EUROPEAN CONVENTION ON CONSULAR FUNCTIONS : A CONTRIBUTION BY THE COUNCIL OF EUROPE TO THE DEVELOPMENT OF INTERNATIONAL LAW

by

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INTRODUCTION

The European Convention on Consular Functions was opened for signature on 11 December 1967. It has so far ben signed by the following States : Austria, Germany, Greece, Iceland, Italy and Norway. It will enter into force after ratification by five States.

The negotiations leading to the conclusion of this Convention were suggested in 1959. A committee of experts nominated by their respective Governments, met for the first time in January 1960, and thereafter at a series of meetings, organised under the auspices of the Council of Europe. It should be remembered that the Vienna Convention on Consular Relations had not yet been proposed.

At this stage therefore, the European Convention was envisaged as applying to the whole area of Consular Relations and a draft was prepared which dealt with the status and privileges as well as the function of consuls.

The Committee were then confronted with the question whether to wind up its work or whether to continue working on aspects of consular law not adequately treated in the Vienna Convention. It was not difficult to discover that one aspect of Consular Relations was very imperfectly treated in the Vienna Convention — that concerning consular functions. This is treated in one Article, Article 5 of the Vienna text [1].

* The views expressed in this paper are solely those of the author, and do not in any way involve the responsibility of the Council of Europe.

[1] The text of this Article is set out in an Appendix, see p. 182 below.

As may be seen, this is a mere enumeration : moreover, it is made clear [2] that the enumeration is not exhaustive. From a legal point of view, this Article is of very little significance : had it been included in a commentary to the Convention rather than in the text, little would have been lost. Two elements may, however, be noted. In the first place a State may not protest that a consul fulfilling a function in the list is acting outside the scope of his *exequatur*. However, and this is the second point to note, these functions fall into three distinct categories. Certain functions may be exercised as a direct consequence of the decision to enter into consular relations; others may be exercised to the extent that they do not conflict with the law of the receiving State; the third category may only be exercised after the specific agreement of the receiving State has been obtained. But these points apart, the Vienna Convention settles little with respect to the important question of consular functions.

The Strasbourg committee thus had little difficulty in deciding to continue its work but to restrict it to the sole question of consular functions. From this decision flows the contribution to international law which the European Convention on Consular Functions undoubtedly provides. For if the Vienna text treats the question merely by a passing reference, it seems reasonable to conclude that this was because of the impossibility, on the universal level, of doing more [3]. On a regional level, between likeminded States such as are grouped together in the Council of Europe, the hope was that far more could be achieved.

The Strasbourg text is divided into chapters dealing with : definitions (Article 1); general consular functions (Articles 2-16); estates (Articles 17-27); shipping (Articles 28-41); general provisions (Articles 42-48) and final provisions (Articles 49-57). There are two Protocols concerned with refugees and aircraft respectively. The author does not deal with the chapters on estates and shipping in the present article.

THE SOURCES OF CONSULAR LAW

Mention of bilateral treaties calls to mind the fact that consular law has been largely built upon bilateral treaties [4], and this in sharp contrast to the position

[2] See the wording of the last sub-paragraph (on) : « performing any other functions... ».

[3] The question of consular functions was not included in the terms of reference given by the General Assembly to the International Law Commission. This explains why, with the important exception of Article 36, as to which see *infra*, no detailed provisions were included in the ILC draft, which served as a basis for the fomulation of the Vienna Convention.

[4] However, a distinction must be made between consular conventions (that is treaties dealing with consular functions and privileges), and treaties of commerce and navigation and of course the capitulation treaties, which deal incidentally with consuls. The latter

of diplomatic law, where written agreements were rare. Both were however built upon a decidedly bilateral basis. Consular relations generally exist between States only as the result of a treaty stipulation.

In 1959 there were, as between the fifteen Member States of the Council of Europe, only 20 bilateral treaties in existence. Had every State a bilateral treaty with every other, there should have been 105. Today, the situation is no doubt different, the United Kingdom alone having concluded consular conventions with 8 Member States (Austria, Belgium, Denmark, France, Germany (Federal Republic), Italy, Norway and Sweden). Consular relations with Turkey are the result of trade agreements of 1930, and the only agreement with the Netherlands appears to relate solely to the extra-metropolitan areas. On the other hand, the United Kingdom have recently concluded a most interesting series of treaties with East European countries and with the Soviet Union.

The existence of a network of bilateral treaties, even if incomplete, must throw doubt on the utility of drafting multilateral treaties, whether on a universal or a regional basis. So far as the questions of status, privileges and immunities are concerned, every State has an evident interest in ensuring that the status of all foreign consuls in its territory is the same. To provide otherwise would be intolerable in terms of its own domestic law, since the absence of redress by its citizens against a consul would then depend not only on the fact that the tortfeasor was a consul, but on the State that he represented. However, it would be equally difficult for a State to accept that its own consuls in a foreign State were accorded a less favourable status than that accorded in its own territory to the consuls of that State. These two considerations point inevitably to the conclusion that the only satisfactory solution is a universal agreement as to the status, immunities and privileges of consuls.

But the same conclusion cannot be drawn with respect to consular functions. There is no particular reason why a State should not allow the consuls of a certain State to exercise a function which is denied to those of another State. A consul's functions are principally to aid and assist the nationals of his State resident within his district. So to act does not, at least directly, cause any prejudice to the resident population of the receiving State. Consideration of consular marriages provides a perfect illustration of this point. For any north European State to accord the power to celebrate a marriage to the Turkish consul and not to the consul of a neighbouring State is perfectly understandable

category date from the 17th century, and treaties of commerce and navigation from the early 19th century. However, the former category date from the second half of the 19th century. The United Kingdom's first such treaty (with the United States) dates from 1949 only, and this was never ratified. See generally on « British Consular Conventions », an article by Prof. C. Parry with this title in *Cambridge Essays in International Law* (in honour of Lord McNair).

and acceptable. In general, States do not insist that their consuls be accorded the power to perform functions which are not useful or necessary merely for the sake of ensuring similarity of treatment with the consuls of other States.

Neither does the consideration based on direct reciprocity apply as a matter of principle, as it undoubtedly does in the case of privileges and immunities. For should a State ask that its consuls be allowed to perform a certain function, the other State would not refuse *merely* because it did not consider it useful or necessary for its own consuls to perfom that function in the first-mentioned State.

Enough has been said to indicate that the situation with regard to consular functions is different from that concerning status, privileges and immunities. While a perfect solution would no doubt be the conclusion of a universal convention with respect also to functions, the absence of such an instrument does not give rise to the same difficulties as would the absence of a universal convention relating to status and privileges.

The next best solution is to solve this problem on a regional basis. If this was the sole value of the Strasbourg Convention, one might question whether it did provide, in any meaningful sense, a « contribution to the development of international law ». It is asserted, however, that it does more than this. The confrontation at Strasbourg provided States with an opportunity to review the whole question of consular functions between like-minded States. At the very least, this thorough overhaul provides a model for other regional experiments. Should the ILC ever be asked to complete the Vienna Convention in relation to consular functions, the Strasbourg text must surely, as the only other multilateral consular treaty in existence, provide the working basis for a universal text.

GENERAL CONSULAR FUNCTIONS

Under the heading General Consular Functions, the Strasbourg text includes, in fifteen articles, all those functions which are not to be found in the two special chapters on « Estates » and « Shipping ».

Certain of these articles are merely declaratory and call for little comment, as that (Article 2) which states that a consular officer shall be entitled to protect the nationals of the sending State and to defend their rights and interests, that « he shall likewise be entitled to further the interests of the sending State... and to promote and develop co-operation between the sending and receiving State ». It was not thought necessary to add, as in the parallel provision of the Vienna text, that a consular officer is entitled to « ascertain by all lawful means, conditions and developments in the commercial, economic etc., life of the receiving State, to report thereon to the sending State and to

give information to persons interested », simply because such a function is obvious and is the right of every national of a foreign State whether consul or not. What distinguishes the position of the consul from the ordinary citizen abroad is, in this context, the means of communication with the sending State of which the former disposes (see Article 35 of the Vienna text).

It is interesting to note however that Lee, in his book on *Consular Law and Practice* [5], ascribes pride of place to this consular activity, for he begins his detailed treatment of consular functions with the sentence « the promotion and protection of trade is unquestionably one of the most important duties in the hierarchy of consular attributions », quoting Martens [6] : « The purpose of the consular institution is... to furnish their government with information in the interests of the promotion of trade ». Lee's chapter on this topic amply bears out the authors statement, by its references to national consular instructions. This omission in the Strasbourg text is therefore one of the points of consular law covered by the statement in the Preamble to the effect that « questions not regulated by the present Convention continue to be governed by customary international law ».

Next comes an Article (Article 3) describing the territorial and administrative scope of consular functions. A consular officer is thus entitled to apply to the competent authorities of his district (including judicial authorities) and, in matters relevant to his district, to the competent central authorities, the latter however only « to the extend permitted by the practice of that State ». The Explanatory Report tells us that the term « practice » should be interpreted as covering both the laws and the usages of the receiving State. A final paragraph deals with the question of translation where it is necessary for such communications.

This Article has no equivalent in the Vienna text, unless it be that which permits a consular officer to exercise his consular functions outside his consular district « in special circumstances », and « with the consent of the receiving State » (Article 6). The Strasbourg text shows just how ambiguous is the phrase « outside his consular district ».

Article 4 sets out six specific ways in which the consular officer may protect the rights and interests of its nationals. He may arrange legal representation; suggest interpreters of himself act thereas if the authorities so permit; assist in the national's relations with the administrative authorities (including so the Report explains, the social security authorities); and in proceedings before the judicial authorities « provided that there is nothing contrary thereto in the law of the receiving State ». The saving clause — to be met with in several other articles of the Convention, is unfortunate. Moreover, its meaning is in this

[5] Chapter 7, at page 64, London, Stevens & Sons Ltd., 1961.

[6] DE MARTENS, G.F., *Droit des Gens* (1858), IV, Ch. III, pp. 386.

case obscure in the sense that it is by no means obvious what provisions of national law could be contrary thereto — unless perhaps laws which reserve a monopoly to nationals of the receiving State, or to specially qualified persons. Finally, the article entitles the consular officer « to seek information on any incident affecting the interest of any such national ». It is interesting to note that a similar provision is found in the United Kingdom's bilateral treaties with Austria, Belgium, Denmark, France, Germany, Italy, Norway, Sweden, Greece, Spain and Yugoslavia, but not in those with Bulgaria, Hungary, Poland, Rumania and the Soviet Union.

Article 5 does not so much set out a consular function as the rights of nationals of the sending state *vis-à-vis* their consul. It records that the national is « at all times entitled » to communicate with his consul, and unless he is detained « to have access to him at his consular post ». It is at this point that we enter the ambit of Article 36 of the Vienna Convention. That Article is somewhat surprising in that it is the only consular function to have received detailed coverage in the Vienna text and yet it is perhaps the most hotly disputed function of all. That text « with a view to facilitating the exercice of consular functions relating to nationals of the sending State » entitles : (a) the consular officer and the national to have freedom to communicate with, and to have access to, each other; (b) the national, who is arrested or detained, to request that the consular officer be so informed, and to address communications to him; and (c) consular officers to visit nationals who are in prison, and, except where detained in pursuance of a judgment, to converse, correspond and arrange legal representation for them. These rights are, by paragraph 2, to be exercised in conformity with the laws of the receiving State subject to the provision that such laws « enable full effect to be given to the purposes for which [these] rights are intended ». The entitlements under (b) and (c) above are made subject, in the case of (b) to the detained national requesting that his consul be informed (the authorities have a corresponding duty to inform the detainee of his rights in this respect), and, in the case of (c), to him not expressly opposing such action.

The Strasbourg Convention covers the same ground — giving rise therefore to apparent conflict between the two Conventions, as to which see below — but in a way which is eloquent in favour of the regional text. The first Article, Article 5, has already been mentioned. By Article 6, the right of the consular officer to be informed « without delay » when within his district a national is « deprived of his liberty » by the authorities of the receiving State, is made absolute. The right to communicate is dealt with in paragraphs 2 and 3 of that Article, paragraph 3 dealing with detention pursuant to a final judgment, and paragraph 2 with other cases of detention. Taking paragraph 3 first, the communications between a consular officer and a nationl detainee within his district are to be forwarded without delay « having regard to the regulations of that institution. Subject to that limitation, a consular officer shall have the

right, after having informed the competent authority, to visit such a national and to interview him, including interviews in private ».

Where the national is under arrest or detained pending trial, the rights of communication and visit are made, by paragraph 2, subject to the same restrictive clause as governs the whole of Article 36 of the Vienna Convention, for these rights « are to be exercised in conformity with the law of the receiving State provided, however, that the said law enables full effect to be given to the purposes for which the rights accorded under this paragraph are intended. »

The reason for this somewhat obscure proviso and the reason why arrest and detention pending trial are treated on a diffrent footing from a national imprisoned after trial, is of course to safeguard secrecy, where necessary.

It is interesting to note that in the bilateral treaty between the United Kingdom and the U.S.S.R.[7], the right to communicate and visit « without delay » is accompanied by a rather different formula, for there the rights are to be exercised « in accordance with the laws... of the receiving State provided, however, that the said laws do not invalidate these rights ». A Protocol, signed on the same day, specifies that the term « without delay » in this provision means « in the course of two to four days (but not later) from the moment that the national was placed under arrest or otherwise detained, having regard to the whereabouts of the latter ». The Protocol also specifies that these rights — to visit and communicate — are to be accorded « on a recurrent basis »[8].

To complete the picture, this is the place to mention a provision of the Strasbourg Convention, not to be looked for in the Vienna text, which was added late in the drafting, but was immediately accepted. Article 47 provides that « the receiving State shall not be obliged to recognise a consular officer as entitled to exercice consular functions on behalf of, or otherwise to act on behalf of or concern himself with, a national of the sending State who has become a political refugee... ». The significance of this Article in the context of the rights to visit arrested, detained or imprisoned nationals is obvious. Moreover, it removes the only valid argument in favour of those provisions of the Vienna text which subject the consul's right to visit to the consent of the imprisoned national. For the addition of that condition weakens the practical effect of the obligation on the receiving State, which is only very partially reinforced by that State's obligation to inform the prisoner of his rights.

This analysis should serve to demonstrate the clear superiority of the Stras-

[7] Signed 2 December 1965, entered into force 22 September 1968.

[8] The later treaties with Bulgaria, Hungary, Poland and Rumania incorporate these provisions in the text of the Treaty, and go somewhat further. The expression « on a recurrent basis » for example is defined to mean « at least once a month ». Nationals may receive parcels form a consular officer containing « clothes, food, medicaments and reading and writing materials ». The series makes fascinating reading.

bourg text, as indeed might be expected between like-minded States such as are grouped within the Council of Europe.

A « negotiated reservation » has been entered to this Article which subjects the rights mentioned to the same conditions as to the request of, and absence of objection from, the detaied national, as are to be found in the Vienna text. The system of « negotiated reservations » is sufficiently interesting to merit a separate article, but shortly put, the system requires that at the same time as the text is negotiated, certain reservations may, at the request of one or more States, be drafted and accepted by the other negotiating States. These are then put into an Annex, and an article of the Convention specifies that the reservations in the Annex are an integral part of the Convention, and that no other reservations are allowed [9].

But the existence of the two texts does bring us to the question of their relationship with each other. The Vienna Convention deals with this matter in Article 73 (2) which states that nothing in that Convention shall preclude States from concluding international agreements « confirming or supplementing or extending or amplifying » its provisions. Articles 5, 6 and 47 of the Strasbourg Convention supplement and extend Article 36 of the Vienna Convention in the manner set out above. Since, moreover, the Strasbourg Convention « shall not affect other international agreements in force as between States parties to them » [10], all possibility of conflict is avoided. As between two States parties both to the Vienna Convention and to the Strasbourg Convention, it is the definite understanding of the negotiators that the Strasbourg text should prevail in relation to the right to visit and communicate. It was because the Vienna text dealt with privileges and immunities in a detailed and acceptable way that that part of the Strasbourg text dealing with the same subject was scrapped. Those parts which were retained were considered as supplementing or extending, and therefore as replacing, the Vienna text.

By Article 7, a consular officer is entitled to issue passports and travel documents to nationals and other persons entitled to receive them (i.e. refugees and stateless persons). He is, of course, entitled also to grant visas for entry into the sending State.

Article 8 is however worthy of comment for that Article deals with consular functions in relation to compulsory military service (paragraph a), and ballot papers and elections (paragraph b). The Article is unfortunately subject to a reservation. In the case of paragraph (a), this provides that the notices which consular officers are allowed to issue for the attention of nationals of the sending

[9] See Articles 49 and 53. A second Annex in which a reservation was negotiated and accepted in relation to a named State only, is unique in Council of Europe practice, and must be regarded as exceptional.

[10] See Article 43.

State shall in no case be published in the local press. The paragraph permits the sending by consuls of individual call-up papers to those on the register of nationals (the right to keep such a register being granted in the previous article). The reservation to paragraph (b) leaves unaffected the right of consuls to send individual notifications to nationals in connection with referendums and elections, whether national or local, but denies the right to receive back the completed ballot papers of nationals qualified to participate therein.

The Explanatory Report tells us that Article 8, paragraph (b) is a « European provision *par excellence* ». Moreover, it is not enfeebled by the addition of a « nothing contrary thereto in the law of the receiving State » clause. However, the value of this provision is to be viewed in the light of the fact that in some States, the right to vote is conditioned upon residence within the State, so that even if the consular officer has the power to exercice this function, he has no occasion to use it.

Articles 9 (serving and transmission of judicial documents, taking evidence, etc.) and 10 (issue of certificates of origin of goods) call for little comment. The power to « receive for safe custody » money documents etc. delivered by nationals, (Article 11) calls to mind that in the exercice of his functions, a consular officer may levy fees and charges — which as Article 42 provides « shall be freely convertible into the currency of the sending State » and transferable thereto.

Article 12 gives the right to receive the declarations required by the sending State « particularly as regards nationality ». Paragraph (2) of that Article permits a consular office likewise to legalise and certify signatures, and authenticate or certify documents. But this paragraph, unlike paragraph (1), is restricted by a « nothing contrary thereto in the law of the receiving State » clause. The reason is that this provision applies to signatures and documents required under the law both of the sending State and of the receiving State. Naturally, and as the Explanatory Report makes clear [11], the « nothing contrary thereto » clause applies only to those required under the law of the receiving State.

Before commenting upon the consular officer's entitlements with regard to matters which fall within the area of private law (Articles 13-15) mention should be made of the social security provision in Article 16. The consular officer is permitted not only to advise nationals as to their rights under the laws of the receiving State in relation to social security and social and medical assistance, but also, if the national is « not duly represented » in the receiving State and if the law of the State permits, to receive payment of pensions and allowances due to him and to pass them on. Direct « system to system »

[11] Paragraph 66.

payments are not of course ruled out. Payment through the consular officer is merely envisaged as an alternative means of transfer.

Article 13 deals with a consular officer's entitlements with respect to civil status. By paragraph 1 (a), he may draw up documents concerning the civil status, including the birth or death, of his nationals. To this provision there is a curious reservation, to the effect that a State may reserve the right « not to recognise such documents as having effect within its territory ». At first sight one might imagine that its object was to ensure that any such documents as might be required *by the law of the receiving State* were drawn up by the persons ordinarily competent to do so by the law of that State. But in fact this is clearly not its purpose for paragraph 2 of this Article clearly states that : « the issue of the documents referred to in paragraph 1 (a) shall not involve exemption from any obligation imposed by the law of the receiving State ». The reservation therefore applies so as to nullify any legal effect within the territory of the receiving State of documents concerning civil status drawn up to fulfill the requirements of the law of the sending State ! Of the Member States of the Council of Europe only Switzerland would appear to be likely to make use of this reservation (in view of the monopoly reserved to the notarial profession in the law of certain Cantons). The implications of this reservation are starting, and the legal situation which makes the reservation necessary must come very close to being a breach of international law.

Paragraph (b) of Article 13 entitles a consular officer to « celebrate marriage, provided that at least one of the parties is a national, that neither is a national of the receiving State and that there is nothing in the law of the receiving State which would prevent the celebration by the marriage officer ». This function of consuls is, notoriously, surrounded by complexities [12]. The *lex loci celebrationis* may prohibit consular marriages. Such is the case in the United Kingdom. In addition, the national consular instructions may prohibit consular marriages altogether, or only where both parties thereto are nationals, or other qualifications may be added. The matter is regulated so far as the United Kingdom is concerned by the appointment of the officers of certain consular posts only as « marriage officers », who, alone, are permitted to perform this function. As the Belgian delegation pointed out [13] States « which are unfavourable to such marriages generally confine themselves to not recognising them » (such is, for example, the case under Danish law) whereas, of course, the proviso refers to there being nothing which would « prevent » (make illegal) the celebration by a consular officer. This provision is thus beset with difficulties, one of which is that it might lead to a « limping » marriage.

[12] See for example PARRY, C., « A Conflicts Myth : the American Consular Marriage », *Harvard Law Review*, vol. 67, n° 7.

[13] Explanatory Report, paragraph 73.

Consular functions with regard to safeguarding the interest of minors gives rise to the problem of whether, in case of conflict, precedence should be given to the territorial law or to the law of the nationality of the guardian.

No provision on this question could ignore the « Convention on the Competence of Authorities and Law Applicable with regard to the Protection of Minors », concluded at The Hague on Octobre 5, 1961. This provides that[14] it is the authorities of the State of habituai residence which are competent to take the measures necessary for the protection of his person and property (Article 1), and that it is this law which is the applicable law (Article 2). However, by Article 3, it is further provided that all Contracting States recognise « un rapport d'autorité résultant de plein droit »[15] of the law of the State of which the minor is a national. This careful balance is, apparently reversed by the effect of Article 4 which specifies that the authority of the State of nationality may nevertheless,... take such measures in accordance with their law as seem to be required for the protection of his person or property, in all cases where they consider that the interests of the minor so require ! To complicate the matter still further, Article 8, which applies « notwithstanding Article 4 », gives the authorities of the State of habitual residence the right to take measures for the minor's protection « whenever the minor is threatened with some serious danger to his person or property ».

Enough has undoubtedly been said to indicate that in this field there are complications. It is therefore not surprising to see that the relevant Article in the Strasbourg text is long, and somewhat inconclusive. A consular officer's right to safeguard the minor's interests is made, by paragraph 1, subject not only to there being nothing contrary thereto in the law of the receiving State, but also without prejudice to any action which the competent authorities of that State may take to this effect. The primary competence is thus in the hands of the territorial authorities. Where these authorities take action, or state their intention to do so, the consul is allowed, by paragraph 2, to propose a suitable person to be appointed guardian or trustee, and generally to « concern himself with » the minor's interests. This seems to bring the wheel full circle, for it is probably in just such a fashion that in former times consuls « concerned themselves with » the interests of their nationals generally without having powers to do so especifically recognised by the law of the receiving State or treaties[16].

[14] Subject to Articles 3 and 4 of that Convention.

[15] The French text alone is authorative, nor is it clear how this could be meaningfully put into English.

[16] See as to this interesting theory, PARRY, C., « British Consular Conventions », *ibidem*, page 125, citing HALL, *International Law*, 8th ed., 1924, p. 372.

« The Consul's... international action does not extend beyond the unofficial employment of such influence as he may possess, through the fact of his being an official and his personal character, to assist compatriots who may be in need of help with the authorities of the country. »

Article 15 relates to notarial functions, in relation to the drawing up of « acts and contacts », and the administration of oaths. Acts and contracts the parties to which are exclusively nationals of the sending State, may be drawn up in notarial form « or in such... form as may be laid down by the law of the sending State ». So may contracts of marriage, provided that at least one of the parties is a national of the sending State. In other cases, even where none of the parties is a national, the consular officer may so act in relation to property situated within the sending State, or contracts designed to take effect within that State. However, judicial effect will be given within the receiving State only to the extent that there is nothing contrary thereto under its law. Nothing is said as to the judicial effect in other Contracting States.

CONCLUSION

This brief review of the consular officer's « general » functions is enough to show that the subject is of great legal interest. For a State to permit a consular function to be performed within its territory is to admit an exercice of foreign jurisdiction. Functions performed in pursuance of the public law requirements of the sending State are, if anything, easier to agree to than those performed in pursuance of private law. The former poses merely the question whether its performance will constitue an unacceptable incursion into territorial sovereignty (for example, the issue of call-up papers, and ballot papers); while the latter may cause havoc with the fragile barriers and finely drawn distinctions which are to be found within the conflicts of laws (for example, the celebration of marriages, the drawing up of contracts). Consular premises not being extraterritorial, what becomes of such notions as the *lex loci,* or the maxim *locus regit actum ?*

The study of consular functions is one means of finding where the precise limit of the legal frontiers is drawn, with respect to both public and private international law.

One final observation : to set out in detail the limit of consular privileges and immunities, and not to specify the exact scope of his functions, as the Vienna Convention has done, is, in one respect at least, contradictory. I refer to the fifth recital of the Preamble which records the realisation of the negotiating States that « the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States ». One might suppose from this statement that the privileges and immunities which any consular officer might expect would *depend upon* the precise nature of his functions. The Vienna Convention somewhat illogically reverses this relation. The Strasbourg Convention, once entered into force, will redress the balance.

APPENDIX

Text of Article 5 of the Vienna Convention on Consular Relations :

Article 5

CONSULAR FUNCTIONS

Consular functions consist in :

(a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;

(b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;

(c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;

(d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;

(e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

(f) 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;

(g) safeguarding the interests of nationals both individuals and bodies corporate, of the sending State in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;

(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking fuli capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;

(i) 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 interest 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;

(j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;

(l) extending assistance to vessels and aircraft mentioned in sub-paragraph (k) of this Article, and to their crews, 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;

(m) 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.