable. Furthermore, this administrative penalty does not necessarily or generally imply that an offence under the ordinary law has been committed; and hence it does not seem necessary to treat the consular officials involved with such severity. Lastly, it should be pointed out that the draft convention on diplomatic intercourse and immunities, now being discussed at Vienna, contains no similar provision applicable to diplomatic officials who have suffered the administrative penalty of discharge.

" *Article 58: Exemption from taxation*

" An honorary consul shall be exempt from taxes and dues on the remuneration and emoluments which he receives from the sending State in his capacity as honorary consul."

The Chilean Government suggests that the following sentence be added to this article: " This provision shall not apply to honorary consuls who are nationals of the receiving State." This clarification is given in the commentary, but it could usefully be included in the body of the article itself.

" *Article 59: Exemption from personal services and contributions*

" The receiving State shall

" (*a*) Exempt honorary consuls, other honorary consul officials and the members of their families, from all personal services, and from all public services of any kind whatever;

" (*b*) Exempt persons referred to in sub-paragraph (*a*) of this article from such military obligations as those connected with requisitioning, taxation and billeting."

For the reason given in the comments on article 58, the Chilean Government suggests that the following sentence be added to this provision also: " This article shall not apply to persons who are nationals of the receiving State."

" *Article 60: Liability to give evidence*

" In any case in which he is requested to do so in connexion with matters relating to the exercise of his consular functions, an honorary consul may decline to give evidence in the course of judicial or administrative proceedings or to produce official correspondence and documents in his possession. In such event, the authority requiring the evidence shall refrain from taking any coercive measures with respect to him."

The Chilean Government suggests that this article should be re-drafted to read: " An honorary consul may decline to give evidence, and to produce official correspondence and documents, in the course of judicial or administrative proceedings which relate to matters connected with the exercise of his functions."

The last sentence in the text of the draft is deleted because, if the consul is exercising a right given to him by law, he cannot be liable to any penalty for exercising a right which the law itself has granted.

" *Article 65: Relationship between the present articles and bilateral conventions* "

First text:

" Acceptance of the present articles shall not rule out the possibility of the maintenance in force by the Parties, in their mutual relations, of existing bilateral conventions concerning consular intercourse and immunities, or the conclusion of such conventions in the future."

Second text:

" The provisions of the present articles shall not affect bilateral conventions concerning consular intercourse and immunities concluded previously between the Contracting Parties, and shall not prevent the conclusion of such conventions in the future."

The Chilean Government prefers the first text, for it abrogates previous bilateral conventions unless the Parties thereto specifically agree to maintain them in force.

The second text, on the other hand, leaves the existing bilateral conventions in force.

3. China

Transmitted by a letter dated 22 March 1961 from the Director of the Office of the Permanent Mission of China to the United Nations

[*Original: English*]

Article 3

It seems advisable to add the word " prior " before the word " consent " in paragraphs 1, 3, 4 and 5.

Article 4

The additional article (a consul's power of representation) proposed by the Special Rapporteur in paragraph 12 of the commentary should be inserted in this article.

Article 22

It is proposed that this article be deleted.

Article 35

The article should be amended to read as follows:

" The receiving State shall ensure to all members of the consulate, freedom of movement and travel in its territory.

" Nevertheless, the receiving State may, for reasons of national security, issue laws and regulations prohibiting or regulating entry into specifically indicated places, provided that this indication be not so extensive as to render freedom of movement and travel illusory."

Article 36

The words " and the official seal " should be inserted between the words " of their character " and the words " may only contain " in paragraph 3.

Article 42

It is proposed to add the following additional paragraph to this article:

" A member of the consulate shall not decline to give evidence concerning events which came to his notice in his capacity as registrar of births, marriages and deaths, nor shall he decline to produce the documents relating thereto."

Article 60

The following new paragraph should be added to this article:

" The honorary consul shall not decline to give evidence concerning events which came to his notice in his capacity as registrar of births, marriages and deaths, nor shall he decline to produce documents relating thereto."

Article 65A

An article should be added to the draft providing for the settlement of disputes arising out of the interpretation or application of the convention.

4. Czechoslovakia

Transmitted by a note verbale dated 9 March 1961 from the Permanent Mission of Czechoslovakia to the United Nations

[*Original: English*]

1. The Czechoslovak Government is of the opinion that the draft articles should contain provisions to the effect that any State has the right to maintain consular relations with other States.

2. For the purpose of completeness the Czechoslovak Government recommends the inclusion in the draft of a provision which would expressly state that the establishment of diplomatic relations involves also the establishment of consular intercourse.

3. The Czechoslovak Government is of the opinion that in drawing up the final text of article 4 the International Law Commission should, in addition to a general definition, incorporate in this article also a detailed list of examples of consular functions.

4. The powers of the consul to protect the interests of the nationals of the sending State are in general terms regulated by the provisions on consular functions. This regulation is sufficient in the view of the Czechoslovak Government. Detailed regulation of questions referred to in article 6 of the draft is a matter falling within the exclusive competence of the internal legislation of the receiving State and, consequently, the Czechoslovak Government proposes that the provisions of article 6 be omitted from the draft.

5. The Czechoslovak Government proposes to include in article 13 of the draft the provision contained in the Commission's commentary that the grant of the *exequatur* to a consul appointed as head of a consular post covers *ipso jure* the members of the consular staff working under his orders and responsibility.

6. As regards the provisions of paragraphs 1 and 2 of article 40, the Czechoslovak Government considers the criterion based on the amount of punishment for criminal offences and on the length of the sentence as unsuitable, because it differs in penal legislations of individual States and, in addition to it, it is subject to changes. Therefore, the Czechoslovak Government is in favour of the adoption of the second alternative of paragraph 1 of article 40 and for amending accordingly paragraph 2 of the same article.

7. The Czechoslovak Government proposes to include in the draft a provision under which a member of the diplomatic mission when assigned to a consulate of such State shall retain his diplomatic privileges and immunities.

8. The Czechoslovak Government considers as acceptable the second text of article 65 concerning the relation of the proposed articles to bilateral conventions, according to which the provisions of the draft shall not affect bilateral conventions concerning consular intercourse and immunities concluded previously between the contracting parties and shall not prevent the conclusion of such conventions in the future.

9. As regards chapter III of the draft (articles 54-63), the Czechoslovak Government does not wish to comment on it as it considers the institution of honorary consuls as unsatisfactory from the point of view of the present level of contacts between States, and consequently does not send or receive honorary consuls.

5. Denmark

Transmitted by a letter dated 17 March 1961 from the Deputy Permanent Representative of Denmark to the United Nations

[*Original: English*]

Article 4

The Danish Government is of the opinion that it will be difficult to visualize the consequences of so far reaching a regulation as in article 4, paragraph 1 " such functions vested in him by the sending State as can be exercised without breach of the law of the receiving State " and the corresponding rule in the variant prepared by the Special Rapporteur.

Article 4: Variant drafted by the Special Rapporteur — I, 2: Assistance to ships

The Danish Government assumes that the rule is only applicable to civil cases (point (*e*) in the commentary). It furthermore assumes that the authorities of the receiving State are only under obligation to give the master of a ship an opportunity to inform the consul and to do this early enough to enable the consul to be present on board the ship, unless this is impossible due to the urgent nature of the legal action (point (*h*) in the commentary). Finally it is assumed that the convention is not to result in curtailment of the powers which the legislation of the receiving State endows upon its authorities as regards the direction of salvage operations within its territory (point (*j*) of the commentary).

II, 6: Guardianship, etc.

It is presumed that the rules do not imply that special obligations towards the consuls of foreign countries are to be imposed upon guardians who are under the supervision of the authorities of the receiving State.

II, 7

The Danish Government would regard it as preferable that the right of consuls to represent an heir or legatee during the settlement of an estate in the receiving State, without producing a power of attorney, be expressly limited to cases in which the said heir or legatee is not a resident of the receiving State, nor staying there at the time of the settlement of the estate.

III, 9

Denmark only recognizes the validity of marriages solemnized before foreign consuls in Denmark if an agreement has been concluded thereon with the consul's home country.

III, 10

The Danish Government is of the opinion that a general rule on the functions of consuls as regards the serving of judicial documents and taking of evidence should not be included in a universal convention on consular functions, since the question is closely related with other matters concerning international legal assistance in court cases, and should therefore not be settled in a uniform manner in respect to all countries. Particular consideration should be given to whether the judicial authorities of the receiving State are empowered to grant legal assistance, or excluded therefrom, to the authorities of other countries. In all circumstances the functions of a consul in this respect ought hardly to include criminal cases.

IV, 11 and 12

The Danish Government presumes that the functions do not imply that the authorities of the receiving State are under obligation to recognize the validity of documents drawn up or attested by the consul, beyond what is due according to the usual rules.

The Special Rapporteur's additional article

The Danish Government would not be prepared to approve such a rule which would authorize a consul to appear in special cases before the courts and other authorities on behalf of absent nationals without producing a power of attorney.

Article 6

The Danish Government understands the proviso in paragraph 2 to mean that it can authorize the receiving State to restrict the consul's freedom to converse with the prisoner when considerations of national security or relations with foreign powers or special consideration for same might otherwise require it.

Article 32

The Danish Government feels compelled to make a reservation as regards exemption from taxation if the consular premises are not owned by, but only leased by, the sending State. Similarly, the sending State is exempted from dues chargeable on the purchase of real property but not when it is only a question of a lease contract.

Article 36, paragraph 1

The Danish Government would prefer that the freedom of communication for consulates be restricted so that, besides maintaining contact with the Government of the sending State and that State's diplomatic missions accredited to the receiving State, they shall only be free to communicate with consulates of the sending State situated in the same receiving State.

Article 36, paragraph 3

The Danish Government would consider it desirable if a rule could be added to paragraph 3 along the following lines:

In special cases, however, the authorities of the receiving State may request that a sealed courier bag should be opened by a consular official in their presence so as to ensure that it contains nothing but official correspondence or articles intended for official use.

Article 40, paragraph 2 and article 42, paragraph 1, point 2

The Danish Government does not consider that there are sufficient grounds for the inclusion of such rules in the convention.

Article 41

The Danish Government would consider it desirable if in connexion with the rule on immunity from the jurisdiction of the receiving State a rule could be inserted on the liability to pay compensation by the driver of motor vehicles, etc., along the following lines:

All motor vehicles, vessels and aircraft, owned by members of the consulate, shall be insured by policies against third party risks. Such insurance shall be made in conformity with any requirements that may be imposed by the law of the receiving State.

The preceding provisions shall not be deemed to preclude members of the consulate from being held liable in a civil action by a third party claiming damages in respect of injury sustained as a result of an accident involving a motor vehicle, vessel or aircraft under his control. In connexion with such an action members of the consulate shall not be entitled to refuse to produce any document or to give evidence.

Article 45

The Danish Government is of the opinion that for persons who are not nationals of the receiving State, but who at the time of their engagement on the consular staff were fully taxable in the receiving State, exemption from taxation should only cover the salary receivable from the consulate.

Article 46

It is the opinion of the Danish Government, furthermore, that exemption from customs duties should only be enjoyed by career consuls (consuls-general, consuls and vice-consuls) who are not nationals of the receiving State and who are not carrying on a gainful private activity there. Exemption from customs duties shall apply to articles imported personally or purchased from an importer who has declared the articles with the customs.

Articles 54 and 57

The Danish Government finds it unsatisfactory to allow the rule in article 31 on the inviolability of consular premises to be applicable to honorary consuls. Similarly, it would consider it desirable if article 57 on the exemption from obligations in the matter of registration of aliens and residents and work permits for honorary consuls be omitted from the convention.

6. Finland

Transmitted by a letter dated 26 January 1961 from the Permanent Representative of Finland to the United Nations

[*Original: English*]

The Government of Finland have noted with satisfaction that the draft on consular intercourse and immunities, prepared by the International Law Commission, is both a codification and a development of the law concerning consuls. The Government consider the draft to be a valuable basis for the preparation of a convention on the subject.

With regard to particular articles the Government of Finland make the following observations:

Article 3, paragraph 5, provides that the consent of the receiving State is necessary in order that a consul might at the same time exercise consular functions in another State. Although a similar restriction relating to the accrediting of the head of a diplomatic mission to several States is contained in the draft articles on diplomatic intercourse and immunities, serious doubt might be raised as to its desirability with regard to diplomatic representatives and, with even greater cause, to consuls. This is a matter with which the sending State is most closely, or even exclusively concerned. A great number of States do not find it possible to maintain consular representatives in every country and they may find it necessary to entrust a consul with functions in several States. If the carrying out of consular tasks suffers from an arrangement of this kind, it is mainly the interests of the sending State and its citizens, and not the receiving State, which have to suffer from it.

Article 4, paragraph 1, contains an extremely broad provision concerning consular functions to the effect that a consul may exercise any functions entrusted to him by the sending State so long as these can be exercised without breach of the law of the receiving State. Although according to articles 18 and 19 of the draft a consul may only perform diplomatic functions to the extent permitted by the receiving State or in accordance with a special agreement, some further general restrictions would seem desirable. The Government notes with satisfaction, however, that the draft refrains from enumerating all possible tasks of a consul, and limits itself to his principal functions.

In paragraph 12 of the commentary to article 4 the International Law Commission requests the comments of governments on the proposal of the Special Rapporteur that an additional article be included in the draft concerning the right of a consul to appear, without a power of attorney, before the courts and other authorities of the receiving State for the purpose of representing nationals of the sending State who are absent or for any other reason unable to defend their rights and interests in due time. It is no doubt necessary to entrust consuls with powers of representation, but the Government of Finland consider it eminently desirable to restrict these powers to a right of representation for the exclusive purpose of preserving rights and interests.

In paragraph 4 of the commentary to article 8 the International Law Commission requests governments for information concerning consular agents. The Government of Finland do not appoint consular agents and are therefore not in a position to give any comments on this matter.

In paragraph 3 of the commentary to article 12 the Commission requests information on prevailing practice concerning the making out of consular commissions in respect of each appointment. According to the practice in Finland, a consular commission must be made out for each post separately.

Article 13 provides that only heads of consular posts require an *exequatur*. Paragraph 7 of the commentary to that article contains the statement that nothing prevents the sending State from requesting in addition an *exequatur* for other consular officials with the rank of consul. The question arises whether such consuls may enter upon their duties without having obtained final recognition of the receiving State by way of an *exequatur*. Many countries seem to require a personal *exequatur*. Paragraph 9 of the commentary rightly states that governments should not be obliged to communicate the reasons for their refusal of *exequaturs* to the government concerned. This case may be compared with the question of granting *agrément* to heads of mission.

Article 16 grants an acting head of post the same rights as the head of the consulate, and a mere notification to the competent authorities of the receiving State is sufficient to grant him those rights. If the provision of article 13 that only the regular head

of post requires an *exequatur* is accepted, it would seem desirable to give the receiving State the right to refuse to accept somebody considered unacceptable as acting head of post, particularly as the provision on unacceptable persons contained in article 23 is exclusively concerned with those belonging to the consular staff, with respect to whom the receiving State is rightly given the power to notify the sending State that a member of the consular staff is not acceptable.

According to article 20, paragraph 1, an *exequatur* may be withdrawn only where the conduct of a consul gives serious grounds for complaint. It is undoubtedly true that, as mentioned in paragraph 3 of the commentary to this article, an arbitrary withdrawal of an *exequatur* might cause serious prejudice to the sending State. Nevertheless, considering that the maintaining of consular relations is founded on a voluntary basis and since it is normally unlikely that an *exequatur* is withdrawn without valid reason, the Government of Finland submit for consideration whether this should be broadened so as to give wider discretion to the receiving State. If that State abuses its right to withdraw an *exequatur*, the sending State might consider withdrawing *exequaturs* granted to consuls of the former State as a retaliatory measure. In its present drafting the article requires that the reasons of withdrawal be stated, in which case discussion might ensue on whether those reasons have been of sufficient weight to justify withdrawal of the *exequatur*.

In paragraph 4 of the commentary to article 38 the International Law Commission requests governments to supply information on the levying of taxes and dues by the receiving State on acts executed at a consulate situated in that State. In Finland, such taxes or dues may only be levied if documents drawn up at consulates are presented to Finnish authorities for the purpose of producing legal effect in Finland. If, however, legal acts are performed at a consulate with the intention to employ the documents outside Finland, no such dues may be levied.

The extensive and important section III of chapter II, dealing with the personal privileges and immunities of consuls, contains certain articles which the Government of Finland consider should be given further examination.

The provision of article 40, paragraph 1, on the exemption of consuls from arrest or detention pending trial is founded, according to paragraphs 4 and 11 of the commentary to that article, on State practice as evidenced in consular conventions. It is however, evident that a great many States, including Finland, have not made this extension of the personal inviolability of consuls. In the opinion of the Government of Finland the personal inviolability of consuls in this respect should not extend beyond relatively insignificant acts, and for this reason the alternative suggested by the International Law Commission in article 40, paragraph 1, is preferable to the present draft article.

For these reasons, the Government further consider that paragraph 2 of article 40 grants too wide inviolability and should be narrowed down substantially. This observation applies with even greater strength to article 52, paragraph 1, concerning obligations of third States.

The Government of Finland give their entire support to the principle embodied in article 41 that members of a consulate shall be exempt from the jurisdiction of the receiving State in respect of acts performed in the exercise of their functions.

The provision of article 43 exempting members of a consulate, members of their families and their private staff from work permits should be limited to work performed in the consulate instead of extending it to every type of work.

With respect to article 54 on the legal status of honorary consuls, the Government consider it appropriate to leave out the reference to article 42, paragraph 1, since it is evident from article 60 that the exemption of consuls from the liability to give evidence is limited to the case mentioned in article 42, paragraph 3.

In paragraph 5 of the commentary to article 54 the International Law Commission requests governments to supply information concerning the granting of the privilege of inviolability of consular premises to honorary consuls. A somewhat restricted practice in Finland on this matter tends to extend inviolability to the actual office premises of the consulate.

In the commentary to article 62 on precedence, information is requested on State practice in this respect. In Finland the rules proposed by the International Law Commission are observed.

7. Guatemala

Transmitted by a letter dated 26 January 1961 from the Acting Permanent Representative of Guatemala to the United Nations

[*Original: Spanish*]

The aforesaid draft contains 65 articles, with commentaries by the International Law Commission, embodying the best practices developed by States in the matter of consular intercourse and immunities.

The draft has been very carefully edited and does not conflict with the generally accepted principles of international law on the subject.

Provided that there is no question of introducing substantial changes in the course of the conference, the draft, as prepared by the International Law Commission, would be acceptable to Guatemala.

8. Indonesia

Transmitted by a letter dated 28 April 1961 from the Permanent Representative of the Republic of Indonesia to the United Nations

[*Original: English*]

I have the honour to inform you that the Government of Indonesia welcomes the efforts made by the United Nations and, in particular, the International Law Commission to codify customary rules and provisions that have been generally recognized and applied to consular relations between States.

However, the Government of the Republic of Indonesia deems it necessary to present its observations on the draft articles on Consular Intercourse and Immunities in view of the fact that some of the articles are not entirely in conformity with changes in the constitutional and political development of Indonesia, as well as the development of its foreign relations.

The observations that the Indonesian Government wishes to make are as follows:

Article 4: In conformity with Indonesian legislation, the Indonesian Government interprets the term " nationals " in this article as comprising both persons and bodies corporate.

Article 8: The Indonesian Government would like to make a reservation on this article to the effect that it does not recognize " consular agents " as " heads of post " since the former classification is not known in the Indonesian Foreign Service. Furthermore, there is apparently no identical and universal interpretation of the designation " consular agents ".

Article 11: To prevent the appointment as consular officials of nationals of " third States " not acceptable to the receiving States, the Indonesian Government wishes to see included the additional restriction that not only " nationals of the receiving State " but also " nationals of a third State " may be appointed as consular officials only with the " express consent of the receiving State ".

Article 14: Considering that " the benefits of the present articles and of the relevant agreements in force " are merely consequences

of the provisional recognition, it is deemed necessary to reaffirm that fact by inserting the words " in pursuance thereof " after the conjunction " and " and before the preposition " to ".

Article 53: Considering that up to now the development of international law generally, and for its greater part, has been and still is determined by developments in the western world, although contemporary international political conditions in the light of the development of the newly independent Asian and African countries can no longer justify this fact, the Indonesian Government wishes to reserve its right in respect to the interpretation of the " other rules of international law " envisaged in paragraph 2 of this article.

9. Japan

Transmitted by a note verbale dated 28 April 1961 from the Permanent Mission of Japan to the United Nations

[*Original: English*]

I. *General observations*

The Government of Japan is deeply appreciative of the contribution made by the International Law Commission in drawing up the draft articles concerning consular intercourse and immunities.

The Government wishes to reserve its position, however, with regard to whether these draft articles should be adopted as another multilateral convention similar, in character, to the Vienna Convention on Diplomatic Relations or as a model rule for a consular convention between two countries to be concluded in the future.

II. *Article by article observations*

1. *Article 1*

It is suggested that the words " and the land ancillary thereto " be inserted before " used . . ." in paragraph (*b*) of this article.

2. *Article 3*

It is proposed that the following new paragraph be added in this article:

" The sending State may establish and maintain consulates in the receiving State at any place where any third State maintains a consulate."

It is suggested that the provision of commentary 3 be included as a new paragraph in this article.

3. *Article 4*

It is suggested that the word " boat " appearing in paragraph 1 (*d*) of this article be deleted as the word " vessel " in the same paragraph contains the meaning of " boat ".

4. *Article 5*

It is suggested that the words " to send a copy of the death certificate to " be replaced by " to inform of his death " in paragraph (*a*) of this article.

5. *Article 6*

It is suggested that paragraph 1 (*b*) of this article be modified as follows:

" If a national of the sending State is committed to custody pending trial or to prison, the competent authorities shall, at his request, inform the competent consul of that State without undue delay."

6. *Article 8*

As regards the commentary 4 to this article, the Government of Japan has not adopted the system of a consular agent.

7. *Article 16*

It is suggested that paragraph 1 of this article be modified as follows:

" 1. If the position of head of post is vacant, or if the head of post is unable to carry on his functions, an acting head of post shall act provisionally as head of post.

" The name of the acting head of post shall be notified, either by the head of post or, in case he is unable to do so, by the sending State to the receiving State. In cases where no consular official is present at the post, a member of the administrative or technical staff 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 post."

8. *Article 31*

It is proposed that the following provision be added at the end of paragraph 1 of this article:

" or, if such consent cannot be obtained, pursuant to appropriate writ or process and with the consent of the minister for foreign affairs or any other minister concerned of the receiving State.

" The consent of the head of post may, however, be assumed in the event of fire or other disaster or if the police or other authorities concerned have reasonable cause to believe that a crime involving violence to persons or property is about to be, or is being, or has been, committed in the consular premises."

9. *Article 36*

It is proposed that the words " all *appropriate* means " be replaced by " all *public* means " in paragraph 1 and that paragraph 2 be modified as follows:

" 2. The bags, when they are certified by the responsible officer of the sending State as containing official correspondence only, shall not be opened or detained."

10. *Article 40*

It is suggested that paragraphs 1 and 2 be deleted and, instead, the following new paragraph be adopted as paragraph 1.

" 1. Consular officials shall not be liable to arrest, detention pending trial or prosecution, except in the case of an offence punishable by a maximum sentence of not less than one year's imprisonment."

11. *Article 43*

It is proposed that the words " private staff " be deleted.

12. *Article 45*

It is proposed that paragraph 1 be modified as follows:

" 1. Consular officials, and members of administrative or technical staff who are nationals of the sending State and not of the receiving State, provided they . . ."

It is desirable that paragraph 1 (*a*) be replaced by " excise taxes including sales taxes."

Paragraph 2 should be deleted.

13. *Article 46*

It is suggested that the present article be named paragraph 1 and that the words " members of the consulate " in the former part of this article and " members of the consulate " in paragraph (*b*) be replaced respectively by " consular officials ".

It is also suggested that a new paragraph be added as follows:

" 2. Members of the administrative or technical staff who are nationals of the sending State and not of the receiving State, provided they do not carry on any gainful activity, shall enjoy the privileges specified in paragraph 1 of this article, in respect of articles imported at the time of first installation."

14. *Article 47*

It is suggested that the former part of this article be modified as follows:

" In the event of the death of a consular official or a member of the administrative or technical staff who was a national of the sending State and not of the receiving State and did not carry on . . ."

It is desirable to have paragraph (*b*) modified as follows:

" (*b*) Shall not levy estate, succession or inheritance duties on movable property situated in its territory and held by him in connection with the exercise of his function as a member of the consulate.

15. *Article 48*

It is proposed that the words " are nationals of the sending State and " be inserted after " private staff who " in paragraph (*a*) of this article.

16. *Article 56*

It is proposed that the following words be added at the end of this article:

" in cases where the life or dignity of an honorary consul was jeopardized by reason of his exercising an official function on behalf of the sending State."

17. *Article 57*

This article is undesirable.

18. *Article 59*

It is proposed that the contents of the commentary 2 to this article be included in this article.

19. *Article 65*

The Government of Japan wishes to reserve its position with regard to this article.

10. Netherlands

Transmitted by a note verbale dated 13 April 1961 from the Permanent Mission of the Netherlands to the United Nations

[*Original: English*]

A. *Introductory remarks*

There is great similarity between this topic and that of diplomatic intercourse and immunities. The results of the United Nations Conference on Diplomatic Intercourse and Immunities, now in session in Vienna, will no doubt affect the drafting of some of the articles on consular intercourse and immunities. Consequently on a number of questions in the consular draft no definite opinion can be stated until the results of the Vienna conference are known.

The Netherlands Government, like the International Law Commission itself, assumes that the draft articles will form the basis of a convention. The ILC's commentary on the draft articles will of course not be included in the final text of a convention. However, the commentary occasionally contains principles that, in the Netherlands Government's view, should be transferred to the draft itself and eventually be incorporated in the convention. The following comments therefore contain a number of suggestions to that effect. Also, incidental comments are made on the commentary.

B. *Articles*

Article 1: Definitions

Paragraph (b). Buildings or parts of buildings used for consular purposes should be granted inviolability and exemption from taxation only when there is strict separation between consular and non-consular offices as envisages in article 53 (3). It is therefore suggested that " consular premises " in paragraph (*b*) be defined as " any building or part of a building used exclusively for the official services of a consulate." It is recalled that the consular archives already enjoy protection under other provisions (article 1 (*e*) in conjunction with articles 33 and 55).

Paragraph (e). The definition of consular archives would seem to be too narrow. The following text is proposed: " the term ' consular archives ' shall be deemed to include correspondence, documents, papers, books, records, registers, cash, stamps, seals, filing cabinets, safes and cipher equipment."

Paragraph (f). The definition is not clear. If the head of a consulate is meant, as seems likely in view of article 9 and in view of the reference to articles 13 and 14 which are concerned with the heads of consular posts, the definition is at variance with the one contained in paragraph (*g*). If, on the other hand, the meaning is " anyone appointed to do consular work " it would seem to be superfluous in view of paragraph (*i*). It is therefore proposed that paragraph (*f*) be deleted and that the term " consul " be used only as an indication of the rank, just as the classification in article 13 of the draft on diplomatic intercourse and immunities solely indicates the rank (e.g., ambassador, envoy, etc.). Throughout the following comments it is assumed that the definition will be omitted. Whenever necessary, it will be suggested that the term " consul " be replaced by another term.

Paragraph (i). After deletion of paragraph (*f*) this paragraph should read as follows: " The expression ' consular official ' means any person, including the head of post, duly appointed by the sending State to exercise consular functions in the receiving State and authorized by the receiving State to exercise those functions. A consular official may be a career consular official or an honorary consular official."

The articles should also be applicable to diplomatic personnel who concurrently exercise consular functions.

The ILC has correctly drawn a distinction between diplomatic and consular functions by not assuming that a diplomatic official would be entitled to perform consular duties and thereby possess consular status without having been properly appointed and recognized.

Paragraph (j) The commentaries on the articles being eliminated from the final text, paragraph (*j*) could be deleted, since the expression " employee of the consulate " does not occur in the articles except in article 1.

Paragraph (k). If paragraph (j) were deleted, paragraph (*k*) would have to read as follows: " The expression ' members of the consular staff ' means the consular officials (other than the head of post) and all persons performing administrative or technical work in a consulate or belonging to the service staff."

The definitions contained in paragraphs 7 and 8 of the commentary on article 3 should be added to the definitions of article 1.

Article 2: Establishment of consular relations

Contrary to the Special Rapporteur's proposal that diplomatic relations should include consular relations, it is suggested that under prevailing international law the establishment of diplomatic relations does not automatically include the establishment of consular relations. Neither does the establishment of diplomatic relations involve the consent of the receiving State with regard to the exercise, by diplomatic officials, of such consular functions as do not fall within the traditional scope of diplomatic activities.

Article 3: Establishment of a consulate

In paragraph 2 the term " mutual consent " should be used instead of " mutual agreement ", following the terminology used in article 2.

In paragraph 4 and paragraph 5 " a consular official " should be substitued for " a consul " and " the consul ". Following the suggestion made in paragraph 3 of the commentary a new paragraph should be added to article 3 along these lines: " 6. The consent of the receiving State is also required if a consulate desires to open an office in a town other than that in which it is itself established."

Arguing that the agreement for the establishment of consular relations " is in a broad sense an international treaty ", paragraph 4 of the commentary states that for the termination of consular relations the same rules apply as for the termination of a treaty. Since it is customary that consular relations, unlike treaties, may under particular circumstances be unilaterally terminated, the comparison would seem incorrect.

Article 4: Consular functions

Article 4 should mention the general functions which will be exercised by consular officials, unless the parties agree otherwise. The parties must be free both to limit and to extend these functions. The following text is suggested: " To the extent to which they are vested in him by the sending State a consular official exercises the following functions unless the sending State and the receiving State have agreed otherwise."

After paragraph (*c*) a new paragraph should be inserted along the following lines: " To serve judicial documents or to take evidence on behalf of courts of the sending State."

In paragraph (*d*), the words " and boats " should be deleted. The term " vessels " covers all nautical craft.

Paragraph 2 of article 4 seems superfluous in view of article 37.

In the commentary on this article it should be stated that " agree " means both a formal agreement and an informal arrangement between two States.

Article 5: Obligations of the receiving State in certain special cases

Articles 5 and 6 are somewhat out of context and would be better placed together with articles 34 *et seq.*

Paragraph (*c*) should be supplemented by a corresponding arrangement for aircraft.

Article 6: Communication and contact with nationals of the sending State

The expression " without undue delay " in paragraph 1 (*b*) is too vague and should be supplemented by the words " and in any case within one month." Furthermore, the words " committed to custody pending trial or to prison " in the same paragraph are not sufficiently comprehensive, since they do not cover persons doing forced labour or committed to a lunatic asylum. Better wording would be: " committed to any form of arrest or detention." In the following sentence there should be a consequential amendment to the same effect. On this point the commentary should explain that every form of deprivation of liberty by the authorities is intended.

As a consequence of the suggested amendment to article 1 the following further amendments are proposed:

Paragraph 1 (a): " access to the competent consul, and the consul . . ." should be replaced by " access to the competent consulate, and the officials of that consulate . . ."

Paragraph 1 (b): " consul " should be twice replaced by " consulate; " his " district " by " its district ".

Paragraph 1 (c): " The consul " should be replaced by " A consular official ".

Article 7: Carrying out of consular functions on behalf of a third State

" Consul " should be replaced by " consular official ", even in case the definition of " consul " in article 1 is maintained.

Article 8: Classes of heads of consular posts

The information on consular agents, requested in paragraph 4 of the commentary, is attached [as an annex to these observations].

Article 9: Acquisition of consular status

This article should be replaced by the following:

" 1. A head of a consular post must be appointed by the competent authority of the sending State as consul-general, consul, vice-consul or consular agent;

" 2. He must be recognized in that capacity by the government of the State in whose territory he is to carry out his functions."

The present text gives a definition which one would expect to find in article 1. Moreover, it would not be correct if throughout the draft articles the word " consul " would mean somebody who has already been recognized in that capacity by the receiving State. In article 10, for instance, this is obviously not the case.

Article 10: Competence to appoint and recognize consuls

Because articles 21 and 22 govern the appointment of consular staff the word " consuls " should be replaced by " heads of consular posts ". Furthermore, the expression " internal law " should be replaced by " municipal law ".

Article 11: Appointment of nationals of the receiving State

The following new wording is proposed:

" The receiving State may require that the appointment of consular officials from its own nationals be subject to its prior consent."

Article 12: The consular commission

Paragraph 1: The opening words should be replaced by " The head of a consular post". In the fith line " the full name of the consul " should be replaced by " his full name".

Paragraph 2: " Consul " should be replaced in the first line by " head of consular post " and in the fourth line by " he ". Instead of " the State on whose territory the consul (he) is to exercise his functions ", the words " the receiving State " may be used.

Paragraph 3: " Consul " should read " head of consular post ".

Article 14: Provisional recognition

The words: " the head of a consular post " should be replaced by " a consular official ".

Article 15: Obligation to notify the authorities of the consular district

" Consul " in this article is no doubt intended to mean the head of a consular post. The provision should, however, apply to all consular officials. It is therefore suggested that " consul " be replaced by " consular official ".

Article 16: Acting head of post

The appointment of acting heads of post may be difficult due to lack of personnel (one-man posts or to the inconvenience of temporarily transferring personnel from other posts. The sending State may therefore prefer to close the consulate temporarily. Thus the words " shall be temporarily assumed " in the third line of the article should read: " *may* be temporarily assumed ". " Consular post " should be replaced by " consulate ".

Article 17: Precedence

" Consuls " should be replaced by " consular officials ".

Articles 18 and 19

" A consul " should be replaced by " the head of a consular post ".

Article 20 (Withdrawal of exequatur*)*

The following new text is suggested:

" The receiving State may withdraw an *exequatur* if for grave reasons a consular official ceases to be an acceptable person. For such reasons it may revoke the admission of members of the consular staff other than consular officials, whether accorded tacitly or by express authorization.

" The receiving State shall, however, take such a decision only if the sending State does not comply within a reasonable time with a request to terminate the appointment of the consular official concerned."

It does not seem necessary to require that an explantation be given for the withdrawal of an *exequatur*.

Article 22: Size of the staff

The words " and normal " should be omitted. The point is whether or not the size is " reasonable". The word " normal " might introduce an element of comparison with other posts, or with the size of the same post in the past.

The proposition made in paragraph 3 of the commentary of first trying to reach an agreement could be incorporated into the article itself.

Article 23: Persons deemed unacceptable

This article may be omitted if the suggestion regarding article 20 is followed.

Article 24: Notification of the arrival and departure

Since under article 51 the receiving State is obliged to grant privileges and immunities from the moment of entry into the country it is recommended to state clearly that the sending State must inform the receiving State prior to the arrival of the consular official.

Article 27: Right to leave the territory of the receiving State

Paragraph 3: The words " discharged locally " need further explanation.

Article 30: Accommodation

" Internal law " should be replaced by the usual expression " municipal law ".

Article 33: Inviolability of the consular archives

The words " the documents " seem superfluous, since the documents are covered by " archives ". If for the definition of " consular archives " the text were to be followed as proposed above for article 1 (*e*), the words " documents " and " official correspondence of the consulate " would have to be omitted since they would be covered by the words " consular archives ".

From the use of the word " documents " in article 36, paragraph 3, it moreover becomes clear that the definition of " documents " in paragraph 3 of the commentary may lead to confusion.

Article 37: Communication with the authorities of the receiving State

" Consuls " should read " consular officials ".

Article 39: Special protection and respect due to consuls

" Consuls " should read " consular officials ".

The last sentence of paragraph 3 of the commentary on this article should be deleted. This sentence creates the impression that the receiving State must grant protection against press campaigns by preventive measures. This is often constitutionally impossible, and would moreover not seem desirable. With regard to the press, preventive measures should not be required.

Article 40: Personal inviolability

The alternative version of paragraph 1 is preferable. Maximum sentences vary so greatly in the various legislations that the first alternative text must lead to an unfair system. It is true that, in the second alternative, there will also be a difference of opinion regarding what must be understood by a " grave crime ". But in this case consultation between the States concerned and if necessary appeal to a third party are possible to answer the question whether a crime is serious or not.

" Gainful private activity " should read " private commercial or professional activity ". Restriction of the immunity is necessary only where those activities are concerned.

The system embodied in paragraph 2 of article 40 is not entirely satisfactory. In so far as this provision does not admit the execution of a sentence providing for imprisonment for a term of less than two years it has the disadvantage of taking away — in respect of the persons enjoying the inviolability — a great deal of the effective force of several types of regulations such as traffic regulations which do not envisage penal sanctions of such magnitude. On the other hand, modern views on penology and rehabilitation have resulted in a tendency to deal with foreign offenders in such a way that long prison sentences can be served in the state of origin. It is therefore suggested that paragraph 2 of article 40 could perhaps better be replaced by a rule providing for consultation between the receiving State and the sending State in respect of the execution of any prison sentence pronounced against a consular official. In such consultation allowance could be made for the interest of the consulate and — with respect to sentences of less than two years' imprisonment — for the possibility that the sending State may prevent the execution by recalling the consular official concerned, for the purpose of trying him before its own courts or of taking other measures against him.

Article 42: Liability to give evidence

The rule formulated in the last sentence of paragraph 3 of the commentary should be added to paragraph 3 of the article. In some countries it may be desirable for the users of consular deeds that a consular official testifies to the authenticity of deeds executed by him. It should be made clear, however, that this does not mean that the consular official is liable to give further details of the background of the instruments or to divulge information which has come to his knowledge in the course of executing the deeds.

Article 43: Exemption from obligations in the matter of registration of aliens and residence and work permits

This article is intended to provide that no work permit is required for the performance of the official work. Under the present wording of the article, however, the exemption woud also apply to the exercise of non-consular activities.

Article 44: Social security exemption

It would seem preferable to substitute the words " social security measures " for " social security system ". Some States, in particular federal States, have more than one social security system.

Article 47: Estate of a member of the consulate or of a member of his family

In this article again " gainful private activity " should read " private commercial or professional activity ".

Article 48: Exemption from personal services and contributions

There is no ground for the difference between this article and the corresponding article 33 of the draft convention on diplomatic intercourse and immunities. The argument that a consulate might suffer if a member of the private staff were subject to the obligations mentioned in the article is equally valid for an embassy, particularly since there are many small embassies and large consulates. It is therefore proposed that the words " and members of the private staff who are in the sole employ of the consulate " be deleted.

Article 50: Members of the consulate and members of their families and members of the private staff who are nationals of the receiving State

The article should state that nationals of the receiving State are entitled to refuse to give evidence, in so far as official acts of the consulate are concerned. The text of the first sentence of the first paragraph of the article could be amended as follows: " The personal privileges and immunities provided for in section III of chapter II and in chapter III shall not apply to members of the consulate who are nationals of the receiving State. However, such members of the consulate shall enjoy immunity from jurisdiction and from liability to give evidence in respect of acts performed in the exercise of their functions."

Article 52: Obligations of third States

The significance of this article is greatly reduced by the first paragraph of the commentary. Eventually it should be decided whether or not a third State is obliged to grant passage. The rule to be adopted in the convention on diplomatic intercourse and immunities may serve as an example.

Article 53: Rrespect for the laws and regulations of the receiving State

If the definition of consular premises in article 1 is amended as suggested above, there should be a consequential change in the third paragraph of this article to be read as follows:

" 3. The rule laid down in paragraph 2 of this article shall not exclude the possibility of offices of other institutions or agencies being installed in the same building as the consular premises, provided that the premises of such offices are separate from those used by the consulate."

Article 54: Legal status of honorary consuls

The draft does not contain a definition of " honorary consul ". As usage varies greatly in the different countries, the ILC considered it difficult to give such a definition and it preferred to leave the question of whether or not a consular official is honorary to the decision of the States concerned. While this view would seem to be agreeable, the following is pointed out. Junior career consuls may be placed under an honorary consul-general while honorary officials may work under a career consul. The function of honorary and non-honorary consuls is identical and the significance of their official acts is the same for the States concerned. Even though an honorary consul may exercise important private activities, this does not alter the nature of his consular work. The status of honorary or non-honorary must therefore be regarded as a personal quality of the consular official, which does not affect the status of his official actions and still less that of the consulate.

Chapter III should therefore be confined to special rules for honorary consular officials. Articles 31 and 33 deal with the consulate as such and should therefore apply equally to consulates under an honorary official. If the proposal made above under article 1 were accepted both " consular premises " and " consular archives " would refer to those used exclusively for the consulate. Rooms belonging to consular officials (whether honorary or not) but used for other purposes are consequently excluded.

The words " honorary consular officials " should be substitued for " honorary consul(s) " in the title and in the article.

Article 55: Inviolability of the consular archives

This article may be omitted if, on the strength of the comments made above under article 54, article 33 were to be mentioned in paragraph 2 of article 54 instead of in paragraph 3.

Article 56: Special protection

The English text: " In keeping with his official position " is less clear than the French: " requise par sa position officielle ".

" Honorary consular official " should be substitued for " honorary consul ".

Articles 57 and 58

" Honorary consul " should read " honorary consular official ".

Article 59: Exemption from personal services and contributions

The words " honorary consuls, other " and the comma after " officials " should be omitted.

Article 60: Liability to give evidence

" Honorary consul " should read " honorary consular official ".

Article 61: Respect for the laws and regulations of the receiving State

The question may be asked whether the prohibition contained in this article does not go too far. An honorary consular official will not always be able to avoid advantages accruing to him in his business as a result of his official position. What should be forbidden is the abuse of consular status to acquire personal advantages. This can be effected by putting the word " unjust " or " unreasonable " before " advantages." " Honorary consul " should read " honorary consular official ".

Article 62: Precedence

" Honorary consuls " should read " honorary consular officials "; " career consuls " should read " career consular officials ".

Article 63: Optional character of the institution of honorary consuls

Both in the article and in the title " honorary consular officials " should be substituted for " honorary consuls ".

Article 64: Non-discrimination

To avoid the impression that the rules are also applicable to consular staff of States that are not parties to the convention the last word of the first paragrah (" States ") should be replaced by " the parties to the present convention ".

Article 65: Relationship between the present articles and bilateral conventions

The second text is preferred for the following reasons:

(*a*) The conclusion of a special agreement between the parties presumed in the first text may lead to a postponement of ratification of the convention;

(*b*) As long as it is uncertain whether the other party to a bilateral convention also wishes to become a party to the convention it may be difficult to open negotiations for a special agreement. If the other party nevertheless does become a party to the convention it may perhaps be too late for the State that has become a party earlier to save the bilateral convention;

(c) Bilateral conventions often regulate more than the question dealt with in the draft convention.

The principle stated in paragraph 2 of the commentary, correct though it may be in theory, cannot be realized in practice.

Instead of " bilateral ", the words " bilateral and multi-lateral " should be used in the article, to ensure the continued existence of regional conventions.

ANNEX

Information as requested in paragraph 4 of the commentary on article 8:

Consular agents in the Kingdom of the Netherlands

Consular agents from the following countries are residing in the Netherlands, Surinam and The Netherlands Antilles:

Cuba: An honorary consular agent on the island of Aruba (Netherlands Antilles);

France: Consular agents in Arnhem, Dordrecht, Groningen, Haarlem, 's-Hertogenbosch, Maastricht, Nijmegen, Terneuzen, Utrecht, Vlissingen, Ijmuiden (Netherlands), Paramaribo (Surinam) and Willemstad (Netherlands Antilles); with the exception of the consular agent in Utrecht all are honorary officials; the consular agent in Paramaribo is serving under a career consul;

India: A consular agent in The Hague who is a career official and head of the Consular Section of the Indian Embassy;

Italy: A consular agent on the island of Aruba (Netherlands Antilles) who is a career official;

Switzerland: A consular agent on the island of Aruba (Netherlands Antilles), who is a career official with the personal title of vice-consul.

These consular agents are all admitted and recognized either on a provisional or on a permanent basis. According to generally applied rules this admission and recognition are granted in the form of a royal decree if the commission is issued by the head of the State; in other cases the admission and recognition are based on a royal authorization.

The commissions of these consular agents contain no restrictions with respect to the exercise of their consular powers.

11. Norway

Transmitted by a letter dated 30 January 1961 from the Deputy Permanent Representative of Norway to the United Nations

[*Original: English*]

The Norwegian comments are stated below in relation to the respective articles of the draft which are most immediately concerned. Where comments relate to more than one article suitable cross-references are made.

Article 1

The Norwegian Government would like to make the following suggestions:

Ad (f): The meaning given to the term " consul " seems unnaturally restricted. In common parlance the term encompasses all consular officials and it might easily lead to misconstructions and confusion if the term were to be used in a different sense.

It also seems of particularly doubtful utility to introduce a special term denoting a head of consular post who has been recognized, finally or provisionally (in conformity with article 13 or 14) by the receiving State. The use of such highly technical terms does not facilitate the reading and interpretation of the document.

Attention is also called to the fact that the adopted terminological system is not consistently followed in the draft itself. If the definition given of the term " consul " is to be maintained, terminological consistency would seem to require that the word " consuls " be replaced by the expression " heads of consular posts " in article 10.

The last sentence of the sub-paragraph should be deleted. It does not seem to have any real terminological import. The extent to which provisions relating to " consuls " also apply to " honorary consuls " is, or should be made, sufficiently clear in article 54.

Reference is also made to the Norwegian comments made below in regard to article 9.

Ad (i): The last line, reading " and who is not a member of a diplomatic mission ", seems unnecessary.

Article 2

In the opinion of the Norwegian Government it is unnecessary to complicate the text of the proposed convention by the introduction of the term " consular relations ". The term seems to be something in the nature of a convenient figure of speech without precise meaning in international law. Legal consequences follow from unilateral or mutual consent to establish one or more specific consulates and not from mutual consent to establish " consular relations ".

The Norwegian Government is therefore of the opinion that the provision in article 2 of the draft should be deleted. The necessary consequential changes should be made in the following articles which use the term " consular relations ".

Article 4

In view of the fact that there are important differences between the functions of the various consulates, particularly as between consulates which do and such as do not include sea-ports within their consular districts, and that these functions are constantly being developed and extended, it seems desirable that the consular functions should not be too restrictively defined in the draft.

On the basis of these general considerations the Norwegian Government is inclined to prefer the draft submitted by the Commission to the more detailed, enumerative definition submitted by the Special Rapporteur. The latter draft could easily on many points lend itself to unfortunate antithetical interpretations. It would seem, however, that the Commission's definition would gain by being amended so as to make sure that it covers the customary consular functions which are specified in the other draft and also some such functions which are mentioned only in the commentary to that draft.

The Norwegian Government would like to propose the following amendments:

It would seem natural to extend the group of persons to which a consulate is entitled to give protection, help and assistance so as to cover not only " nationals of the sending State " (see paragraph 1 (*a*) and (*b*)), but also stateless persons who have their domicile in the sending State.

To paragraph 1 (*d*) should be added the words " and to their crews ". The purpose of this proposal would be to take due account of the fact that it is customary for consuls to give assistance to members of the crews of vessels, boats, and aircraft of the sending State irrespective of such persons' nationality.

Apart from this specific proposal concerning sub-paragraph (*d*), it also seems to the Norwegian Government that this provision is formulated in too vague and general terms. Reference is made in this connexion to the commentary to the corresponding provision (I,2) of the Rapporteur's alternative text. It would seem to the Norwegian Government that many of the customary consular functions mentioned in this commentary are so important that it ought to be made perfectly clear that they are covered by

the article. This applies particularly to sub-paragraphs (*b*), (*d*) and (*e*) of that commentary.

The Norwegian Government would further propose that there be added a sub-paragraph, drafted along the lines of paragraph II, 7, of the Rapporteur's alternative text, which would give consuls the functions of representing heirs and legatees who are nationals of the sending State in decedents' estates within the receiving State. This representational function ought also to be regulated by a separate article of the draft. Reference is made in this connexion to pararaph 12 of the Commission's commentary. The Norwegian Goverment does not believe, however, that it would be advisable to extend this representational right beyond the field of decedents' estates.

In the opinion of the Norwegian Government, there should also be added a sub-paragraph drafted along the lines of paragraph III, 10, of the Rapporteur's alternative text, in order to affirm the customary right of consuls to serve judicial documents and take evidence on behalf of the courts of the sending State.

The Norwegian Government would finally like to suggest that the following sub-paragraph should be added at the end of paragraph 1:

" A consul may also perform other functions, provided that their performance is not prohibited by the laws of the receiving State."

This sub-paragraph is modelled upon paragraph V, 17, in the more detailed text prepared by the Rapporteur.

Article 6

The provisions of this very important article do not seem to be satisfactorily drafted.

The " freedoms " provided for in paragraph 1 of the article are too extensive inasmuch as they fail to take proper account of the many situations in which the police authorities of the receiving State have legitimate reasons for preventing free communications between a prisoner and the outside world.

It seems, on the other hand, that these " freedoms " are made illusory by the important and ill-defined reservations in paragraph 2.

In the opinion of the Norwegian Government it would be impossible to determine, on the basis of the present formulation of article 6, in what situations and on what conditions a consul has a *right* to communicate with or to visit imprisoned nationals. It is therefore suggested that the article should be re-drafted with a view to establishing clear and binding norms.

It is also suggested for consideration that it might be advisable to extend the application of the rule relating to detained persons in order to make it applicable in all cases of forced detention (quarantine, mental institutions etc.). This would seem particularly appropriate in regard to the members of the crews of vessels flying the flag of the sending State and the rule should, in this case, perhaps apply irrespective of the crew member's nationality.

Article 8

In reply to the question raised in paragraph 4 of the Commission's commentary the Norwegian Government wishes to state that it does not employ " consular agents " in the Norwegian service, and that it has no rules governing the method of their appointment. Norway does not, as a receiving State, differentiate between " consular agents " and other groups of consular officials.

Article 9

The Norwegian Government is not convinced by the reasons given in paragraph 2 of the commentary that it is necessary to include this provision in the draft. The purpose stated would seem to be adequately achieved by the definition given under paragraph (*f*) in article 1. Two different definitions of one and the same term can only lead to doubt and confusion.

Reference is made to the Norwegian comments to article 1 (*f*).

Article 10

The Norwegian Government sees no compelling reason for including these provisions in the draft. The stated principles seem clearly implicit in the use throughout the draft of the terms " the sending State " and " the receiving State ". The functioning and acting of States are normally governed by their internal laws and it would seem unwise to give the contracting parties any mutual *droit de regard* in this respect.

Article 12

In reply to the question raised in paragraph 3 of the Commission's commentary, the Norwegian Government wishes to state that it agrees that a new consular commission must be made out if a consul is appointed to another post within the same State. The Norwegian Government believes, but is unable to affirm, that this rule is in accordance with the prevailing practice. The question has not arisen in regard to foreign consuls in Norway or in regard to Norwegian consuls abroad.

Article 18

This provision seems wholly unnecessary and the formulation of the rule is, at all events, open to serious objections. Provided the receiving State gives its permission, there seems to be no reason why the consul should not be at liberty to perform diplomatic acts irrespective of whether or not the sending State has a diplomatic mission in the country. Nor is there any reason why such acts should only be allowed on " an occasional basis ". It must be the concern of the sending State to see to it that its consuls do not unduly encroach upon the domain of its diplomatic missions.

The correct rule would seem to flow naturally from the juridical character of the draft, which is made clear in article 65.

Article 19

In the opinion of the Norwegian Government atypical borderline cases where a mission partakes both of a consular mission and of a diplomatic mission will, at all events, have to be regulated by *ad hoc* agreement between the sending and the receiving States, and there does not seem to be any utility in trying to regulate such cases by the provisions of a multilateral convention.

Article 25

This article seems inadequately drafted and it is difficult to understand why it should be necessary to include a general provision of the proposed kind. The modes of termination which apply to the functions of heads of consular posts and of other consular officials would seem to be quite adequately set forth in the preceding articles.

As far as paragraph 1 (*c*) is concerned, reference is made to the Norwegian Government's comments to article 2. In this case the use of the term " consular relations " is particularly unfortunate. It is the termination of the consular mission at which the consular officials in question are employed which is the sole relevant fact in this context. Such a termination might easily occur without any " severance of consular relations ". The present formulation of the article leaves out of account the fact that in the consular relationship between two States one or more consulates are often abolished while others are maintained.

Article 26

The Norwegian Government sees no reason for including a provision to the proposed effect. It does not seem necessary to state that the severance of diplomatic relations has no automatic effect in regard to such consular missions as the two States involved may have established within each other's countries. As far as the use of the term " consular relations " is concerned, reference is made to the Norwegian comments in regard to article 2.

Article 27

Paragraph 3 is not clear. The expression " discharged locally " would have to be clarified in order to make it possible to comment upon the substance of this paragraph.

Article 28

In accordance with the view stated under article 2, the Norwegian Government would like to propose that article 28 be re-drafted in such a way that the use of the ill-defined term " consular relations " could be avoided.

Article 29

If it is the intention to provide for a right to use a consular flag beside, or instead of, the national flag, this ought to be made clear in the text of the article and not only in the commentary. No reasonable interpretation of the term " national flag " could be made to include a consular flag.

Article 30

The legal import of the expression: " has the right to procure " in the first sentence of this article is difficult to understand. The sentence as a whole does not seem to create any clearly ascertainable right and might as well be deleted. The provision in the second sentence should, in the opinion of the Norwegian Government, be made applicable also to the head of the consular post and to the employees of the consulate.

Article 31

The second sentence of paragraph 1 seems far too categorically drafted. In its present formulation this provision would preclude even a courtesy call by an agent of the receiving State.

Appropriate exceptions should also be included to provide for cases of fires or other disasters and for cases where the local authorities have reasonable cause to believe that a crime of violence has been, or is about to be, committed in the consular premises.

In cases where the consent of the head of the consular post is refused, or cannot be obtained, the agents of the receiving State should nevertheless be entitled to enter the premises pursuant to appropriate writ or process provided they have secured prior authorization from the minister for foreign affairs of the receiving State.

Article 32

In paragraph 2 of the Commission's commentary it is stated that the exemption provided for in this article is an exemption *in rem* affecting the actual building acquired or leased by the sending State. This interpretation does not seem to be warranted by the wording of the article.

Attention is called in this connexion to the corresponding article (21) of the Commission's draft on diplomatic intercourse and immunities with commentary. It will be seen that article 32 of the present draft is closely modelled on, and in all relevant respects identical with, article 21 of the previous draft. In the Commission's commentary to article 21 of the previous draft, however, it is stated: " The provision does not apply to the case where the owner of leased premises specifies in the lease that such taxes are to be defrayed by the mission."

It is very difficult to understand how two texts, which are in all material respects identical, could be given completely different interpretations.

As far as the question of substance is concerned, the Norwegian Government is opposed to giving the exemption provided for in article 32 the effect *in rem* which is suggested in the Commission's commentary.

Article 38

Under paragraph 4 of the commentary, the Commission requests information from governments concerning their law and practice in regard to the levying of taxes and dues on " acts performed at consulates between private persons ". The Norwegian Government, for its part, has some difficulty in complying with this request inasmuch as it is not clear to it exactly what kind of " acts " the Commission envisages. It would seem natural, however, to grant exemption from taxes and dues in regard to such of the acts performed at consulates between private persons *which it is customary to perform at consulates*, and which are not intended to produce legal effects within the receiving State.

Article 40

The provision proposed in paragraph 2 is not warranted by the generally accepted rules of international law and the Norwegian Government would not deem it necessary or desirable from the point of view of the progressive development of international law. It seems to accord a far too liberal immunity to consular officials. The Norwegian Government would therefore prefer to see it deleted.

Paragraph 3 is unfortunately drafted. The words " except in the case referred to in paragraph 1 of this article " seem to relieve the receiving State of any obligation not to " hamper the exercise of the consular function " in cases where a consular official is prosecuted for an offence " punishable by a maximum sentence of not less than five years' imprisonment."

Under paragraph 17 of the commentary to paragraph 3, it is stated in relation to the words " must appear before the competent authorities ", that " the consular official is not required to appear in person and may be represented by his attorney ". This interpretation has no basis in the relevant words of the paragraph itself and the Norwegian Government sees no reason why the consular official should be given such a choice. The granting of such a privilege in connexion with criminal proceedings would hardly accord with the corresponding rule in article 42,2 of the draft.

There ought to be incorporated into the draft a provision enabling the proper authorities of the sending State to waive the immunities dealt with in this article. The same also applies to the immunities provided for in articles 41 and 42. Reference is made in this connexion to article 30 of the Commission's draft on diplomatic intercourse and immunities. It would seem just as necessary to have clear rules on this point in regard to consulates as in regard to diplomatic missions.

Article 41

The expression " in respect of acts performed in the exercise of their functions " is not sufficiently clear.

The similar provision of article 50 uses the expression " in respect of *official* acts performed in the exercise of their functions " and it is stated in paragraph 3 of the commentary to this article that " the present article, unlike article 41, uses the expression ' official acts ', the scope of which is more restricted than that of the expression used in article 41". Paragraph 2 of the commentary to article 41, however, seems to indicate that the expression used in that article is synonymous with " official acts ". The terminology used in these two articles seems too abstruse to permit ready and easy interpretation of the texts and should be revised.

Reference is made to the last paragraph of the Norwegian comments to article 40.

Article 42

The Norwegian Government sees no reason for including the provisions of paragraph 1.

The rule stated in the first sentence would seem to follow *e contrario* from the other articles in this section of the draft. The rule stated in the second sentence is not warranted by generally accepted principles of international law or by reasonable considerations having to do with the progressive development of international law. The requirements of juridical stringency and precision would seem to exclude the possibility of introducing a " liability " with which the persons concerned could freely and without risk decline to comply.

Reference is made to the last paragraph of the Norwegian comments to article 40.

Article 43

The exemptions proposed in this article should, in the opinion of the Norwegian Government, be granted only to members of the consulate and their families. There does not seem to be sufficient reason to extend these exemptions to their private staff.

It is also suggested that the exemption in regard to work permits should not apply to such members of the consulate and their families who carry on a gainful private activity outside the consulate (see in this connexion article 57 of the Commission's draft).

Article 45

In the opinion of the Norwegian Government, the tax exemptions provided for in this article go too far.

Contrary to what is said in the Commission's commentary, they even extend farther than the corresponding exemptions in the draft on diplomatic intercourse and immunities. According to article 36,2 of that draft the tax exemption granted to " members of the service staff " only applies to " the emoluments they receive by reason of their employment." Paragraph (*h*) of article 1 in the present draft, read in conjunction with paragraphs (*k*) and (*j*), makes it clear that the term " members of the consulate " includes " the service staff ".

It is submitted that " members of the consulate " other than " consular officials " should be accorded exemption only from dues and taxes on the wages they receive for their services.

The provision of paragraph 1, sub-paragraph (*b*) should be drafted so as to cover all kinds of property, not only *immovable* property. There does not seem to be any valid reason why a consular official should be exempt from capital tax on private assets such as shares of stock and bonds, which have their *status* in the receiving State.

Article 46

In the opinion of the Norwegian Government, the exemption from customs duties which is proposed in this article extends too far.

Here again (see the Norwegian comments under article 45), the Commission has been more generous in its proposal regarding consulates than it was in its previous draft on diplomatic intercourse and immunities. In article 34, 1 (*b*) of that draft the exemption from customs duties is limited to " diplomatic agents or members of their families belonging to their households ". In the present article the exemption is extended to " *members of the consulate* and members of their families belonging to their households ". The latter expression, according to the definitions given in article 1, includes the " service staff ", while the corresponding group falls outside the term " diplomatic agents " in the previous draft.

The Norwegian Government is opposed to the extension of the exemption provided for in article 46 (*b*) to other members of the consulate than " consular officials ".

Article 50

It would make it easier to read and apply the document if the provisions which are affected by the exemptions in article 50 had appropriate references to this article.

In the opinion of the Norwegian Government the privileges and immunities which are proposed to be granted to members of the consulate who are nationals of the receiving State are somewhat too restricted. It seems for instance that such members of the consulate should at least be excused from producing official correspondence and documents relating to the exercise of their functions (see article 42, 3).

In the corresponding article of the Commission's draft on diplomatic intercourse and immunities, article 37, the following provision is added:

" However, the receiving State must exercise its jurisdiction over such persons in such a manner as not to interfere unduly with the conduct of the business of the mission."

A similar provision ought to be added to article 50 of the present draft.

In regard to the expression " official acts " reference is made to the second paragraph of the Norwegian comments to article 41.

As far as " honorary consuls " are concerned, reference is made to the third paragraph of the Norwegian comments to article 54.

Article 52

In the opinion of the Norwegian Government, the draft ought to settle in an affirmative sense the question of whether or not a third State is under a duty to grant free passage through its territory to consular officials, employees and their families in transit between the sending and receiving countries.

In its present form paragraph 3 of the article seems to have settled this question in an affirmative sense as far as " other mem bers of the consulate or of members of their families " are concerned. This is hardly the intention, but the words " shall not hinder the transit through their territories " are at least open to this construction.

Article 54

Chapter III, concerning honorary consuls, is very important from the point of view of the Norwegian Government. It is very difficult to comment upon its various provisions, however, in view of the fact that the Commission has so far given no definition of the term " honorary consul ".

In the opinion of the Norwegian Government the determining criterion for the distinction between " consuls " and " honorary consuls " ought to be that the latter are authorized to engage in commerce or other gainful occupation in the receiving State. If this criterion is adopted it would become unnecessary to make applicable to " consular officials " the proviso in articles 40, 45, 1, 46 and 47 in regard to members of the consulate who carry on a " gainful private activity ".

The Norwegian Government is further of the opinion that there is no reason, where " honorary consuls " are concerned, to discriminate in the field of privileges and immunities between honorary consuls who are and such as are not nationals of the receiving State.

The system adopted in article 54 seems very unsatisfactory. It would seem far better, even if it leads to extensive repetition of provisions contained in the preceding articles relating to consuls, to spell out clearly in chapter III all the provisions which apply to honorary consuls. The system of references and cross references will inevitably lead to difficulties of interpretation. This applies particularly to article 54,3.

In regard to article 54,2 it is suggested that article 32 shoud not be made applicable to the premises of honorary consulates.

In reply to the question raised in paragraph 5 of the Commission's comments to article 54, the Norwegian Government wishes to state that in Norway the premises used by an honorary consul for the purposes of exercising consular functions are not vested with inviolability.

Article 62

In reply to the question raised in the Commission's commentary to this article, the Norwegian Government wishes to state that the rule of precedence which is proposed in this article is in conformity with the prevailing practice in Norway.

Article 64

It is difficult to see any valid reasons for including the provisions of this article. They seem, at best, superfluous and might give rise to misconstructions.

When the two paragraphs of the article are read in conjunction, it appears clearly that discrimination *per se* is unobjectionable. The less favoured State can only object if the privileges and immunities accorded to its consuls are less extensive than those laid down in the preceding articles. In this case, however, it is the non-compliance with these articles, not the discrimination, which affords the basis for a complaint.

Article 65

This article raises important problems having to do with the juridical character of the document.

It is stated in paragraph 24 of the Commission's "General Considerations" that the draft is prepared "on the assumption that it would form the basis of a convention". This assumption is restated in paragraph 1 (*a*) of the Commission's commentary to article 65. The Norwegian Government agrees with this assumption and has based its comments upon it.

If this premise is accepted, the problem dealt with in article 65 is reduced to the question which arises when two or more (but less than all) the parties to a convention agree to, or have previously agreed to, undertakings *inter se* which are inconsistent with the convention.

It becomes necessary, however, to assess still more precisely the juridical character of the draft. Is it the intention that the convention should have such a character (*a*) that two or more of the parties may not agree to depart from its provisions without the consent of all the remaining parties, (*b*) that it only imposes a *minimum* standard which none of the parties is at liberty to disregard without the consent of all the remaining parties, or (*c*) that it merely imposes rules which will apply to the extent that other rules are not agreed to as between two or more of the parties?

The Norwegian Government agrees with the majority of the Commission that the third proposal would be most appropriate and sees no reason why any of the two other possibilities should be seriously considered.

As far as the choice between the first and the second text is concerned, the Norwegian Government prefers the latter. A very difficult task would be imposed upon the contracting parties if, before the conclusion of the proposed convention they had to go through their pre-existing agreements with the same parties in order to determine which of their inconsistent provisions they wanted to maintain in force by special agreement. There would be a serious risk that some such provisions might be overlooked and that they would consequently be abrogated by inadvertence.

Both of the alternative texts proposed by the Commission speak of other "bilateral conventions concerning consular intercourse and immunities... between the contracting parties". The Norwegian Government, for its part, sees no reason why the provision should be made applicable only to *bilateral* conventions. The same general considerations would seem to apply equally to *multilateral* conventions and agreements whatever the name. It would also seem that problems arise only in regard to other conventions which contain provisions at variance with those of the present draft and not in regard to all other conventions "concerning consular intercourse and immunities".

12. Philippines

Transmitted by a letter dated 1 February 1961 from the Deputy Permanent Representative of the Philippines to the United Nations

[*Original: English*]

General observations:

The Committee [which was established to study the draft articles] found the draft generally acceptable. The individual assessment of each office may be summarized thus:

Administration: "The provisions of the draft articles affecting administration have been found to be properly predicated on the generally accepted international principles and practices and the body of rules usually incorporated in consular conventions like those which the Philippines has with the United States of America, Spain and Greece."

Consular Affairs: "I believe the provisions of this draft of consular intercourse and immunities are acceptable to us."

Economic Affairs: "The commentaries... are clear and to the point and this office finds no necessity for further comments."

Political Affairs: "In the main, however, the above-mentioned articles are not inconsistent with, nor do they contravene, any existing policy of the government vis-à-vis the political relations of the Philippines with other countries or affecting our national security and dignity. The articles, furthermore, reflect adherence to the principles of customary international law and usage on the points treated, and are in substantial conformity with Philippine consular regulations and practice as evolved during the almost decade and a half of independent national existence."

Comments:

The Committee, however, would like to invite the secretary's attention to its comments on the following articles: Art. 1 (para. (*i*)); Art. 4; Art. 5 (para. (*b*)); Art. 41; Art. 42 (para. 1); Art. 50; Art. 52; Art. 54; Art. 60; and Art. 65.

Article 1, paragraph (i): *Definitions*

Article 1 supplies the definitions and states that for purposes of the draft,

"(*i*) The expression 'consular official' means any person, including the head of post, who exercises consular functions in the receiving State and who is not a member of a diplomatic mission;"

The members of the Committee entertained certain doubts on the definition of "consular official", particularly in relation to situations where persons are attached to a diplomatic mission but who perform consular functions. The query was whether, in situations of this sort, the distinguishing factor is official attachment to the post or the nature of the function performed. This is particularly important when viewed in relation to the enjoyment by such official of immunities and privileges, i.e., tax exemption, immunity from arrest, liability, generally exemption from local jurisdiction, where the enjoyment or non-enjoyment of the aforementioned may depend on whether said official is a consular or diplomatic official.

Article 4: Consular functions

"1. A consul exercises within his district the functions provided for by the present articles and by any relevant agreement in force, and also such functions vested in him by the sending

State as can be exercised without breach of the law of the receiving State. The principal functions ordinarily exercised by consuls are: (enumeration) "

It is to be noted that, apart from what are provided for in (*a*) bilateral agreements and (*b*) the powers conferred by the sending State exercisable without breach of the laws of the receiving State, article 4 confers no other authority. Specifically, it is the view of the Committee members that the phrase " the principal functions ordinarily exercised by consuls are:" is no more than just a statement or a declaration and cannot, in situations where countries have no bilateral agreements or have domestic laws which do not touch on consular functions, be a source of consular power invocable under this Convention.

It is, therefore, suggested that some sort of a rewording be made in the language of article 4 in order that it may actually confer consular powers apart from those exercisable thereunder.

Article 5, paragraph (b)*: Obligations of the receiving State in certain special cases*

" The receiving State shall have the duty

" (*a*) . . .

" (*b*) To inform the competent consulate without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity, and who is a national of the sending State;

" (*c*) . . ."

Paragraph (*b*) needs clarification particularly on whether the duty contemplated thereunder is permissive or mandatory. This is particularly significant in relation to situations where, in a guardianship or similar action brought before a court in a foreign State, guardianship papers have been released and effected without notice being given to the appropriate consular officer one of whose nationals is a party interested. The pertinent question is: Are the proceedings valid, voidable, or impugnable in the absence of said notice ?

Article 41 Immunity from jurisdiction

" Members of the consulate shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of their functions."

The Committee members envisioned certain difficulties which may arise in the application of article 41, such as:

(1) As the very basis for non-amenability to local jurisdiction is non-interference with consular functions, the question that arises is: *Who* or *which* determines " acts performed in the exercise of these functions " ?

(2) Assuming that by agreement the *who* and *which* may be located, what will be the criteria which may serve as their bases in determining whether an act is one that is " performed in the exercise of consular functions " or otherwise?

The difficulty under the second hypothesis becomes the more apparent when considered in the light of article 4, which includes under the heading of " consular functions " even those of an administrative nature.

It is also noted in the commentaries appearing under article 41 that nationals of the receiving States are excluded from the term " members of the consulate". Considered again in relation with article 4 is it not very probable that one who is appointed a member of the consulate but who is a national of the receiving State may perform functions even of an administrative nature?

Article 42, paragraph 1: Liability to give evidence

" 1. Members of the consulate are liable to attend as witnesses in the course of judicial or administrative proceedings. Nevertheless, if they should decline to do so, no coercive measure may be applied with respect to them."

While the Committee members have no substantial objection over said provision, this observation is nevertheless being made by way of suggesting a change in mere phraseology. Specifically, it is the Committee members' view that the word " liable " appearing in the first sentence of paragraph 1 is negated by the phrase " no coercive measure may be applied " appearing in the second sentence of the same paragraph.

Article 50: Members of the consulate and members of their families and members of the private staff who are nationals of the receiving State

" 1. Consular officials who are nationals of the receiving State shall enjoy immunity from jurisdiction only in respect of official acts performed in the exercise of their functions. They may in addition enjoy any privileges and immunities granted to them by the receiving State.

" 2. Other members of the consulate, members of their families, and members of the private staff, who are nationals of the receiving State, shall enjoy only the privileges and immunities granted to them by the receiving State."

The Committee members are of the impression that article 50, paragraph 1, seems to insinuate that only consular officials may perform consular functions and that members of the consulate, under paragraph 2, perform non-consular functions. It is also their impression that the immunity from jurisdiction under article 50 attaches by reason of the performance of consular functions, irrespective of the nationality of the consular official performing said function.

It is their view that article 50 seems untenable when viewed in the light of article 1, which defines consular officials to include even members of the consulate, corroborated by the provisions of article 4 regarding consular functions of an administrative character performable by members of the consulate but are of the nature of consular functions. So also, as is the difficulty under article 41, the problem arises as to *who* or *which* may determine consular functions and assuming the *who* and *which* to have been located, the criteria upon which they may base their determinations of whether an act is a consular function or otherwise.

Article 52: Obligations of third States

" 1. If a consular official passes through or is in the territory of a third State while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord to him the personal inviolability provided for by article 40, and such other immunities as may be required to ensure his transit or return.

" 2. . . .

" 3. In the circumstances specified in paragraph 1 of this article, third States shall not hinder the transit through their territories of other members of the consulate or of members of their families.

" 4. . . ."

It is to be noted under article 52 that a distinction has been made between a consular official under paragraph 1 and a mere member of the consulate under paragraph 3, suggesting that while personal inviolability attaches to the former, the latter enjoys no more than a mere privilege of not being hindered while in the territory of another country in the course of transit.

The same observations made under articles 41 and 50 would seem to apply with as much weight to paragraphs 1 and 3 under this article. In view of the definition of consular official under article 1 in relation with the enumeration of consular functions under article 4, both articles considered, confusion is lent to the distinction.

Article 54: Legal status of honorary consuls

" 1. The provisions of chapter I of the present articles shall apply to honorary consuls.

" 2. In chapters II and IV, articles 29, 30, 32, 34, 35, 36, 37, 38, 40 (paragraphs 3 and 4), 41, 42 (paragraph 2), 46 (except sub-paragraph (*b*)), 50, 51, 52, and 64 shall likewise be applicable to honorary consuls.

It is noted that article 41 similarly applies to honorary consuls. The same objections raised under article 41 in connexion with career consuls are similarly raised under article 54 in relation to honorary consuls.

Indeed, the reasons for the distinction between a consular and non-consular act become the more compelling under article 54, since generally honorary consuls engage in private gainful occupation.

While it is appreciated that with respect to career consuls under article 41, there is reason to presume that when a career consul acts, his acts are to be taken as consular acts unless otherwise shown, the fact that honorary consuls engage generally in gainful occupation give grounds for the non-application of the same presumption to that effect.

Article 60: Liability to give evidence

" In any case in which he is requested to do so in connexion with matters relating to the exercise of his consular functions, an honorary consul may decline to give evidence in the course of judicial or administrative proceedings or to produce official correspondence and documents in his possession. In such event, the authority requiring the evidence shall refrain from taking any coercive measures with respect to him."

The Committee members have the same reservation under article 60 as they had under articles 41, 50 and 52. Specifically, what functions are to be classified as consular, and otherwise? *Who* and *which* may determine the question?

Article 65: Relationship between the present articles and bilateral conventions

" [*First text*]

" Acceptance of the present articles shall not rule out the possibility of the maintenance in force by the parties, in their mutual relations, of existing bilateral conventions concerning consular intercourse and immunities, or the conclusion of such conventions in the future.

" [Second text]

" The provisions of the present articles shall not affect bilateral conventions concerning consular intercourse and immunities concluded previously between the contracting parties, and shall not prevent the conclusion of such conventions in the future."

It is noted that article 65 contains two variants. It is the feeling of the Committee members that whether the Philippine Government shall prefer one variant to the other will depend on whether the observations made under present draft articles are accepted or not. In other words, if the reservations made are accepted, it is suggested that the Philippine Government adopt that variant which subordinates bilateral agreements to this Convention; *a fortiori*, the adoption of the other variant otherwise.

13. Poland

Transmitted by a letter dated 6 April 1961 from the Permanent Representative of Poland to the United Nations

[*Original: English*]

The Government of the Polish People's Republic is of the opinion that the draft articles on consular intercourse and immunities prepared by the International Law Commission contribute a great deal to the progressive development of international law and its codification. Most of the provisions contained in the draft articles having been universally accepted in the practice followed by States, their codification is both feasible and desirable.

The general idea of the draft and the majority of the articles contained therein give rise to no objections; however, it would be advisable to introduce some modifications into a few of the articles.

It is of fundamental importance to determine what are the basic principles of the draft articles on consular intercourse and immunities in their entirety. Since the intention of the draft is to establish a basis for a multilateral convention, such a convention would have to contain a detailed definition of the functions of a consul. Therefore, it is preferable to accept the second variant of article 4 which includes a more exhaustive enumeration of these functions.

Article 4 ought to be somewhat altered and supplemented; in particular, under paragraph 1 it should also invest the consul with the right of judicatory action (court summons) process serving inheritance cases. Neither is it exact to regard the actions of a notary as being of an administrative nature, which is implied under article 4, sub-paragraph 1 (*c*).

There are also some objections as to paragraph 2 of article 4. Considering that the relations between a consulate and the authorities of the receiving State are defined under article 37 of the draft, the said paragraph 2 of article 4 seems to be redundant. Moreover, it unnecessarily introduces a clause which, contrary to the generally accepted practice, restricts the possiblities of a consul communicating with any authorities of the receiving State located outside his district.

The Government of the Polish People's Republic deems it necessary to insert under article 4 the additional paragraph as proposed by the Special Rapporteur in section 12 of the commentary. Its terms are the logical consequence of the essential function of a consul — to wit, to protect *ex officio* the interests of the nationals of the sending State in the territory of the receiving State (article 4, sub-paragraph 1 (*a*)). Such provisions are usually contained in most of the existing bilateral consular conventions.

As it has become an increasingly frequent practice to vest the exercise of consular functions in special sections of the respective diplomatic missions, the Government of the Polish People's Republic considers it necessary to insert, after article 1, a new article which might read as follows:

" The provisions concerning the rights and duties of a consul shall accordingly apply to the official of a diplomatic mission who exercises consular functions, provided that the respective authorities of the receiving State have been duly notified. Such persons shall exercise consular functions without prejudice to their diplomatic privileges and immunities."

As the International Law Commission has asked, in section (4) of the commentary to article 8, for information on appointment of consular agents, the Government of the Polish People's Republic informs the Commission that the institution of consular agents or consular agencies is disappearing from the consular practice of Poland.

As regards article 13, under Polish Law the *exequatur* can be granted only to the head of a consular post (Law of June 17, 1959, regulating certain consular matters: the Official Gazette *Dziennik Ustaw* for 1959, No. 36, Pos. 225, and decision of the Council of State of 9 September 1959, concerning the authorization of the minister of foreign affairs to issue the consular commission and to grant the *exequatur: Monitor Polski* for 1959, No. 90, Pos. 485).

The stipulation of article 22 of the draft, which authorizes the receiving State to set unilateral limitations on the size of the consular staff, is unsubstantiated. In fact, it enables the authorities

of the receiving State to interfere with the work of the consulate of the sending State and to narrow it down at will, which runs counter to the prevailing practice.

Article 27 should explicity stipulate that the provisions relating to the right to leave the territory of the receiving State in case of an international crisis do not apply to the employees of the consulate who are nationals of the receiving State. It seems that article 50 of the draft, mentioned under section 4 of the commentary to article 27, pertains solely to chapter II of the draft.

The draft says nothing about exempting the consulate from any payments in kind levied by the receiving State. A relevant stipulation might be inserted in article 32 or thereunder. Such an exemption would be in line with the existing practice and with the obligation of the receiving State to ensure the consulate the best possible conditions of work. Similar stipulations ought to be introduced also in article 48 of the draft.

The provisions of article 33 should be amended to apply as well to the correspondence addressed to the consulate by private persons. Section 4 of the commentary to article 33 fails to mention such correspondence.

It is hard to agree with the view expressed in section 2 of the commentary to article 43 that the practice of issuing special cards to members of a consulate is of a " purely technical character ". The importance of the matter is borne out by the fact that the issuance of documents certifying the status of members of the consulate and of their families is stipulated in a number of consular conventions concluded recently. As revealed by the practice of States the absence of such special cards may expose the members of a consulate to unforseen obstacles in the exercise of their duties on the part of local authorities of the receiving State.

The Government of the Polish People's Republic prefers the second text of article 65. It is more acceptable in case a multilateral convention is concluded since it does not infringe upon the existing bilateral consular conventions which so often reflect the specific relationship between different countries.

14. Spain

Transmitted by a note verbale dated 28 April 1961 from the Permanent Mission of Spain to the United Nations

[*Original: Spanish*]

This report will deal only with those articles of the draft which depart from the rules that Spain considers it possible and appropriate to accept; it will not mention the other articles to which the Spanish Government has no objection.

In accordance with the practice commonly observed in the consular conventions concluded since the Second World War, article 1 of the draft is devoted to definitions. The Spanish Government has the following comments to make on some of them:

(i) In sub-paragraph (*b*), the word " official " should be inserted before the word " purposes ", since only premises used for the official purposes of the consulate should be regarded as the consular premises.

(ii) In sub-paragraph (*d*), the word " foreign " before " consul " should be deleted since in many countries the *exequatur* is granted to honorary consuls who are nationals of the receiving State.

(iii) The definition of " employee of the consulate " given in sub-paragraph (*j*) is too broad, and the expression should in our opinion be applied only to those employees of the consulate who perform technical or administrative tasks. The definition might be worded as follows: " The expression ' employee of the consulate ' means any person who, not being a consul, performs auxiliary duties at a consulate, provided that his name has been notified to the appropriate authorities of the receiving State. This expression shall not, however, mean drivers or other persons employed exclusively on domestic tasks or on maintenance work at the consulate."

If the definition of " employee of the consulate " is amended and restricted in this way, the definitions of " members of the consulate " and " members of the consular staff " given in article 1 will also have to be adjusted, since employees of the consulate are included in these categories.

(iv) The definition of " private staff " in sub-paragraph 1 should also be restricted so as to mean only staff in the private and exclusive service of a career consul.

(v) It would have been useful to include definitions of various other expressions, such as " sending State ", " receiving State ", " grave offence ", " vessel ", etc. etc.

(vi) There is one expression which, though it does not occur in the consular conventions recently concluded, Spain has been trying to introduce into the draft agreements which it is negotiating on this subject with various European countries. This expression, which we believe to be of positive value, is, in Spanish, " Oficial de cancilleria ". It might be rendered in English by " consular officer " and in French by " agent de chancellerie ".

If we inquire into the matter thoroughly, we shall see that, even if it excludes personnel employed on purely domestic tasks, the expression " employee of the consulate " as used in the draft under discussion is, as we pointed out above, excessively broad because, side by side with employees of the consulate who are nationals of the receiving State and who are in no way debarred from engaging in other gainful activities different from those on which they are employed at the consulate, there will obviously be, at the same time, another category of employees at the consulate who are nationals of the sending State, from which they receive a regular salary, and who are not free to engage in any gainful professional activity other than the official tasks they perform at the consulate.

Employees in the first of these two groups might be called " employees of the consulate " and those in the second " consular officers ". Employees of the consulate in this sense are not usually granted any advantage or privilege, whereas " consular officers " are granted privileges and immunities very similar to those granted to the consul himself.

To distinguish and define these two classes of employee would be of undoubted advantage and would help to clarify these problems of consular law by improving the system of classification.

We suggest that the following definition should be considered:

" The expression ' consular officer ' means any employee of the consulate who fulfils the following conditions, that is to say:

" (1) He must be a national of the sending State;

" (2) He must not be authorized to carry on a gainful private activity in the receiving State; and

" (3) He must be in receipt of a regular remuneration from the sending State."

Article 2 does not call for comment. It should, however, be pointed out that the additional paragraph 2 proposed by the Special Rapporteur, which provides that the establishment of diplomatic relations includes the establishment of consular relations, is unnecessary; there is little point in a clause having this implication.

For article 4, two texts are presented, one comprehensive and the other shorter and consequently more general. The general definition is considered preferable in Spain, for, by appearing to be exhaustive, the other definition might give rise to doubts concerning particular consular functions found to have been omitted from the definition.

Article 5 contains a series of heterogeneous, though acceptable, provisions. It might be desirable to present them in more systematic form.

Article 12 provides that heads of consular posts shall be furnished by the sending State with " full powers ". This statement is, of course, exaggerated, since what the consuls receive are the powers necessary for the performance of their functions. There is no objection to the rest of the article, provided that the language is rectified in this respect.

The provisions of article 16 on the acting head of consular post are altogether acceptable, but it should be pointed out that, as in the conventions which Spain is negotiating with various countries, the general principle that the acting head of post enjoys the same status as the consul whom he replaces should be subject to the condition that the acting head of post may not enjoy the rights, privileges and immunities the enjoyment of which is subject to specific conditions which he does not satisfy (as for example, where the acting head of post is a national of the receiving State, whereas the consul was a national of the sending State).

An article should be added recognizing the now common practice whereby, with the consent of the receiving State, the sending State appoints one or more members of its diplomatic mission to discharge consular, as well as diplomatic, functions in the capital.

Article 20 might include a reference to article 51, which guarantees that the consul's rights and privileges will be respected until he leaves the country, a question which, in article 20, is at present dealt with only in the commentary.

In article 24, the term " family " should be clearly defined so as to avoid the conflicts and ambiguities of interpretation of all kinds to which this and other articles of the draft might otherwise give rise.

In this connexion it might be suggested that the " family " should be understood as consisting of the wife and the minor children who are dependent on the head of the family. Similarly, it would be necessary to provide that the private staff whose arrival and final departure have to be notified under paragraph 1 (*c*) of the article includes only those members of the private staff who are not nationals of the receiving State and who are employed exclusively in the service of career consuls.

As is rightly stated in paragraph 4 of the commentary, and in accordance with the provisions of article 50 of the draft, article 27 does not, of course, apply to persons who are nationals of the receiving State, although, for the sake of greater clarity — and we stress this point not only in the present context but in relation to many other parts of the draft — we would prefer this reference to article 50, which affects so many provisions of the draft, to be made, not in the commentary, but in the text itself.

And, of course, our observations on the definitions of " employee of the consulate " and " private staff " given in article 1 should be taken into account; these expressions should be used in the restricted sense attached to them in our comments.

Likewise, the " rights " given to the " private staff " by article 27 clearly can only be granted to persons who, besides being employed exclusively in the service of the career consul, are not nationals of the receiving State.

The terms of article 28 are excessively broad, since, especially in the case of the severance of relations, the obligation of the receiving State should be confined to respect for the consular archives.

Similarly, the inviolability granted to the consular premises by article 31 is too broad. It would be advisable to add that, even without the consent of the head of post, the local authorities may, in exceptional cases, enter the consular premises, provided that they produce for this purpose the appropriate court order together with the authorization of the ministry of foreign affairs of the receiving State.

Article 36 raises the problem of the freedom of communication of foreign consulates.

The draft extends this freedom to the consulate's communications, by means including the use of consular bags and cipher, not only with its government and the embassy and other consulates of its country established in the territory of the receiving State, but also with its country's diplomatic and consular missions anywhere. This extension of the right of communication is at variance with the principle of the treaties to which Spain is a party, and which provide that direct and secret communication of this kind is allowed, in principle, only with the government of the sending State and with its diplomatic mission and consulates in the territory of the receiving State.

A provision might be added under which it would be possible to verify that the consular bags contain only official correspondence and documents, e.g., permission to open the bags, in cases of serious suspicion, in the presence of a duly authorized official of the consulate.

In article 40, paragraph 1, we prefer the formula, suggested by the text itself: " Except in the case of an offence punishable by a heavy penalty."

We have no objections to articles 41, 42, and 43, provided that the stipulations of article 50 of the draft are taken into account generally and provided that the narrower definitions of " employee of the consulate " and " private staff " suggested in the comments on article 1 are accepted. The privilege of giving evidence at his own residence, to which article 42, paragraph 2, refers, should, it seems, be granted to career consuls only.

Article 45 (Exemption from taxation) should apply only to career consuls and to those employees of the consulate (according to our suggestion, they would be called " consular officers ") who, under the direction of a consul, carry out an administrative, technical or similar task at a consulate of the sending State and who, being nationals of the sending State, do not carry on in the receiving State any gainful activity other than their official duties, for which they receive a regular salary. The words " and members of their families " in paragraph 1 should be deleted. The whole of paragraph 2 should also be deleted.

Article 46 (Exemption from customs duties) is acceptable, even in its present broad and vague wording, with the limitation and safeguard embodied in the text, which provides that " the receiving State shall, *in accordance with the provisions of its legislation*, grant . . ."

Furthermore, the article stipulates that the exemption is to be granted to members of the consulate " who do not carry on any gainful private activity." It is noted that paragraph (4) (*b*), of the commentary on this article states that, by virtue of article 50, the exemption from customs duties does not apply to members of the consulate who are nationals of the receiving State. In effect, therefore, article 46 applies only to the persons mentioned in this government's comments on article 45.

Article 48 should apply to the persons mentioned in this government's comments on article 45.

Article 49 affects the persons mentioned in article 45 and their wives and minor children.

Artice 50, which is fully acceptable and to which it is necessary to refer so often in the other articles of the draft, is very important.

Article 50 ought to be cited and referred to frequently in the provisions of the draft; this government does not agree with the practice of citing the article in the commentaries.

Article 51 is consistent with present international practice, except for the last sentence of paragraph 3, which provides that in respect of acts performed by members of the consulate in the exercise of their functions, immunity from jurisdiction continues to subsist without limitation of time. This statement conflicts with present customary law, not only in consular but also in diplomatic relations. It is well known that if a person returns to a country without the diplomatic status which he had enjoyed during his former residence there, proceedings may be instituted against him which at that time were barred by the privilege of immunity from jurisdiction.

Article 52 represents an innovation rather than a codification. At the present stage of development of the international community, the rule laid down in this article is perhaps rather premature and actually open to objection on political grounds.

There is no objection to paragraphs 1 and 2 of article 53. Paragraph 3, on the other hand, is somewhat confusing. It says that offices of other institutions or agencies may be installed in the consular premises, provided that the premises assigned to such offices are separate from those used by the consulate; in that event the said offices are deemed not to form part of the consular premises.

As at present drafted, this provision is absolutely incompatible and at variance with the definition of " consular premises " given in article 1 (*b*). Perhaps what is meant is that the offices of such institutions or agencies may be situated in the same building or, using the word in a general sense, premises, as the consular premises; but they cannot, of course, be situated in the consular premises in the technical and precise sense given to that expression in article 1. The wording of paragraph 3 of this article should therefore be revised.

It seems advisable to enter a reservation regarding paragraph 2 of article 54. This paragraph enumerates the articles of chapters II and IV of the draft which are appliable to honorary consuls. The reservation concerns the application of articles 32, 42 paragraph 2, and 52 to honorary consuls.

There is no objection to article 55, which provides for the inviolability of the archives, documents and official correspondence of a consulate headed by an honorary consul, provided that they are kept properly separated from the honorary consul's private correspondence, books and documents.

There is no objection to article 57 (Exemption from obligations in the matter of registration of aliens and residence and work permits), provided that the exemption is confined, as stated in the commentary, to honorary consuls and members of their families who do not carry on a gainful private activity outside the consulate.

Similarly, the provisions of article 58 are acceptable, if the honorary consul is not a national of the receiving State.

Article 59 would be acceptable if confined to honorary consuls who are not nationals of the receiving State and if its benefits did not extend to members of the families of honorary consuls.

Lastly, two texts are offered for article 65, concerning the relationship between the draft and bilateral conventions. The first text is based on the idea that existing bilateral conventions would be abrogated by the entry into force of the multilateral consular convention.

The second text, on the other hand, would leave the previously concluded bilateral conventions in force.

Since a convention based on these articles would necessarily be of a general nature, it seems advisable to give the preference to the second text, under which the more detailed regulation of consular matters in existing bilateral conventions would not be affected by the inevitably more restrictive provisions of a multilateral convention.

15. Sweden

Transmitted by a letter dated 14 March 1961 from the Acting Deputy Head of the Legal Department of the Royal Ministry for Foreign Affairs

[*Original: English*]

The Swedish Government has studied with interest the draft articles now presented by the Commission and has found that they form a suitable basis for the codification and the development of international law on the subject of consular intercourse and immunities. It is generally left to the future parties to the convention to decide whether they shall establish consular relations and to agree on the seat and the district of their consulates and, to a considerable extent, on the status, rights and privileges of the consuls and their functions. It can therefore be said that the main value of a future convention in this field lies in the fact that it offers a model text for bilateral consular conventions and at the same time subsidiary provisions where consular relations exist between States which have not concluded a formal convention to this effect or which have a convention not containing more detailed provisions.

On the whole, the Swedish Government can approve the draft articles of the Commission but must naturally reserve any final position with regard to their contents. Proposals for minor changes in the drafting of the various articles would, it is felt, preferably be advanced at a later stage of the preparatory work on the draft convention, and the Swedish Government will at this juncture limit itself to submitting the following observations in relation to the below-mentioned articles:

Article 4: Consular functions

The purpose of a convention on consular intercourse and immunities should apparently to be create rights for the sending State and its consular officials and to determine the corresponding obligations for the receiving State. Thus it follows that there should be no place in such a convention for articles solely containing desiderata, recommendations or advice of a general nature.

In addition, the functions of consular officials are set forth in instructions and regulations promulgated by the sending State; the extent to which the consular official is able to carry out these functions is dependent upon the relevant legislation and practice of the receiving State and the additional contractual obligations accepted by it. Looking at these facts from another angle, it can be said that the receiving State must not — by referring to the internal instructions of the sending State — require a consular official of the latter State to exercise certain functions or otherwise take steps to a certain end, for instance on the pretext of the consular official's duty to help and assist his own nationals, to refuse public assistance or medical care to a destitute or sick alien.

The wording of article 4 of the draft convention in either version does not always meet the two requirements just mentioned.

When weighing the two variants of article 4 against each other, it can be maintained that long experience has shown substantial difficulties to exist when hammering out the text of articles on consular functions for insertion in bilateral consular conventions. Evidently, it must be far more complicated, or sometimes even quite impossible, for a body of more than ninety States to reach agreement in this sphere on texts that will be of a practical value and not only contain highly watered-down texts or recommendations in general terms. If, on the other hand, elaborate clear-cut definitions are inserted in the Convention, numerous reservations can be expected, thus depriving the articles of their inherent significance. These considerations lead the Swedish Government to the conclusion that the only realistic approach in this field is to abandon all attempts at producing texts on the consular functions copied from the corresponding texts of bilateral conventions and to be contented with a broad definition on the lines of article 4, paragraph 1, the second variant:

" The task of consuls is to defend, 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, as well as 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."

Article 8: Classes of heads of consular posts

The class of " consular agents " is in principle not recognized by the Swedish Foreign Service. However, for some time past consular agents have in a few exceptional cases been appointed by Sweden. Their position is very similar to the status of an honorary vice-consul, but the essential difference lies in the fact that they merely represent a consul at a place other than the seat of the consulate but within the same consular district. They are appointed not by the consul but in exactly the same manner as vice-consuls. There is no desire on the part of Sweden for the retention of consular agents as a special class, and reference to this expression could therefore advantageously be omitted in the Convention.

Article 12: The consular commission

A consular commission is made out by Sweden for each appointment of a consul, even in the case that the new appointment only signifies a change in the consular district within the receiving State.

Article 40: Personal inviolability

According to paragraph 2 of this article, a consular official shall not be committed to prison save in the execution of a final sentence of at least two years' imprisonment. In the commentary to this rule the exemption from imposition of punishment is based upon two considerations, to wit (i) the functioning of the consulate should not be interrupted, and (ii) in many countries a suspended sentence may be awarded. These two reasons for the exemption here referred to may be questioned because, in the first place, it is unlikely that a person who has been sentenced to imprisoneent in the receiving State is retained by the sending State in his position as consul, and, secondly, that a suspended sentence can in certain circumstances be revoked and another sanction imposed, while it can be inferred from the commentary that the punishment should be entirely cancelled.

Article 41: Immunity from jurisdiction

Section 2 of the commentary points out that the immunity from jurisdiction is granted consuls not as a personal immunity for them but as an immunity that the sending State possesses and consequently is limited to official acts. This being so, there is no real reason for establishing any discrimination between official acts performed by consuls who are nationals of the receiving State and consuls who are not such nationals, a distinction that seems to have been made in articles 41 and 50. Artile 50 dealing with the former category of consuls uses the expression " *official acts* performed in the exercise of their functions ", whereas the word " *official* " does not figure in article 41, although the commentary indicates that the immunity set forth in this article exclusively comprises official acts.

Article 45: Exemption from taxation

As is the case with the corresponding article of the draft convention on diplomatic intercourse and immunities, this article on tax exemption contains no limitations of the expression " members of their families ". Under Swedish legislation on this point tax exemption is accorded the wife of a consular official and his children under the age of eighteen years, provided that the children live with him and are not Swedish nationals. A corresponding definition in this article seems desirable in order to avoid too extensive an interpretation of the expression " members of their families ".

Article 46: Exemption from customs duties

Section 2 of the commentary to this article states that the Commission decided to include in this article provisions on exemption from customs duties for members of a consulate identical to the provisions suggested in the draft articles on diplomatic intercourse and immunities. As drafted, article 46 accords, however, exemption from customs duties also to employees of the consulate, whereas the corresponding category is excluded from this privilege in the draft articles on diplomatic intercourse and immunities. In the opinion of the Swedish Government, members of a consulate should never enjoy more extensive privileges than members of a diplomatic mission.

16. Switzerland

Transmitted by a letter dated 29 May 1961 from the Permanent Observer of Switzerland to the United Nations

[*Original: French*]

The competent authorities of the Swiss Confederation have carefully studied the draft articles on consular intercourse and immunities prepared by the United Nations International Law Commission and are happy to have this opportunity to state their views on the draft. In view of the importance which Switzerland attaches to its consular relations with other States, the Swiss authorities follow with the greatest interest the work of the United Nations in codifying the law of nations. They hope that the preparation of a final convention will be entrusted to a diplomatic conference of plenipotentiaries in which Switzerland will be able to take part.

The Swiss authorities consider that the principal purpose of the present codification of the law of consular intercourse should be to formulate, in satisfactory terms, the rules at present applicable, the law being allowed to evolve in bilateral and multilateral relations. Accordingly, the convention should confine itself to laying down a minimum of rights and duties, leaving the States concerned free to stipulate *inter se* other rights and duties by means of international conventions.

The draft articles are largely in keeping with this idea. In the opinion of the Swiss authorities, they represent a useful basis for the preparation of a general convention on consular intercourse. Some provisions of the text, however, depart greatly from Swiss practice; in so far as they affect questions of principle, these provisions are therefore hardly acceptable to the Swiss authorities.

Unlike other States, Switzerland has not concluded any bilateral consular treaties in recent years. Apart from general provisions contained in treaties of friendship, establishment and commerce, Swiss practice is based mainly on customary law, which in turn is based on the principle of reciprocity. For this reason the Swiss authorities consider that the future convention should contain a general provision stipulating that questions not expressly setted by the convention continue to be governed by customary law.

Article 1

(*a*): The draft uses the terms " consulate " and " consul " in two different senses. Such definitions, which might lead to misunderstandings, should be avoided. It would be advisable to introduce here the expression " consular post ", which might also be used in other articles.

In Swiss practice, consular agencies are not consular posts in the full sense of the term. They are not in direct contact with the government of the sending State; they are merely organs intended to assist consular posts in the discharge of their duties. They have no consular district of their own; the scope of their activities is limited to a part only of the district of the consular post to which they are subordinate. Consequently, consular agents are not heads of consular posts. The functions they exercise are limited, and they enjoy no privileges. No consular commissions are issued to them and they are not granted the *exequatur* of the receiving State. Consular agencies should therefore not be referred to in the convention, and the States concerned should be left to settle the admission of consular agencies and agents and the definition of their legal status by bilateral conventions.

(*f*) and (*g*): To avoid the difficulties which may arise out of the double meaning of the term " consul ", as used in the draft articles, the expression " head of consular post " should be defined at the outset in (*f*); this definition might be worded as follows:

" (*f*) The expression ' head of consular post ' means any person appointed by the sending State to be in charge of a consular post as consul-general, consul or vice-consul and authorized to exercise those functions in conformity with articles 13 or 14 of this draft."

This definition would be more accurate than the present text, for articles 13 and 14 concerning the *exequatur* and provisional recognition to which this definition refers, apply merely to heads of posts (see paragraph 7 of the commentary on article 13).

(*i*): The expression " senior consular officials " which is current in the practice of many States, including Switzerland, should be introduced after the definition of head of post; it denotes the members of consular posts who, though not heads of posts, exercise consular functions and have a consular title. Senior consular officials might be defined as follows:

" The expression ' senior consular official ' means any person, other than a head of post, who is duly appointed by the sending State to exercise consular functions in the receiving State and who bears a consular title such as deputy consul-general, consul, deputy consul or vice-consul."

Article 2

In conformity with the Special Rapporteur's proposal reproduced in paragraph 3 of the commentary, a second paragraph of article 2 should provide that the establishment of diplomatic relations includes the establishment of consular relations. Such a provision would be in keeping with general practice, under which diplomatic missions may exercise consular functions in cases where the sending State has no consular posts in the receiving State or where the districts of existing consular posts do not cover the whole of the receiving State's territory. This would not, however, settle the question whether the head of the diplomatic mission or the member of the mission who heads the consular section of that mission requires an *exequatur*. Under Swiss practice an *exequatur* is not necessary in such cases.

Article 4

In view of the very great diversity of State practice, it seems impossible to enumerate, in a general convention, all consular functions in detail. Hence, only a restrictive enumeration of broad categories of functions can be considered. The text of paragraph 1 is accordingly preferable to the detailed variant reproduced in paragraph 11 of the commentary.

(*a*): The reference to the protection of the interests of the sending State may lead to misunderstandings, for this is more properly one of the diplomatic functions. It is self-evident that the consul always acts in the interests of the sending State. This reference should therefore be deleted or spelt out in restrictive terms.

(*c*): The consul's function as registrar is permissible only if registries of births, marriages and deaths do not exist in the receiving State or if that State permits the exercise of such functions by consuls even though it has its own registries. The condition that there must be no conflict between consular functions and the law of the receiving State applies in this case, too. (In this connexion, see, in paragraph 9 of the detailed list of consular functions, the express proviso concerning the consul's right to solemnize marriages). The exercise of other administrative functions should also be subject to this condition. (For the details, see the comments below on the list of consular functions.)

(*f*): Like his other functions, the consul's function of acquainting himself with the economic, commercial and cultural life of his district can be exercised only subject to the law of the receiving State, in particular, to the provisions of the penal code regarding the protection of the security of the State.

Detailed list of consular functions (paragraph (11) of the commentary): Apart from the general reservation set forth above, the following observations are relevant to this definition.

Clause 6: In connexion with the appointment of guardians or trustees for nationals of the sending State, the consul is not qualified to submit nomination to the court for the office of guardian or trustee; at most he may recommend such persons to the judge. Nor should the consul have the power to supervise the guardianship or trusteeship. Such supervision would constitute interference in the domestic affairs of the receiving State. In the case of Switzerland, such a provision is the more superfluous as Swiss law gives the authorities of the country of origin of foreign nationals the possibility (subject to reciprocity) to exercise the guardianship or trusteeship.

Clause 7: The right to represent heirs and legatees in cases connected with succession without production of a power of attorney can be recognized only on condition that such representation is in accordance with the wishes of the persons concerned.

Clause 10: Under Swiss law, acts relating to judicial assistance are official acts which can be performed only by the competent authorities of the receiving State. For this reason Switzerland has not concluded any agreement granting such powers to consuls. A provision under which consuls may perform acts of judicial assistance would be acceptable to Switzerland only if subject to the condition that the express consent of the receiving State is necessary.

Clause 13: The consul's right to receive for safe custody articles and documents belonging to nationals of the sending State does not apply in the case of articles and documents which have played a part in the commission of criminal offences. Should such a provision be inserted in the convention, it would have to be qualified by a specific proviso, unless it is clearly laid down that the general saving clause regarding respect for the law of the receiving State covers this point.

Clause 14: The consul's competence to further the cultural interests of the sending State should be defined restrictively, in order to avoid improper interference in the domestic affairs of the receiving State.

Clause 16: See the observation above under (*f*) concerning the protection of the security of the State.

Clause 17: This general provision goes too far. To empower the consul to perform any additional functions the performance of which is not prohibited by the laws of the receiving State would invite malpractices. It would be more correct to refer merely, as in clause 1, to the functions the exercise of which is is compatible with the laws of the receiving State.

Additional article to be inserted after article 4 (Proposal by the Special Rapporteur in paragraph 12 of the commentary): This provision, under which the consul may provisionally represent nationals of the sending State before the courts and other authorities of the receiving State until the persons in question have appointed an attorney or have themselves assumed their defence, should, perhaps, be supplemented by a provision stating that the consul's participation in proceedings in such circumstances does not *per se* satisfy the condition that both sides must have had an opportunity to present their case.

Article 4

Paragraph 2: The final passage of this provision should be re-drafted to read more clearly: "... a consul ... may deal only with the *regional* and local authorities." In Switzerland consuls deal mainly with the cantonal authorities.

Article 5

(*b*) The duty of the receiving State to notify the consul of cases where the appointment of a guardian or trustee appears to be in the interests of a national of the sending State appears acceptable, provided that the notification does not prejudge the competence of the receiving State as regards the execution of such measures.

(*c*) It would be advisable to provide that the receiving State must notify the consular post not only where a vessel of the sending State is wrecked or runs aground, but also in case of any accident involving aircraft registered in the sending State (see article 4, paragraph 1 (*d*)).

Article 6

(*a*): This provision should state clearly that the consul's right of access to the nationals of the sending State may not be exercised against the freely expressed wishes of the persons concerned.

(*b*): Cases where it is necessary to hold a person *incomunicado* for a certain period for the purposes of the criminal investigation should be expressly referred to in the provision itself and not in the commentary (paragraph 7), as is now the case. Moreover, the duty of the receiving State to inform the consul of the arrest or imprisonment of a national of the sending State should be limited to cases where the person arrested or imprisoned expressly desires such a communication to be made.

(*c*): The consul's right to visit a national of the sending State who is detained or imprisoned should be limited, as suggested under (*a*) above, by a clause providing that such right may not be exercised against the freely expressed wishes of the person concerned. Moreover, as regards persons detained for the purposes of a criminal investigation, the right of the examining magistrate to authorize visits in the light of the requirements of the investigation should be referred to in the text of the convention itself and not in the commentary (paragraph 5). The general reservation in paragraph 2 — viz., that the freedoms referred to in paragraph 1 shall be exercised in conformity with the laws and regulations of the receiving State is too heavily qualified by the proviso immediately thereafter — viz., that the said laws and regulations must not nullify these freedoms.

Article 8

As indicated above in connexion with article 1, Swiss practice does not regard consular agents as heads of consular posts. Under this practice, consular agents are appointed by the competent authorities of the sending State. They are merely recognized by the Federal Political Department; a federal *exequatur* is not issued to them. They have no jurisdiction of their own and are the representatives, in the district in which they discharge their functions, of the authority which appointed them. As a rule, they enjoy no privileges.

Article 9

This provision is not very clear because, as mentioned earlier in connexion with article 1, no clear distinction is drawn between the head of a consular post and a consular official who, though not head of a post, has a consular title.

Article 12

The three paragraphs of this article clearly relate to heads of consular posts, for none but heads of posts are furnished with consular commissions. This point is not made sufficiently clear in the text, the word " consul " being used in different senses in the draft articles.

In Swiss practice, heads of consular posts are furnished with a new consular commission and a new *exequatur* whenever a change is made in the consular district; the same applies whenever a change occurs in the rank of the head of post.

Article 13

This article regulates the recognition of the head of the consular post only. An express provision relating to the recognition of consular officials other than heads of posts is missing. The commentary (paragraph 7) merely points out that these officials do not require an *exequatur* and that notification by the head of post is sufficient in their case. This point should be dealt with in a special provision. It should also be made clear that officials other than heads of posts do not enjoy privileges and immunities until the receiving State has recognized them after due notification (see the comments on articles 23 and 51).

Article 14

It is not correct to say (as does the commentary, paragraph 4) that the provisional recognition of the head of a consular post imposes on the receiving State the duty to accord all the privileges and immunities provided for in the draft articles. Such a statement might lead to difficulties if the *exequatur* should be refused; this would happen particularly where exemption from customs duties has been granted provisionally. It would therefore be sufficient to say:

" Pending delivery of the *exequatur*, the head of a consular post may be admitted on a provisional basis to the exercise of his functions. In that case, he will enjoy the customary immunities in respect of acts connected with his functions."

Article 16

Paragraph 1: This article should mention the authorities competent to appoint the acting head of a consular post.

Paragraph 2: Inasmuch as the acting head discharges his functions on a temporary basis, there appears to be no justification for according to him all the privileges of the titular head of post.

Article 17

Paragraph 2: The date of provisional recognition should not automatically determine the precedence of the head of post. The receiving State should be left free to determine the order of precedence of heads of consular posts either in accordance with the date of provisional recognition or with that of the grant of the *exequatur*.

Paragraph 3: Since the commission is frequently presented after the grant of the *exequatur*, the date of such presentation should not be used to determine the order of precedence; it would be better to provide as follows:

" If several heads of posts obtained the *exequatur* or provisional recognition on the same date, the order of precedence as between them shall be determined according to the date of the application for the *exequatur*."

Paragraph 5: Acting heads of posts should, like acting " chargé d'affaires ", rank, as between themselves, not according to the order of precedence of the titular head of post, but according to the date of the notification of their entry on duty as acting heads of posts.

Article 19

Where the head of a consular post bears the title of consul-general-chargé d'affaires, each State should be free to make the grant of diplomatic status to such a head of post subject to the condition that he resides at the place where the seat of the government is established (as is the case for heads of diplomatic missions).

Article 23

It should be expressly provided that if the receiving State regards a consular official as not acceptable, it shall not be required to state the reasons for its decision.

It is not sufficient — as does paragraph 2 of the commentary — that a member of the staff of a consular post may be declared not acceptable before his arrival in the receiving State, since the person in question may enter the territory of the receiving State or take up his duties at the moment of notification. A provision should therefore be included to the effect that consular officials do not enjoy privileges and immunities until the receiving State has approved their appointment after due notification (see the comments on articles 13 and 61).

Article 27

Private staff should be excluded from the benefit of paragraphs 1 and 2. Such staff enjoy no privileges in Switzerland.

Article 29

The right of the consulate to fly the national flag should be limited in view of the difficulties which the receiving State may experience in carrying out its obligation to protect the flag.

Paragraph 1 should accordingly be qualified as follows:

" The consulate shall have the right to fly the national flag *in conformity with the usage of the receiving State* and to display . . ."

Paragraph 2 should be deleted; the right to fly the national flag on personal means of transport should be limited to heads of diplomatic missions.

Articles 30 and 31

Like article 22 covering the size of the consular staff, the articles on accommodation and the inviolability of consular premises should contain a provision for an appropriate limitation as regards the premises having regard to circumstances and conditions in the consular district and to the needs of the consulate.

Article 35

The convention should stipulate freedom of movement for members of consular posts in respect of the consular district only. This freedom may be extended to cover the rest of the territory of the receiving State, subject to reciprocity.

Article 36

To accord to consular posts an unlimited right to use the diplomatic bag and diplomatic couriers seems unjustified. If the sending State has a diplomatic mission in the receiving State, the official correspondence of consular posts should be routed through that mission. At the very least, the use of the diplomatic bag and of diplomatic couriers should be subject to reciprocity.

Article 40

Swiss practice does not recognize the personal inviolability of consuls. However, such inviolability might be admitted in principle for heads of consular posts and conceivably also for consular officials who, though not heads of posts, have a consular title. But the system provided for by the convention is extremely complicated and may lead to glaring inequalities of treatment according to the national laws concerned.

Paragraph 1: This provision denies the benefit of personal inviolability in the case of an offence punishable by a maximum sentence of not less than five years' imprisonment. An itemized provision appears preferable to the variant referring to " a grave crime ". However, in view of the diversity of criminal law, the expression " sentence of imprisonment " should be replaced by a more general expression such as " sentence involving deprivation of liberty ".

Under Swiss criminal law, many offences which constitute " grave crimes " are punishable by imprisonment (the maximum term of which is three years) and not by rigorous confinement (réclusion *). In the light of the principles of Swiss law, the decisive criterion whould be a sentence of three, not of five, years' imprisonment. If such a change cannot be made, the Swiss authorities would prefer the variant: " except in the case of a grave crime."

Article 42

Paragraph 1: Only heads of consular posts and consular officials who, though not heads of posts, have a consular title should be exempt from coercive measures if they decline to attend as witnesses.

Paragraph 2: Provision should be made for the possibility of written testimony, subject of course to the proviso that such testimony is permitted by the law of the receiving State.

Article 43

With regard to exemption from obligations in the matter of the registration of aliens, residence and work permits, the circle of members of the family should be limited. In addition, it would be desirable to specify in what circumstances the members of the family are deemed to form part of the household.

Furthermore, private staff should be excluded from the exemption granted under this article.

Article 45

The general tax exemption granted by this article should not be accorded to employees of the consulate who perform only administrative and technical duties.

The commentary should explain that the tax exemption may also be accorded in the form of reimbursement.

The circle of members of the family benefiting from tax exemption should be limited to the spouse and the children under age and, in exceptional cases, to other relatives forming part of the official's household. This remark also applies to all the other articles which accord privileges and immunities to members of the family.

(*a*) This provision is too restrictive; it should cover all indirect taxes, whether they are incorporated in the price of goods or services or added to that price.

Article 46

(*b*) The exemption from customs duties should be limited to heads of consular posts and to consular officials who, though not heads of posts, have a consular title.

As regards the members of the family, see article 45.

Article 47

As regards the members of the family, see article 45.

Article 48

As regards the members of the family, see article 45. The domestic staff should be excluded from the benefit of this article.

Article 49

In so far as this article relates to the case of a woman member of the consulate who marries a national of the receiving State, it conflicts with the Swiss constitutional principle of the unity of the family (article 54 of the Federal Constitution), under which a foreign woman who marries a Swiss national acquires her husband's nationality by her marriage. The Swiss authorities therefore propose that the words " except in the case of marriage " should be inserted in article 49.

* " Réclusion " may be ordered for a term of five to ten years [Translator's note].

Article 51

Paragraphs 1 and 2 should be amplified by a provision to the effect that new members of the consulate should in all cases, whether they arrive in the receiving State or are already in that State, enjoy privileges and immunities from the time when the receiving State has approved their appointment and not from the time their appointment was notified to that State (see comments on articles 13 and 23).

Article 52

The obligations of third States with regard to consular officials passing through their territory on their way to their duty station or on returning to their country should be limited to cases of direct transit by the shortest route.

Article 54 et seq.

The regulations set forth in chapter III on honorary consuls appear acceptable in their essentials. They are not, however, adequate in so far as they do not differentiate clearly between the personal position of honorary heads of consular posts and other honorary consular officials who, though not heads of posts, have a consular title, on the one hand, and the position of a consular post headed by an honorary consul, on the other.

In Swiss practice, the legal status of a consular post, in all matters relating to the exercise of functions, does not depend on whether the head of the post is a career consul or an honorary consul. This distinction is important only from the personal point of view, as the draft articles very properly provide.

Article 54

In conformity with the above comment, this article should more properly be entitled: " Legal status of honorary consuls *and of consulates in the charge of honorary consuls* ".

Article 31 relating to the inviolability of consular premises and article 53, paragraphs 2 and 3, which prohibit the improper use of consular premises, should be included among the provisions referred to in article 54. Article 54, paragraphs 2 and 3, which clearly lay down the limits within which consular premises may be used, are most important in the case of honorary consuls who carry on a gainful private activity. Inasmuch as it is possible to take account of this particular situation under article 31, read in conjunction with article 53, there would be no need, if these two provisions were made applicable by article 54, for a special article on the inviolability of the premises of a consulate headed by an honorary consul on the lines of article 55 concerning the inviolability of archives.

Article 55

To cover the case where the honorary consul does not occupy premises used exclusively for consular purposes, this provision should be amplified in the following manner:

" The consular archives, the documents and the offical correspondence, *and also any articles intended for the official use* of a consulate headed by an honorary consul shall be inviolable . . ."

Article 57

In Switzerland, honorary consuls must comply with the obligations in the matter of registration of aliens, residence permits, and work permits. These obligations can hardly be waived in the case of honorary consuls.

Article 58

This provision should specify more clearly that the tax exemption of honorary consuls applies only to the appropriate reimbursement of expenses incurred but not to any salary which may be paid by the sending State, for this salary can only with difficulty be distinguished, for taxation purposes, from income derived from a private gainful activity.

In any case, as the commentary points out, honorary consuls who are nationals of the receiving State should not be exempt from taxation.

Article 62

In Switzerland, no distinction is made between career consuls and honorary consuls in the matter of precedence. The system provided for by the convention, however, appears to be preferable.

Article 65

The Swiss authorities prefer the second text, which, while leaving the parties free to conclude further bilateral conventions concerning consular intercourse and immunities, automatically maintains in force the existing bilateral consular conventions.

17. Union of Soviet Socialist Republics

Transmitted by a note verbale dated 24 March 1961 from the Permanent Mission of the Union of Soviet Socialist Republics to the United Nations

[*Original: Russian*]

The competent USSR authorities have the following comments to make on the draft articles on consular intercourse and immunities prepared by the International Law Commission at its twelfth session:

1. Article 1, in which the terms and expressions used in the draft are defined, needs to be made more specific. In particular sub-paragraph (*e*) should be worded as follows:

" The expression ' consular archives ' means all documents, official correspondence and the consulate library, as well as any article of furniture intended for their protection or safe-keeping."

2. Article 2 states that the establishment of consular relations takes place by mutual consent of the States concerned. The article should state, further, that the establishment of diplomatic relations includes the establishment of consular relations.

3. Article 3 (5) states that the consent of the receiving State is required if the consul is at the same time to exercise consular functions in another State.

This paragraph should be excluded from the draft.

4. The Special Rapporteur proposed an additional article on the right of a consul to appear *ex officio* on behalf of nationals and bodies corporate of the sending State before the courts and other authorities of the receiving State until the persons or bodies in question have appointed an attorney or have themselves assumed the defence of their rights and interests.

This article should be included in the draft.

5. Article 5 (*c*) states that the receiving State shall have the duty to inform the consulate if a vessel flying the flag of the sending State is wrecked or runs aground. This paragraph should be extended, *mutatis mutandis*, to cover aircraft.

6. Of the two variants of article 65, which deals with the relationship between these articles and bilateral conventions, the second is preferred.

7. A new article should be included in the draft in the following terms:

" 1. The provisions of these articles regarding the rights and duties of consuls shall extend to members of diplomatic missions who are appointed to carry out consular functions and of whose appointment the ministry of foreign affairs of the receiving State has been notified by the diplomatic mission concerned.

" 2. The diplomatic privileges and immunities to which any such persons may be entitled shall not be affected by their carrying out consular functions."

8. The above comments on the draft articles on consular intercourse and immunities are not exhaustive. The competent USSR authorities reserve the right to put forward additional comments and suggestions at an appropriate time.

18. United States of America

Transmitted by a note verbale dated 6 April 1961 from the Permanent Representative of the United States of America to the United Nations

[*Original: English*]

General

The Government of the United States is of the opinion that the International Law Commission should be commended for its work on the subject of consular intercourse and immunities, as reflected in chapter III of the report covering the work of its twelfth session (A/4425). The draft articles, with commentary, formulated by the Commission indicate generally the areas in which the practice of governments is sufficiently uniform to warrant its codification or incorporation in a treaty, and also the areas in which, while present practice varies, it is desirable that uniform rules be formulated.

Governments have long recognized the value of treaty provisions as a means of regulating the conduct of consular relations and the status of consular personnel. A general multilateral convention containing provisions on the most important matters and on which governments generally agree, would be desirable.

The United States offers the following general observations on the draft articles on consular intercourse and immunities:

1. Many provisions correspond to provisions in the draft articles on diplomatic intercourse and immunities adopted by the Commission at its tenth session (A/3859), to be considered by the Conference of Vienna convened March 2-April 15, 1961. It is assumed that the Commission will be guided by the decisions of the Conference, to the extent that such decisions may be applicable. In particular, language agreed to at Vienna should be incorporated in corresponding consular provisions, except where changes appear warranted by the differences in status and duties of diplomatic and consular officers. In no case should the revised draft articles grant to consular officers or employees personal privileges, exemptions and immunities in excess of those accorded diplomatic officers and employees.

2. The draft articles should cover only those matters essential to the effective functioning of a consular establishment and the comfort and security of its personnel. Differences between governments which involve domestic law and local practice applicable to the rights and duties of consular officers usually may be resolved more easily in bilateral agreements than in multilateral agreements.

3. The draft articles appear to place too much emphasis on " heads of consular posts". The phrase might be replaced by " officers of consular posts " or " consular officers", except when it is necessary to single out the principal officer. The position of head of a consular post is not really comparable with that of head of a diplomatic mission. An American ambassador, minister or chargé is the official representative of his government and members of the mission merely assist him in the performance of his functions. In contrast, the head of a consular post, at least under American law, possesses no more authority in certain substantive matters than subordinate consular officers on his staff. American consular officers are individually responsible for the proper performance of their statutory duties. The Secretary of State, the chief of the diplomatic mission, and the principal officer at the consular post may advise an American consular officer, but they may not direct or require him to perform or omit to perform certain acts.

The post of principal officer at a consular establishment thus has significance only with respect to matters of precedence and rank, and the exercise of supervisory responsibilities. Matters of precedence and rank are believed best left for regulation in accordance with local custom. Their supervisory responsibilities are essentially a matter of internal administration.

4. The draft articles should not distinguish the status of permanent residents from that of nationals of the receiving State. Persons in the receiving State as immigrants or stateless persons recruited locally should enjoy no more favourable status than nationals of the receiving State in which they reside.

5. The Commission's proposals as to exemption of consular officers from territorial jurisdiction are interesting, and merit consideration. It is pointed out, however, that the activities of consular officers affect private rights to a degree not usually permitted in the case of diplomatic officers. Moreover, consular officers often reside in remote places where they are beyond the watchful eyes of the chief of their diplomatic mission and the foreign office of the receiving State, and where the local authorities and the press may be ignorant of the standards of conduct to be expected of them. The fact that they are generally subject to local jurisdiction has perhaps contributed to their general good behaviour.

The Commission might also undertake to suggest a more precise rule as to the categories of persons exempt from territorial jurisdiction, and the circumstances under which such persons are to be exempt. If the exemption is for the benefit of the sending State — e.g., protection of archives — neither rank nor nationality nor place of residence should be a factor.

6. Immunity on the grounds that the action involves " official acts " should be limited to cases where the sending State assumes responsibility for the act, with provision for waiver of immunity, or lack of immunity in other cases. A consul who may embezzle money entrusted to him in his official capacity by private persons or by courts for transmission to his absent countryman, should be subject to a civil suit for recovery. Perhaps, if the sending State is unwilling to assume responsibility for his act, he should be subject to criminal prosecution in certain cases.

7. The draft articles show overlapping problems of sovereign immunity and consular immunity. Are all consular acts to be considered " governmental " in nature? What about consular officers from state-trading countries who engage in commercial transactions of the sort which would normally be litigated in the courts? May receiving States adhering to the restrictive theory of sovereign immunity determine on a case-to-case basis whether a given function of a consular establishment was a private rather than a public activity of a foreign sovereign — thus making the immunity from jurisdiction illusory?

8. The commentary contains much material which, if intended to have binding effect, should be embodied in the substance of the articles to which it relates.

The United States offers the following additional comments with respect to certain specific provisions:

Article 1

(*a*) It is suggested that " or " be deleted, and a comma inserted therefor, and that the words " or other consular establishment " be added after " agency". This will allow for the variations in nomenclature which inevitably develop over the years.

(*d*) The term " exequatur " has not been usee by the United States as " the act whereby the receiving State grants to the foreign consul final recognition", but has been limited to apply only to documents of recognition bearing the signature of the head of

the receiving State which have been issued to foreign consular officers on the basis of a commission of appointment signed by the head of the sending State. Certificates of recognition bearing the signature of the Secretary of State are issued on the basis of other documentary evidence of appointment. Nevertheless, there may be merit in defining *exequatur* as final authorization, whatever the form, to exercise consular functions, and eliminating the necessity of heads of state having personally to sign commissions of officers granted *exequaturs*.

(*f*) The United States would prefer omission of the hyphens.

(*g*) In lieu of "consulate" insert "consular establishment". The head of the post must have been accorded recognition by the receiving State as a consular officer.

(*h*) This paragraph might be combined with paragraphs (*j*) and (*k*), with clarifications, as there seems to be some overlapping.

(*i*) The United States objects to this provision. Most governments now accord dual accreditation to certain persons as members of diplomatic missions and also as consular officers. The United States also recognizes in a consular capacity a few members of permanent delegations to the United Nations, where the total representation in the United States of the government concerned is small, and denial of dual accreditation, under the circumstances, would result in undue hardship.

The term "consular officer" may appropriately be used in a generic sense.

Article 2

The United States agrees that consular relations may be established (or maintained) between States which do not maintain diplomatic relations. It disagrees, however, with any statement to the effect that the establishment of diplomatic relations automatically includes establishment of consular relations.

Article 3

The seat of the consular post and the limits of the district should be determined by mutual agreement. The agreement as to the seat and the initial district should probably be express. Agreement as to subsequent changes in limits of the district might be through notification from the sending State, to be considered final in the absence of objection by the receiving State.

Paragraph 3, read literally, provides that a sending State may not close a consular post without the agreement of the receiving State. As no such result is intended, the paragraph should be revised.

The proposal, in paragraph 4, that a consul may exercise functions elsewhere than within the district covered by his commission and *exequatur* would seem to merit further consideration. When a consular officer performs occasional diplomatic functions, he acts on an intergovernmental level. Therefore the limitations of his consular district are not pertinent.

Paragraphs 7 and 8 of the commentary are of a substantive nature, and should be a part of article 3 or of another article.

Article 4

The functions of consular officers should be limited not only to those which can be exercised without breach of the laws of the receiving State, but also to those on which the law is silent, and to which the receiving State does not object.

Add to "a" the words "and of third states of which it is agreed he may accord protection." See article 7.

The functions of a "notary" in the United States are not comparable to those of a notary in certain other countries. The words "civil register" are not easily identifiable in United States law. "Administrative" is a rather ambiguous word, not really descriptive of functions to be performed.

The text of the more detailed or enumerative definition reproduced in paragraph 11 of the commentary and the proposed additional article reproduced in paragraph 12 described various consular functions not now permissible in the United States and in some respects unacceptable. Considering the present case of communications, it seems unnecessary for the consul to undertake to represent his absent countryman in court proceedings, to direct salvage operations, or represent him in other matters without first obtaining a power of attorney and appropriate instructions. In many situations the consul need be notified only when it has not been possible to notify the parties in interest in order that he may contact them, and thereafter render such assistance as they may request.

Article 5

In the United States, vital statistics records are maintained by state and municipal authorities rather than by the Federal Government. Except in the case of travellers, the authorities often do not know that a deceased person was not a national until the fact develops in the course of administration of his estate and search for his next of kin. It is desirable, of course, when a deceased person is found to be of foreign nationality, that the consular officer of the foreign country be apprised as promptly as possible of the death and have access to public records, if necessary, to obtain the information required for the preparation of a consular report of death, and further, at the request of the next of kin or if there are no next of kin, and if permissible under local law, be permitted to arrange for the burial or shipment of the body. These are matters, however, with respect to which the drafting of provisions requires careful consideration, having in mind such factors as the federal-state system in the United States.

When minors or incompetents are in difficulties, it would seem enough for local authorities to seek out next of kin, who may, if they wish, seek the assistance of the consul concerned. The important thing is that the consul be assured access to public records.

Article 6

In some cases persons arrested and imprisoned may not wish their consul to be notified. The United States believes it is enough to assure that a person arrested or imprisoned may, upon request, communicate at once with his consular officer, and that in such case the consul be given immediate access to him, and have the opportunity to arrange for his legal representation, and to visit him if convicted and serving a term of imprisonment.

The United States would object to inclusion of a provision which appears to give validity to arrest procedures whereby a person may be held *incomunicado*. The domestic law of the United States would not support the proposition that it is necessary to hold a person *incomunicado* in order to conduct properly a criminal investigation. In certain countries, the *incomunicado* measure may be required by law. In such a case a maximum of 48 or 72 hours might be agreed upon.

Article 8

American consular agents are appointed by the Secretary of State. They are not necessarily full-time government employees, and sometimes engage in outside business activities.

The advisability of formulating a rule which would codify the titles of heads of consular posts is questioned.

Article 10

This article seems both unnecessary and redundant. It is one of a number of articles which should either be deleted or their substance incorporated in another article.

Article 12

It is the practice of the United States to require a new consular commission of appointment or assignment whenever a consular officer is transferred from one post to another in the United States. If a United States consular officer is detailed to another consular district, he is provided with an assignment commission to the post where he is to perform his functions temporarily; he nevertheless holds his commission to his regular post. Thus, when his detail terminates, he resumes his functions at his regular post without need of a new assignment commission and a new recognition.

The United States does not accept the informal method of notification of a " consul's posting " unless at the same time a written request is made for some kind of consular recognition at the new post. It should be practicable to prescribe the limitations of consular districts by simple notification to the Foreign Office, the latter's acceptance without objection, and subsequent publication.

Article 13

As previously stated in lieu of " heads of consular posts " the phrase " officers of consular posts " should be used.

Article 14

Provisional recognition granted by an exchange of diplomatic notes frequently is the " final " recognition of a consular officer, particularly when consular recognition is required for secondary consular officers who are not commissioned. In the United States, provisional recognition is never granted by oral communication only.

Article 15

The United States notifies only the authorities of those States which have requested such notifications. Any obligation with respect to notification which governments can practicably accept should be one which can be complied with by publication in an official gazette. The consul can carry a copy of such publication with him to introduce himself, and, if need be, to buttress his authority. His predecessor, his office staff, and the dean of the consular corps can smooth the way for him, until he has learned to find his way around.

Article 16

Under the present practice all consular officers at a post request and obtain recognition. When the principal officer is absent or incapacitated, another officer of his staff replaces him, and if there is no other officer at his post, his government usually will provide a replacement. The head of a consular post must be a person recognized by the receiving State in a consular capacity. Other than this, the matter seems solely one of internal administration, of principal interest to the sending State.

Article 17

The United States would be agreeable either to inclusion of an article along these lines, or to its deletion, thereby leaving the precedence of consular officers to be determined in accordance with local custom.

Article 18

This might be deleted. Its meaning is uncertain, and it appears unnecessary.

Article 19

A consular officer performing functions of a diplomatic character due to the non-existence of diplomatic relations between his government and the government of the country of his assignment remains a consular officer. He is not thereby entitled to enjoy diplomatic privileges and immunities, and needs no special title.

Article 20

The receiving State's withdrawal of an *exequatur* should be effective immediately, but a request for recall need not be.

Article 21

The United States considers that consular officers are those of a consular establishment who have some form of consular recognition, and that consular employees are those members whose presence has been notified to the Department of State as members of the staff, but who have no consular recognition.

Article 22

This article should be deleted.

Article 23

Any person deemed unacceptable to the receiving State should upon its notification to the diplomatic mission of the sending State cease forthwith to be entitled to perform consular functions.

Article 24

The receiving State needs to be notified of arrivals and departures of all persons claiming privileges and immunities by virtue of their connexion with a consular post.

Article 26

It seems unnecessary to state the generally accepted proposition that the severance of diplomatic relations does not *ipso facto* terminate consular relations.

Article 28

The United States agrees that consular officers and employees and members of their families should be permitted to depart as soon as possible after their functions have been terminated, even in event of armed conflict. The details of the article should, however, be considered in the light of the practice of governments. Their immediate departure may necessarily be delayed pending negotiation of arrangements for an exchange of persons, the obtaining of safe conducts, availability of means of transport, etc., and the extent to which general regulations relating to departure of aliens may apply in particular cases. The matter is further complicated by the possible need to provide special protective facilities pending their departure, and the application of currency control regulations, restrictions on transfer of foreign assets, etc.

The receiving State should not be obligated to assume a bailee responsibility with respect to the sending State's property in case of severance of diplomatic and consular relations.

Article 30

This article might be revised to read as follows:

" The sending State has the right to procure on the territory of the receiving State, in accordance with the internal law of the latter, the premises (*including residences*) necessary for its consulates. The receiving State is bound to facilitate, as far as possible, the procuring of suitable *office* premises for such consulates."

Article 31

Consular premises often consist only of space in an office building, or of a building adjoined to other buildings. Such premises should be inviolable, but with a right of entry reserved in case

of fire or other force majeure, or crime in progress. Since consular agents usually establish their office in a local business enterprise, perhaps article 31 and article 33, out of an abundance of precaution, should be so worded that the premises and archives will be held inviolable, notwithstanding the fact that the consular agency is headed by a local business man and usually located on his local business premises, both being otherwise subject to local jurisdiction.

Article 32

This article may be intended to eliminate any differentiation in treatment as between property leased by a sending State and property owned by it. While the objective is clear, this would involve establishment of a new concept in the administration of property taxes. Generally no distinction is drawn in the application of property taxes on the basis of who the lessee may be. Thus, property leased by the United States Federal Government from private owners is generally subject to property tax although property owned by it is exempt. The practice which the draft would introduce would, moreover, fail to benefit the sending State in some cases and provide a windfall to the property owner. This would be likely to occur where a long-term rental agreement is in existence which does not reflect the tax exemption status of the property, or, where a sending State leases only a small part of a property — i.e, space in an office building.

Finally, it may be noted that this article, in conjunction with the definition of consular premises, might exempt from tax property owned by a sending State even if only a small part were used for consular purposes and the balance rented out. This would be undesirable.

Article 33

In the United States domestic mail service, only first class mail is not subject to inspection. Relevant provisions of postal conventions should be considered.

Article 34

This article might well be deleted.

Article 35

The United States is opposed in principle to the imposition of travel restrictions. In any event, if the consul cannot go to his nationals in a restricted zone, his nationals should be permitted to come to him.

Article 36

This article corresponds to article 25 of the draft articles on diplomatic intercourse and immunities to be considered at the Vienna Conference. The Commission will presumably take due account of the Conference's decisions in the matter to the extent applicable. The United States believes that a diplomatic bag may be refused entry by the receiving State if it has reason to believe it contains articles other than correspondence, and the sending State is unwilling to open it for cursory inspection. The United States believes also that considerations which might warrant permitting diplomatic missions to operate their own radio transmitters do not necessarily exist with respect to consulate posts.

It is assumed that the article is not intended to exempt consular officers from payment of postage.

Article 37

Consuls should have access to public records, and should be permitted to address local authorities — the term meaning authorities of branches of government other than the central government.

Article 39

The United States Federal Government is without authority to " protect " a foreign consular officer from what he or his government may well consider a " slanderous " press campaign. Freedom of press is guaranteed by the United States Constitution.

Articles 40, 41 and 42

The basic principles of customary international law as presently understood are (1) that consuls do not enjoy a diplomatic character, and (2) that the jurisdiction of the territorial sovereign is presumed. The draft articles 40 and 41 attempt to bring about a change in this area by providing for a general inviolability of consuls and immunity from jurisdiction. The various theories which have developed on the subject are outlined in the commentary.

It is noted, however, that article 40 (1) would waive the personal inviolability of consuls in cases of offences " punishable by a maximum sentence of not less than five years ' imprisonment " or, alternatively, " in the case of a grave crime". The wording seems unsatisfactory, considering the practice of certain States to impose severe criminal sanctions for so-called " political crimes ". An analogy can be drawn here with extradition treaties (see, for example, the multilateral Montevideo Treaty of 1933, 49 Stat. 3111), which provides that the act for which extradition is sought must constitute " a crime and (be) punishable under the laws of the demanding and surrendering State with a minimum penalty of imprisonment for one year." Similarly, article 40 might be re-worded to provide criminal jurisdiction over consular officers in case of grave crimes *only* where such offences constitute such a crime under both the laws of the sending and the receiving State.

The test as to whether a function is official is whether the sending State assumes responsibility for it. The officer concerned is not the person to decide.

Further consideration should be given to the matter of requiring a consular officer or employee to give evidence or permitting him to decline to give evidence, and to his taking an oath with the possibility of liability for perjury or contempt of court.

Article 43

United States immigration laws impose no requirements regarding residence and work permits.

Article 45

The grant of exemption from taxation to members of a consulate and their families is conditioned on their not carrying on " any gainful private activity ". It is not clear whether the quoted phrase is consistent with the intent of the article. If an individual were to make investments in the United States, it would constitute " gainful private activity ". Under this circumstance, none of the exemptions accorded by article 45 would apply to such an individual. It does not seem to be the intended result.

The commentary points out that under article 50 there are excluded from the scope of the exemption members of a consulate and their families who are nationals of the receiving State. This exclusion is desirable as far as it goes, but it does not go far enough. The principle incorporated in article 44 seems highly appropriate in connexion with this article, so that not merely nationals but also persons who are permanently resident in the receiving State would fall outside the scope of the exemption. There is a large and growing body of persons in the United States, and presumably elsewhere, whose employment is largely with various foreign missions and who are permanent residents of the host country. There seems to be no sound reason why they should be tax-exempt or why their tax liability should vary from time to time depending upon whether their employment is with a foreign mission. In this connexion, it may be noted that the imposition of a tax on the

remuneration of employees is not a tax on a foreign government, and there would seem to be no legal objection to this levy. Moreover, the mechanism by which wages and salaries are commonly determined in these cases is generally such that the taxable or exempt status of the employee is an irrelevant factor. Consequently not even an indirect burden may be said to be imposed on the foreign government. In any event, these individuals are beneficiaries of the services of the receiving government and should not be absolved from sharing its costs.

The article grants to members of a consulate and their families exemption from certain taxes other than " indirect taxes incorporated in the price of goods or services". The meaning of this language is ambiguous. It is not clear whether this refers only to those taxes which normally are not stated separately, or whether it refers to taxes which cannot ordinarily be separated out of the price. The former interpretation would be more restrictive than the latter. Thus, the manufacturer's excise tax on automobiles is not usually quoted separately from the price, but it is readily ascertainable. Either interpretation would depart significantly from existing United States practices and would not be desirable. Under existing law, consular officers of foreign governments are exempt from federal excise taxes, the legal incidence of which would fall upon them in connexion with transactions arising in the performance of their official duties. The exemption thus applies to such taxes as those on transportation, admissions and dues, and communications. It does not apply to the various excise taxes imposed either at the manufacturer's or retailer's level.

Articles 46-53

These articles are among those which should be considered in the light of the results of the Vienna Conference.

Articles 54-63: Chapter III, " Honorary Consuls "

The United States suggests that this chapter may be unnecessary. While the United States does not now appoint honorary consuls, it does appoint consular agents, who are often resident in the country, and engaged in business. The United States accords consular recognition to honorary consuls in the United States appointed by other governments, but does not accord them personal privileges and immunities. The United States refuses to recognize in a consular capacity, other than "honorary", any person who is a national or permanent resident of the United States.

Consular agents and honorary consular officers, who are nationals or residents of the receiving State, should be entitled, in the performance of their official functions and the custody of the archives of the consular post, to whatever rights and privileges other consular officers of the sending State would enjoy in those respects. Except for that, their status and that of their families and households in the receiving State should be the same as any other national or permanent resident.

The United States observes also that while the provisions on nationality adopted at the Vienna Conference should be considered, the language adopted at Vienna may not be entirely suitable for incorporation in a proposed convention relating to consular personnel. The United States Constitution provides that all persons born " subject to the jurisdiction thereof " automatically acquire United States nationality at birth. Since a consular officer's child is not immune from United States jurisdiction, it automatically acquires United States citizenship if born in the United States. The child of a diplomatic officer, in contrast, is immune from jurisdiction, and therefore does not acquire United States citizenship automatically.

Article 65

The first text is not acceptable. It is considered unnecessary and undesirable to require, either explicitly or impliedly, that the contracting parties enter into special agreements for the purpose of retaining in force bilateral conventions between them. As to a bilateral convention in force at the time of the entry into force of the multilateral convention, it is understood that the normal rule would apply that, to the extent that there is any real conflict between the provisions of the two conventions, the one later in time will prevail, and that other provisions of both will continue in effect according to their tenor. It is to be expected that, after entry into force of the multilateral convention, if two of the contracting parties negotiate a bilateral convention they will give adequate consideration to the terms of the multilateral convention and consider to what extent, if any, they wish to amplify the scope of provisions on consular intercourse and immunities or include in the bilateral convention provisions having the effect of modifying as between themselves the multilateral convention.

The second text for article 65 is closer to a statement of situation, but the question may be raised whether the expression " shall not affect " is in accordance with the actual intent. If it were intended that, even as to provisions where there is a real conflict, the multilateral convention shall not affect the prior bilateral convention, then the second text would accomplish that purpose. Ordinarily, as indicated above, it would be expected that, in any case of real conflict between the provisions, the multilateral, being later in time, would prevail. However, if it were the consensus of opinion that the prior bilateral convention should be left unaffected by anything in the multilateral convention, the United States would be prepared to acquiesce in a decision to that effect. As indicated in the commentary, the multilateral convention would then apply only to matters not covered by the bilateral convention. So far as a later bilateral convention is concerned, the second text would leave the way open for such later convention to have the effect, as between the parties thereto, of modifying or limiting the application of certain provisions of the multilateral convention. This would be the normal application of the later-in-time rule.

19. YUGOSLAVIA

Transmitted by a note verbale dated 28 February 1961 from the Permanent Representative of Yugoslavia to the United Nations

[*Original: French*]

The draft articles on consular intercourse and immunities adopted at the twelfth session of the International Law Commission contain the principles of contemporary international law and generally recognized practice, and are in principle acceptable to the Government of the Federal People's Republic of Yugoslavia.

With regard to certain articles of the draft, the Government of the Federal People's Republic of Yugoslavia considers it desirable to point out a few details where the text can be somewhat improved at its second reading in the International Law Commission, and requests the Secretary-General to transmit the comments made hereunder to the Commission.

Article 1. It would be desirable to state whether the consular agent referred to in section (*f*) of this article enjoys the same consular privileges and immunities as a consul.

A proper definition of the terms " sending State " and " receiving State " as set forth in article 3, commentary, paragraphs 7 and 8, could, for the sake of completeness, be inserted in the text of article 1.

Article 4. The Government of the Federal People's Republic of Yugoslavia prefers the first variant of this article, which comprises a general definition of consular functions, since it is in fact impossible to include all the aspects of such functions

in one definition. Any enumeration of these functions, however detailed, would be incomplete.

It should be noted that, as a result of the internal distribution of powers in the receiving State, the consul is often unable to deal with the local authorities in the exercise of many of his functions. For this reason it would be desirable to add at the end of paragraph 2 of article 4 of the first variant, after the expression " with the local authorities ", the following phrase: " or with the central authorities in connexion with consular matters which in the first instance normally fall within their competence ".

Should the Commission consider it more desirable to adopt the second variant, the Government of the Federal People's Republic of Yugoslavia will not oppose this — in spite of the views expressed above — but in that case the provisions proposed therein, i.e., the enumeration of consular functions, should be the subject of more detailed study. Such a review is necessary because the Commission has not discussed the text of the second variant in detail. The Government of the Federal People's Republic of Yugoslavia requests the Commission to take the following observations into consideration:

(*a*) First of all, it is desirable to insert a general provision stipulating that consular functions are exercised within the limits of the legislation of the receiving State. When the second variant is discussed, consideration might be given to the following:

I

Functions concerning trade and shipping

Paragraph 2 (*a*). It might be added that the consul is competent to deliver and renew the validity of ships' papers and renew passports of the crew.

Paragraph 2 (*c*). The consul does not draw up the manifests but may certify them, particularly in the case of manifests of ships of any flag carrying cargo consigned to the sending State.

Paragraph 2 (*e*). The authorization for the consul to settle all disputes between masters, officers and seamen, even disputes unconnecteed with employment, is too comprehensive.

Paragraph 2 (*g*). A consul cannot be permitted to act as the agent of a shipping company.

Paragraph 2 (*h*). It should be decided whether the consul should be informed of searches conducted on ships when his residence is not at the port and for how long he should be awaited in his absence. There is no provision for this in international law except with regard to criminal matters (article 19 of the Convention on the Territorial Sea, 1958).

Paragraph 2 (*j*). Salvage operations are a matter of the public policy (ordre publique) of each State and the consul cannot be permitted to direct such operations. It is, however, within his competence to ensure, on behalf of the party concerned, that the appropriate salvage measures be taken.

Paragraph 3 (*d*). It would be wrong to authorize the consul to supervise compliance with international conventions. He is not empowered to make representations with regard to violations of international agreements, since this falls within the competence of the diplomatic mission.

A distinction should be made between civil, public and military aircraft, since each has a different status and receives different treatment. Furthermore, paragraph 4 distinguishes between " vessels " and warships.

The Government of the Federal People's Republic of Yugoslavia considers that warships, since they are ex-territorial, do not come within the competence of consuls.

II

Functions concerning the protection of nationals of the sending State

Paragraph 7. The Government of the Federal People's Republic of Yugoslavia agrees that the consul may represent, without producing a power of attorney, the nationals of his country in all cases connected with succession, provided that the parties concerned are not opposed to this and do not appear themselves before the authorities in question.

III

Administrative functions

Paragraph 8. With respect to the delivery of acts of civil registration, the State of residence normally reserves the sole right to deliver death certificates (in view of the possibility of criminal proceedings) and birth certificates. Marriage certificates are governed by the procedure agreed upon by the two States concerned.

Paragraph 8 (*g*). The stipulation according to which the consul would transmit benefits, pensions or compensations to persons entitled to such payments in the foreign territory, in particular to the nationals of the receiving country, seems somewhat difficult to accept.

Paragraph 11. The consul may neither receive nor draw up statements in the receiving State which could violate its public policy (ordre publique).

Paragraph 13. The consul cannot be authorized to receive for safe custody articles which it is prohibited to export.

Paragraph 17. The Government of the Federal People's Republic of Yugoslavia agrees that, in given conditions, the consul may exercise additional functions.

Article 5. It is desirable to make provision in section (*c*) for the consul to be informed not only in the case of accidents involving ships, but also of those involving aircraft.

Article 8. A point to be clarified is whether agents belong to the same class as consuls or to a special cateogry of consular officials.

Article 15. The Government of the Federal People's Republic of Yugoslavia believes that paragraph 2 of the commentary should be inserted in the text of the provisions (presentation of the consular commission and *exequatur* by the consul himself, should the government of the receiving State omit to fulfil these obligations).

Article 16. It would be desirable for the Commission to consider whether, and in what, cases provisional recognition is required for the acting head of post, even in cases where the acting head of a consular post serves in that capacity for a long period. Unless this is clarified, the institution of the delivery of the *exequatur* might be jeopardized.

Article 18. The occasional performance of diplomatic acts by the consul should, in the opinion of the Government of the Federal People's Republic of Yugoslavia, be subject to the articles on diplomatic intercourse and immunities, and not to those on consular intercourse.

The Government of the Federal People's Republic of Yugoslavia considers that this article should be omitted.

Article 22. The receiving State should decide on the number of consular staff it is willing to receive in its territory. In case of dispute, the Government of the Federal People's Republic of Yugoslavia considers that the matter should be referred to arbitration on the understanding that the decision of the receiving State shall remain in force until the award.

Article 23. The Government of the Federal People's Republic of Yugoslavia considers that it would not be desirable to stipulate that the sending State must be informed whenever a member of the consulate is deemed unacceptable.

Information of this kind could be more detrimental to good relations between the States than the absence of such information.

Article 26. It is desirable to stress that upon severance of diplomatic relations there is no interruption of consular relations and that the consular sections of diplomatic missions then continue to function as consulates.

In such cases, it is necessary to make contact possible between consulates and the representatives of the protecting Power.

Article 29. It would be desirable to decide in the Commission whether the head of the consular post has the right to fly the national flag on his personal means of transport, since this does not necessarily follow from paragraph 2 of this article.

Article 31. The Government of the Federal People's Republic of Yugoslavia considers that it would be useful to make provision for authorization to be granted, either by the head of the consular post or some other person authorized for this purpose, to representatives of the authorities of the receiving State to enter the consular premises in case of fire or similar emergency.

Article 33. This article would be more complete if the definition of inviolable articles were incorporated separately in the body of the provision.

Article 35. With regard to this article, the Government of the Federal People's Republic of Yugoslavia considers that it should be stated clearly that the consul may be prevented from entering prohibited zones even if they are situated within his consular district and his intention to enter them is based on the need to exercise his consular functions.

Article 37. Paragraph 2 of this article, which deals with the question of the consul's communication with the central authorities, could be completed as follows: " or such communication is indispensable in connexion with consular functions and relates to the competence of the central authorities to rule in the first instance on the scope of the consular activity."

Article 40. In the opinion of the Government of the Federal People's Republic of Yugoslavia, it should be explicitly stated that it is possible for the sending State to waive the immunity referred to in this article and also that it must waive the same in the case of an offence committed by a consular official whenever the sending State has no justifiable interest in preventing legal proceedings from being taken. Provision should also be made to cover the obligation of the sending State to try any official who could not be tried, or to whom the penalty could not be applied, in the receiving State because of his immunity.

With regard to the variants in paragraph 1 of article 40, the Government of the Federal People's Republic of Yugoslavia considers that it would be desirable to state that the consul may not be imprisoned except in a case where he has committed an offence punishable by a minimum sentence of five years' imprisonment.

Article 41. It would be desirable, in order to make the text clearer, to add at the end of the article, which refers to the immunity from jurisdiction of consular officials, the term " consular " before the word " functions ".

Article 42. The Government of the Federal People's Republic of Yugoslavia considers it desirable to provide, in the interests of establishing the truth in a dispute at law, that the consul may, instead of giving evidence at his office or residence, submit a written declaration.

The effect of this could be that consular officials would less frequently refuse to give evidence.

Finally, in the opinion of the Government of the Federal People's Republic of Yugoslavia it would be desirable to insert in article 42 a rule stipulating that, in a case where a consular official refuses to give evidence or claims that the evidence is connected with the exercise of his functions, official correspondence or documents, the receiving State may request the sending State through the legal diplomatic channel either to instruct the consul to give evidence or to release him from official secrecy whenever the sending State does not consider this secrecy to be of essential importance to its interests. This is suggested in view of the fact that exemption from the duty to give evidence cannot be considered a personal privilege of the consul; such exemption is an immunity granted in the interests of the service, and it is for the sending State to judge whether this interest really exists.

It would also be desirable to provide that the consul has the right to demand exemption from the requirement of testifying under oath.

Article 45. In the opinion of the Government of the Federal People's Republic of Yugoslavia, it should be stated that the consul is liable to taxation on capital invested for gainful purposes or deposited in commercial banks.

Article 46. It would be desirable to add at the end of paragraph (*b*) of this article the words "and foreign motor vehicles". It should also be specified that the " articles intended for their establishments " must have been actually received.

If such objects, after being imported by the consul free from customs duties, are sold, it should be specified that customs duties must be paid or that the sale of such articles may only take place in conformity with the customs regulations of the receiving State.

Article 47. The exemption from succession duties on the movable property of the consul and members of his family could be restricted to property intended for direct personal use, or for the household of the person inheriting the property.

Article 50. The Government of the Federal People's Republic of Yugoslavia considers that it should be specified which persons are to be considered members of the consul's family.

Article 52. In the opinion of the Government of the Federal People's Republic of Yugoslavia, this article does not apply to a consul's private visits to third States.

Article 53. It is indispensable to insert in this article a provision to the effect that consuls have no right to provide asylum.

Article 54. In the opinion of the Government of the Federal People's Republic of Yugoslavia, the provisions of article 31 of the draft on the inviolability of consular premises can only apply in the case of honorary consuls, to premises intended solely for the exercise of consular functions.

Article 59. Paragraph 2 of the commentary, which stresses that this article does not apply to nationals of the receiving State, should be inserted in the body of this article as paragraph (*c*).

Article 65. With respect to the relationship between the present articles and bilateral conventions, the Government of the Federal People's Republic of Yugoslavia considers that the first text is more acceptable, and that it could terminate with the following phrase: " provided that the minimum guarantees offered by this convention are at all times extended ". Alternatively, it could be stressed that future conventions may be concluded provided that they are not, at least, contrary to the basic principles of this convention.