

MEMORANDUM FOR THE CABINET  
BY THE HON. MINISTER OF JUSTICE

Convention on Consular Relations between  
States

The International Law Commission of the United Nations has drafted Articles designed to codify international law concerning consular relations between States in a single convention. It is apparent that a really satisfactory agreement on a world-wide basis would be a valuable and desirable instrument and the United Nations has decided to convene an international conference in Vienna in March 1963 with a view to concluding such a Convention.

2. Since a territorial application article, providing for the separate application of the Convention to territories for whose international relations a Contracting State is responsible, is not included in the draft Articles, the U.K. Government would like to ensure, before ratifying the Convention, that each of the territories for whose international relations H.M. Government is responsible would wish to comply with the provisions of the Articles, before the final Convention is ratified by the United Kingdom.

3. The Attorney General's Office have considered the draft Articles prepared by the Commission together with the U.K. Government's comments on them Appendix "A", and have submitted the following observations with which Hon. Minister of Justice agrees:-

- (i) Some of the more important rights of Consular Officers recognised by the International Law have been embodied in our law under Act No. XXXI of 1955 - The Consular Conventions Act 1955 - which provides inter-alia for certain restrictions of powers of entry into consular offices, exemption of consular documents from production in Court and exemption of consular officers and employees from liability in proceedings in the Courts in respect of acts falling within the functions of a Consular Officer. These provisions reflect to a considerable extent some of the corresponding sections of the International Law Commission's Draft Articles on Consular Relations.
- (ii) Our Consular Conventions Act, 1955, refers only to the more important rights of Consular Officers. Other provisions of

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law referring to Consular Officers are to be found in specific laws dealing with a particular subject. To quote instances: The Malta Income Tax Act 1948 - Act No. LIV of 1948 provides at section 8(1)(g) thereof that the emoluments payable to members of the permanent consular services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity or to permanent official agents of such countries who are not British subjects and who are not employed in any trade, business or other undertaking carried on for the purpose of profit shall be exempt from income tax. Again by Government Notice 261 of 1951 instruments relating to the purchase by or lease to any Foreign Government or State of immovable property for consular purposes or as a consular residence or for the use of its Agencies established in these Islands are in effect exempted from stamp duties, provided such Foreign Government or State grants by way of reciprocity a corresponding similar exemption.

- (iii) Other rights and exemptions, such as exemption from estate and succession duties or social security exemptions flow automatically from particular local laws governing fiscal, social and other relations. For instance, for the purposes of section 8(1) (Property subject to duty) of Cap. 70 - Succession and Donation Duties Ordinance - a person shall be deemed to be domiciled in these islands if he was born and resided in these islands or has taken up permanent abode in these islands. Also here Malta law appears to be well in line with international concepts prevailing.
- (iv) The Convention is intended to codify international law on the subject of consular relations. From the United Kingdom written comments it is evident that Her Majesty's Government is aware of certain requirements applicable to the Commonwealth and to countries for whose international relations Her Majesty's Government is responsible. To quote one instance: the comments made to Article 15 by U.K. to the Draft Articles are appropriate, also in the case of Malta: where recourse is made to the temporary services of a locally resident private individual certain privileges and immunities are clearly not applicable and Article 15 of the Draft should be qualified.

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- (v) It would therefore appear that there would be no legal objection for the Government of Malta to accept the instrument which will emerge from the Conference and particularly to the extent that it is acceptable to the U.K. It may be generally stated that our legal outlook on consular relations is not at variance with the U.K. international view point. Furthermore considering the possible contacts which Malta may have with other countries in Europe and elsewhere in the industrial and economic fields it may be desirable, also on the policy level, that Malta should adhere to the Convention.

4. Hon. Ministers are asked to say whether they consider that the Secretary of State be informed that there is no particular requirement with regard to Malta which should be taken into account in the negotiations of the proposed Convention and that the Government of Malta does not expect to find any difficulty in accepting the instrument which emerges from the Convention to the extent that it is acceptable to the U.K. Government.

(Note: The only available copy of the draft Articles prepared by the U.K. International Law Commission is available for perusal at the Office of the Secretary to Cabinet.)

5th October, 1962.

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