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REQUEST FOR THE INCLUSION OF AN ADDITIONAL ITEM IN THE  
PROVISIONAL AGENDA OF THE FORTY-FIFTH SESSIONADDITIONAL PROTOCOL ON CONSULAR FUNCTIONS TO THE VIENNA CONVENTION  
ON CONSULAR RELATIONS

Letter dated 2 April 1990 from the Chargés d'affaires a.i. of  
the Permanent Missions of Austria and Czechoslovakia to the  
United Nations addressed to the Secretary-General

We have the honour to transmit to you herewith the joint memorandum of the Federal Minister for Foreign Affairs of the Republic of Austria and the Minister for Foreign Affairs of the Czechoslovak Socialist Republic, signed at Prague, on 7 March 1990, together with the request, in accordance with rule 13 of the rules of procedure of the General Assembly, for the inclusion in the provisional agenda of the forty-fifth session of the General Assembly of an additional item entitled "Additional Protocol on Consular Functions to the Vienna Convention on Consular Relations".

In accordance with rule 20 of the rules of procedure of the General Assembly, an explanatory memorandum is annexed to this request, to which the text of the draft of the Additional Protocol is attached.

(Signed) Thomas HAJNOCZI  
Chargé d'affaires a.i.  
of Austria to the  
United Nations

(Signed) Václav MIKULKA  
Chargé d'affaires a.i.  
of Czechoslovakia to the  
United Nations

ANNEX

Explanatory memorandum

1. The Vienna Convention on Consular Relations of 24 April 1963 is one of the most important international instruments emanating from the work of the International Law Commission. This Convention, which has proven its great value over the years since its entry into force, however, concentrates on consular privileges and immunities and lacks precise rules regarding consular functions. This lacuna is filled in by a large number of bilateral consular agreements regulating these functions in greater detail. Such bilateral agreements, useful as they are, cannot be considered as a substitute for a universal convention, as they differ in content and are only in force between certain countries.

An important task of the General Assembly is to initiate studies and to make recommendations for the purpose of encouraging the progressive development of international law and its codification. Czechoslovakia and Austria hold the view that the General Assembly should now address the question of supplementing the provisions of the Vienna Convention on Consular Relations by an Additional Protocol thereto relating to consular functions.

2. An Additional Protocol should contain specific rules on consular functions without, however, trying to regulate every detail. Rules of customary international law should continue to govern questions not expressly dealt with by the Additional Protocol. Such an instrument should focus on the functions of consular officers relating to nationals of the sending State. It might, in particular, deal with the following questions:

(a) More specific provisions regarding communication and contact with nationals of the sending State;

(b) Issuance of passports, visas and travel documents;

(c) Acting as notary and civil registrar;

(d) Safeguarding the interests of nationals in cases of succession mortis causa, as well as the interests of minors and other persons lacking full capacity;

(e) Representing nationals before the tribunals and other authorities;

(f) Executing letters rogatory or commissions to take evidence;

(g) Exercising rights of supervision and inspection in respect of vessels and aircraft.

A draft of such an Additional Protocol is attached to this memorandum (see appendix).

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3. Czechoslovakia and Austria jointly request the Secretary-General of the United Nations to include in the provisional agenda of the forty-fifth session of the General Assembly an item entitled "Additional Protocol on Consular Functions to the Vienna Convention on Consular Relations".

Done at Prague, on this seventh day of March 1990.

The Federal Minister for  
Foreign Affairs of the  
Czechoslovak Socialist Republic

The Federal Minister for  
Foreign Affairs of the  
Republic of Austria

APPENDIX

Additional Protocol to the Vienna Convention  
on Consular Relations

The States Parties to the present Additional Protocol and to the Vienna Convention on Consular Relations adopted by the United Nations Conference, held at Vienna from 4 March to 22 April 1963, hereinafter referred to as "the Convention",

Expressing their wish to establish more detailed rules between them concerning consular functions,

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Additional Protocol,

Have agreed as follows:

Article 1

1. The definitions listed in article 1, paragraph 1, of the Convention shall be applied in the same manner in this Additional Protocol.
2. The provisions of this Additional Protocol relating to nationals of the sending State, shall apply, mutatis mutandis, to legal persons and partnerships under commercial law which are established in accordance with the laws and regulations of the sending State or which have their head office in that State.

Article 2

In the exercise of the functions referred to in 5 (d) of the Convention, consular officers shall, in particular, have the right:

- (a) To issue passports and other travel documents to nationals of the sending State and to extend, alter, broaden or revoke them;
- (b) To issue entry, return and transit visas to persons wishing to travel to the sending State, to leave it or pass in transit through it.

Article 3

1. In the exercise of the functions referred to in article 5 (f) of the Convention, consular officers shall, in particular, have the right:

- (a) To keep a register of the nationals of the sending State who are domiciled or resident in the consular district;

/...

(b) In accordance with the laws and regulations of the sending State, to accept applications and declarations, to validate certificates and to issue documents relating to nationality;

(c) To register births and deaths of nationals of the sending States; this does not, however, relieve nations of the sending State of their obligation to observe the relevant laws and regulations in force in the receiving State;

(d) To authenticate documents issued by the competent authorities of the receiving State and destined for use in the sending State;

(e) To authenticate the signature of nationals of the sending State on documents, as well as copies of and extracts from documents;

(f) To authenticate the signature of nationals of the receiving State on documents, as well as copies of and extracts from documents destined for the authorities and institutions of public law of the sending State.

2. In so far as required by the laws and regulations of the receiving State, consular officers shall notify the competent authorities of the receiving State of actions taken in accordance with paragraph 1 (c).

#### Article 4

Consular officers shall also have the right to draw up or authenticate in notarial form in the receiving State the following legal acts and contracts provided that they are not contrary to the laws and regulations of the receiving State:

(a) Legal acts and contracts between nationals of the sending State, as well as unilateral legal acts of such persons, provided that such legal acts and contracts do not result in the establishment, alteration or abrogation of rights in respect of immovable property situated in the receiving State;

(b) Testamentary dispositions of nationals of the sending State or other declarations relating to the estates of such nationals;

(c) Legal acts or contracts relating exclusively to property situated in the sending State or to business being conducted in that State, irrespective of the nationality of the parties.

#### Article 5

1. Consular officers shall have the right:

(a) To accept for safekeeping documents, cash, valuables and other articles belonging to nationals of the sending State;

(b) To accept from the authorities of the receiving State, for return to their owners, documents, cash, valuables and other articles lost by nationals of the sending State during their sojourn in the receiving State.

2. The articles accepted for safekeeping in accordance with paragraph 1 may be exported from the receiving State only where such export is not contrary to the laws and regulations of that State.

#### Article 6

In the exercise of the functions referred to in article 5 (j) of the Convention, consular officers may, in particular:

(a) Issue extracts and ordinary or certified copies of any document which they have drawn up within the scope of their authority;

(b) Translate instruments and documents or certify their translation;

(c) Accept and register declarations by nationals of the sending State;

(d) Issue certificates indicating the source or origin of goods, as well as other similar certificates;

(e) Transmit judicial and extra-judicial documents and to execute applications for legal assistance in civil cases, provided that such action is in conformity with valid international agreements or, if such agreements do not exist, provided that it is in accordance with the laws and regulations of the receiving State.

#### Article 7

In the exercise of the functions referred to in article 5 (h) of the Convention, consular officers shall, in particular, have the right to intercede with the authorities of the receiving State for the purpose of protecting the rights and interests of minors or other persons requiring trusteeship, or of absent persons, who are nationals of the sending State. Where the need arises to appoint officially a guardian, trustee or other representative for a national of the sending State, the authorities of the receiving State shall so inform the consular officer. The consular officer shall have the right to submit appropriate proposals in respect of the person to be appointed.

#### Article 8

If a national of the sending State deceases in the receiving State, the competent authority of the receiving State shall promptly notify the consular officer of the sending State and transmit to him free of charge the death certificate or other document certifying death.

Article 9

The right to represent nationals of the sending State before the tribunals and other authorities of the receiving State referred to in article 5 (i) of the Convention shall cease to have effect as soon as the persons represented appoint a representative or themselves undertake the defence of their rights.

Article 10

In the exercise of the functions referred to in article 5 (l) of the Convention, consular officers shall, in particular, have the right to board a vessel as soon as the vessel has received pratique. From that moment, the master of the vessel and members of the crew may communicate with the consular officer. Consular officers shall also have the right to request assistance from the authorities of the receiving State in all matters relating to vessels of the sending State and members of the crew of such vessels.

Article 11

In the exercise of the functions referred to in article 5 (k) and (i) of the Convention, consular officers, without prejudice to the powers of the authorities of the receiving State, shall, in particular, have the right:

(a) To investigate any incident in connection with a vessel of the sending State occurring during its voyage, in port or anchorage, question the master of the vessel and the members of its crew, examine the vessel's papers, receive information concerning the destination of the vessel, and provide assistance in connection with the vessel's entry into the port of anchorage, its stay in port or at the anchorage and its departure from port or anchorage;

(b) To settle disputes between the master of a vessel of the sending State and the members of the crew, including disputes relating to working conditions, if such settlement is not contrary to the laws of the Contracting States;

(c) To make arrangements for the medical treatment or repatriation of the master or any member of the crew of a vessel of the sending State;

(d) To receive, draw up or authenticate any declaration or other documents prescribed by the sending State in connection with vessels.

Article 12

1. Where an authority of the receiving State intends to take any coercive measures or institute an investigation on board a vessel of the sending State, the authorities of the receiving State shall so notify the consular officer. Such notification shall be made before the measure is begun, in order that the consular officer may be present when the measure is carried out. If, in urgent cases, the

consular officer cannot be notified and he is not present when the measure is carried out, the authorities of the receiving State shall inform the consular officer of the measures which have been taken.

2. Paragraph 1 shall also apply if the master of a member of the crew of a vessel of the sending State is taken ashore.

3. This article shall not apply to customs, passport or sanitary inspection or to actions taken at the request or with the consent of the master of the vessel.

#### Article 13

1. Where a vessel of the sending State is wrecked, runs aground or is otherwise damaged in the receiving State or where any article which is the property of a national of the sending State, including part of the cargo of a damaged vessel of a third State, is found on or near the coast of the receiving State, the authorities of the receiving State shall promptly notify the consular officer. The authorities of the receiving State shall also inform the consular officer of the measures they have taken for the preservation of human lives of the vessel, or the cargo and other property on board and of articles belonging to the vessel or forming part of its cargo, which have become separated from the vessel.

2. The consular officer may render every assistance to the damaged vessel referred to in paragraph 1, its passengers and members of its crew; for that purpose he may request assistance from the authorities of the receiving State.

3. The consular officer shall have the right to take part in the investigation of the causes of the damage, stranding or shipwreck, provided that such action is not contrary to the laws and regulations of the receiving State.

#### Article 14

Articles 10 to 13 shall also apply, mutatis mutandis, to civil aircraft of the sending State.

#### Article 15

1. In the implementation of article 36, paragraph 1 (b) and (c) of the Convention, the competent authorities of the receiving State shall notify the consular post of the sending State promptly, or at the latest within five days, of the preventive detention, arrest or other restriction of the personal freedom of a national of the sending State, if the person concerned does not object against the notification. The measures taken by the consular officer shall also include the right to propose in accordance with the laws and regulations of the receiving State that criminal proceedings shall be conducted in the sending State.



2. The competent authorities of the receiving State shall transmit promptly any communication addressed by the person concerned to the consular officer. The receiving State shall also ensure that letters from the consular officer to detained nationals of the sending State shall be transmitted to the addressees without undue delay.

3. Consular officers shall also have the right to communicate with nationals of the sending State who have been taken into preventive detention or arrested, who are serving a term of imprisonment or who have been subjected to any other form of deprivation of personal freedom, to visit them and speak with them regarding all matters relating to the performance of consular functions in that case, in particular, the protection of the rights and interests of the persons concerned, as well as the circumstances of their detention. Consular officers shall also have the right to assist the persons concerned in appointing a legal representative. The competent authorities of the receiving State must accord the said right to the consular officer, at the latest, one week after the date of preventive detention, arrest or other deprivation of personal freedom and thereafter at appropriate intervals. Without prejudice to his other rights under the Convention and this Additional Protocol, the consular officer must, however, refrain from intervening in accordance with this paragraph if the person concerned expressly objects thereto in the presence of the consular officer and a representative of the competent authorities of the receiving State.

4. The competent authorities of the receiving State must inform the person concerned without delay in an unmistakable and clear manner of his rights arising from paragraphs 1, 2 and 3, as well as from article 36, paragraph 1 (b) and (c) of the Convention.

#### Article 16

1. The provisions of the present Additional Protocol shall not affect other international agreements in force as between States parties to them.

2. Nothing in the present Additional Protocol shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.

#### Article 17

The present Additional Protocol shall be open for signature by all States which are or may become Parties to the Convention, as follows: ...

#### Article 18

The present Additional Protocol is subject to ratification. The instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article 19

The present Additional Protocol shall remain open for accession by all States which are or may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 20

1. The present Additional Protocol shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Additional Protocol with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the present Additional Protocol after its entry into force in accordance with paragraph 1 of this article, the Additional Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 21

The Secretary-General of the United Nations shall inform all States that are or may become Parties to the Convention:

(a) Of signatures to the Additional Protocol and of the deposit of instruments of ratification or accession, in accordance with articles 17, 18 and 19;

(b) Of the date on which the present Additional Protocol will enter into force, in accordance with article 20.

Article 22

The original of the present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in article 17.

In witness whereof the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Additional Protocol.

Done at ..., this ... day of ..., one thousand nine hundred and ...

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