



INTERNATIONAL LAW COMMISSION
Twelfth session
Item 2 of the Agenda

PROVISIONAL DRAFT ARTICLES RELATING TO
CONSULAR INTERCOURSE AND IMMUNITIES

Texts prepared by the Drafting Committee and submitted to the
Commission for its consideration

Article 1

Replace sub-sections (f) to (k) by the following provisions:

(f) The term "consul", except in article 6, 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 11 or 12 of this draft. A consul may be a career consul or an honorary consul.

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

(h) The expression "members of the consulate" means the head of consular post and the members of the consular staff;

(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;

(j) The expression "employee of the consulate" means any person who performs administrative or technical work in a consulate, or belongs to the service staff;

(k) The expression "members of the consular staff" means the consular officials (other than the head of post) and the employees of the consulate;

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

CHAPTER I

SECTION I: CONSULAR INTERCOURSE IN GENERAL (continued from eleventh session)

Article 19

Appointment of the consular staff

Subject to the provisions of articles 9, 19.a and 20, the sending State may freely appoint the members of the consular staff.

Article 19 a

Size of staff

In the absence of agreement as to the size of the consular staff, the receiving State may refuse to accept a size exceeding what is reasonable and normal, having regard to circumstances and conditions in the consular district, and to the needs of the particular consulate.

Article 20

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 such case, the sending State shall, as the case may be, recall the person concerned or terminate his functions with 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.

Article 21

Notification of the arrival of members of the consulate
and of the termination of their functions

1. The arrival of members of the consulate after their appointment to the consulate, and the termination of their functions with the consulate, shall be notified to the Ministry of Foreign Affairs, or the authority designated by that Ministry. The same shall apply in the case of the arrival of members of their families and of their private staff, and in the event of the latter ceasing to form part of their households.

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

SECTION II: CONSULAR PRIVILEGES AND IMMUNITIES

Article 22 (incorporating article 23)

Use of the national flag and of the State coat-of-arms

1. The consulate shall have the right to fly the national flag and to display the State coat-of-arms, with an inscription identifying the consulate, on the building occupied by the consulate and at or near the entrance door.
2. The head of post shall have the right to fly the national flag on his means of transport.

SUB-SECTION A: CONSULAR PREMISES AND ARCHIVES

Article 24 (adopted at eleventh session)

Accommodation

Article 25

Inviolability of consular premises

1. The consular premises shall be inviolable. The agents of the receiving State may not enter them, save with the consent of the head of post.
2. The receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consulate or impairment of its dignity.
3. The consular premises and their furnishings shall be immune from any search, requisition, attachment or execution.

Article 26

Exemption in respect of the consular premises from taxation

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.

Article 27

Inviolability of the official correspondence, archives and documents

The official correspondence, archives and documents of the consulate shall be inviolable.

SUB-SECTION B: FACILITATION OF THE WORK OF THE CONSULATE, FREEDOM OF
MOVEMENT AND COMMUNICATION

Article 28

Facilities

The receiving State shall accord full facilities for the performance of the consular functions.

Article 28a

Free movement

Subject to its laws and regulations concerning zones, entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure to all members of the consulate freedom of movement and travel in its territory.

Article 29

Freedom of communication

1. The receiving State shall permit and protect free communication on the part of the consulate for all official purposes. In communicating with the Government, the diplomatic missions and the other consulates of the sending State, wherever situated, the consulate may employ all appropriate means, including diplomatic or other special couriers, the consular bag and messages in cipher.
2. The bags containing the consular correspondence shall not be opened or detained.
3. These bags, which must bear visible external marks of their character, may only contain documents or articles intended for official use.

Article 30

Communication with the authorities of the receiving State

1. In the exercise of the functions defined 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.

Article 30a

Communication and contact with nationals of the sending State

[To be inserted after article 4 as article 4 ter.]

1. With a view to facilitating the exercise of the consular functions relating to the protection of the nationals of the sending State who are present in the consular district:
 - (a) Nationals of the sending State shall be free to communicate with and to have access to the competent consul, and the consul shall be free to communicate with and, where appropriate, to have access to the said nationals;
 - (b) The competent authorities shall inform the competent consul of the sending State without undue delay if, within his district, a national of that State is committed to custody pending trial or to prison. Any communications addressed by the person in custody or in prison to the consul shall be forwarded by the said authorities without undue delay;
 - (c) The consul shall be permitted to visit a national of the sending State who is in custody or imprisoned, to converse with him and to arrange for his legal representation. He may also visit any national of the sending State who is imprisoned within his district in pursuance of a judgment.
2. The freedoms referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must not nullify these freedoms.

Article 31

Levying of consular fees and charges and exemption
of such fees and charges from taxes and dues

1. The consulate is entitled to levy in the territory of the receiving State the fees and charges provided by the law of the sending State for consular acts.
2. Neither the receiving State nor any territorial or local authority shall levy any tax or due on the consular fees and charges referred to in paragraph 1 or in respect of the issuance of receipts relating thereto.

SUB-SECTION C: PERSONAL PRIVILEGES AND IMMUNITIES

Article 32

Special protection and respect due to consuls

The receiving State is bound to accord special protection to consuls by reason of their official position, and to treat them with due respect. It shall take all reasonable steps to prevent any attack on their persons, freedom or dignity.

Article 33

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 5 years' imprisonment.
2. Save in the case specified in paragraph 1 above, the officials referred to in that paragraph shall not be committed to prison or subjected to any other restriction upon their personal freedom except 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, that official shall 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 consular functions as little as possible.
4. In the event of the arrest or detention pending trial of, or of criminal proceedings being instituted against, a member of the consular staff, the receiving State shall notify the head of the consular post. Should the latter be himself the object of the said measures, the receiving State shall notify the diplomatic representative of the sending State.

Article 34

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.

Article 35

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

Members of the consulate, members of their families and their private staff shall be exempt from all obligations under local legislation in the matter of the registration of aliens, residence permits and work permits.

Article 36

Social security exemption

1. Subject to the provisions of paragraph 3 of this article, the members of the consulate and the members of their families belonging to their household, shall be exempt from the social security system in force in that State.
2. The exemption provided for in paragraph 1 of this article shall also apply to members of the private staff who are in the sole employ of members of the consulate, provided
 - (a) that they are not nationals of or permanently resident in the receiving State, and
 - (b) that they are covered by the social security system of the sending State or of a third State.
3. Members of the consulate who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall be subject to the obligations which the social security laws of the receiving State impose upon employers.
4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system, provided that such participation is allowed by the laws of the receiving State.

Article 37

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 44 concerning the succession to movable property left by members of the consulate or by members of their families;
- (d) taxes and dues on private income having its source in the receiving State;
- (e) charges levied for specific services provided by the receiving State or by public services;
- (f) registration, court or record fees, mortgage dues and stamp duty, subject to the provisions of article 26.

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.

Article 38

Exemption from customs duties

The receiving State shall, in accordance with the provisions of its legislation, grant to members of the consulate who do not carry on any gainful private activity, exemption from customs duties, and from all other charges and taxes chargeable at the time of customs clearance, on articles intended

- (a) for the use of a consulate of the sending State;
- (b) for the personal use of members of the consulate, and of members of their families belonging to their households, including articles intended for their establishments.

Article 39

Exemption from personal services and contributions

The receiving State shall

- (a) exempt members of the consulate, members of their families, and members of the private staff who are in the sole employ of members of the consulate from all personal services and from all public service of any kind whatsoever;
- (b) exempt the persons referred to in sub-paragraph (a) of this article from such military obligations as those connected with requisitioning, taxation and billeting.

Article 40

Liability to give evidence

[to be placed after article 34]

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.

Article 41

Acquisition of nationality

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.

Article 42

Members of the consulate and 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 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.

Article 43

Duration 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. Persons belonging to the household of a member of the consulate shall enjoy such privileges and immunities as soon as they enter the territory of the receiving State, whether they are accompanying the said member of the consulate or proceeding to join him. If such a person is in the territory of the receiving State at the moment when he joins the household of the member of the consulate, he shall enjoy the privileges and immunities as soon as his name 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 have 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.

Article 44Estate of a member of the consulate or of a member of his family

[to be inserted after article 33]

In the event of the death of a member of the consulate or of a member of his family who was not a national of the receiving State, and did not carry on any gainful private activity there, the receiving State,

- (a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the country and the export of which was prohibited at the time of his death;
- (b) shall only levy estate, succession or inheritance duties on immovable property situated in its territory.

Article 45Obligations 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 which he enjoys by virtue of article 33 above, and such other immunities as may be required to ensure his transit or return.
2. The third State shall accord the necessary facilities to the members of the family of such consular official who accompany him or who travel separately to join him or to return to their own country.
3. In the circumstances specified in paragraph 1 above, third States shall not hinder the transit through their territories of other members of the consulate and of members of their families.
4. Third States shall accord to correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as are accorded by the receiving State.

SECTION III: DUTIES OF THE CONSULATE AND OF ITS MEMBERS TOWARDS THE RECEIVING STATE

Article 46Respect for the laws and regulations of the receiving State

1. Without prejudice to the exercise of the consular functions or the privileges and immunities recognized by the present articles and by other relevant international agreements, it is the duty of all persons enjoying consular privileges and immunities

to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. The consular premises shall not be used in any manner incompatible with the consular functions as specified in the present articles or in other rules of international law.

3. The rule laid down in paragraph 2 above shall not exclude the possibility of offices of other institutions or agencies being 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 shall not, for the purposes of the present articles, be deemed to form part of the consular premises.

[Article 47 - omitted]

Article 48

Obligations of the receiving State in certain special cases

(to be inserted after article 4 as article 4 bis)

The receiving State shall have the duty

- (a) in the case of the death in its territory of a national of the sending State, to send a copy of the death certificate to the consulate in whose district the death occurred;
- (b) to inform the competent consulate without delay of any cases where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State;
- (c) if a vessel flying the flag of the sending State is wrecked or runs aground on the coast or in the territorial sea of the receiving State, to inform without delay the consulate nearest to the scene of the occurrence.

SECTION IV: END OF CONSULAR RELATIONS AND IMMUNITIES

Article 49

Termination of a consul's functions

1. The functions of the head of post shall be terminated on the following grounds, 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 be terminated if the receiving State gives notice under article 20 above that it considers the said functions to be terminated.

Article 50

Maintenance of consular relations in the event of
the severance of diplomatic relations

The severance of diplomatic relations shall not ipso facto involve the severance of consular relations.

Note: It is understood that this article may later be combined with the provision of article 2, paragraph 2, if the Commission approves the latter.

Article 51

Right to leave the territory of the receiving State
and facilitation of departure

1. Subject to the application of the provisions of article 33, 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.

Article 52

Protection of consular premises and archives and of the interests
of the sending State

1. In the event of the severance of consular relations between the sending State and the receiving State,

(a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the consular property and archives;

(b) the sending State may entrust the custody of the consular premises and of the consular property and archives to the consulates or diplomatic mission of a third State acceptable to the receiving State;

(c) the sending State may entrust the protection of its interests to the consulates or diplomatic mission of a third State acceptable to the receiving State.

2. The provisions of paragraph 1 of the present article shall apply also if a consulate of the sending State is closed temporarily or permanently, and the sending State has no diplomatic mission or other consulate in the receiving State.

3. If the sending State is not represented in the receiving State by a diplomatic mission but has another consulate in that State, that consulate may be entrusted with the custody of the archives of the consulate which has been closed and, with the consent of the receiving State, with the exercise of consular functions in the district of that consulate.

SECTION V

Article 53

Non-discrimination

1. In the application of the present articles, the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place where the action of the receiving State consists in the grant, on a basis of reciprocity, of privileges and immunities more extensive than those provided for in the present articles.