



F.I.C.A.C.

Federation **I**nternationale des **C**orps et **A**ssociations **C**onsulaires
International **F**ederation of **C**onsular **C**orps and **A**ssociations

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**Proposed amendments to Chapter III
of the VIENNA CONVENTION**

Athens, 24 November 2003

PROPOSED AMENDMENTS TO CHAPTER III OF THE VIENNA CONVENTION

CHAPTER III REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS

Article 58

General provisions relating to facilities, privileges and immunities

- Art. 58.1 Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 59, 60, 61 and 62.

Article 28

Facilities for the work of the consular post

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

Article 29

Use of national flag and coat of arms

- 1. The sending State shall have the right to the use of its national flag and coat of arms in the receiving State in accordance with the provisions of this article.*
- 2. The national flag of the sending State may be flown and its coat of arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.*
- 3. In the exercise of the right accorded by this article regard shall be had to the laws, regulations and usages of the receiving State.*

Article 30

Accommodation

- 1. The sending State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way*
- 2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members*

Article 34

Freedom of movement

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

Article 35

Freedom of communication

1. *The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.*
2. *The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.*
3. *The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.*
4. *The packages constituting the consular bag shall bear visible external marks of their character and may obtain only official correspondence and documents or articles intended exclusively for official use.*
5. *The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.*
6. *The sending State, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.*
7. *A consular bag may be entrusted to the captain of a ship or a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.*

Article 36

Communication and contact with nationals of the sending State

1. *With a view to facilitating the exercise of consular functions relating to nationals of the sending State:*
 - (a) *Consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State.*
 - (b) *If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph.*

- (c) *Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if the expressly opposes such action.*
2. *The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.*

Article 37

Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

- (a) *In the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;*
- (b) *To inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;*
- (c) *If a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.*

Article 38

Communication with the authorities of the receiving State

In the exercise of their functions, consular officers may address:

- (a) *The competent local authorities of their consular district;*
- (b) *The competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.*
- (c) *The consular archives and documents shall be inviolable at all times and wherever they may be.*

Article 39

Consular fees and charges

1. *The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.*
2. *The sums collected in the form of the fees and charges referred to in paragraph 1 of this article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.*

Article 54
Obligations of third States

3. *Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.*

Article 55
Respect for the laws and regulations of the receiving State

2. *The consular premises shall not be used in any manner incompatible with the exercise of consular functions.*
3. *The provisions of paragraph 2 of this article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises*

Article 59
Protection of the consular premises

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

Article 60
Exemption from taxation of consular premises

1. *Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.*
2. *The exemption from taxation referred to in paragraph 1 of this article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.*

Article 61
Inviolability of consular archives and documents

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books and documents relating to their profession or trade.

Article 62

Exemption from customs duties

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 the following articles, provided that they are from the official use of a consular post headed by an honorary consular officer: coats of arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

Art. 58.2 **Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.**

Article 42

Notification of arrest, detention or prosecution

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

Article 43

Immunity from jurisdiction

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.
2. The provisions of paragraph 1 of this article shall not, however, apply in respect of a civil action either:
 - (a) Arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
 - (b) By a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft

Article 44

Liability to give evidence

3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

Article 45

Waiver of privilege and immunities

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43, 44.
2. The waiver shall in all cases be express, except as provided in paragraph 3 of this article, and shall be communicated to the receiving State in writing
3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.
4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

Article 53

Beginning and end of consular privileges and immunities

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.
2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.
3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.
4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.
5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

Article 55

Respect for the laws and regulations of the receiving State

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

Article 63
Criminal proceedings

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 64
Protection of honorary consular officers

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

Article 65
Exemption from registration of aliens and residence permits

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

Article 66
Exemption from taxation

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments, which he receives from the sending State in respect of the exercise of consular functions.

Article 67
Exemption from services and contributions

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

- Art. 58.3** Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.
- Art. 58.4** The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.
- Art. 58.5** *Notwithstanding the provisions of the aforesaid paragraphs, a Consular Post headed by an Honorary Consular Officer, functioning in a country which does not have a resident Ambassador of the Sending State, shall be entitled to enjoy all the rights and privileges of a Career Consular Officer.*

Article 60
Exemption from taxation of consular premises

- ~~1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.~~
1. *Consular premises of a Consular post headed by an honorary Consular officer, specifically designated and used exclusively for Consular functions, shall be exempted from all national, regional or municipal dues, rates and taxes whatsoever.*
 2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

Article 61
Inviolability of consular archives and documents

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

Article 62
Exemption from customs duties

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 the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

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If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

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Article 67
Exemption from personal services and contributions

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 68
Optional character of the institution of honorary consular officers

Each State is free to decide whether it will appoint or receive honorary consular officers.