
VIENNA CONVENTION ON CONSULAR RELATIONS: ANALYSIS OF THE ARTICLE 5

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ABSTRACT

Treaties are a document between countries formally approved and signed by their leaders, agreeing to certain terms and conditions. It can be drafted when two or more countries agree on set of facts/ laws by negotiation or drafting of contract. One of such fundamental treaties in international law is the Vienna Convention. Though, treaty and conventions are not one and the same. A convention is a set of rules for the parties agreeing to the convention to solve a problem affecting a large area of the society. A convention has annexures and articles and though there is no hard and fast rule for drafting a convention in a defined manner, IMO has structured a basic format of a convention. This convention is an international agreement between states. Being called the “treaty of treaties” this convention has laid down important and crucial rules, procedures, and guidelines for how treaties are drafted, amended, and interpreted. An international treaty is a written document which states the connection between various international states reflecting to their creation and alteration of rights and obligations towards each other.

ABOUT VIENNA CONVENTION LAW OF TREATIES:

The Convention was adopted on 22 May 1969 and opened for signature on 23 May 1969 by the United Nations Conference on the Law of Treaties. The Conference held two sessions, both at the Neue Homburg in Vienna, the first session from 26 March to 24 May 1968 and the second session from 9 April to 22 May 1969. In addition to the Convention, the Conference adopted the Final Act and certain declarations and resolutions, which are annexed to that Act. By unanimous decision of the Conference, the original of the Final Act was deposited in the archives of the Federal Ministry for Foreign Affairs of Austria.¹ This convention codifies various international laws. It defines what a treaty is and states that every country or state has the power to conduct and form a treaty. It includes everything one needs to know about treaties and its functions and formations. This convention applies only to the treaties that came into existence after it was made and states with intergovernmental organizations. It excludes treaties between states and international organizations or treaties between two international organizations and restricts its application to treaties between only 2 or more states.

INTRODUCTION TO CONSULAR RELATIONS

A Consul is an official representative of one State appointed to live in another to protect the State's interests and citizens. Consular relations deals with the rights and duties of States in respect to the consular representatives they send and receive. It is the means by which nations protect the interests of their citizenry abroad, especially their nationals who are arrested for violating other nations' criminal laws. Rights and duties of states as they send and receive consular representatives is the subject matter of the field of consular relations. The law relating to consular relations governs the process for accreditation of consular representatives, the obligations of the receiving state to facilitate consular functions, immunities enjoyed by the sending state for the premises it uses and the functions in which it engages, and immunities enjoyed by consular representatives.² The right of consular relations in the Vienna convention has been highly raised and practiced in various proceedings not only at the domestic or regional level but also at international level.

HISTORY OF CONSULAR RELATIONS

¹ CHAPTER XXIII, Law of treaties,

https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en, United Nations, *Treaty Series*, vol. 1155, p. 331.

²[John Quigley](#), [view/document/obo-9780199796953/obo-9780199796953-0014.xml](http://www.unhcr.org/refugees/obo-9780199796953/obo-9780199796953-0014.xml), 25 OCTOBER 2017

The formation of consular relations is highly associated with the development of international and economic trade needs of States. After the 12th century consul emerged in its most important and complex form. The Vienna Convention consists of 79 articles, most of which provide for the operation of consulates; outline the functions of consular agents; and address the privileges and immunities granted to consular officials when posted to a foreign country.³ Some other articles have specified consular officials' duties in case citizens feel any disturbance or difficulties while dealing with the foreign nations. The law of consular relations can be traced in the customary laws, back from centuries. These customary laws have been codified in the Vienna Convention on Consular Relations (1963). Many states enter into bilateral treaties with other states to prefer for specific consular relations amongst each other. Consular law is given mention in many general treatises on international law.

VIENNA CONVENTION ON CONSULAR RELATIONS:

Vienna Convention on consular relations is an international treaty that defines a framework of consular relations between sovereign states. It codifies many consular practices which were prevalent in the state customs or bilateral treaties entered between states in the past. Consuls were introduced to represent the interests of the states or their nationals at an embassy of other country. This convention lays down the functions, rights, immunities, liabilities, accorded by the consular offices and officers as well as the rights and duties of the receiving states where the consul is based and the sending states which the consul represents.

KEY PROVISIONS REGARDING THE CONSUL:

The Vienna Convention consists of total 79 articles, covering a wide spectrum of laws. With introduction to the conclusion every aspect of international law is covered under this convention. The preamble of the convention also states that the customary international laws laid down will be applicable to the matters which are not mentioned in the same. Some important provisions regarding consular relations are:

- 1) Article 5- this article lays down 13 consular functions including, protecting the receiving and the sending states, its nationals, individuals and corporate bodies, and also the development of cultural, economic, scientific relations between the states.
- 2) Article 23- It provides that the host nation at any given time that is felt suitable and for

³ Juan Manuel Gómez Robledo, <https://legal.un.org/avl/ha/vccr/vccr.html>, 24 April 1963

any reason announce a particular of the consular officials to be 'persona non grata' and the sending state must call this official back in a reasonable time otherwise the official loses its immunity.

- 3) Article 31- It says that the consular premises are invocable, i.e., the host nation is not permitted to enter consular premises, and is entitled to protect the premises from damage or intrusion.
- 4) Article 35- provides that the freedom of communication between consuls and their home country must be preserved.
- 5) Article 37- this article states that the host country should without delay notify one of the sending states consular officers that one of its consul nationals have died and if it has a guardian or trustee appointed over him.

Though there are a number of articles cumulating the essence of consular relations between states, the most basic yet crucial article amongst all is Article 5. It states down 13 important functions on which this convention is based.

ARTICLE 5: CONSULAR FUNCTIONS

Consular functions consist:

- 1) Protecting interests of nationals, individuals and corporate entities, of sending states in the receiving states which lie under the spectrum of international law.
- 2) Focusing on development of commercial, economic, social, friendly and cultural relations of sending and receiving states with accordance to this Convention.
- 3) Ascertaining by all lawful means the conditions and developments of the receiving states and reporting to the Government of the sending the states the condition.
- 4) Issuing travel documents, visas, passports to people of Sending states or to those coming into the states.
- 5) Helping and assisting nationals, individuals as well as corporate bodies.
- 6) Acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is

nothing contrary thereto in the laws and regulations of the receiving State.⁴

- 7) Safeguarding interests of sending and receiving states at all times and especially during the time of emergencies.
- 8) Safeguarding within the limits of laws laid down in the receiving states, the interests of minors and other persons who lack full capacity of nationals of Sending states, particularly where a guardianship or trusteeship is required.
- 9) Subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests.
- 10) Sending judicial and extra-judicial documents as evidence to the courts and commissions of the sending states with regards to international laws in force with regards to these agreements or in absence of the same. The procedure is laid down with regards to laws prevalent in the receiving states.
- 11) Taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State.
- 12) Supervise and inspection the laws and regulations of the sending states with regards to vessel having nationality of the Sending state.
- 13) Performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

CRITICAL ANALYSIS OF THIS PROVISION:

⁴ <https://treaties.un.org/doc/Publication/UNTS/Volume%20596/volume-596-I-8638-English.pdf>, Registered ex officio on 8 June 1967.

This provision includes a wide area of laws and regulates various aspects that need to be considered before entering into a treaty with other states. This provision forms basis of other provisions related to consular relations. It lays down how the states are bound to each other and in what framework of laws. It not only covers action of states entering into an agreement but also takes into consideration the cultural, social and economic security needed to sustain these relations. A very advantageous and profound part of this article is that it not only grants immunity and security to individuals but also the corporate bodies. This will result in less disputes between the corporate sectors and it will help in protecting the economic and business sectors of those states. The provision of paragraph (1) concerning the protection of the interests of the State and of its nationals is distinct from that of paragraph (5), which concerns the help and assistance to be given to the nationals of the sending State, in that the former relates to the function which the consular official exercises vis-a-vis the authorities of the receiving State, whereas the latter covers any kind of help and assistance which the consul may extend to nationals of his State: information supplied to a national, provision of an interpreter, introduction of commercial agents to business concerns, assistance in case of distress, assistance to nationals working in the receiving State.

Though the function regarding vessels can be deepened and it may include a consul going on the ship and examining its papers, record statements concerning the voyage, etc. The consuls may also include functions like arbitration or conciliation, which will prove to be a support to the existing legal laws concerning the consuls. In codifying these “consular functions”, the Vienna Convention has highlighted a basic difference between consular and diplomatic immunities. Article 5 has been interpreted broadly in cases like *Heaney v. Spain*. This article, though not perfect, sheds light on a vast area of requirements of peaceful consular relations and safeguards the interests and obligations of receiving and sending states towards each other. If, certain other functions are included it will be a provision with no shortcomings and will help strengthen the current consular relations of the states. The functions are a crucial part while forming laws because it gives ground rules to work upon.

CONCLUSION

This convention has codified consular relations based on years of customary law and bilateral consular conventions to promote peace and friendly relations with other nations. The convention has successfully raised awareness about the right to consular notification. The ICJ,

has stated that the provisions should remove the inconsistencies by clarifying the scope of these provisions in terms of enforcement and remedies available.