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

Topic:
Consular intercourse and immunities

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

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[Agenda item 2]

DOCUMENT A/CN.4/L.82

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[Original text: French]
[14 May 1959]

Article 1

In paragraph 2 (i), insert the word "normally" before the word "includes";
(ii) add the following text at the end of the paragraph:
"; but consular relations may subsist in the case of severance of diplomatic relations and may be established in the case of the non-recognition or de facto recognition of the receiving State without implying de jure recognition ".

Add the following new paragraph:
"4. Consular officers are officials of the Governments by which they are sent ".

Article 8

(i) Delete the words "without giving reasons for its refusal ".
(ii) Add the sentence: " If the exequatur is refused, the reasons for the refusal shall, as far as possible, be stated, and the exequatur cannot be refused systematically."

Article 13

I prefer the second variant.

Article 14

Replace the text of the article by the following:
"The receiving and the sending States may, where appropriate, if the sending State has no diplomatic mission in the receiving State, agree with each other to entrust to the consuls a mission of a diplomatic nature, such agreement to be without prejudice to the question of recognition."

Article 17

In paragraph 1, insert after the words "of that State's laws" the words: "or of the international obligations attaching to his office ".
Add the following new paragraph:
"3. The withdrawal of the exequatur shall be regarded as an individual measure only and in no case as a measure taken for the purpose either of modifying the stipulations of the consular convention, or of obstructing the normal discharge of consular functions. Consequently, the withdrawal of the exequatur cannot be a wholesale measure ".

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