UNITED NATIONS

GENERAL ASSEMBLY

Distr.
GENERAL

A/5171
21 August 1962
ENGLISH
ORIGINAL: ENGLISH/FRENCH/
RUSSIAN

Seventeenth session

CONSULAR RELATIONS

Comments by Governments on the draft articles on consular relations adopted by the International Law Commission at its thirteenth session in 1961

CONTENTS

NOTE BY THE SECRETARY-GENERAL

1. At its 1081st plenary meeting on 18 December 1961, the General Assembly adopted resolution 1685 (XVI) concerning the international conference of plenipotentiaries on consular relations to be convened in Vienna at the beginning of March 1963. In operative paragraph 2 of that resolution, the General Assembly requested Member States to submit to the Secretary-General written comments concerning the draft articles on consular relations adopted by the International Law Commission at its thirteenth session in 1961.[1/] In order that they may be circulated to Governments prior to the beginning of the seventeenth session of the General Assembly, comments were to be submitted before 1 July 1962.

2. In pursuance of operative paragraph 2 of the above-mentioned resolution, the Secretary-General, by a note verbale of 21 February 1962, requested the Governments of Member States to communicate their written comments before 1 July 1962.

3. By 10 August 1962, the Governments of Afghanistan, Belgium, Canada, Congo (Brazzaville), Czechoslovakia, Denmark, Finland, Luxembourg, Madagascar, the Netherlands, Norway, Pakistan, Poland, Sierra Leone, the Ukrainian Soviet Socialit Republic, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Yugoslavia had communicated their observations on the draft. These comments are set out in part I of the present document.

4. Comments were also received from Switzerland, a non-Member State invited to participate in the international conference of plenipotentiaries. The comments of Switzerland are contained in part II of the present document.

5. In a letter addressed to the Secretary-General, the Government of Tanganyika stated that it had no observations to make.

6. Any comments received after 10 August 1962 will be circulated later as addenda to the present document.

1/ Official Records of the General Assembly, Sixteenth Session, Supplement No. 9 (A/4843), para. 37.

1. AFGHANISTAN

Transmitted by a note verbale of 4 June 1962 from the Permanent Mission to the United Nations

/Original: English/

The representative of Afghanistan in the Sixth Committee has already stated the views of the Afghan Government on the matter. The Government of Afghanistan considers the draft articles a good basis for a convention which could be prepared by a special conference, preferably to be held in 1963 or later. On the point of participation in the conference, the Government of Afghanistan reaffirms its position in favour of the principle of universality in all international conferences.

The Government of Afghanistan reserves its right to make further detailed observations on the draft articles at the appropriate time.

2. BELGIUM

Transmitted by a note verbale of 3 July 1962 from the Permanent Representative to the United Nations

/Original: French/

INTRODUCTION

The Belgian Government has studied with the greatest care the revised text of the draft articles prepared by the International Law Commission at its thirteenth session, which took place in Geneva from 1 May to 7 July 1961.

It notes with satisfaction that a very large number of the comments communicated in a letter dated 11 April 1961 from the Permanent Representative of Belgium to the United Nations have been accepted.

The Belgian Government has every reason, therefore, to be pleased with the new version of the draft articles. Some articles, however, call for the following observations.

Preamble

The Belgian Government would like a preamble to be placed at the beginning of the proposed convention, as in the Vienna Convention on Diplomatic Relations of 18 April 1961.

Article 1

Undoubtedly an attempt should be made to profit by the experience gained during the 1961 Vienna Conference on Diplomatic Intercourse and Immunities, particularly as regards the definitions of the different categories of persons employed by consulates.

Accordingly, the Belgian Government agrees to the present wording of paragraphs (a) and (b) of article 1 and proposes that the subsequent paragraphs should be worded as follows:

"(c) 'Head of consular post' means the person charged by the sending State with the duty of acting in that capacity;

(d) 'Members of the consulate' means the head of the consular post and the members of the staff of the consulate;

(e) 'Members of the staff of the consulate' means the consular officials, the consular employees and the members of the service staff of the consulate;

(f) 'Consular official' means any person, including the head of the consular post, entrusted with the exercise of consular functions in a consulate;

(g) 'Consular employee' means any person required to perform administrative or technical tasks in a consulate;

(h) 'Members of the service staff' means the members of the staff of the consulate in the domestic service of the consulate;

(i) 'Private servant' means a person employed exclusively in the private service of a member of the consulate who is not an employee of the sending State."

It does not seem advisable, on the other hand, to include a definition of consular archives in article 1. It appears to be very difficult to define this notion and any definition might lead to difficulties when applied.

Article 15

1. The Belgian Government wishes to draw attention to the fact that there is a considerable difference between diplomatic agents and consular officials. It prefers the former wording of paragraph 1, which appeared as paragraph 1 of article 16 in the text prepared by the International Law Commission at its twelfth session (25 April-1 July 1960). That text said:

"If the position of head of post is vacant, or if the head of post is unable to carry out his functions, an acting head of post may act provisionally as head of the consular post."

What is specified in the present text of article 15, paragraph 1, has no legal value at all, since it has been thought necessary to stipulate that this choice will be made "as a general rule

The Belgian Government would therefore like the last two sentences of paragraph 1 to be deleted, particularly since in Belgium the Minister for Foreign Affairs has complete freedom in the choice of an acting head of post. If these provisions were retained, the Belgian Government would be obliged to enter an express reservation.

2. The Belgian Government wishes to point out, in addition, that an acting head of post is not entitled under Belgian municipal law, to the tax privileges mentioned in articles 48, 49 and 50, among others, if he does not fulfil the conditions laid down in those articles.

It must therefore enter a reservation with respect to paragraph 3 of article 15.

Article 16

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

2. Unlike article 17 of the draft prepared by the International Law Commission at its twelfth session, this text relates only to heads of consular posts. It would be more logical therefore to insert article 21 immediately after article 16.

Article 17

In paragraph 2, the word "inter-governmental" should be replaced by "international".

Article 19

1. In accordance with the proposed changes in article 1, the Belgian Government suggest that the end of paragraph 1 of article 19 should read as follows:

" ... the members of the staff of the consulate".

2. With regard to article 19 as worded at present, provision should be made for current practice concerning the appointment and admission of consular officials and employees parallel with article 12, which relates to heads of consular posts.

The following phrase should therefore be added to paragraph 1:

" ..., who shall be admitted to the exercise of their functions upon notification of their appointment in accordance with article 24".

That provision seems to be consistent with the spirit of the draft, and in particular with article 24.

Article 20

The Belgian Government considers that this article could be deleted, since it deals with a matter which is governed solely by the internal law of States and

should be settled by a bilateral agreement between the States concerned in a spirit of mutual understanding.

Article 21

As indicated above, this article might be placed after article 16.

Article 31

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 becomes the owner. The principle is, therefore, that the exemption may be granted only to the foreign State.

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

2. 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 made in article 30, paragraph 3.

If that suggestion is acceptable, a paragraph 3 might be added reading 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 35

1. 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 3 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.

Article 36

Paragraph 1 (c) of this article should state explicitly that consular officials have the right not merely to visit and converse with a national of the sending State who is in custody or in prison, but also to write to such a person.

The Belgian Government wishes to emphasize the importance of such an improvement to the text and therefore proposes that sub-paragraph (c) should be amended to read as follows:

> "Consular officials shall have the right to visit a national of the sending State who is in custody or in prison, to converse and communicate with him and to arrange for his legal representation. They shall also have the right ... ".

Article 37

Sub-paragraph (a) of this article deals with the subject of the estate of a deceased national of the sending State, but not with that 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, by means of a new sub-paragraph reading as follows:

> "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."

Article 38

The well-established principle mentioned in paragraph 1 of the commentary should be incorporated in the text of this article.

Since, moreover, paragraph 2 of the article covers all the cases included in paragraph 1, it is to be feared that the present text as a whole may go further than the International Law Commission intended.

The Belgian Government therefore considers that article 38 should be drafted as follows:

"1. In the exercise of the functions specified in article 5, consular officials may address themselves to:

(a) the local authorities of their district;

(b) the authorities which are competent under the law of the receiving State.

2. The procedure to be observed by consular officials in communicating with the authorities referred to in paragraph 1 (b) of this article shall be determined by the relevant international agreements and by the municipal law and usage of the receiving State."

Article 41

1. In paragraph 1 of this article, in the French text, the word "préventive" should be in the plural. That change would be in accordance with paragraphs 5, 7 and 13 of the commentary on the article.

2. Paragraph 13 of the commentary states that most of the Governments which commented on the draft articles preferred the second alternative given for the last words of paragraph 1.

The Belgian Government notes, however, that only five States, out of the nineteen which submitted their comments, opted for the variant "grave offence", in preference to "grave crime", as the present text says.

It ought to be possible to come to an agreement regarding the wishes of States in this highly controversial matter. Is it their opinion that the personal inviolability of consular officials should be kept to a minimum or do they think that it should be extended by using the phrase "except in the case of a grave offence"? Since each State would be able to interpret the expression "grave offence" in accordance with its municipal law, the result would be that this provision would be applied in a great variety of ways.

If, however, it proves impossible to reach agreement on the real, practical import of the term "grave offence", its meaning might be stated in a protocol annexed to the Convention.

Article 42

In the French text, the word "préventive" should be in the plural, as noted in the first comment on article 41.

Article 52

At the Vienna Conference on Diplomatic Intercourse and Immunities, Belgium said that it was inappropriate to include an article on nationality in the body of the Convention on Diplomatic Relations. It could not even accept the text of the Optional Protocol concerning acquisition of nationality drawn up by that Conference.

The same reservation must be made by the Belgian Government regarding the Convention on Consular Relations.

The Belgian Government is therefore in favour of simply deleting article 52.

Article 59

Regarding this article, the Belgian Government would draw attention to the comment made under article 31 (2).

Article 66

A study of this article shows that article 55, paragraphs 2 and 3, should be applicable to honorary consular officials. Those paragraphs should therefore be referred to in this article.

Similarly, article 55 should be mentioned in article 57, paragraph 1, and article 66 should say:

> "Without prejudice to their privileges and immunities, honorary consular officials may not misuse their official position for the purpose of securing advantages in any private activities in which they may engage."

Article 68

Paragraph 1 of this article should be worded as follows:

> "The provisions of articles 5, 7, 36, 37 and 39 of the present Convention apply also ... ".

Article 69

The Belgian Government suggests that paragraph 1 should provide that all the members of the consulate shall 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 might therefore read as follows:

> "Except in so far as additional privileges and immunities may be granted by the receiving State, members of the consulate who are nationals of the receiving State shall enjoy ... ".

This change is particularly important, since in most cases it will be exceptional for consular officials, apart from honorary consular officials, to be nationals of the receiving State, whereas the subordinate staff will almost always be recruited locally.

Article 70

The Belgian Government considers that the provisions of this article should be modificed to bring them into closer conformity with article 47 of the Vienna Convention on Diplomatic Relations.

3. CANADA

Transmitted by a note verbale of 28 June 1962 from the Pernament Mission to the United Nations

[Original: English]

Article 1

Paragraph 1

It would be preferable to substitute "Consular post" for the word "Consulate" in sub-paragraph (a) of paragraph 1. It is an anomaly to refer to a consulate-general, or a vice-consulate as a "consulate". It would be preferable to use the general term "consular post" throughout the Convention in the same manner as the word "mission" is used throughout the Vienna Convention. Consequently, throughout the Consular Convention the word "consulate" should be deleted wherever it appears, and the words "consular post" submitted therefor. In order to take account of the earlier suggestion that the words "consular establishment" be included in the definition, it is suggested that sub-paragraph (a) should read as follows:

> "'Consular post' means a consulate-general, a consulate, a vice-consulate, a consular agency, or any other consular establishment."

It would be preferable for the definition in sub-paragraph (c) of "head of consular post" to read as follows:

> "Means any person charged by the sending State with the duty of acting in that capacity."

This suggested definition makes it clear that the "head of consulate post" refers to the titular head of post in accordance with the meaning of article 8 of the Convention.

Sub-paragraph (j) is suitable subject to the comments on article 31.

Sub-paragraph 3

This would be suitable if the phrase "or permanent residents" were inserted after the word "nationals".

See also comments on article 69.

Article 5

A general definition of consular functions would appear to be preferable to a detailed list of functions; however, it would seem important to draw a distinction between those functions that are so inherent and universal to the consular position that they are not subject to the laws of the receiving State, and those functions which would be regarded as subject to the laws of the receiving State. In keeping with this objective, the Canadian Government proposes the following amended version of article 5:

> "The task of consuls is to protect, 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 in accordance with international law. In addition, the task of consuls is 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."

It is preferable to see the main consular functions of protection of the rights and interests of the sending State and its nationals stated as general principles of international law and not explicitly subject to the laws of the receiving State. The purpose of this amendment is to encourage the development of the recognition of the basic functions of consular officers as general principles of international law and to ensure that consular officers are not prevented from exercising these essential functions by restrictive national laws. However, because many of the other functions of a consul are closely linked with the relevant municipal law of the receiving State, they should be declared specifically subject to such laws, for example, those functions relating to minors, estates, service of judicial documents.

If, however, it is decided that detailed definitions of consular functions along the lines of the definitions embodied in the International Law Commission's draft are to be included in the Convention, the Canadian Government is in agreement with such definitions subject to the following comments.

Sub-paragraph (c) is suitable, subject to the addition of the words "by all lawful means" between the words "ascertaining" and "conditions" in order to make it explicit that consular officers are subject to international law and the law of the receiving State and to bring the sub-paragraph into line with the similar provision of article 3 in the Vienna Convention on Diplomatic Relations.

Article 7

The Canadian Government would wish to have it made clear that in those States where Great Britain has been performing consular functions on behalf of Canada for some years before the Convention on Consular Relations comes into force, prior consent is assumed to have been given by the receiving State by implication.

Article 8

The phrase "consular official" should be substituted for the phrase "head of a consular post". Far too much emphasis is placed on the status of the head of consular post in this draft Convention. Furthermore, in Canada it is not only the head of post but all consular officials who are required to be admitted individually to the exercise of their functions by the Canadian Government, and we would wish to retain this right to exercise our discretion in this matter. Consequently the phrase "consular official" should be substituted for the phrase "head of consular post" where appropriate in certain of the articles of the Convention.

Article 9

The receiving State should have the opportunity to accept or reject any change in the designation of a head of consular post. For example it would be preferable to have inserted a new sub-paragraph 2 of the article along the following lines:

"A head of consular post must be appointed to one of the above classes and be recognized in that capacity by the receiving State."

The article as amended would therefore read:

"1. Head of consular posts are divided into four classes:

(1) Consuls-general;
(2) Consuls;
(3) Vice-consuls;
(4) Consular agents.

"2. A head of consular post must be appointed to one of the above classes and be recognized in tha capacity by the receiving State.

"3. The foregoing paragraph in no way restricts the power of the Contracting Parties to fix the designation of the consular officials other than the head of post."

Article 10

The Canadian Government would prefer the substitution of the phrase "consular official" for the phrase "head of a consular post" in this article. The Canadian Government does not at present insist upon the receipt of a consular commission or similar instrument from a sending State for the appointment of consular officials, provided some type of communication is received from a competent authority of the sending State concerning the appointment of the consular official; and in its present form, the article is not in conflict with Canadian practice. However, for the sake of uniformity we would prefer to see the phrase "consular officials" used. Sub-paragraph 3 provides that the notification does not necessarily have to be in the form of a consular commission or similar instrument, so that those States who do not grant such documents to their consular officials, other than the head of post, will not in any case be affected by this amendment.

Article 13

The Canadian Government would prefer to see the phrase "consular official" substituted wherever the phrase "head of consular post" appears. The Canadian Government disagrees with the view that full privileges and immunities should not be extended to a consular official until after he has received the exequatur. The receiving State should be under a duty to accord the privileges and immunities normally conferred on consular officials as soon as provisional admittance is granted.

Article 15

In the Canadian Government's view a person who is not a consular official could not normally be appointed as an acting head of consular post. In line with this, Canada would like to see the phrase "as a general rule" in paragraph 1 of this article deleted and the last sentence of paragraph 1 amended along the lines of paragraph 2 of article 19 of the Vienna Convention on Diplomatic Relations to read as follows:

"In the exceptional cases where no such officials are available to assume this position, a consular employee 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 consular post."

The Canadian Government has difficulty in accepting the argument put forward in paragraph 2 of the International Law Commission's commentary to support paragraph 2 of this article, since it considers that there are important differences between the functions of Chargé d'Affaires a. i. and Acting Head of a consular post. Despite some misgivings about the justification for the paragraph, from the viewpoint of administrative convenience it appears to be satisfactory.

Paragraph 3 is not considered necessary so far as Canada is concerned since under Canadian law and the regulations affecting privileges and immunities, no special rights are granted to consular officials solely by fact of their being a head of consular post. Nevertheless Canada would not object to the sub-paragraph in its present form.

Article 17

The Canadian Government would prefer to have the provisions of this article made applicable to all consular officials, so that diplomatic acts could be performed by others than only the head of consular post. Furthermore this preference is in line with our general view that emphasis should not be placed solely on the head of a consular post. We would also prefer to see the essence of paragraph 6 of the commentary on this article embodied in the article itself by amending paragraph 1 of the article to read as follows:

1. "In a State where the sending State has no diplomatic mission, a consular official may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts."

Article 19

It is Canadian practice to insist on the granting of the exequatur, i.e. final recognition, to all foreign consular officials, unless they are concurrently diplomats. In the view of the Canadian Government provision should be made in paragraph 1 of this article for the prior approval by the receiving State of each official appointed to a consular post. The principle enunciated in paragraph 7 of the commentary is not in accord with our view of what the position should be, nor with Canadian practice.

Article 31

This article is suitable, provided that it is not intended to give an exemption for property used for residential purposes. The article must be read in conjunction with article 1. 1(j) which states "'Consular premises' means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the consulate". Where a part of a residential property is used for a consular office it should, of course, be exempted to the extent that it is so used. The present text appears to accomplish this. It should be clearly understood, however, that "used for the purposes of the consulate" does not include residential use by members of the consulate.

Article 36

The freedom of communication between consuls and nationals of the sending State is so implicit in the exercise of consular functions that its absence would make the establishment of consular relations quite meaningless. For this reason the Canadian Government recommends the deletion of the phrase "in appropriate cases" in sub-paragraph (a) of this article. A consulate should have the right of free access to its own nationals; and this right must not be unduly restricted by the authorities in the receiving State. The French version of the phrase - "le cas échéant" - in the draft article seems to be more in conformity with Canadian views of this matter.

Although the Canadian Government is in favour of the general principle expressed in sub-paragraph (b), (but, not of course in the case where a detained person is unwilling to communicate with the consular officials of the sending State) the specific obligations imposed on a receiving State under this sub-paragraph are somewhat unrealistic. The Canadian Government suggests the limitation of this obligation to the instances where a person in prison, custody or detention is mentally or physically incapacitated. An amendment along the following lines might achieve the purpose:

"The competent authorities shall inform any person in prison, custody or detention of his right to communicate with the consular officials of the sending State, and that person shall be allowed to do so if he wishes. A person in prison, custody, or detention shall have the right to communicate freely with the consular officials of the sending State. Where a person in prison, custody, or detention appears to be incapable, by reason of physical or mental incapacity, of communicating with the consular officials of the sending State, the authorities of the receiving State shall so notify the relevant consular officials. Any communications addressed to the consulate by the person in prison, custody or detention shall be forwarded by the said authorities without undue delay."

Article 37

The practicality of the obligation imposed upon receiving States under sub-paragraph (a) of the article is questionable because, for example, so many persons die every day who are not known to be foreign nationals. The important thing would seem to be that the consular official should be granted full facilities (in accordance with article 33) to check the vital statistics records whenever he has the need to do so. In a majority of States it would seem to be almost impossible to insist that the relevant authorities of the receiving State would have to notify the appropriate consular officer each time it comes to their attention that a national of the consular officer's State dies. The obligation imposed on the receiving State would seem to be out of all proportion to the benefits which may be derived from it by the sending State; and such benefits are not essential to the performance of the main consular functions.

Article 43

It might be preferable to see the phrase "of official duties" substituted for the phrase "of consular functions" on the grounds that the former phrase would provide a wider basis of immunity. For example, this amendment might serve to avoid possible disputes about whether making a public speech is a normal consular function.

Article 44

The provisions of this article appear to extend the privilege of not giving evidence beyond the rules of customary international law as known at present. Its effect seems to be to extend to all consular officials, at any time, the right to decline to give testimony before a court, although they would still be

required to give written evidence in certain cases. The Vienna Convention provided that there is no obligation on a diplomatic officer to testify in any circumstances. Under existing customary international law there is no such wide exemption for consular officials, although this article does extend to consular officials an exemption from testifying vive voce.

The word "undue" might be inserted between the words "avoid" and "interference" in paragraph 2 of this article in order to emphasize that consular officials should assist in the administration of justice, subject to care being taken by the authorities of the receiving State not to unduly inconvenience them in the performance of their duties.

The Canadian Government can agree with this article on the understanding that paragraph 3 of the article is to be interpreted broadly to mean that there is no obligation on a consular official to testify in relation to anything which might prove embarrassing to his Government, because such evidence would obviously be "concerning a matter connected with the exercise of his functions", although it might not necessarily be evidence concerning an act he witnessed while actually performing his official duties at the time. For example, if a consular official were to witness an attack by local citizens on a foreign diplomat, even although the consular official were not on official duty at the time, he should not be compelled to give evidence about the incident, if it might embarrass his Government in some way.

Article 47

The principles embodied in this article are acceptable. It appears, however, that there is a point to be clarified, although this may be only a matter of drafting.

The commentary says that the exemption for members of the consulate from the social security provisions of the receiving State is justified because it would be difficult for them to comply with the social security provisions of the receiving State that apply to them. The draft, however, seems to go further than this. Instead of saying "the members of the consulate shall with respect to services they render for the sending State ..." says "... with respect to services rendered ...". This would appear to exempt, say, the head of post from tax on services rendered for the consulate by an outside person such as a

telephone company. If such an exemption is to be given at all it should be given under article 48; the same exemption should not be given under two different articles. Moreover, an exemption given under article 47 would not be confined to direct taxes but could include indirect taxes, from which by virtue of sub-paragraph (a) of article 48, no exemption is allowed. Obviously such an impairment of sub-paragraph (a) should be avoided.

This problem would probably be best dealt with by changing "services rendered" in paragraph 1 to "services they render". This would require a consequential amendment in paragraph 2, which could at the same time eliminate an inconsistency it now contains. Paragraph 2 now provides the same exemption for certain members of the private staff as it does for members of the consulate, but obviously the former should not receive an exemption with respect to services rendered for the sending State because they do not render such services. An amendment along the following lines might therefore be desirable "Subject to the provisions of paragraph 3 of this article members of the private staff who are in the sole employ of members of the consulate shall, with respect to services they render to the members of the consulate, be exempt from social security provisions ... on condition ... ."

Article 48

In the view of the Canadian Government the general principle embodied in this article that members of a consulate should be granted the same tax exemptions as members of a diplomatic mission is sound. This is in accord with the trend by which members of a consulate should be granted the same tax exemptions as members of a diplomatic mission is sound. This is in accord with the trend by which members of a consulate have come to be regarded as foreign government representatives and thereby entitled to certain of the same privileges as diplomatic personnel.

In their written comments, several Governments have suggested that the phrase "consular officials" be substituted in paragraph 1 for "members of the consulate". The effect of this amendment would be to limit the tax exemptions to the officer staff only of the consular posts. The Canadian Government is not in favour of the suggested amendment because it has an interchangeable service where an employee may be called upon to serve in either a consular or

diplomatic capacity. Under article 37 (2) of the Vienna Convention on Diplomatic Relations the administrative staff of diplomatic missions receive similar privileges to those enumerated in article 48 of the Consular Convention. As the Canadian Government prefers to see an equality of treatment in so far as exemption from taxation for administrative staff is concerned it would favour retention of the phrase "members of the consulate".

Paragraph 1 of this article exempts members of the family of a consular official or a consular employee entrusted with administrative or technical tasks and paragraph 2 gives a limited exemption to members of the service staff and members of the private staff. Article 69 excludes from the wide range of exemptions, members of the family of a consular employee, and from the limited exemption, members of the service staff and members of their families and members of the private staff, when any such member is a national of the receiving State. The Vienna Diplomatic Convention is more restrictive inasmuch as it also excludes from the exemption:

(a) Members of the family of a diplomatic agent who are nationals of the receiving State (article 37 (1));

(b) Members of the family of a member of the administrative or technical staff of the mission who are permanently residents in the receiving State (article 37 (2));

(c) Members of the service staff who are permanently resident in the receiving State (article 37 (3));

(d) Private servants of members of the mission if they (the servants) are permanently resident in the receiving State (article 37 (4)).

As mentioned in the commentary on article 69, the Canadian Government believes that permanent residents of the receiving State should generally be treated in the same way as nationals of the receiving State, i.e., they should be granted no privileges under the Consular Convention and only those immunities that are necessary for the effective functioning of the consular post. Thus the corresponding categories to those described in (b), (c) and (d) (i.e., paragraphs (2), (3) and (4) of article 37 of the Vienna Diplomatic Convention) above should be excluded from the exemptions conferred by article 48, if they are permanent residents of the receiving State.

In the Vienna Diplomatic Convention there is an exception to this general rule for the members of the family of a diplomatic agent who are permanent residents of the receiving State and it would seem appropriate to provide in the Consular Convention also that only the members of the family of a consular official who are nationals of the receiving State and not those who are permanent residents of the receiving State be excluded from the exemptions; that is, the draft article in the Consular Convention should be changed to correspond to article 37 (1) of the Vienna Diplomatic Convention.

It appears that the members of the family of a consular official who is a national of the receiving State are at present granted privileges under article 48 that such a consular official is himself denied under article 69, paragraph 1. The members of the family of such a consular official should be excluded from these exemptions, even if they themselves are not nationals or permanent residents of the receiving State. The Vienna Diplomatic Convention also appears to contain a similar anomaly except that it excludes from the exemptions the members of the family of a diplomatic agent (including one who is a national or permanent resident of the receiving State) if the members of the family are themselves nationals of the receiving State. The result is that members of the family of a diplomatic agent who are permanent residents of the receiving State are entitled to more exemptions than the diplomatic agent who is a permanent resident. It would seem desirable not to follow, much less to extend, this precedent.

These results could be achieved by changing article 69 as recommended in the comments on that article.

There appears to be nothing in this article or other articles of the Convention to prevent a member of the consulate from being taxed by the receiving State on income from sources in the receiving State and on property (other than movable property situated in the receiving State as an incident of his residence there) as if he were a full-fledged resident or domiciliary of the receiving State. This might result in undue taxation by the receiving State and possibly double taxation. For example, as a resident of the receiving State a member of the consulate might be subject to tax by it on a gift he makes of property not situated in the receiving State to a person who may or may not be in the receiving

State. Similarly it is possible that his estate might be made subject to death tax by the receiving State in respect of all his property situated outside of the receiving State, because he died a resident of the receiving State. It is also possible that his income from sources within the receiving State and his property situated in the receiving State might be made subject to tax at different rates if tax were levied on the basis of residence rather than on the basis of non-residence for income tax purposes, and on the basis of domicile rather than situs for death duty purposes.

It is hard to tell to what extent such cases would arise but generally it would seem fairer both to the member of the consulate and to the receiving State that taxes be levied as if the member were not resident or domiciled in the receiving State. It would probably be less burdensome to the member also, but even where this were not so, it would be consistent with the aim of the Convention to provide that a member of the consulate (other than one referred to in article 69 if amended as suggested later) should be considered not to be resident or domiciled in the receiving State for tax purposes. It would also be consistent with the tax treatment afforded by many States to their own consuls and other government officials serving outside the country whereby they are deemed to be resident in their own country for tax purposes. An amendment along the following lines should be helpful in ensuring fair treatment for the member of the consulate and in reducing the extent to which his Government might have to provide tax relief in respect of taxes levied by the receiving State.

It might therefore be advisable to add to article 48 a new paragraph 3 as follows:

> "A period during which a member of the consulate is in the receiving State by reason solely of his being a member of the consulate shall not be considered for purposes of the taxation laws of the receiving State as a period of residence or domicile therein or as creating a change of residence or domicile."

The first line of article 48 contains a minor drafting error and should be changed to read: "Members of the consulate, with the exception of members of the service staff".

The phrase beginning "unless held" in sub-paragraph (b) is not satisfactory. This exception to the exception frees from tax any member of the consulate (other

than a member of the service staff) and any member of his family who holds private immovable property on behalf of the sending State for the purposes of the consulate. Since article 31 has already provided an exemption to the sending State and to the head of post in respect of consular premises, it is undesirable to provide an exemption for other members of the consulate in respect of consular premises. An amendment to meet this point might be worded as follows:

> "(b) dues and taxes on private immovable property situated in the territory of the receiving State, subject, however, to the application of the provisions of article 31 to immovable property owned or leased by the head of post on behalf of the sending State for the purposes of the consulate."

The comment on article 31 in regard to the phrase "used for the purposes of the consulate" is also applicable here.

Sub-paragraph (c)

This is suitable as far as estate, succession or inheritance taxes are concerned. The Canadian Government subscribes to the principle that such taxes should be levied on the basis of the situs of property and not on the basis of domicile or residence for members of the consulate and members of their families (other than persons excluded by article 69 if modified), that property situated in the receiving State should be exempt where it is there as a normal incidence of the member's residence in the receiving State to carry out his functions as a member and that any other property situated there (such as investment property) should be taxable.

Sub-paragraph (c) of article 48 together with article 50 make it clear that there is no exemption from death duties on immovable property, but sub-paragraph (b) of article 48, together with the preamble to article 48, confer an exemption from dues and taxes on private immovable property held by a member of the consulate on behalf of the sending State for the purposes of the consulate. This conflict would, of course, not arise, if the recommended amendment to sub-paragraph (b) above were accepted. If it is not it should be made clear which paragraph is paramount.

The paragraph departs from the Vienna Diplomatic Convention by adding "duties on transfers". This has a good many implications, depending on the meaning of these words, and it would seem necessary to define them more carefully. Otherwise there may be conflicts with other provisions of the Convention.

This addition may be justifiable if it refers to the possibility of death duties reaching back to include transfers of property made by the deceased in his lifetime in the receiving State. However, if such transfers are generally not to be exempt, it should also follow that they are to be exempt when they are in the same category of property as is exempted by article 50, i.e., movable property present in the receiving State solely because of the presence there of the member of the consulate or member of his family. The exclusion in paragraph (c) of duties, including duties on transfers, from the general exemption in the preamble is subject to the provisions of article 50 concerning successions, but article 50 does not refer to duties on transfers. It should be put beyond doubt that the exemption from death duties extends to transfers made by the deceased in his lifetime that are brought into the estate for purposes of death duties.

As far as transfers between living persons (inter vivos transfers) are concerned it also seems justifiable that the receiving State should be able to impose taxes on transfers of property to members of the consulate from nationals or permanent residents of the receiving State. Thus, if under the law of the receiving State the tax applies to the donor but there is a joint liability on the donee if the donor fails to pay, there seems no reason why the member of the consulate should have an exemption from this liability. It does not seem reasonable, however, particularly where the transfer tax is designed to protect future income tax or death duty revenue, that a member of the consulate should be liable to a tax on transfers he makes unless he would have been liable to such a tax if he had not been a member of the consulate. In other words his presence in the receiving State as an incidence of carrying out his consular functions should not be held against him. This would seem to be the right principle on which to rely, and it could be made effective by adopting the recommendation made in the eighth paragraph of the present reply dealing with article 48.

In any case, it would seem that transfers between a member of the consulate and members of his family during lifetime should be free from tax just as they would be at death, by virtue of article 50. Possibly this exemption could be achieved by an amendment to article 50 (which, as mentioned previously, should make it clear that lifetime transfers of movable property between members of the consul's family should be exempt, if included in the estate of a deceased person) by the addition of the words "transfer duties" after the words "inheritance duties" in sub-paragraph (b). Since, however, this article deals only with estates, it would also be necessary to amend it in other ways to refer to inter vivos transfers between members of the family of members of the consulate.

It would also have to be made clear that such an exemption would not prevail over the exclusion from exemption in sub-paragraphs (b), (d) and (f). Indeed these sub-paragraphs appear to include so many transfer taxes, that it seems doubtful whether it is worth while to attempt to deal specifically with whatever residual taxes there may be under the category of "transfer taxes", especially when it would appear that several involved consequential amendments are required. It is also questionable whether there should be a distinction made between consuls and diplomats in this respect.

For these reasons the Canadian Government would recommend either that the reference to duties on transfers be removed or that the consequential amendments suggested be made.

Article 50

This article will not exclude permanent residents unless article 69 is amended. The commentary on article 48 concerning this point is applicable.

Sub-paragraph (a) refers to permission to export. The Canadian Government's understanding is that this is intended to apply to situations where the law of the receiving State prohibits the export of, say, national art treasures and that it is not intended to allow the receiving State's death duty law to prevent the export of movable property on the grounds that death duties have not been paid. On the other hand this provision should not be interpreted so as to prevent the authorities of the receiving State from obtaining reasonable evidence that the property is in fact of the kind described, and not investment property.

Unless the reference in article 48 (c) to "duties on transfers" is deleted, article 50 should be amended so as to make sure that the exemption from death taxes will continue to apply where such taxes reach back to include transfers made during lifetime.

Article 52

The Canadian Government would assume that this article should be dealt with in the same manner as the corresponding article in the Vienna Convention and therefore we would prefer to see this provision embodied in a separate protocol rather than in the Convention itself.

General comment on chapter III

Throughout this chapter the term "consular post headed by an honorary consular official" should be used rather than "consular premises" (see article 59) or "headed by an honorary consul" (article 58). There is not - at least in Canada - such a thing as an honorary consulate per se, nor is there any definition in the Convention of a consul, but rather only of "consular official". Furthermore, a consulate might be headed by an honorary consular official who is a vice-consul rather than a consul.

Article 57

The following comments relate to earlier articles in the draft convention as applied to honorary consular officials under article 57.

Article 29: In the view of the Canadian Government the application of the provision of article 29 in respect of acquisition of accommodation to honorary consular officials is unnecessary since there would normally be permanent residents of Canada, already settled in a specific locality.

Article 41 (3): This article appears to extend a privilege to honorary consular officials which is not entirely necessary to the exercise of their functions and in the view of the Canadian Government its application to honorary consular officials might well be deleted.

Article 42: In the view of the Canadian Government the application of this article to honorary consular officials would constitute an undue

assimilation of honorary consular officials to career consular officials and might well be deleted. It would appear to be a matter for his own responsibility whether or not an honorary consular official notifies the sending State that he has been arrested or detained.

Article 49 (1) (a): Permits honorary consuls to import free of duty and taxes the same articles for official use as may be similarly exempted when imported by career consuls. The administrative procedures that might be instituted for importations by an honorary consul could require the sending State to supply him with the necessary articles rather than permit direct importations. If the honorary consul has to obtain authority from the sending State, which authority will be evidenced by documents, there will be less likelihood of abuse. The "sending State" includes the diplomatic mission of the sending State in the receiving State. The exemption from taxes on imports for honorary consuls should be put in a separate article, the amendment to be worded somewhat as follows:

"Delete in article 57, paragraph 1 '49, with the exception of paragraph 1 (b)'

"Add new article 63A:

"Exemption from duties and taxes on imports

"1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage, and similar services, on articles exclusively for the official use of a consular post (headed by an honorary consular official).

"2. The articles referred to in paragraph 1 are coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment, and similar articles supplied by the sending State to the consular post."

Article 61

The Canadian Government has doubts about the appropriateness of the use of the words "special protection" in this article, which suggests that honorary consuls should enjoy a privileged status over and above that accorded to an ordinary citizen of a receiving State. It would seem to us that the essential criterion should be rather the requirement or the need for protection, and

recognition that this may be greater for an honorary consul than for an ordinary citizen. For this reason the Canadian Government would prefer a wording of the article along the following lines:

> "The receiving State is under a duty to accord to an honorary consular official such additional protection as he may require by reason of his official position."

Article 63

This article would be suitable if both nationals and permanent residents of the receiving State are excepted from the exemption accorded in this article by article 69 (provided article 69 is amended to include permanent residents).

Article 64

This article, as presently worded, affords a status to honorary consuls, and in particular to permanent residents of the receiving State which is akin to that granted to career consuls who are usually permanent officials of a foreign Government. The Canadian Government is not in favour of the granting of such broad exemptions to honorary consuls. The article would be more acceptable if it were made clear that it is inapplicable not only to honorary consular officials who are nationals of the receiving State but also to permanent residents of the receiving State.

Article 69

With regard to paragraph 1, the Canadian Government sees no justification for granting privileges to consular officials who are permanent residents of Canada, or for granting them immunities except to the extent specified for nationals. It believes that, as in the Vienna Diplomatic Convention, such permanent residents of the receiving State should generally be treated the same as nationals of the receiving State. There seems to be no good reason why permanent residents who are consular officials should be given more generous treatment than permanent residents who are diplomatic agents. This point could be met by inserting the words "or permanent residents of" after "nationals" in paragraphs 1 and 2.

With regard to the "other members of the consulate" referred to in paragraph 2, the Canadian Government agrees with the Netherlands and Belgium comments that, so far as "other members of the consulate" are concerned (although not so far as "members of their families and members of the private staff" are concerned) they should enjoy exactly the same "immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided for in article 44, paragraph 3", as described in paragraph 1 as being accorded to consular officials. Often the "other members of the consulate" exercise almost the same functions as consular officials, and therefore with regard to their official acts they should have the same immunities from the jurisdiction of the courts of the receiving State, despite their being nationals or permanent residents of the receiving State. Although paragraph 2 of article 38 of the Diplomatic Convention does not grant as extensive immunities to diplomatic employees who are nationals or permanent residents of the receiving State, there appears to be justification for extending this immunity to consular employees because consulates normally employ a greater number of nationals or permanent residents of the receiving State who are more intimately concerned with, and have more knowledge of, the day to day business.

To provide for this extension, the restrictions for permanent residents referred to above in paragraph 1 of these comments and the changes suggested in paragraphs 3-6, and 11, of the comments on article 48, the Canadian Government suggests the following amendments to paragraph 2. These would also affect other articles including 1 (3), 50 and 51 and in certain cases those dealing with honorary consuls:

> "2. Other members of the consulate who are nationals or permanent residents of the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided for in article 44, paragraph 3, of these articles. Members of the family forming part of the household of a consular official who are nationals of the receiving State, members of the family forming part of the household of a member of the consulate who is a national or permanent resident of the receiving State, members of the family forming part of the household of a member of the consulate other than a consular official who are nationals of or permanent residents of the

receiving State, and members of the private staff who are nationals of or permanent residents of the receiving State shall enjoy privileges and immunities only insofar as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over these persons in such a way as not to hinder unduly the performance of the functions of the consulate."

4. CONGO (Brazzaville)

Transmitted by a note verbale of 21 June 1962 from the Ministry of Foreign Affairs

[Original: French]

A Congolese law dated 15 January 1961 deals with the question of diplomatic and consular immunities and privileges. The International Law Commission's draft articles are perfectly compatible with the Congolese law. However, on two individual points they are more liberal than the latter.

With regard to the personal inviolability of consular officials, the Commission's draft articles provide that they may not be liable to arrest, except in the case of a grave crime and only pursuant to a decision by the judicial authority (article 41, paragraph 1). Congolese law provides for the possibility of detention pending trial not only in the case of a crime (which is not required to be grave), but also "in the case of a serious offence punishable by a term of not less than five years' imprisonment", a decision by the judicial authority not being necessary, moreover (article 14).

In the matter of exemption from taxation the Congolese law (article 16, in fine) excludes consular employees who are nationals of the receiving State. It would even seem arguable that the law of 15 January 1961 wholly excludes members of the service staff from the benefit of exemption from taxation and accords exemption exclusively to members of the consular staff.

5. CZECHOSLOVAKIA

Transmitted by a note verbale of 20 July 1962 from the Deputy Permanent Representative to the United Nations

[Original: English]

The Government of the Czechoslovak Socialist Republic highly appreciates the valuable work of the International Law Commission which, shortly after having completed the draft articles on diplomatic intercourse and immunities which became a basis for successful codification of diplomatic law at the Vienna Conference in 1961, submits its final draft articles on consular relations and immunities.

The Government of the Czechoslovak Socialist Republic is convinced that the new draft which as a whole proceeds from the need to strengthen friendly relations and create conditions for their further promotion in the spirit of the principles of peaceful coexistence, will be accepted with satisfaction by all States.

Even though the draft articles as a whole constitute a good basis for the conclusion of a convention on consular relations at the forthcoming diplomatic conference, the Government of the Czechoslovak Socialist Republic believes that some of the provisions contained therein could be improved and made more precise. To this end, and reserving the right to submit additional comments later, the Government of the Czechoslovak Socialist Republic submits the following suggestions:

1. As the Government of the Czechoslovak Socialist Republic pointed out already when commenting on the provisional draft articles (see annex to the report of the International Law Commission covering the work on its thirteenth session, document A/4843), it is of importance to include a provision to the effect that any State has the right to maintain consular relations with other States and to send and receive consuls. Such a right is a recognized attribute of the State. Without establishing consular and/or diplomatic relations the States cannot discharge properly the obligations laid down by the United Nations Charter and the contemporary international law in general, i.e. develop friendly

relations among nations, based on the principle of equality and mutual advantages, and practise international co-operation by settling international problems of economic, social, cultural or humanitarian nature. The Government of the Czechoslovak Socialist Republic therefore recommends to include the provision on the right of States to send and receive consular representatives into the draft convention which will be prepared by the diplomatic conference.

2. The development of consular relations showed the growing significance of consular missions, showed that at the present time the function of consular missions cannot be limited to the exercise of so far typical consular functions consisting in the protection of the interests of the sending State or its nationals, but must also facilitate the consolidation and promotion of friendly relations between the respective States. The Government of the Czechoslovak Socialist Republic is of the opinion that this new nature of the function of consular representatives should find an express reflection in the codification under preparation and therefore it recommends that article 5 enumerating consular functions should contain the principle that support to the development of friendly relations between the sending State and the receiving State is an important consular function.

3. Already in the preceding stage of commenting by Governments, the Government of the Czechoslovak Socialist Republic brought forth its position that in accordance with the practice of the majority of States, it would be useful to complete article 11 by an express provision to the effect that the grant of the exequatur to the head of a consular post covers ipso jure all members of the consular staff working under his orders and responsibility. As follows from paragraph 7 of the commentary to article 11, the International Law Commission, while identifying itself with the idea, did not amend the wording of article 11. Instead it reiterated its position in the commentary and stated 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 and that therefore it is not necessary for consular officials who are not heads of post to present consular commissions and obtain an exequatur and that notification by the head of a consular post to the competent authorities of the

receiving States suffices to admit them to the benefits of the present articles and of the relevant agreements in force. The Government of the Czechoslovak Socialist Republic therefore reiterates its former comment and recommends that the respective wording be included in article 11. The proposed modification of article 11 would to a considerable degree contribute to the unification of the present practice in the granting of the exequatur and would eliminate possible misunderstandings that might arise between States.

4. Article 26 of the draft stipulates that the receiving State must, even in case of armed conflict, grant facilities in order to enable persons enjoying privileges and immunities - other than nationals of the receiving State - and members of their families irrespective of their nationality, to leave the territory of the receiving State at the earliest moment. It must, in particular, in case of need, place at their disposal the necessary means of transport for themselves and for their property. The article does not stipulate, however, that the persons concerned should be provided with sufficient time needed for making preparations for the departure and the transport of their property. The present wording of the article is therefore concentrated only on the interest to facilitate consular officials the quickest possible departure from the country of their appointment while no respect is paid to the interest of the consular officials concerned to have the necessary time for making preparations for the departure. The Government of the Czechoslovak Socialist Republic therefore recommends that article 26 be amended by a provision that the receiving State must grant to persons enjoying privileges and immunities the necessary time for the preparation of their departure and the transport of their property.

5. The Government of the Czechoslovak Socialist Republic attaches great importance to a principal solution of the question relating to the extent of protection, privileges and immunities granted to the head of a consular post and consular officials. In this connexion a certain lack of harmony between articles 40 and 41 of the draft cannot escape attention. While article 40 lays down the duty of the receiving State to accord special protection to consular officials by reason of their official position and to treat them with due respect, article 41, which deals with questions of personal inviolability of consular officials, in substance subjects consular officials to the jurisdiction

of the receiving State. The Government of the Czechoslovak Socialist Republic therefore recommends a detailed consideration of the provisions of the above-mentioned articles with due regard to both the existing state of law and requirement of the progressive development of international law as well as to the needs of the present international practice.

6. Finally, the Government of the Czechoslovak Socialist Republic draws attention to the shortcoming in the English version of article 1, paragraph 1, letter (f) as contained in document A/4843, p. 5, where the category of "consular officials" was dropped. The sub-paragraph (f) of paragraph 1 of article 1 in the English version as adopted by the International Law Commission should read as follows:

"(f) 'Members of the Consulate' means all the consular officials and employees in a consulate."

6. DENMARK

Transmitted by a note verbale of 19 July 1962 from the Acting Permanent Representative to the United Nations

/Original: English/

Article 1, paragraph 1 (f)

The definition of "members of the consulate" does not agree with the content of item (4) of the commentary.

Article 5 (f) and (g)

The Danish Government refers to its comments on the International Law Commission's first draft (Consular intercourse and immunities), the Special Rapporteur's alternative variant, article 4, IV, paragraphs 11 and 12, and II, paragraph 7.

Article 5 (h)

The Danish Government suggests that this provision shall only apply on the assumption that such persons are not under guardianship supervised by the authorities of the receiving State.

Article 5 (j)

The Danish Government is still of the opinion that a general rule on the functions of consuls in this field should not be included in a universal convention on consular functions, seeing that this matter is closely bound up with other matters relating to international legal assistance in cases which come before law courts; such matters should therefore not be governed by uniform rules applicable in all countries. In any event, the functions of consuls in this field should hardly extend to criminal cases.

The Danish Government further wishes to point out that the words "compatible with the law of the receiving State" go beyond the scope of the Hague Convention of 1 March 1954 relating to Civil Procedure; cf. the words used in articles 6 and 15 of that Convention: The receiving State "does not object".

Article 5 (1)

The Danish Government refers to its comments on the International Law Commission's first draft (Consular intercourse and immunities), the Special Rapporteur's alternative version, article 4, I, paragraph 2.

Article 31

The Danish Government must make a reservation with regard to exemption from stamp duty on contracts for lease of real property.

Article 36

The Danish Government refers to its comments on the Commission's first draft (Consular intercourse and immunities, article 6).

Article 43

The Danish Government refers to its comments on the Commission's first draft (Consular intercourse and immunities, article 41).

Articles 48 and 49 (cf. articles 15, 22, 24 and 53).

The Danish Government must make a reservation with regard to the extent of the categories of persons entitled to exemption from customs and excise duties.

Article 59

The Danish Government must make a reservation with regard to exemption from taxation of real property which is the property of an honorary consul and not of the sending State.

Reference is also made to the comments on article 31 above.

7. FINLAND

Transmitted by a note verbale of 20 July 1962 from the Chargé d'affaires to the United Nations

/Original: English/

Definitions and general considerations

The term "honorary consular officials" is utilized in the heading of chapter III of the draft, and also in many of the appertaining articles, the intention being that it should cover also the employees of an honorary consulate, or both "officials and employees", which expression is in accordance with the terminology used in connexion with career consulates. Accordingly the words "and employees" would need to be added at the end of article 57, paragraph 1, and to the second line of paragraph 2 as well as to the second sentence of article 1, paragraph 2, and possibly to articles 62-64 and 66, however excluding at discretion the staff employed for domestic duties only. On the other hand, it seems appropriate that the members of the administrative and technical staff of the honorary consulate also be granted certain privileges and immunities.

The heading "General provisions" of chapter IV of the draft should perhaps be replaced by "Various provisions", taking also into account that the heading of chapter I reads: "Consular relations in general".

It would appear that article 34, which provides for the freedom of movement of the members of the consulate, could be transferred from the section, which is concerned with the consulate proper, to that regarding the members of the consulate, that is to say after article 40.

Article 1

Paragraph 1, sub-paragraph (c)

Some improvement might be effected if, in the definition of "head of consular post", emphasis is laid upon the fact that the person concerned is directing the consular post and is, consequently, bearing the responsibility both with respect to the sending and the receiving State.

Paragraph 1, sub-paragraph (f)

It would appear that the definition of members of the consular post given in this sub-paragraph is somewhat misleading. The definition includes "all the consular employees", but in the preceding sub-paragraph (e), the same term "employee" is used in a more restricted sense, to denote only members of the administrative, technical and service staff. The former definition might be made more specific were the terms given in paragraph 4 of the commentary on the article added. It would then read: "Members of the consulate", means all the persons who belong to it, that is to say, the head of the consular post, the other consular officials and the consular employees, or, put more briefly, "Members of the consulate" means the head of the consular post, the other consular officials and the consular employees.

Article 5

This article provides for a long list of consular functions. Since these functions are no more than examples, it would appear that the article could be abbreviated appreciably. Perhaps a general indication would here be sufficient, in accordance with the Vienna Convention on Diplomatic Relations. A detailed enumeration such as this gives the impression that the article provides for an almost complete list of consular functions; this does not, however, seem to be the intention and a complete enumeration would not have been practical in view of the reasons stated in the commentary.

Article 6

According to this article a receiving State may prevent the extension of consular functions to a third State by making an express objection to it. At the Vienna Conference, the question was solved in a similar manner so far as diplomatic missions are concerned. It seems, however, that where consular posts are in question, there is less reason to observe this rule, since the consular functions usually are of minor importance.

Articles 7 and 18

No objection can be made to the arrangement of joint consular representation contemplated in these articles, although there may at times arise difficulties in the exercise of these functions, as is indicated in the commentary to article 18. According to the Vienna Convention, such a system is also possible so far as diplomatic missions and the exercise of diplomatic functions are concerned. On the other hand, there seems to be some inconsistency in that in article 7, which provides for less close co-operation than article 18, the prior consent of the receiving State is required, whereas in the latter case it is sufficient if the receiving State raises no express objection to such a joint representation. It would appear that the difference between the two cases would be of a minor nature. Consequently, it seems doubtful whether the cases should be accorded separate treatment. If the head of the consular post, in addition to exercising the consular functions on behalf of the sending State, is also entrusted to exercise these functions on behalf of another State, he does in fact represent the other State as well, and accordingly the other State might consider it reasonable to appoint him its consular official. Article 7 might therefore either be deleted from the draft, or it could be combined with article 18, in which case both the exercise of consular functions on behalf of another State and the simultaneous appointment of one person by two or more States as head of a consular post would be subject to prior consent of the receiving State.

Article 19, paragraph 2

According to this paragraph, the sending State may request that the receiving State grant exequatur not only to the head of the consular post, but also to the other consular officials. It is noted that it has been left to the discretion of the sending State to request exequatur for other consular officials than the head of the post. Such a system might, however, be necessary only by reason of the legislation of the receiving State, and not, as is envisaged in this paragraph, of the legislation of the sending State. This provision should accordingly be amended to read: "the receiving State is granted the right to require exequatur or corresponding prior approval also where consular officials other than the head of the consular post are concerned."

Article 22, paragraph 1

The aim of this article also is to achieve similarity with the provisions in the Vienna Convention on Diplomatic Relations. In contrast to the members of a diplomatic mission, the majority of consuls, that is to say honorary consuls, are, however, according to the custom of most countries, chosen from among the citizens of the receiving State. A valid analogy, therefore, does not exist. If the receiving State is granted, as has been suggested by the Government of Finland (see under article 19), the right to require of all consular officials exequatur or other prior approval, this question of nationality need not be taken into consideration, and article 22 could be deleted.

Article 23

According to the provision of this article the exequatur will be withdrawn only in instances of serious nature or if a member of the consular post is declared unacceptable. The receiving State might be granted the same freedom of action as that which they possess with respect to the members of a diplomatic mission. This appears, however, to be in conformity with the current practice. In view of paragraph 7 of the commentary, this article could be interpreted to mean that the sending State is entitled to require of the receiving State that it affords a reason for its displeasure if it withdraws the exequatur of the head of the consular post, or declared a consular official unacceptable. This again would appear to entail a deviation from the customary treatment accorded a diplomatic mission, and is hardly justifiable.

Article 44, paragraph 1

The first sentence of this article provides that the members of the consular post may be called upon to appear as witnesses during the course of judicial or administrative proceedings. In the second sentence it is said that if a consular official should decline to do so, no coercive measure or penalty may be applied to him. Since the disclosure of incidents connected with the exercise of consular functions is out of the question, as is shown by paragraph 3, the members of a consular post should be obliged to give evidence concerning matters not connected with their functions. It would thus seem that the second sentence of this paragraph could be deleted.

Article 46, paragraph 2

This paragraph deals with work permits. In spite of its being amended subsequent to the foregoing draft it may still be given too free an interpretation. The provision appears to require an addition to the effect that the members of a consular post are exempt from the duty of securing work permits if they employ in their service a person who does not possess the nationality of the receiving State. This would be in conformity with paragraph 4 of the commentary.

Article 50, sub-paragraph (a)

In the event of the death of a member of the consulate, or of a member of his family, forming part of his household, the receiving State must, in accordance with this sub-paragraph, permit the export of the property of the deceased, with the exception of any property acquired in the country, the export of which was prohibited at the time of his death.

It is true that a similar provision is included in the Vienna Convention on Diplomatic Relations, but objections were raised at the Vienna Conference against this restriction at the end of the article, and a number of States, among them Finland, voted for its deletion. If the property has been lawfully acquired, and especially if the export was not prohibited at the time of acquirement, then it would seem justifiable that such export be not prohibited.

Article 52

This article provides for a certain immunity for the members of the consulate and members of their families as regards the provisions of the law on nationality of the receiving State. At the Vienna Conference, a corresponding Optional Protocol was adopted with respect to diplomatic missions. At the forthcoming conference regarding consular relations this provision could in the same way form the subject of a separate document, since many States object strongly to such restrictions with respect to the law on nationality.

8. LUXEMBOURG

Transmitted by a note verbale of 9 July 1962 from the Ministry of Foreign Affairs

/Original: French/

The Luxembourg Government has examined with interest the draft articles on consular relations and immunities adopted by the International Law Commission, more specially the draft adopted by the Commission at its thirteenth session in 1961.

The drafts in question undoubtedly constitute the necessary complement to the Vienna Convention on Diplomatic Relations and form a new and distinguished contribution to the unification and development of international law in a field of great practical importance to Governments.

In general, the provisions of the draft are consistent with the principles and usages followed in Luxembourg in consular matters. The Luxembourg Government's comments are accordingly confined to the following points.

Preamble

Like the Vienna Convention, the draft does not attempt to lay down any kind of general principle but rather endeavours to find a positive solution for the most important problems in the field of consular relations. The statement of great general principles, indeed, might give rise to unnecessary difficulties. It would seem essential, however, to indicate clearly, either in the preamble, as in the case of the Vienna Convention, or even in a special article, that the convention does not constitute a complete body of rules covering all problems of consular law. Consequently, recourse to the general principles of law and to international usage, as well as to domestic judicial or administrative provisions and practices, will not be ruled out.

Article 5

Article 5 contains a by no means exhaustive list of the principal functions of consuls. However, consular functions are not attributed automatically to the

consular official; the sending State decides which functions the official will have to perform. It would therefore be useful to supplement article 5 with a clause providing that it is for the sending State to specify the extent to which its consuls will perform their functions.

Article 7

Article 7 provides that two or more States may establish a joint consulate in a third State.

It would seem to be understood that the rule of the consent of the receiving State does not require the grant of an exequatur by that State, but that the consent to the representation of the third State's interests may be tacit and cover all functions.

Article 15

It would seem useful to indicate, either in the text of the article or in the commentary, that the acting head of post may also be chosen from among the staff of another consulate. A provision to this effect is important for States whose consular posts have small staffs.

Articles 30 and 58

The Luxembourg Government considers that the provisions of article 30, paragraph 1, and of article 58 are too categorical. The two articles should allow for exceptions to the rule of inviolability of premises, for example in case of fire or other disaster or in cases where the local authorities have serious grounds for believing that a crime has been committed on the premises. Even without the consul's consent the authorities of the receiving State should be able to enter the consular premises in pursuance of a warrant and a decision of the courts, with the authorization of the Minister for Foreign Affairs.

It would seem inadvisable to place consular premises and the premises of a diplomatic mission on precisely the same footing.

Articles 31 and 59

In Luxembourg, exemption from the land tax is accorded only in respect of premises belonging to a foreign State. Accordingly, the most that the Luxembourg Government could agree to would be to extend such exemption to natural or legal persons acting on behalf of the sending State which is the owner or lessee of the property.

Article 43

The Luxembourg Government considers that a paragraph 2 could usefully be added to this article, specifying that nothing contained in article 43 shall prevent civil proceedings from being taken against a consul in matters of contracts not expressly concluded by him as an agent of the sending State or in respect of any damage caused by a traffic accident in which the consul is involved, where that accident has occurred in the receiving State and was caused by an automobile.

Article 53

The Luxembourg Government considers that in the case of a member of the consulate already in the territory of the receiving State the beginning of consular privileges and immunities should be fixed not at the moment when his appointment is notified to the Ministry of Foreign Affairs or similar authority, but at the moment when the exequatur is granted by the receiving State. It would seem logical that the receiving State should first signify its agreement, especially as the consul may be a national of that State.

Article 69

The Luxembourg Government considers that the provisions expressly envisaging the possibility for the receiving State to accord wider privileges and immunities to members of the consulate, members of their families and members of the private staff who are nationals of the receiving State, while adding nothing essential to the text, might encourage unjustified claims. It accordingly proposes that all reference to this possibility of granting additional facilities should be deleted.

9. MADAGASCAR

Transmitted by a note verbale of 10 August 1962 from the Permanent Mission to the United Nations

[Original: French]

The Government of the Malagasy Republic has decided to give its assent to the draft articles and comments on consular intercourse, which are the subject of General Assembly resolution 1685 (XVI) of 18 December 1961.

Nevertheless, it desires to express the following reservations:

- all personal and tax immunities in favour of the private staff of consulates should be excluded.
- the personal and tax immunities of members of consulates and honorary consulates should be attached to the official capacity of members of consulates.

10. NETHERLANDS

Transmitted by a note verbale of 24 July 1962 from the Permanent Representative to the United Nations

/Original: English/

The Netherlands Government regards the new text of the International Law Commission as an improvement on the previous text (A/4425) as regards a number of points, but wishes to make the following comments.

The Netherlands Government is of the opinion that on the whole fewer privileges and immunities would suffice. It does not regard it as necessary to put members of the consulate on a par with members of the diplomatic mission in this respect. As regards fiscal privileges the Netherlands Government would prefer a system in which the liability to taxation of members of the consulate is made a primary consideration. Members of the consulate should only be exempt from national, regional and municipal taxes or charges in the receiving State, in respect of any official emoluments, salary, wages or allowance received by them as compensation for their services.

Article 1

In the English text the words "consular officials and" have been omitted under (f) after "all the". The French text: "tous les fonctionnaires et employés consulaires d'un consulat", seems correct.

Article 5

The Netherlands Government would favour the retention of a list of consular functions but would like a general reference to the law of the States concerned to precede the list. Therefore it proposes that the opening sentence read as follows:

> "To the extent to which they are vested in him by the sending State and without prejudice to the legislation of the receiving State, a consular official exercises the following functions unless the sending State and the receiving State have agreed otherwise."

Article 30, paragraph 3

The Netherlands Government considers the scope of the definition in this paragraph to be too wide. In its opinion the opening words of the paragraph should be: "The consular premises, their furnishings and other property thereon...", in accordance with the text of article 22, paragraph 3, of the Vienna Convention on Diplomatic Relations.

The Netherlands Government has serious objections to the complete immunity of the consulate's means of transport. It might render the supervision of imports impossible. The immunity of the means of transport should be confined to "requisition, attachment or execution". It should always be possible to search the means of transport, in so far as such searching does not violate the immunity of consular officials. Moreover, such searching would seem desirable in order to make the necessary supervision of traffic possible. The Netherlands Government fears that there was insufficient opportunity to weigh all the consequences of such a provision when the corresponding provision was incorporated in the Vienna Convention on Diplomatic Relations. The inclusion of a separate provision for the inspection of vehicles for road safety purposes might also be considered.

Article 32

The Netherlands Government considers the words "and documents" superfluous and confusing when taken in conjunction with the definition of archives as it now stands in article 1 (k). The explanation which the Commission gives in paragraph 6 of its commentary on article 1 is not very convincing as far as it concerns article 32.

Article 35

To make it clear that the immunity applies solely during the performance of the courier's duties, the Netherlands Government proposes that the last two sentences of paragraph 5 be joined together to form one. The end of this paragraph would then read: "In the performance of his functions he shall be protected by the receiving State, shall enjoy personal inviolability and shall not be liable to any form of arrest or detention."

Paragraph 6 has been taken from paragraph 7 of article 27 of the Vienna Convention; however, paragraph 6 of article 27 has not been included. The Netherlands Government is of the opinion that this paragraph must also be taken over. It is more comprehensive in its wording than paragraph 7, and makes it possible for instance to entrust a courier's bag to the master of a sea-vessel. It cannot replace the latter paragraph, however, as it may be desirable in certain cases to entrust the courier's bag to the pilot of an aircraft instead of to a courier ad hoc.

Article 41

In its 1960 draft the International Law Commission had written "shall not be liable" (article 40). The Netherlands Government is of the opinion that that wording is to be preferred to "may not be liable".

The last sentence of paragraph 12 of the commentary is not entirely correct, since it follows from articles 56 and 57 that article 41, paragraph 3, is in fact applicable to a consular official carrying on a gainful private occupation.

Article 43

The Netherlands Government is of the opinion that the present wording of article 43 is a considerable improvement on the wording of the former article 41. In the Government's opinion the express use of the words "consular functions" clearly indicates that there is no immunity in respect of traffic offences. The Netherlands Government believes that it follows from the article that a consular official can be prosecuted for a traffic offence, even if he commits it during a journey made in the performance of his functions. After all, driving a car is not in itself a consular function.

Article 46

The Netherlands Government is of the opinion that the second paragraph of article 46 should not apply to persons belonging to the families of members of the consulate desirous of obtaining work outside the consulate.

Article 52

During the Vienna Conference important objections were raised to the corresponding article in the draft for the convention of diplomatic relations. The Netherlands Government considers that largely the same objections can be brought forward against article 52 as worded at present. It also feels that there are objections to an optional protocol of the same tenor, because making such a protocol optional might be interpreted as a denial of the fact that the principle referred to in article 52 is already customary law. The Netherlands Government is therefore of the opinion that either no article at all should be included or that an article should be included that firmly establishes the existing customary law in the convention. An argument in favour of the first alternative is that the question of nationality falls outside the scope of this convention. On the other hand, if it is desired to include an article, it might read as follows:

> "Members of consulates and members of their families forming part of their households shall not solely by residence or birth within the territory of the receiving State acquire the nationality of the receiving State, without their consent".

If certain States should wish to regulate more than this general principle covers, additional provisions could be laid down in an optional protocol.

Articles 58 and 60

"Consul" should be replaced by "consular official".

Article 69

In the Vienna Convention on Diplomatic Relations members of the mission who are permanently resident in the receiving State are put on a par with nationals of the receiving State. The Netherlands Government is of the opinion that the arguments supporting that decision apply with even greater force to members of the consulate; therefore it would suggest that a similar addition be made to article 69.

Article 70

The Netherlands Government construes article 70 to mean that the ban on discrimination is valid solely for the application of the present Convention. Therefore the article does not preclude the laying down of more favourable rules in other conventions between two or more States. The Netherlands Government understands that the Commission has omitted the reference to special agreements appearing in article 47 of the Vienna Convention because it regarded the possibility of special agreements being concluded as self-evident. However, the present wording of article 70 is insufficiently clear, particularly if it is taken in conjunction with article 47 of the Vienna Convention. A more exact formulation would seem desirable.

Article 71

The Netherlands Government is of the opinion that the text of article 71 does not preclude departure from the rules given in the Convention by subsequent agreements. After all, it cannot have been the intention of the International Law Commission to inhibit the entire further development of the law governing consular relations. However, it would seem desirable to state more clearly in article 71 that the Convention may also be departed from by subsequent agreements. The interpretation which the Netherlands Government would like placed on article 70 is that such an agreement may also include rules which are more favourable than those of the present articles.

In any case the word "pre-existing" would have to be omitted from paragraph 1 of the commentary.

11. NORWAY

Transmitted by a note verbale of 12 July 1962 from the Acting Permanent Representative to the United Nations

[Original: English]

The Norwegian Government has studied with interest the draft articles, which it considers a suitable basis for a consular convention.

In principle the draft is accepted as a working paper for the Vienna conference in 1963. It is assumed that proposals for minor changes in the drafting of the articles can better be presented at the conference. The Norwegian Government will therefore only make a few comments on the articles most immediately concerned.

Article 1 (f)

It may prove a disadvantage to use the term "consular employees" in (f) in a meaning which differs from the definition in (e). (Cf. the commissions commentaries in No. 4).

Chapter I

Article 3

It seems superfluous to say that consular functions are exercised by consulates. The reference to article 68 is also unnecessary. Is is therefore submitted that article 3 be deleted.

Article 5 (i)

The consul's right of representation is limited to "provisional measures". The meaning of this limitation is not quite clear and it should therefore be deleted.

Article 5 (e)

The Norwegian Government will reiterate its proposal that the group of persons to which a consulate is entitled to give protection; help and assistance should be extended so as to cover not only "nationals of the sending State", but also stateless persons who have their domicile in the sending State.

Article 5 (l)

It is noted that the Norwegian proposal to add in the former article 1 (d) the words "and to their crews" is accepted (cf. (l) in the present draft). In this connexion it must be borne in mind that it is customary for consuls to give assistance to the members of a ship's crew irrespective of such persons' nationality.

Article 25

This article is superfluous and should be deleted. It is noted that the enumeration is not exhaustive and consequently that the article is incomplete.

Article 27, paragraph 1 (b)

(a) and (b) should be synonymous. The last sub-paragraph should therefore be read: "The sending State may entrust the custody of the consular premises, together with the property of the consulate and its archives, to a third State acceptable to the receiving State."

Article 27, paragraph 3

The Norwegian Government has the following amendment to this paragraph: "... that consulate may be entrusted with the custody of the premises, together with the property and the archives of the consulate which has been closed, and ...".

Chapter II, section I

In the opinion of the Norwegian Government it does not emerge clearly from the text that the facilities, privileges and immunities are relating to consulates and not to the consular officials. It seems therefore illogical to use the expression "the consulate and its head ...." in article 28 and some other provisions.

In particular article 34 does not belong in this context.

Section II should read:

"Facilities, privileges and immunities regarding career consular officials and employees."

Article 43

The Norwegian Government will propose the following amendments:

"The provisions of this article shall not, however, preclude a member of the consulate from being liable in a civil action arising out of a contract concluded by him in which he did not contract expressly as agent of the sending State. The members of the consulate are liable in a civil action by a third party for damage relating to a traffic accident in which the members are involved."

Article 55, paragraph 1 (i)(f)

This article is not sufficiently clear. The expression "interfere" should be clarified.

Article 66

Reference is made to the comments to article 55, paragraph 1, (i)(f).

12. PAKISTAN

Transmitted by a note verbale of 24 July 1962 from the Permanent Representative to the United Nations

/Original: English/

The Government of Pakistan has noted with satisfaction that the draft rules on consular intercourse and immunities prepared by the International Law Commission provides workable basis for the preparation of a convention on the subject.

With regard to particular articles the Government of Pakistan makes the following comments.

Article 23

The grounds for complaint have been qualified by the word "serious" which is capable of being contested by the sending State or the persons concerned. The word "serious" should therefore be omitted.

Article 32

Documents and archives of the consulate cannot be deemed inviolable regardless of any premises. The inviolability should be restricted to documents and archives within the premises of the consulate or those in physical possession of a member of the consulate staff or in a consular bag.

Documents found in other circumstances, for instance deposited with nationals of the receiving State or private persons, cannot be accorded inviolability. These documents may relate to matters which are actionable under the law of the receiving State and should not therefore enjoy inviolability. The word "wherever" should therefore be omitted.

Article 41

It seems to accord a far too liberal immunity to consular official than is warranted by the generally accepted rules of international law. The Government of Pakistan would request further consideration should be given to these provisions.

Article 58

The Government of Pakistan does not grant inviolability to official or residential premises of honorary consuls and would request that the article may be deleted.

Article 59

The Government of Pakistan does not grant any exemption from taxation to honorary consul and would favour deletion of this article.

Article 70

This should be reworded on the line of article 47 of the Vienna Convention on Diplomatic Relations.

Article 57

Articles 43, 44, 49, paragraph (b), should not apply to honorary consular officials.

13. POLAND

Transmitted by a note verbale of 26 June 1962 from the Permanent Mission to the United Nations

[Original: English]

While considering the revised draft articles on consular relations and immunities prepared by the International Law Commission as a good basis for a multilateral Convention, the Polish Government wishes to reserve its right to make detailed comments thereon during the Diplomatic Conference at Vienna in 1963.

14. SIERRA LEONE

Transmitted by a note verbale of 10 May 1962 from the Ministry of External Affairs

/Original: English/

Article 1 (f)

The insertion of the words "consular officials and" after the words "means all the".

Reason. Because it is apparent from (4) of the commentary that the expression is intended to include "consular officials" as well as "consular employees", which are both defined terms and so defined as to constitute two distinct classes.

Article 12

The substitution of the words "form and requirements" for the word "formalities" in the second line.

Reason. It appears from the commentary that the article is intended to deal with all the requirements and not merely the "formalities".

Article 30

It is recommended that this article of the Convention be modified to permit the receiving State to enter the consular premises in certain cases without the consent of the head of post.

Reason. Three formidable arguments in support of this recommendation would be (a) fire prevention, (b) fire fighting and (c) prevention of a violent crime. Precedents in support of (c) spring readily to mind but do not lend themselves to reference.

15. UKRAINIAN SOVIET SOCIALIST REPUBLIC

Transmitted by a note verbale of 19 June 1962
from the Ministry of Foreign Affairs

/Original: Russian/

The Ministry of Foreign Affairs of the Ukrainian Soviet Socialist Republic has the honour to state that the competent Ukrainian authorities regard the draft articles on consular relations and immunities prepared by the United Nations International Law Commission at its thirteenth session as acceptable and suitable for use as a basis for the conclusion of international conventions.

However, the competent authorities of the Ukrainian SSR reserve the right to make observations and express their views on the draft articles in due course.

16. UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Transmitted by a note verbale of 2 August 1962 from the Permanent Representative to the United Nations

/Original: English/

1. Her Majesty's Government in the United Kingdom have carefully studied the draft articles on consular relations and consider that they provide a suitable basis for the preparation of a multilateral Convention on the subject.

General observations

2. They wish to make the following general observations:

(a) The task which will face the Conference to be held in Vienna in March 1963 differs in an important respect from that which faced the Conference of 1961 on Diplomatic Intercourse and Immunities. That Conference was concerned with a highly-developed and well-understood body of customary law and practice and, in consequence, the Convention on Diplomatic Relations represents, to a large extent, a codification of existing law and practice. In the consular field, however, customary international law is relatively undeveloped and there is wider diversity in current practice: a considerable number of the provisions of the draft articles relate to matters which at present are governed only by domestic law or local practice and policy. This is a factor which will have to be borne in mind if the Conference is to repeat the success of the Conference of 1961.

(b) It is also important that a clear distinction should be drawn between diplomatic and consular status, and it will be necessary for the Conference to study carefully the relationship between the Vienna Convention on Diplomatic Relations and the proposed convention on consular relations.

(c) Her Majesty's Government agree generally with the articles concerning the opening of consulates, the appointment of consular personnel and connected matters. Care must, however, be taken to ensure that certain of these provisions do not have the effect of imposing an unnecessary burden of additional administrative work upon the sending and receiving States, particularly the latter.

(d) Her Majesty's Government are also in general agreement with the draft articles on privileges and immunities, but consider that certain amendments and modifications are desirable. In their opinion the provisions of the draft articles go in several respects beyond what is at present generally accepted in the practice of States. While Her Majesty's Government do not consider that the proposed convention should be restricted to setting out current practice, they do think that privileges and immunities should not be extended except in so far as this can be shown to be necessary in order to ensure the effective performance of the work of the consulate. Certain privileges and immunities contemplated in the draft articles seem to be either unduly extensive in themselves or else too wide in application. In this connexion, it is important to bear in mind that the grant of privileges and immunities to foreign officials and in respect of official premises usually involves some curtailment of the private rights of individuals.

(e) The draft articles deal primarily with matters of status, but articles 5, 36 and 37 are concerned not with status but with functions. The provisions of articles 36 and 37 in particular appear to fall outside the main framework of the draft articles. It would not be practicable to deal with functions comprehensively in the proposed convention and in the absence of comprehensive treatment the desirability of retaining these articles is open to question. It might be preferable to limit the treatment of functions to general provisions in article 5.

3. Comments on particular articles are set out below. These comments are subject to the general qualification that prior to the Conference Her Majesty's Government will have to devote further study to a number of aspects of the draft articles both internally, and, in so far as concerns their compatibility with the arrangements existing within the Commonwealth, with other Commonwealth

Governments. Consequently, the comments below are not to be taken as either final or exhaustive. Moreover, they are for the most part confined to matters of substance and do not raise purely drafting points.

Comments on particular articles

Article 1 (f)

The definition of "members of the consulate" appears to contain a drafting mistake. As now worded it excludes the head of post and other "consular officials", but paragraph (4) of the commentary states that the definition includes these persons. It is clear from the other provisions of the draft articles that it is the commentary which represents the intention of the Commission.

Article 1 (j)

It is important either in this sub-paragraph or, as appropriate, in other provisions of the draft articles to make it clear that, where a building in which a consulate is located is used partly for other purposes, the facilities, privileges and immunities accorded in the draft articles in respect of consular premises relate only to that part of the building which is used exclusively for consular purposes.

Article 2

The precise significance of this article and its relationship with article 4 are somewhat obscure. In particular, the implications of paragraph 2 are not clear in so far as it concerns States which are in diplomatic relations at the time of the entry into force of the convention between them. It would be preferable for the establishment of consular relations to depend on express agreement between the States concerned rather than upon a presumption as contemplated in the present draft.

It is therefore suggested that paragraph 2 should be deleted and that paragraphs 1 and 3 should be combined with article 4.

Article 3

The exercise of consular functions by diplomatic missions is an important matter and the modalities will have to be looked at with care. Further comment on this subject is made in connexion with article 68.

Article 5

Her Majesty's Government doubt the advisability of going into as much detail as in the present draft article. They would prefer an article on the lines of article 4 of the draft prepared by the International Law Commission at its twelfth session in 1960.

Articles 8-14, 17 and 18

There seems no justification for treating heads of consular posts separately from other consular officials as contemplated in this group of articles. There is no real analogy between the status of the head of a consular post and that of the head of a diplomatic mission; in a consular context, the line of demarcation is between consular officials and consular employees. In this group of articles, therefore, it would be preferable to refer to consular officials in general and not to heads of consular posts alone. In particular, it is important that the provisions of article 11 should not be limited to heads of posts, but that an exequatur or other appropriate authorization should be required in the case of all consular officials.

Article 15

Paragraph 1 of this article does not appear to be sufficiently widely drawn. It may sometimes be necessary to have recourse to the temporary services of a locally resident private individual. It would be better, therefore, to express this paragraph in more general terms and to qualify it by the addition of provisions entitling the receiving State to withhold particular privileges and immunities, the enjoyment of which is subject to compliance with certain conditions, in cases where these conditions are not fulfilled.

Moreover, in the opinion of Her Majesty's Government, if a member of a diplomatic mission is temporarily seconded to act as head of a provincial consular post, it is not normally acceptable that he should continue to enjoy the full range of diplomatic immunities and privileges. Paragraph 4 should, therefore, be qualified so as to make the assignment of a member of a diplomatic mission to perform consular functions subject to the consent of the receiving State and his continued enjoyment of "diplomatic privileges and immunities" subject to agreement. This comment does not, of course, apply in cases where members of a diplomatic mission are appointed to perform consular work in the consular section of the mission.

Article 19

If articles 8-14, 17 and 18 are recast, as proposed above, so as to apply to consular officials generally, the scope of article 19 would be limited to consular employees. In this event, paragraph 2 and the reference to article 22 in paragraph 1 should be deleted.

Article 22

This article seems superfluous, since the exercise of consular functions by a consular official should in any event be subject to the granting of an exequatur or other appropriate authorization by the receiving State. It is true that an article in similar terms is included in the Convention on Diplomatic Relations but, in view of the differences between consular and diplomatic work, the reasons for imposing limitations in respect of nationality are less cogent in the case of consular appointments.

Article 30

The inviolability proposed for consular premises should apply only to that part of the premises which is used exclusively for the purposes of the work of the consulate.

It should be provided that, in the absence of the consent of the head of post, entry may be authorized by the Minister of Foreign Affairs of the receiving State.

In addition, entry should be permitted in certain emergency cases without either the consent of the head of post or the authorization of the Minister of Foreign Affairs; for example, where a crime of violence has been, is being or is about to be committed on the premises, or in the event of fire.

A provision should also be added to the effect that the consent of the consular officer in charge of the post is sufficient if contact cannot be made with the head of post.

The article should state expressly that consulates must not be used to afford asylum to fugitives from justice.

Some clarification of the scope of paragraph 3 is desirable.

Article 31

The opening words of this article should be amended to make it clear that its provisions apply not only to a head of post but also to any other person in whose name property is owned or leased for consular purposes on behalf of the sending State.

Article 32

This article should be amended to provide that, if the consular archives and documents are to be treated as inviolable, they must be kept separately from other documents and papers.

It is not clear precisely what the term "documents" is intended to denote since "documents" are included in the definition of "archives" at article 1 (k). This point also arises in relation to article 60.

Article 34

The obligation on the receiving State should be limited to "permitting" rather than to "ensuring" freedom of movement and of travel. The expression "in its territory" should be made more precise. The proper area of application would seem to be the consular district of the officer concerned.

Article 35

The proposal to extend to consular bags the same complete inviolability as is given to diplomatic bags under article 27 of the Convention on Diplomatic Relations goes beyond the requirements of existing customary international law as understood in the United Kingdom. It is proposed that the draft should be amended so as to provide that the authorities of the receiving State may request the opening of a consular bag if they have reasons to believe that it is being used for any improper purpose but to make it clear that, if the authorities of the sending State refuse to comply with such a request, they would be free to take back the bag unopened either to the consulate in the case of outgoing bags or to the sending State in the case of incoming bags.

Article 36

Her Majesty's Government are doubtful whether this article should be included, since as explained in paragraph 2 (e) above it appears to fall outside the main framework of the draft articles.

If, however, the article is retained, a number of modifications would be desirable. In particular, a provision should be included in the article (or alternatively inserted as a separate article) to the effect that the receiving State should be entitled to decline to recognize the right of members of a consulate of the sending State to act on behalf of, or otherwise concern themselves with, a national of the latter State who is a refugee, or is seeking asylum in the receiving State, for reason of race, nationality, political opinion or religion.

In addition, the last words of paragraph 2 should be amended so as to read as follows: "subject to the proviso, however, that the said laws and regulations must permit adequate facilities for the purposes for which the rights accorded under the article are intended."

Article 41

The inviolability conferred by paragraph 1 is considered to be too wide particularly in that it does not permit arrest without warrant in any circumstances.

It is suggested that the provision should be amended so as to grant immunity from detention pending trial except:

(i) in the case of a grave offence; or

(ii) where the offender is detected in the course of committing an offence; or

(iii) at the request or with the consent of the sending State.

The purpose of this proposal would be to prohibit detention pending trial but not arrest; that is to say a consul could be arrested but would have to be released after being charged.

The final words of paragraph 2 (namely "of final effect") should be deleted, or at any rate clarified. As the text stands at present, it might be open to an interpretation excluding for example detention after conviction of an offence but before the possibilities of an appeal have been exhausted.

In addition, it would be desirable to specify, either in the "definitions" article or elsewhere, the meaning of the term "grave crime". This has been done in many bilateral conventions, where the criterion usually adopted has been that of an offence punishable with a maximum penalty of at least five years imprisonment, the intention being to establish a standard roughly equivalent to that of offences categorized as "crimes" under a number of legal systems.

Article 43

This article appears to require amendment in a number of respects.

In the first place, the article appears to be based on a wrong conception, namely that of immunity from jurisdiction. In the opinion of Her Majesty's Government, the relevant rule of customary international law goes no further than to provide that, if a consular officer or employee is made the subject of proceedings, he cannot be held liable in these proceedings in respect of an official consular act.

Secondly, the words "in respect of acts performed in the exercise of consular functions" do not provide a sufficiently precise criterion. In the opinion of Her Majesty's Government, consular immunity should apply only in regard to acts performed by the individual concerned in his official capacity and falling within the functions of a consular officer under international law.

Thirdly, the inclusion of "service staff" within the scope of the article does not appear to be justified. For example, there are strong and self-evident reasons why the article should not apply to the drivers of vehicles.

In the interests of protecting private rights, the article should be qualified by a provision to the effect that a consular officer or employee may be held liable in civil actions either (a) arising out of a contract concluded by him in which he did not contract expressly or impliedly as agent of his Government; or (b) brought by a third party in respect of damage caused by a motor vehicle, vessel or aircraft.

Article 44

The second sentence of paragraph 1 should be deleted. To exempt consular officers and employees from liability to coercive measures and penalties would be undesirable from the point of view of preserving private rights and in the opinion of Her Majesty's Government the provision as drafted goes beyond the requirements of existing international law.

The present wording of paragraph 2 is unduly peremptory and far-reaching. It would be preferable to redraft it on the following lines:

> "In such event, all reasonable measures shall be taken to avoid interference with the work of the consulate and, in the case of a consular official, arrangements shall, wherever possible and permissible, be made for the taking of the evidence, orally or in writing, at his office or residence."

Article 45

Paragraph 1 should be expanded so as to make it clear that it is the duty of the sending State to waive immunity when this is desirable in the interests of justice, provided that to do so would not be prejudicial to the interests of the sending State.

Article 46

Her Majesty's Government consider that the scope of this article is too wide and that it should not apply to members of the service staff, to members

of the service staff, to members of the private staff or any member of the consulate, or to the members of the families of members of the service or private staff. They do not agree with the argument in paragraph (3) of the commentary for giving these immunities to members of the private staff; under the Convention on Diplomatic Relations private servants of members of the mission do not enjoy any privileges and immunities which would have the effect of freeing them from the obligations referred to in article 46 of the present draft articles; the argument in paragraph (7) of the commentary does not apply to them. There seems no sufficient reason for conferring greater privileges in this respect on the private servants of members of a consulate than on those of members of a diplomatic mission.

If this proposal is accepted, it follows (in accordance with what is said in paragraphs (4) and (5) of the commentary) that paragraph 2 of the article should be omitted.

Her Majesty's Government also consider that exemptions under article 46 should not be granted to a consular employee (or members of his family) unless the employee:

(a) is a permanent employee of the sending State, and

(b) is not carrying on a private gainful occupation in the receiving State.

The second of these restrictions would have the effect of making the position of a consular employee similar to that of a consular official in accordance with articles 56 and 62.

Articles 48-50

Her Majesty's Government are giving further study to the provisions of these draft articles. Meanwhile they have the following preliminary comments on articles 48 and 50.

Article 48

Her Majesty's Government consider that the exemption of members of the consulate from taxation on income having its source outside the receiving State should be limited to those persons who:

(a) are permanent employees of the sending State; or

(b) were not ordinarily resident in the receiving State immediately before becoming members of the consulate.

Moreover, the extension of this exemption to members of families and the granting of tax exemption on the wages of members of the private staff would go beyond the existing requirements of international law.

Article 50

While sub-paragraph (a) appears acceptable, there is not, in the view of Her Majesty's Government, sufficient justification, having regard to the existing rules of international law, for granting exemption from death duties to consular personnel.

In any event, sub-paragraph (b) appears to contain a drafting mistake; by failing to exclude permanent residents of the receiving State, it goes considerably further than the corresponding provision of the Convention on Diplomatic Relations.

Article 52

It would be preferable to follow the precedent of the Convention on Diplomatic Relations and to relegate this provision to an optional protocol. The considerations which led to the adoption of this course in the case of that Convention apply also in the case of the present draft articles.

Article 53

With regard to paragraph 1, while it is difficult to determine the precise point at which the enjoyment of privileges and immunities should begin, it would seem more appropriate to link it to the admission (including provisional admission) of the officer concerned to the exercise of consular functions than to the notification of his appointment as proposed.

Article 68

With regard to paragraph 2, it is important that members of a diplomatic mission assigned to perform consular functions should be specifically appointed to hold consular, in addition to diplomatic rank and that their consular appointments should be made in the same way as the appointments of consular personnel.

Paragraph 3 permits dealings with authorities other than the Ministry for Foreign Affairs only by way of exception. In the view of Her Majesty's Government the normal principle that consular officials may deal directly with authorities other than the Ministry for Foreign Affairs should apply even to the exercise of consular functions by members of a diplomatic mission. It is therefore suggested that this paragraph should be recast on the following lines:

"In the exercise of consular functions, members of a diplomatic mission may, subject to local law or usage, address authorities in the receiving State other than the Ministry for Foreign Affairs."

With regard to paragraph 4, the continued enjoyment of diplomatic privileges and immunities by a member of a diplomatic mission assigned to perform consular duties should be the subject of agreement between the sending State and the receiving State.

Article 70

It would be preferable to follow the precedent of article 47 of the Convention on Diplomatic Relations and to amend paragraph 2 so as to permit the Convention to be applied restrictively, where appropriate, on a reciprocal basis.

17. UNITED STATES OF AMERICA

Transmitted by a note verbale of 17 July 1962 from the Permanent Representative to the United Nations

/Original: English/

The United States Government has not yet ratified the Vienna Convention on Diplomatic Relations. Since this is the case, the United States Government is unable to comment fully on all such articles of that Convention, as they may be duplicated in this draft Convention.

Following is an article by article comment upon such of the 71 articles which are of special interest to the United States Government at this time.

Article 1

Through apparent inadvertence, the definition of "members of the consulate" in paragraph 1 (f) seems not to include consular officials. Paragraph 4 of the commentary, however, implies that consular officials are to be so included. The accuracy of the commentary is assumed. Paragraph 1 (f) should be revised accordingly.

It is suggested article 1 (i) be qualified in the manner similar to that of article 1 (h) of the Vienna Convention on Diplomatic Relations, so it will be clear that a member of the private staff means a person who is in the private service of a member of the consulate and is not an employee of the sending State. Otherwise, it may be difficult to distinguish between sub-paragraph (h) and (i) personnel in the instant draft.

As discussed more fully in the United States Government comment pertaining to article 69, paragraph 3 of this article should be amended by adding permanent residents to the category of persons covered by article 69.

Article 4

It might be desirable to change paragraph 3 to provide that subsequent changes in the seat of the consulate or in the consular district may be accomplished through prior notification of not less than 3 months to the

receiving State, to be considered final in absence of objection by the receiving State.

Article 5

The United States Government would prefer to draw a distinction between those functions which are inherent to the consular activity, and therefore not generally subject to the laws of the receiving State, and those functions which are generally regarded as subject to the laws of the receiving State. The important consular functions of issuing passports and visas and certain notarial functions are definitely in the former category, and should not be subject to restrictive national laws. However, many other functions of a consul, including functions relating to minors, and estates, are closely linked with the implementation of relevant local laws of the receiving State, and should be declared specifically subject to such laws.

While the United States Government therefore would prefer a general definition of consular functions, the following comments are offered for consideration if it is decided that a detailed definition of consular functions, along the lines of the various paragraphs of this article, is to be retained.

Because of the controversial nature of several of the paragraphs of this article, whatever final form they may take, the United States Government presume that the language of sub-paragraph (e), viz., "Helping and assisting nationals of the sending State;" will be construed to be mutually exclusive of matters specifically considered elsewhere in this article.

The concept of the civil registrar of sub-paragraph (f) is one which is unfamiliar to United States jurisprudence. To the extent that the exercise of this function in the United States by a consul would go beyond the powers of an American notary, such as solemnizing a marriage (see commentary 12), this action presumably would not be prohibited by the laws of the United States. However, since the marriage would not be recognized under the laws of the United States if it were not celebrated according to local law, certain practical difficulties may ensue. Similar problems would certainly arise should the consul perform other functions regularized under conflict of laws doctrine by the law of the receiving State, which relate to legal rights and

obligations in the receiving State. It is suggested, therefore, that sub-paragraph (f) be prefaced by language in the sense of "to the extent consistent with the laws of the receiving State ...".

It is believed that the word "Safeguarding", as found in sub-paragraphs (g) and (h), is somewhat ambiguous. For example: (1) In the United States, even if there is a treaty, a consul without a power of attorney is only empowered to make appropriate inquiries with respect to the rights and interests of such nationals of the sending State as are not resident in the receiving State, and make recommendations to appropriate authorities of provisional measures for the protection of those rights and conservation of interests, if such procedures are permissible under local law. Commentary 14 indicates, though sub-paragraph (g) of the draft is not clear in this regard, that the consul may, without a power of attorney, take action beyond that of making inquiries and recommendations and that he could concern himself with assets of an estate claimed, inter alia, by nationals of the sending State who are permanent residents in the receiving State and who, under United States law and practice, are considered legally capable of looking after their own interests. (2) Guardianship and trusteeship matters are governed in the United States solely by the local law of their several states, and, while these laws may not specifically preclude the consul from participation therein, they do not authorize it. This provision would be acceptable to the United States only if it were understood to mean that the consul would have to qualify for these duties pursuant to local law.

Sub-paragraph (i) implies that the consul may appear as attorney or agent on behalf of absent nationals of the sending State, and that this right must be exercised in accordance with the laws and regulations of the receiving State. This Convention should recognize that certain considerations might well preclude "representation" by a consul, whereas no specific legal prohibition could be substantiated under receiving State legal doctrine. Furthermore, in such situations in the absence of specific laws or regulations authorizing the consul to act in such matters, the consul would under United States local law and practice be as effectively precluded therefrom as if a specific prohibition of law existed.

It is proposed, therefore, for the foregoing reasons that sub-paragraphs (g), (h) and (i) be modified to indicate that the functions set forth may be exercised by a consul only within the discretion of the appropriate judicial authorities and if permissible under, or not prohibited by, existing applicable local law.

With respect to sub-paragraph (j) it is understood that many judicial systems utilize the "commission rogatoire", regardless of whether it is addressed to a foreign court or addressed to a consul of the sending State for execution, the latter simply being an extension of the sending State court's own domestic procedures. United States practice has been generally to reserve the term "letter rogatory" to requests addressed to foreign courts, and to refrain from applying the description "rogatory" to commissions intended for execution by consuls or other persons not members of a foreign judiciary. Since sub-paragraph (j) authorizes the execution of both letters rogatory between courts, and commissions from courts to consuls in accordance with existing treaties, or in a manner compatible with the law of the receiving State, no objection is perceived thereto. However, it may be preferable if the matter of court to court letters rogatory were made the basis for a separate convention.

With respect to sub-paragraph (l) the words "of any kind" seem too broad. In United States practice foreign consuls may act only with respect to events occurring on board before the vessels entered our waters, and matters of internal administration of the vessel while within our waters, with respect to which there would be no reason to interfere. It is proposed that the sub-paragraph be redrafted to recognize the superior right of the administrative or judicial authorities of the receiving State to take cognizance of crimes or offences which disturb the peace of the port and to enforce the laws of the receiving State applicable to vessels of any State within its waters.

Article 15

In United States practice only commissioned consular officers are empowered to perform certain of the consular functions. It is not believed paragraph 1 could empower an acting head of post who is not a commissioned consular officer of the United States to perform consular functions vis-à-vis United States municipal law.

The United States Government would not object to a member of the diplomatic staff temporarily assuming the direction of a consulate while simultaneously receiving diplomatic privileges and immunities, except that should this person perform such functions as taking provisional custody of, or administering estates, making distribution of funds, etc., then he should be subject, with respect to the exercise of these functions, to the law of the receiving State in the same manner and to the same extent as a national of the receiving State. Paragraph 4 should be amended accordingly.

Article 17

The United States Government is of the view that, except in certain justifiable cases of hardship, the functions and status of a consular officer are incompatible with the functions and status of an individual entitled to the privileges and immunities of a representative of the sending State to an international organization. It is proposed that article 17 should be amended to reflect this view. With few exceptions the United States Government has declined to recognize in a consular or other non-diplomatic status any representative to an international organization entitled to diplomatic immunity (see the comment to article 15).

Article 19

If the premise that only the head of a consular post needs an exequatur or provisional recognition to enter upon his functions (and this recognition will cover the continuing consular activities of all members of the consular staff), is to be established by this Convention, it is presumed, in the absence of a request pursuant to paragraph 2, that notwithstanding articles 13 and 11, article 15 will permit an acting head of post and his staff to exercise all functions of the consular post without further authorization from the receiving State.

Article 23

From the commentary to this article it is assumed that the receiving State would be obliged to communicate the reasons for its action to the sending State under paragraph 1 but not under paragraph 2. Even if this were a proper assumption to make, the United States Government does not believe that a reason should be required in either case. The grounds for the complaint should not be

subject to debate. It is believed that States may be expected to exercise sufficiently good judgement in this respect not to warrant the distinction between paragraphs 1 and 3.

Article 26

It is believed that permanent residents should be specifically excluded from the right granted by this article (see the discussion pertaining to article 69).

Article 28

The United States Government believes this article should be amended to provide that in times of emergency the national flag may be flown at the residence and on the vehicle, vessel or aircraft of any consular officer of the sending State.

Article 29

The United States Government believes that this article should be amended by the addition of a paragraph to provide the sending State with the right to acquire by purchase or otherwise, in terms no less favourable than available generally to nationals of the receiving State, the premises necessary for the consulate. Thus, the sending State should have the opportunity to choose whatever tenure is most advantageous to its own particular needs or desires.

Article 30

Under the provisions of this article, agents of the receiving State cannot enter the consular premises, except with the consent of the head of post. Because of the fundamental difference between the diplomatic chancery and the ambassadorial residence, which buildings are usually maintained separately, and the consulate, which is often a suite or a floor in a large office building complex, a right of entry should specifically be reserved or implied in case of fire or force majeure. Advance consent might not be possible to obtain in such emergency situations. These are matters which vitally affect the safety and welfare of the remainder of the building and of the entire area, and if such an entry, with implied consent, were exercised in a restrained manner, the continued operation of the consulate would be facilitated, not adversely affected.

Article 32

In view of the words "... wherever they may be" this article leaves unresolved the question of who determines what constitutes a consular archive not found on the consular premises. It is presumed that the burden would be upon the sending State in such situations to demonstrate a given document is actually entitled to the protection of this article. In addition, there appears to be no real need to include the words "and documents", since these words are included in the definition of consular archives in article 1 (k).

Article 35

It is, of course, desirable that the official correspondence should be considered inviolable, whether transmitted by code, courier, or bag. If official correspondence is transmitted through the open mail, it should be understood to be subject, however, to the postal and customs regulations of the receiving State.

Article 36

With respect to this article, freedom of communication between consuls and nationals of the sending State is implicit in the exercise of consular functions.

An onerous burden must not be placed by sub-paragraph (b) upon the receiving State to notify consuls in all cases. The unreasonableness of this would be readily apparent in international border areas, in large shipping centres, and in areas with significant alien populace. The notification obligation should therefore be modified to cover instances in which the person in prison, custody or detention is mentally or physically incapacitated. The remainder of the obligation to notify should be based upon the request of the national concerned.

With respect to permanent residents, the United States Government questions whether in all cases it would be practicable to effectuate the notification.

It would seem that the last six words of the first sentence of paragraph 1 (c) would raise the inference that the consul may visit his national in prison, custody or detention only for the purpose of arranging for legal representation. Since such a construction of the paragraph would not seem to be in accordance with the tenor of this Convention, the right to visit, communicate, etc., could be clarified by revising the last six words to read "and for the purpose of arranging for his legal representation".

Article 37

In the view of the United States Government the general vital statistics obligation which sub-paragraph (a) imposes on the receiving State is disproportionate to the benefit which may be derived from it by the sending State. To include in this obligation cases in which there is a known heir or testamentary executor in the receiving State goes well beyond the usually recognized consular functions. The preferred substitute, an amendment excluding from the obligation all cases except those in which there is no known heir or testamentary executor, would be complemented by the according of full facilities under article 33 to utilize the records of the pertinent authorities of the receiving State whenever the need arises.

With reference to sub-paragraph (b), it is presumed that the phrase "appears to be in the interest of the minor" gives the authorities of the receiving State discretion in exercising this obligation of informing. Even if the competent consulate were so notified, it is not known what purpose would be served. In United States legal practice, local law determines the manner in which a guardian or trustee may be appointed and the qualifications needed by such a person. It is presumed that sub-paragraph (b) does not require the receiving State to permit the consular official to be appointed as a guardian or trustee, except in conformity with local law.

Article 40

It is noted that the first sentence of this article creates a greater duty of according special protection to consuls than is accorded under article 29 of the Vienna Convention on Diplomatic Relations to diplomatic personnel. It is suggested that the substance of the last sentence of article 29 of the latter Convention comprise article 40 of this Convention. This would bring article 40 more in line with the generally accepted status of consular officers.

Article 41

The term "grave crime" as the criterion for determining personal inviolability appears to lack sufficient clarity, in view of the disparity in classification of crimes which exists among the States which may adopt the Convention.

Further, to eliminate the opportunity of subjecting a consul to charges of a political crime, it may be desirable to provide criminal jurisdiction in cases of crimes only where the offence is a crime both under the laws of the sending and receiving State.

It is considered that the personal inviolability of the consul can only have its fullest meaning if he is exempt not only from arrest but from prosecution, except when charged with a crime which, upon conviction, might subject the guilty individual to imprisonment for a given period of time.

Article 43

The United States Government fully supports the official acts doctrine upon which this article seems to be based. However, paragraph 3 of the commentary does not fully answer the question of who decides whether a given act was performed in the exercise of consular functions. It is considered that article 41 (3) would permit the courts of the receiving State to make this decision on a case-to case basis. If this is intended, article 43 should be amended to accord with the preferred rule that consuls are amenable to the jurisdiction of local courts as a matter of procedure, and if the court decides the act was done in the performance of official duties, the consul is not then liable as a matter of substantive law.

Article 44

The sixth amendment to the United States Constitution grants in all criminal cases to an accused the right, inter alia, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favour. The second sentence of paragraph 1 would be to the contrary. Further, to accord with the amenability of consuls to the jurisdiction of local courts as a matter of procedural law, the second sentence should be omitted.

Article 47

Article 38 of the Vienna Convention on Diplomatic Relations extends only limited privileges and immunities to a diplomatic agent "who is a national of or permanently resident in that State". Article 69 of the instant draft similarly uses only the words "who are nationals of the receiving State". As a result,

members of the consulate who are permanently resident in the receiving State would be exempt from, for example, the social security coverage of article 47. It is considered that diplomatic and consular officers who are permanently resident in the receiving State should be treated in a similar manner for like purposes (see the discussion at article 69).

Article 48

By virtue of article 69, nationals of the receiving State are not tax exempt pursuant to article 48. However, permanent residents would achieve this exemption whether as members of the consulate, service staff, or private staffs. A resident alien who has manifested an intent to become a permanent resident of the receiving State would no longer have significant connexions with the sending State other than his employment, and should not therefore be tax exempt (see the discussion at article 69).

Article 50

It is noted that article 50 makes no reference to taxes imposed by state and municipal governments of the receiving State, in contrast with the wording of articles 31 and 48. Many of the state laws of the United States impose estate, succession or inheritance taxes upon the death of a member of the consulate or of a member of his family. Since article 50 is intended to apply to such taxes as well, it is recommended that the exemption be stated in terms similar to those in articles 31 and 48.

Further, the benefits of article 50 are not extended to members of the consulate and members of their families who are nationals of the receiving State by reason of article 69. Members of the consulate who are permanent residents of the receiving State should also be excluded from the exemption. The commentary points out that the exemption of article 50 is justified because the persons in question came to the receiving State to discharge a public function in the interests of the sending State. By the same token, appointment of a permanent resident of the receiving State as a member of the consulate should not entitle his estate to exemption under article 50 (see the comments to article 69).

Article 52

This article conflicts with significant portions of the domestic law of the United States. It would be preferable if this article was embodied in a separate protocol rather than in the Convention itself, in the manner of the Vienna Convention on Diplomatic Relations, and for the same reasons.

Article 53

It is noted that paragraph 4, while based upon the last sentence of article 39 (2) of the Vienna Convention on Diplomatic Relations, is further embellished by adding the term "inviolability". The use of this term is not fully understood. It is suggested that this term be dropped, in conformity with the United States Government comments on article 41, 43 and 44.

Article 57

Upon a careful consideration of the content of chapter III, and assuming that article 69 is amended by including permanent residents within the scope thereof, it is not known why honorary consuls need be dealt with separately in articles 58 through 67. No reason is seen, therefore, to distinguish in these articles between the regular consular officials and honorary consuls, since it can be argued that the consular functions performed by these honorary consuls are the same as those of full-time consular officials. The immunity and privileges, of course, are to effectuate the consular functions, not at all to benefit the individual concerned. Further, since the approval of the receiving State is required for the appointment of one of its nationals as an honorary consul, it can be argued equally well that this consent, if given, could imply there is no objection to granting him the privileges and immunities of consular officials generally, except as specifically qualified by his nationality or permanent residence.

Article 58

Since article 1 (j) defines consular premises to be the building or parts of the building used for the purpose of the consulate, use of the word "exclusively" by this article could be interpreted to mean that even if one out of ten rooms is not used for consular functions, the entire building loses its inviolability.

Perhaps in view of the language of article 30 this meaning was intended, and if so, the United States Government approves.

Article 59

Again, it would appear that if one small part of the consular premises was not used for the exercise of consular functions, the word "exclusively" would mean that tax exemption for the entire premises would be lost. In view of the language of article 31, this meaning appears to be intended and, if so, the United States Government approves.

Article 68

Paragraph 4 of this article appears to complement article 15 (4). To the extent this may be true, the discussion of the United States Government at article 15 is for application here. There is no intent on behalf of the United States to deny any personal privileges to a person in such capacity, or to derogate from his immunity except for that small part pertaining to his exercise of certain fiduciary consular functions.

Article 69

With particular respect to matters covered by articles 26 (right to leave the territory), 47 (social security exemptions), 48 (tax exemptions), 50 (estates), 57 (rights of honorary consuls) and 61 (special protection to honorary consuls), the United States Government believes that permanent residents of the receiving State should be in no better position than nationals of the receiving State. This is the policy expressed by article 38 of the Vienna Convention on Diplomatic Relations, and should be followed in this Convention, by adding the words "or permanently resident in" to paragraphs 1 and 2.

18. YUGOSLAVIA

Transmitted by a note verbale of 21 June 1962 from the Secretary of State for Foreign Affairs

[Original: French]

In submitting this memorandum on the draft articles on consular intercourse and immunities prepared by the United Nations International Law Commission, the Government of the Federal People's Republic of Yugoslavia has the honour and the pleasure to express its great satisfaction at the progress accomplished as shown in the drafting of this report which is in conformity with the importance and role of the consul in international relations and in the development of a relationship of friendship, co-operation and understanding between the peoples. The Government of the Federal People's Republic of Yugoslavia declares itself at the same time prepared to take part in the International Conference convened by the General Assembly of the United Nations at Vienna with a view to adopting a convention on consular intercourse and immunities.

Although the Government of the Federal People's Republic of Yugoslavia gives its general acceptance to the proposed draft which it considers a useful and appropriate basis for the adoption of a convention, nevertheless it considers that it is its duty to call attention to certain paragraphs and provisions of this draft. In its desire, therefore, to contribute to the improvement of the draft the Government of the Federal People's Republic of Yugoslavia submits the following observations:

Article 5

Although it is in agreement with the text of this article the Government of the Federal People's Republic of Yugoslavia reserves the right to request at the Conference that certain paragraphs should be formulated more clearly; for that purpose it proposes to submit a certain number of drafting comments to the Conference.

Article 13

The Government of the Federal People's Republic of Yugoslavia agrees with the idea expressed in this article. Nevertheless it is of the opinion that in the interest of clarity it should be stressed that "the head of a consular post may be admitted by the receiving State", for that is in reality the idea in mind.

Article 15

It is of the opinion that the receiving State should have the right to accept or not accept "the acting head of a (consular) post" if the latter is not chosen from among the consular officials of the consulate in question for otherwise recourse to this practice might represent a misuse of the exequatur. The Yugoslav Government is also of the opinion that the refusal to accept "the acting head of a (consular) post" is by no means equivalent to declaring that person "persona non grata" for the exercise of other functions in the service of the sending State.

Article 18

Although it recognizes that this provision is on a line with Article 6 of the Vienna Convention on Diplomatic Relations the Government of the Federal People's Republic of Yugoslavia is of the opinion that there should be a more precise definition of the responsibilities of a State with respect to the activities of a person who had been appointed head of a consular post by two or more States at the same time. This question should be subjected to further study apart from the analogy it presents with the Vienna Convention on Diplomatic Relations.

Article 20

The Government of the Federal People's Republic of Yugoslavia is of the opinion that this article should be made to conform with Article 11 of the Vienna Convention on Diplomatic Relations and that the receiving State should be given the right not only to demand a limitation of the size of the consulate's staff, but also the right to decide on the matter itself in default of an explicit agreement between the sending State and the receiving State. The Government of the Federal

People's Republic of Yugoslavia does not see why the rights of the receiving State with regard to the consular staff should be more limited than the rights of the same State with regard to the staff of diplomatic missions.

Article 21

The order of precedence as between the head and the officials of the consular section of the diplomatic mission in their position as consular officials is not clearly defined. The Government of the Federal People's Republic of Yugoslavia thinks that the article should be completed in this sense.

Article 23

The Government of the Federal People's Republic of Yugoslavia is of the opinion that a new paragraph 4 should be added to this article to specify that the receiving State is bound to withdraw the exequatur or the provisional decision of acceptance of the consul if the sending State notifies the receiving State that the person in question has ceased to occupy his functions with the consulate. The Government of the Federal People's Republic of Yugoslavia believes that it is not in the interest of good relations between States to create fictions with respect to the legality of the position of a consul whom the sending State has withdrawn from his appointment. The addition of such a paragraph would be in line with the provisions of Article 25 of this draft.

Article 24

The Government of the Federal People's Republic of Yugoslavia is of the opinion that sub-paragraph (a) of paragraph 1 of this article should make provision for any changes that may occur in the course of service in addition to the appointment of members of a consulate, their arrival and final departure or the termination of their functions, since such changes are frequently of importance and may present a considerable interest to the receiving State.

Article 27

The Government of the Federal People's Republic of Yugoslavia believes that it is essential to repeat here a comment already submitted in the note verbale

dated 28 February 1961 with respect to Article 26 of the previous draft, namely: "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 41

The Government of the Federal People's Republic of Yugoslavia feels bound to state that there might be serious difficulties in applying this provision by reason of the inherent lack of precision in the idea of "grave crime".

Article 44

The Government of the Federal People's Republic of Yugoslavia is of the opinion that the territorial State should be given the right to approach the sending State in the matter and request it to call upon its consul to appear as a witness if he should refuse to do so, provided that his evidence would not be incompatible with the exercise of his consular functions.

Article 45

This article should specify the body authorized in the name of the State to make the declaration of the waiver of immunities.

Article 46

The Government of the Federal People's Republic of Yugoslavia would have no comment to make if paragraph 2 of this article were to specify that the exemption from obligation in the matter of work permits referred only to the work done in the consulate or in the service of the members of the consular staff and not any other employment (for instance, members of the family) outside the consulate.

Article 48

The Government of the Federal People's Republic of Yugoslavia considers that the exemption from taxation mentioned in this article, paragraph 2, does not cove the nationals of the receiving State nor persons permanently residing there (see article 69 of the draft).

Article 49

The Government of the Federal People's Republic of Yugoslavia is of the opinion that the text should specify that the expression "articles for the personal use" should also cover automobiles, in view of the fact that practice in the various countries does not always agree in this respect.

Article 51

This privilege should be extended to the service staff from the sending State since the imposition of special obligations with respect to this staff might paralyse the activity of the consulate.

Article 52

In view of the practical difficulties experienced in this respect the Government of the Federal People's Republic of Yugoslavia is of the opinion that it is essential to state expressly in the text that the principle of jus soli cannot be applied automatically, at the mere will of the receiving State, to children of the consular staff born in the territory of that State during the period of service of their parents, if the sending State is opposed in a particular case to the application of that principle.

Article 54

The Government of the Federal People's Republic of Yugoslavia is of the opinion that it should be laid down that third States whose territories must be crossed by consular officials proceeding to join their posts or returning to their own country are bound to grant those officials the right of transit or the necessary visas. Nevertheless this obligation should be limited to cases where the third State in question is on the sole route of transit between the sending State and the receiving State.

Article 55

The Government of the Federal People's Republic of Yugoslavia notes that the provision forbidding the use of consular premises as an asylum has not been included in the provisions of this draft and accepts the argument put forward by

the United Nations International Law Commission that the question was not foreseen in the draft. It expects nevertheless that the question of asylum will be solved separately in the provisions that will result from the examination of the question of the right of asylum at present on the agenda of the International Law Commission.

General Observation on Chapter II

In the opinion of the Government of the Federal People's Republic of Yugoslavia a new article should be added at the end of this chapter stipulating that the Minister of Foreign Affairs of the receiving State should deliver to the consuls and members of the consular staff special identity cards which the latter would be able to present to the authorities and officials of the receiving State as a document certifying their functions and the privileges due to them in the exercise of their duties. The Government of the Federal People's Republic of Yugoslavia makes this proposal because it has frequently occurred that in the absence of such a document consuls often meet with difficulties in the contacts with the local authorities, a situation which is detrimental to the official performance of their service. It may occur that the local officials and other authorities, and in particular the executive authorities, refuse to recognize on the territories of certain States the immunities and privileges of the consular staff on the pretext that they do not know the list of names and functions. It would therefore be advisable to print on this card of identity the provisions respecting the guarantees of privileges and immunities.

It is just as important for the consul to have at his disposal a similar card for the identification of the automobiles of the consulate and of the members of the consular missions. It would be advisable also to adopt provisions respecting the car-plates to distinguish the means of transport in the service of consuls and members of the consular staff.

Article 57

Although the Government of the Federal People's Republic of Yugoslavia is of the opinion that honorary consular officials should be granted all the facilities,

privileges and immunities which are indispensable to them for the exercise of their duties, it is nevertheless convinced that the Conference should not limit itself to the question of what facilities, privileges and immunities should be granted to honorary consuls, but above all to what extent these facilities, privileges and immunities should be conferred upon them in consideration of the other occupations which honorary consuls are able to exercise. Honorary consuls must not be able to abuse their position and escape from the control of the receiving State, a control which is quite normal in view of their profession and other activities. Although it considers the institution of honorary consuls as most useful the Government of the Federal People's Republic of Yugoslavia thinks that the question of their privileges and immunities should be subjected to careful and prudent examination for there are many cases in which this institution is exploited by businessmen to an extent far exceeding the requirements of official consular functions. It is essential to draw the line between consular and other activities.

Article 58

The guarantees contained in this article do not commit the receiving State in cases where the honorary consul exercises other functions or is the subject of penal proceedings for an offence which has nothing to do with the exercise of his consular functions.

Article 60

The Government of the Federal People's Republic of Yugoslavia is of the opinion that the provisions restricting the exercise of consular functions by diplomatic missions only refer to that part of the territory of the receiving State which is not included in the consular districts of the different consulates of the sending State.

Article 70

Although there can be no denial of the right of States freely to enter into international agreements, the Government of the Federal People's Republic of Yugoslavia is of the opinion that future international agreements relating to

consular intercourse should conform to the convention which will be adopted on the basis of these draft articles since the provisions of these articles represent the minimum guarantees required today by international public policy. Therefore this article might well conclude with the following sentence: "provided always that nothing herein contained shall prejudice the minimum guarantees offered by this Convention."

In submitting the above observation the Government of the Federal People's Republic of Yugoslavia, bearing in mind the reasons which led the Commission to include in the text the expression "in case of armed conflict", merely desires to express the fear that the use of such an expression might serve to encourage those who might wish to deduce from it that the Commission has accepted the principle of the lawfulness of the "armed conflicts" which is obviously in complete contradiction with the fundamental principles of the Charter of the United Nations and the policy of coexistence and co-operation between the nations, elements of prime importance that cannot be ignored when codifying international law.

Clause (j): This provision concerns the serving of judicial documents and the execution of letters rogatory. These functions must be exercised in accordance with conventions in force or, in the absence of such conventions, in any other manner compatible with the law of the receiving State. Paragraph (18) of the commentary appears to imply that, in the case of the serving of judicial documents, this condition relates solely to the manner in which the function may be exercised, whereas paragraph (19) suggests that, in the case of the execution of letters rogatory, it relates to the actual admissibility of the function. Since acts relating to judicial assistance are regarded in a number of States, including Switzerland, as sovereign acts which can be performed only by the competent national authorities, it should be expressly stated that they may not be performed except with the consent of the receiving State.

Article 11

The Swiss Government considers that it would be desirable to amplify this article by a provision stating that, in accordance with the general practice, an exequatur is not required for consular officials who are not heads of posts and that a notification by the head of the consular post to the competent authorities of the receiving State is sufficient to admit such officials to the benefit of the provisions of the Convention.

Article 13

As the Swiss authorities indicated in their observations on the 1960 draft, the provisional admission of the head of a consular post should not entail the automatic grant by the receiving State of all the privileges and immunities provided for in the Convention. Such a statement might lead to difficulties, particularly in regard to exemption from customs duties, if the exequatur should be refused. It would therefore be preferable to replace the present text by the following provision:

> "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 15

Paragraph 3: As the acting head discharges his function on a temporary basis, there appears to be no justification for according to him all the privileges of the titular head of post. The following provision would be sufficient:

"The competent authorities shall afford assistance and protection to the acting head of post and accord him the necessary privileges for the exercise of his functions."

Article 19

Paragraph 2: As is noted in connexion with article 11, the exequatur granted to the head of a post is generally recognized as covering the activities of all the other consular officials. The optional measure provided for in this paragraph must be regarded as exceptional; it might, furthermore, conflict with the municipal law of the receiving State. The Swiss Government is therefore of the opinion that the paragraph should be deleted.

Article 23

This article should expressly provide, as does article 9 of the Vienna Convention on Diplomatic Relations, that if the receiving State regards a consular official or employee as not acceptable, it shall not be required to state the reasons for its decision.

Article 28

The Swiss Government adheres to the view it expressed in connexion with article 29 of the 1960 draft. The right accorded to the consular post and its head to fly the national flag should be limited in view of the difficulties which may be created for the receiving State by the corresponding duty to provide for the permanent protection of the flag. Furthermore, the right to fly the flag on means of transport should be granted only to heads of diplomatic missions and should not be extended to heads of consular posts. Article 28 should therefore be replaced by the following provision:

"The consular post and its head shall have the right to use the national flag and coat-of-arms of the sending State on the building occupied by the consulate and at the entrance door, in accordance with the current practice in the receiving State."

Article 34

As the Swiss Government stated in its observations on the 1960 draft, freedom of movement for members of consular posts should be stipulated 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 35

To accord to consular posts the right to make unlimited use of the diplomatic bag and diplomatic couriers seems unjustified. Where the sending State has a diplomatic mission in the receiving State, the communications of the consular post with the Government and with diplomatic missions and consular posts of the sending State situated in a State other than the receiving State should be routed through that mission.

Article 36

Paragraph 1: The Swiss Government adheres to its view, which is shared by a number of other Governments, that it is necessary to include an explicit stipulation that action in the circumstances referred to in sub-paragraph (b) (obligation of the competent authorities of the receiving State to inform the consular post of the arrest or detention of a national of the sending State) and in sub-paragraph (c) (right of consular officials to visit a national of the sending State who is in prison, custody, or detention) shall be subject to the freely expressed wishes of the nationals of the sending State. Furthermore, sub-paragraph (b) calls for an express reservation with respect to cases where in the interest of the criminal investigation it is necessary that the detention of a person should be kept secret for a certain time (see paragraph (6) of the commentary). Reference should also be made in sub-paragraph (c), with regard to persons against whom a criminal investigation or a criminal trial is in process, to the right of the judge to authorize visits in the light of the requirements of the investigation or trial (see paragraph (5) of the commentary).

Paragraph 2: The general reservation that the rights 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 following proviso that the said laws and regulations must not nullify these rights.

Article 37

Clause (b): As the Swiss Government indicated in its observations on the 1960 draft, the duty of the receiving State to inform the competent consular post 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 who is a national of the sending State, is without prejudice to the competence of the receiving State as regards the execution of such measures.

Article 41

Paragraph 1: The International Law Commission has used the term "grave crime" ("crime grave") in defining the limit of the personal inviolability of consular officials. The Swiss Government considers that the system embodied in this provision, though vague and open to different interpretations by States, is preferable to one based on the length of the sentence imposed for the offence committed. Under the Swiss penal code, as under the criminal law of other countries, "crimes" form a separate category of offences distinct from less serious offences (délits), the most severe penalty in the case of the latter being imprisonment whereas the former entail rigorous confinement (réclusion). The term "crime grave" should therefore be replaced by that of "infraction grave", used in the alternative text of article 40, paragraph 1, in the 1960 draft.[1/]

Article 43

Under article 1, paragraph 1 (d), the exercise of consular functions is solely restricted to consular officials to the exclusion of consular employees, who are also covered by the term "members of the consulate" used in this provision. Members of the administrative, technical and service staff of a consular post cannot, by definition, perform consular functions. The final

1/ The term "grave crime" is used in the English text in both cases (translator's note).

phrase of this provision should, therefore, be amended to read: "in respect of acts performed in the exercise of their official functions".

Article 48

Paragraph 1 (a): Although this provision is identical with article 34, sub-paragraph (a) of the Vienna Convention on Diplomatic Relations, it should be amended to include, in addition to indirect taxes normally incorporated in the price of goods or services, those which are added to that price.

Article 53

The Swiss Government adheres to its view that members of the consulate, whether or not they are already in the territory of the receiving State, should not enjoy privileges and immunities until the receiving State has approved their appointment after due notification.

Article 54

As the Swiss authorities pointed out in connexion with article 52 of the 1960 draft, the obligations of third States with regard to consular officials passing through the territory of such States 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 60

The Swiss Government still believes that this provision should be amplified by including a reference to articles intended for official use in addition to consular archives and documents. The extension of protection to such articles would be useful in cases where the honorary consul does not occupy premises used exclusively for consular purposes. The amended article would read as follows:

> "The consular archives and documents, as well as any articles intended for the official use of a consulate headed by an honorary consul shall be inviolable...".

Article 62

In Switzerland, honorary consuls must comply with the obligations in the matter of registration of aliens and residence permits. These obligations can hardly be waived in the case of honorary consuls.

Article 66

The Swiss Government considers that this article should be amplified by a provision similar to article 55, paragraph 2. The stipulation that the consular premises must not be used in any manner incompatible with the consular functions as laid down in the Convention or by other rules of international law should also apply to the premises of a consulate headed by an honorary consul, whether or not they are used exclusively for the exercise of consular functions. Article 66 would thus include a paragraph 2, reading as follows:

> "The premises of a consular post headed by an honorary consul, whether or not they are used exclusively for the exercise of consular functions, must not be used in any manner incompatible with the consular functions as laid down in the present articles or by other rules of international law."

The Swiss Government regrets that the draft articles contain no provision on the settlement of possible disputes concerning the interpretation or application of the Convention.
