

No. 12146

**AUSTRIA
and
ROMANIA**

**Consular Convention. Signed at Vienna on 24 September
1970**

Authentic texts: German and Romanian.

Registered by Austria on 22 November 1972.

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et
ROUMANIE**

**Convention consulaire. Signée à Vienne le 24 septembre
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Textes authentiques : allemand et roumain.

Enregistrée par l'Autriche le 22 novembre 1972.

[TRANSLATION — TRADUCTION]

CONSULAR CONVENTION¹ BETWEEN THE REPUBLIC OF AUSTRIA AND THE SOCIALIST REPUBLIC OF ROMANIA

The Republic of Austria and the Socialist Republic of Romania, desiring to regulate consular relations between them and thus to promote the development of relations between the two countries on the basis of respect for the principles of sovereignty and national independence, equal rights, non-intervention in internal affairs and mutual benefit, have decided to conclude a consular convention and have for that purpose appointed as their plenipotentiaries:

The Federal President of the Republic of Austria:

Dr. Rudolf Kirchschläger, Federal Minister for Foreign Affairs,

The President of the Council of State of the Socialist Republic of Romania:

Corneliu Mănescu, Minister for Foreign Affairs,

who, having exchanged their full powers, found in good and due form have agreed as follows :

Article 1. DEFINITIONS

1. For the purposes of this Convention:

(a) "Consular post" means any consulate-general, consulate, vice-consulate or consular agency;

(b) "Consular district" means the area assigned to a consular post for the exercise of its functions;

(c) "Head of consular post" means the person charged with the duty of acting in that capacity;

(d) "Consular officer" means any person, including the head of a consular post, entrusted with the exercise of consular functions;

(e) "Consular employee" means any person employed in the administrative or technical service of a consular post;

(f) "Member of the service staff" means any person employed in the domestic service of a consular post;

(g) "Member of the consular post" means consular officers, consular employees and members of the service staff;

(h) "Member of the consular staff" means consular officers other than the head of a consular post, consular employees and members of the service staff;

(i) "Member of the private staff" means any person employed exclusively in the private service of a member of the consular post;

(j) "Member of the family" means the spouse of a member of the consular post and the children and parents of a member of the consular post or of the latter's spouse where such persons live with and are supported by the member of the consular post;

¹ Came into force on 11 August 1972, i.e. on the thirtieth day after the date of the exchange of the instruments of ratification, which took place at Bucharest on 12 July 1972, in accordance with article 55.

(k) "Consular premises" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;

(l) "Consular archives" means all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with ciphers and codes, card-indexes and any article of furniture intended for their protection or safe-keeping;

(m) "Vessel of the sending State" means any vessel employed in maritime or inland navigation which, in conformity with the laws and regulations of the sending State, possesses the nationality of that State; this term shall not include naval vessels.

2. The provisions of this Convention relating to nationals of the sending State shall apply *mutatis mutandis* to bodies corporate, including commercial companies, established pursuant to the laws and regulations of the sending State and having their head office in its territory.

CHAPTER I

CONSULAR RELATIONS

Article 2. ESTABLISHMENT OF A CONSULAR POST

1. Each Contracting Party may establish consular posts in the territory of the other Contracting Party with the latter's consent.

2. The seat of the consular post, its classification and the consular district shall be determined by agreement between the Contracting Parties.

3. Changes in the seat of the consular post, the classification or the consular district shall similarly be made by agreement between the Contracting Parties.

Article 3. THE CONSULAR COMMISSION AND THE EXEQUATUR

1. The sending State shall transmit the consular commission through the diplomatic channel to the Ministry of Foreign Affairs of the receiving State.

2. The consular commission shall certify the status of the head of the consular post and who his full name, his class, the consular district and the seat of the consular post.

3. The head of a consular post shall be admitted to the exercise of his functions by an authorization from the receiving State granted, following presentation of the consular commission, in the form of an exequatur.

4. The head of a consular post may, pending delivery of the exequatur, be admitted to the exercise of his consular functions by the receiving State by means of a provisional authorization. In that case, the provisions of this Convention shall apply.

Article 4. NOTIFICATION TO THE AUTHORITIES OF THE CONSULAR DISTRICT

As soon as the head of a consular post is admitted, even provisionally, to the exercise of his functions, the receiving State shall notify the competent authorities of the consular district. The receiving State shall also take the necessary measures to enable the head of a consular post to exercise his functions and to benefit from the provisions of this Convention.

Article 5. EXERCISE OF CONSULAR FUNCTIONS

1. Consular functions shall be exercised by the consular officers of the sending State within the consular district.

2. Consular functions may also, where appropriate, be exercised by members of the diplomatic mission of the sending State in the receiving State. In that case, the provisions of this Convention shall apply without prejudice to the rights and obligations of the members of the diplomatic mission.

3. Consular functions may be exercised outside the consular district only the prior consent of the receiving State.

*Article 6. TEMPORARY EXERCISE OF THE FUNCTIONS OF THE HEAD
OF A CONSULAR POST*

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, the functions of head of post may be provisionally exercised by a consular officer of the same post or of another consular post of the sending State in the receiving State or by a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State.

2. The full name of the person appointed as acting head of post shall be notified in advance to the Ministry of Foreign Affairs of the receiving State.

3. The acting head of post shall enjoy the facilities, rights, privileges and immunities accorded to the head of a consular post under this Convention.

Article 7. SIZE OF THE CONSULAR STAFF

The sending State shall determine the size of the consular staff in the light of the consular post's workload and the needs of its normal functioning. The receiving State may, however, require the size of the consular staff to be kept within limits which it considers to be reasonable and normal, having regard to conditions in the consular district and the actual needs of the consular post.

Article 8. NATIONALITY OF MEMBERS OF THE CONSULAR POST

1. Consular officers shall have the nationality of the sending State only and shall not be domiciled in the receiving State.

2. Other members of the consular post shall have the nationality of the sending State or of the receiving State only.

Article 9. PROHIBITION OF CERTAIN ACTIVITIES

1. Members of the consular post may not engage, in the receiving State, in any commercial activity or other gainful occupation in addition to their consular functions or the tasks performed by them at the consular post.

2. The Contracting Parties shall not make use of honorary consuls in relations between them.

Article 10. IDENTITY DOCUMENTS

The receiving State shall issue to every member of the consular post who is a national of the sending State a document, accompanied by a photograph, certifying his identity and his status as a member of the consular post.

Article 11. NOTIFICATION OF APPOINTMENTS, ARRIVALS AND DEPARTURES

1. The sending State shall, through the diplomatic channel, notify to the Ministry of Foreign Affairs of the receiving State :

- (a) The appointment of members of the consular staff, their arrival after appointment, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;
- (b) The arrival and final departure of members of the family of a member of a consular post and, where appropriate, the fact that a person has become or has ceased to be a member of the family;
- (c) The arrival and final departure of members of the private staff and the termination of their service as such;
- (d) The engagement and discharge of persons domiciled in the receiving State as members of a consular post or as members of the private staff entitled to facilities, rights, privileges and immunities.

2. Prior notification shall be given in the case of arrivals and final departures.

Article 12. TERMINATION OF THE FUNCTIONS OF A MEMBER OF THE CONSULAR POST

1. The functions of a member of the consular post shall come to an end *inter alia* :

- (a) On notification by the sending State to the receiving State that his functions have come to an end;
- (b) On withdrawal of the *exequatur*;
- (c) On notification by the receiving State to the sending State that the receiving State has ceased to consider him as a member of the consular post.

2. The receiving State may at any time notify the sending State through the diplomatic channel that a consular officer is *persona non grata* or that another member of a consular post is not acceptable. In that event, the sending State shall recall the consular officer or terminate the functions of the member of the consular post.

3. If the sending State fails within a reasonable time to carry out its obligations under paragraph 2, the receiving State may, in the case of the head of a consular post, withdraw his *exequatur* or, in the case of another member of the consular post, cease to consider the person concerned as having that status, this decision being notified to the sending State through the diplomatic channel.

4. In the cases referred to in paragraphs 2 and 3, the receiving State shall not be obliged to inform the sending State of the reasons for its decision.

CHAPTER II
CONSULAR FUNCTIONS

Article 13. PURPOSE OF CONSULAR ACTIVITIES

Consular officers shall, through their activities, contribute to the strengthening of friendly relations and further the development of commercial and economic relations between the two Contracting Parties.

Article 14. DEFENCE OF THE RIGHTS AND INTERESTS OF THE SENDING STATE
AND OF ITS NATIONALS

1. Consular officers shall be entitled to defend, within their consular district, the rights and interests of the sending State and of its nationals. They may for that purpose apply directly, either orally or in writing, to the judicial or administrative authorities of their consular district.

2. If the consular officer's intervention proves unsuccessful or it is learned that judicial or administrative authorities outside the consular district are dealing with the matter, the diplomatic mission shall be entitled to take further action in that regard.

Article 15. REGISTRATION OF NATIONALS OF THE SENDING STATE

Consular officers shall be entitled to keep a register of nationals of the sending State who are domiciled or resident in their consular district.

Article 16. REPRESENTATION OF NATIONALS OF THE SENDING STATE

1. Subject to observance of the laws and regulations of the receiving State, consular officers shall be entitled to arrange for appropriate representation for nationals of the sending State before the judicial or administrative authorities of the receiving State. They may request the adoption, in conformity with the laws and regulations of the receiving State, or provisional measures to safeguard the rights and interests of nationals of the sending State who, because of absence or for any other reason, are unable to defend their rights and interests at the proper time.

2. Consular officers shall be entitled to request the competent judicial or administrative authorities to postpone consideration of a matter until the national concerned of the sending State receives notification of it and is afforded a reasonable opportunity to appear or to designate a representative.

Article 17. ISSUE OF PASSPORTS AND VISAS

Consular officers shall be entitled:

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

Article 18. FUNCTIONS IN RESPECT OF CIVIL REGISTRATION

1. Consular officers shall be entitled to register births and deaths of nationals of the sending State and to issue the appropriate certificates.

2. The provisions of paragraph 1 shall not imply exemption from the obligation to make such declarations as are prescribed by the laws and regulations of the receiving State.

Article 19. FUNCTIONS IN RESPECT OF GUARDIANSHIP AND TRUSTEESHIP

1. Consular officers shall be entitled to intercede with the judicial or administrative authorities of the receiving State for the purpose of protecting the rights of minors or other persons requiring trusteeship who are nationals of the sending State.

2. Where the need arises to appoint a guardian or trustee for a national of the sending State, the judicial or administrative authorities of the receiving State shall so inform the consular post of the sending State.

Article 20. NOTARIAL FUNCTIONS

1. Where the laws and regulations of the receiving State so permit, consular officers shall be entitled :

- (a) To accept, draw up and authenticate documents containing declarations by nationals of the sending State;
- (b) To accept, draw up and authenticate testamentary dispositions of nationals of the sending State and other declarations relating to the estates of such nationals;
- (c) To accept, draw up and authenticate documents relating to other legal acts of nationals of the sending State, provided that such acts do not relate to immovable property situated in the territory of the receiving State or to rights *in rem* in respect of such property;
- (d) To indicate the correct date on documents of nationals of the sending State and to attest signatures and seals on such documents;
- (e) To attest signatures and seals on documents issued by the judicial or administrative authorities of the sending State;
- (f) To legalize copies or translations of or extracts from documents at the request of nationals of the sending State;
- (g) To attest signatures and seals on documents issued by the judicial or administrative authorities of the receiving State which are to be used in the sending State;
- (h) To accept for safekeeping documents belonging to or intended for nationals of the sending State.

2. The functions enumerated in paragraph 1 shall be exercised at the consular post or at another place in cases where the person concerned is unable for valid reasons to appear at the consular post.

3. The documents referred to in paragraph 1, where they have been drawn up or authenticated by a consular officer, and copies or translations of and extracts from such documents which have been legalized by a consular officer shall be regarded in the receiving State as official documents or as having been officially authenticated or legalized and shall have the same legal effect and evidentiary value as documents drawn up, authenticated or legalized by the judicial or administrative authorities or officials of the receiving State.

Article 21. FUNCTIONS IN RESPECT OF SUCCESSION

1. The authority of the receiving State competent to register deaths shall transmit to the consular officer, free of taxes and other charges, a certificate of the death of any national of the sending State.

2. The judicial or administrative authorities of the receiving State dealing with the estate of a national of the sending State shall communicate to the consular officer whatever information is available concerning the property of the estate, the heirs or legatees, their domicile or residence and the existence of a will.

3. The competent judicial or administrative authorities of the receiving State shall promptly notify the consular officer of the sending State when an heir or

legatee in a succession opened in the territory of the receiving State is a national of the sending State.

4. The consular officer shall have the following rights in respect of the estate of a national of the sending State or a succession in which an heir or legatee is a national of the sending State :

- (a) The right to assist in drawing up an inventory of the estate;
- (b) The right to communicate with the judicial or other competent authorities of the receiving State with a view to taking measures to protect the estate and prevent it from being damaged or destroyed or, where appropriate, with a view to selling property forming part of the estate. These functions of the consular officer may also be exercised by a person authorized by him for the purpose.

5. If, after the completion of succession proceedings in the territory of the receiving State, the movable estate or the proceeds of the sale of the immovable estate are to descend to an heir or legatee domiciled in the territory of the sending State who has not taken part in the succession proceedings either in person or through a representative, such estate or proceeds shall be delivered to the consular officer of the sending State for transmittal to the heir or legatee.

6. The estate or proceeds referred to in paragraph 5 shall be delivered to the consular officer after any claims presented within the period prescribed by the law of the receiving State have been paid or secured.

7. The estate proceeds shall be transferred from the receiving State to the sending State by the consular officer subject to the export restrictions and foreign exchange regulations of the receiving State.

8. If a national of the sending State not domiciled in the receiving State dies while travelling in the latter State, any articles in his possession shall be delivered without formal proceedings to the consular officer of the sending State with the exception of those articles the export of which is prohibited at the time of his death. Any articles not delivered to the consular officer shall be dealt with in the manner prescribed by the laws and regulations of the receiving State.

9. The consular officer to whom articles are delivered pursuant to paragraph 8 shall pay any debts contracted by the deceased during his stay in the receiving State up to the amount of the said articles' value.

10. The provisions of paragraph 7 shall apply *mutatis mutandis* in the cases referred to in paragraphs 8 and 9.

Article 22. FUNCTIONS IN RESPECT OF MARITIME AND INLAND NAVIGATION

1. Consular officers shall be entitled to extend assistance to vessels of the sending State which put in at a port or other landing place within the consular district. They shall also be entitled to take statements and issue documents concerning:

- (a) The registration of a vessel or its removal from the register in the sending State;
- (b) The entry into or withdrawal from operation of a vessel of the sending State;
- (c) The purchase of vessels which are to be registered in the sending State or the sale of vessels of the sending State in another country;
- (d) The scrapping of vessels of the sending State.

The consular officer shall consult the competent authorities of the receiving State

concerning the entry into or withdrawal from operation or the scrapping of a vessel of the sending State in the receiving State.

2. Consular officers shall be entitled to establish contact with the crews of vessels of the sending State, to visit them, to examine and stamp ship's papers and documents relating to the cargo and to ensure the application of the shipping laws and regulations of the sending State. They shall also be entitled to take steps to ensure order and discipline on board such vessels.

3. Where the judicial or administrative authorities of the receiving State intend to take measures of conservation or execution or other coercive measures on board a vessel of the sending State, they shall first notify the consular officer so that he may be present when the measures are carried out. If, owing to the urgency of the case, the consular officer cannot be notified and he is not present when the measures are carried out, the judicial or administrative authorities of the receiving State shall immediately inform the consular officer of the measures which have been taken.

4. The consular officer shall be notified when members of the crew of a vessel are to be interrogated by the judicial or administrative authorities of the receiving State. If, owing to the urgency of the case, the consular officer cannot be notified, he shall be informed of the interrogation immediately afterward.

5. The provisions of paragraphs 3 and 4 shall not apply to passport, customs or health control.

6. Where a vessel of the sending State is wrecked, stranded or otherwise damaged in the territorial or inland waters of the receiving State, the competent authorities of the latter State shall immediately notify the consular officer, informing him of the measures taken to save and protect the passengers, the crew, the vessel and the cargo and supplies and of the circumstances in which the measures were taken. The said authorities shall also extend to the consular officer the necessary assistance in the adoption of any measures required in connexion with the shipwreck, stranding or other damage and shall invite him to be present at the proceedings conducted to determine the causes of the occurrence and to collect evidence. The consular officer may request the authorities of the receiving State to take the necessary measures to save and protect the passengers, crew, vessel, cargo and supplies.

7. Where a vessel of a third State carrying cargo which belongs to a national of the sending State is wrecked, stranded or otherwise damaged, the competent authorities of the receiving State shall immediately notify the consular officer of the measures taken to save and protect the cargo. The consular officer may request the competent authorities of the receiving State to take the necessary measures to save and protect the cargo.

8. Where the provisions of paragraph 6 are applicable to a vessel of the sending State, the consular officer shall, in the absence of the owner or other authorized person, be entitled to take measures on behalf of the owner or other authorized person for the protection and administration of the vessel and its supplies. He shall also be entitled to take such measures on behalf of the absent owner or other authorized person in cases where the cargo of a vessel belongs to a national of the sending State.

9. Where cargo belonging to a national of the sending State has been removed from a vessel of a third State to which the provisions of paragraph 7 are applicable and is found on or near the coast of the receiving State or is brought into a port of that State, the consular officer shall, in the absence

of the owner or other authorized person, be entitled to take measures on behalf of the owner or other authorized person for the protection and administration of the cargo.

Article 23. FUNCTIONS IN RESPECT OF AIR TRANSPORT

The provisions of article 22 shall apply *mutatis mutandis* to aircraft.

Article 24. OTHER CONSULAR FUNCTIONS

Consular officers may exercise any other consular functions entrusted to them by the sending State in respect of which the receiving State, having been previously notified, has expressed no objection.

CHAPTER III

FACILITIES, RIGHTS, PRIVILEGES AND IMMUNITIES OF CONSULAR OFFICERS

Article 25. FACILITIES FOR THE PERFORMANCE OF THE FUNCTIONS OF THE CONSULAR POST

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

Article 26. USE OF THE NATIONAL COAT OF ARMS AND FLAG

1. The coat of arms of the sending State may be displayed on the building occupied by the consular post, at the entrance door thereof and on the residence of the head of the consular post.

2. The national flag of the sending State may be flown from the building occupied by the consular post, from the residence of the head of the consular post and on means of transport used by the head of the consular post in the performance of his official duties.

3. An inscription designating the consular post may be placed on the building occupied by the post and at the entrance door thereof.

4. 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 27. FACILITIES FOR OBTAINING OFFICES AND ACCOMMODATION

1. The receiving State shall facilitate, in accordance with its laws and regulations, the acquisition in its territory by the sending State of premises necessary for its consular post or assist the sending State in obtaining accommodation in some other way.

2. The receiving State shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

Article 28. INVIOABILITY OF THE CONSULAR PREMISES AND OF THE RESIDENCE OF THE HEAD OF THE CONSULAR POST

1. Consular premises and the residence of the head of the consular post shall be inviolable.

2. The judicial and administrative authorities of the receiving State shall not enter the consular premises or the residence of the head of the consular post

except with the consent of the head of the post or his designee or of the head of the diplomatic mission of the sending State.

3. The receiving State shall be under a duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4. The consular premises, their furnishings and other property of the consular post, including its means of transport, shall be immune from any form of requisition for purposes of national defence or public utility.

Article 29. EXEMPTION FROM TAXATION OF CONSULAR PREMISES AND ACCOMMODATION OF MEMBERS OF THE CONSULAR POST

1. Consular premises and accommodation of members of the consular post which are owned or rented by the sending State 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 shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by a person who contracted with the sending State.

Article 30. INVIOABILITY OF THE CONSULAR ARCHIVES

The consular archives and documents shall be inviolable at all times and wherever they may be.

Article 31. FREEDOM OF COMMUNICATION

1. The receiving State shall permit and facilitate freedom of communication on the part of consular posts of the sending State 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 lawful means of communication, including diplomatic or consular couriers, diplomatic or consular bags and coded or uncoded messages. However, the consular post may install or use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the consular post and the consular bag shall be inviolable, they shall not be opened, examined or detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the correspondence or bag contains something other than the correspondence, documents or articles referred to in paragraph 3, it shall be returned to its place of origin.

3. The consular bag, whether consisting of one package or more than one, shall be sealed and shall bear visible external marks of its character; it may contain only official correspondence and documents or articles intended exclusively for official use.

4. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. He must be a national of the sending State and may not be domiciled in the territory of the receiving State. In the performance of his functions, the consular courier shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to detention or to any other form of restriction on his personal freedom.

5. A consular bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized airport. The captain shall be provided with an official document indicating the number of packages constituting the consular bag; he shall not, however, be considered to be a consular courier. The consular post may send one of its members to take possession of the bag directly and freely from the captain of the aircraft. The provisions of paragraph 2 concerning the return of consular bags shall apply *mutatis mutandis*.

Article 32. COMMUNICATION WITH AND PROTECTION OF NATIONALS OF THE SENDING STATE

1. Consular officers shall be entitled to communicate with nationals of the sending State, to visit them and to advise them. Nationals of the sending State shall be entitled to communicate with and visit consular officers.

2. At the request of the person concerned, the judicial or administrative authorities of the receiving State shall without delay, and in any case within five days, notify the consular post of the sending State if, within its consular district, a national of that State is arrested or subjected to any form of restriction on his personal freedom. After this notification has been made, the judicial or administrative authorities of the receiving State shall forward to the consular post without delay any correspondence or other communication addressed to it by the person concerned. The said authorities shall inform the person concerned without delay of his right to communicate with the consular officer.

3. Consular officers shall be entitled to receive correspondence or other communications from a national of the sending State who has been subjected to any form of restriction on his personal freedom, to visit him and to communicate with him. The exercise of this right shall commence not later than seven days after the imposition of such restriction. Nevertheless, consular officers shall refrain from taking action on behalf of a national who has been subjected to a restriction on his personal freedom if he expressly opposes such action in the presence of the consular officer and of a representative of the authority by which he is being detained.

4. The rights referred to in paragraphs 1, 2 and 3 shall be exercised in conformity with the laws and regulations of the receiving State.

Article 33. COMMUNICATION WITH THE AUTHORITIES OF THE RECEIVING STATE

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

- (a) The local judicial and administrative authorities of their consular district;
- (b) The competent central authorities of the receiving State if and to the extent that this is permitted by the laws and regulations of that State or by the relevant international agreements.

Article 34. FREEDOM OF MOVEMENT

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

Article 35. CONSULAR FEES AND CHARGES

1. The consular post may levy in the territory of the receiving State the fees and charges provided for 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 shall be exempt from all dues and taxes in the receiving State.

CHAPTER IV

FACILITIES, RIGHTS, PRIVILEGES AND IMMUNITIES OF MEMBERS OF THE CONSULAR POST

Article 36. FACILITIES OF MEMBERS OF THE CONSULAR POST

The receiving State shall take all measures to enable the members of the consular post to exercise their functions and to enjoy the facilities, rights, privileges and immunities accorded by this Convention.

Article 37. PROTECTION OF CONSULAR OFFICERS

The receiving State shall treat consular officers with due respect and shall take all necessary steps to prevent any attack on their persons, freedom or dignity.

Article 38. IMMUNITY AND PERSONAL INVIOABILITY OF THE HEAD OF A CONSULAR POST

1. The head of a consular post shall not be amenable to the civil, criminal or administrative jurisdiction of the receiving State.

2. The provisions of paragraph 1 shall not apply in respect of a civil action either:

- (a) Arising out of a contract concluded by the head of a consular post in which he did not contract expressly or impliedly as an agent of the sending State; or
- (b) Instituted by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

3. The head of a consular post shall enjoy personal inviolability. He shall not be subject to measures of execution except in the cases referred to in paragraph 2 (a) and (b) and only if execution can be effected without impairing the inviolability of his person or his residence.

Article 39. IMMUNITY FROM JURISDICTION OF THE MEMBERS OF A CONSULAR POST

1. Consular officers other than the head of a consular post 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 their official functions.

2. The provisions of paragraph 1 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) Instituted by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

Article 40. PERSONAL INVIOLABILITY OF CONSULAR OFFICERS OTHER THAN THE HEAD OF A CONSULAR POST

1. In respect of acts performed outside the exercise of their official functions, consular officers other than the head of a consular post shall not be liable:

- (a) to arrest or detention pending trial except in the case of a grave crime and pursuant to a decision by the competent judicial authority of the receiving State.
- (b) to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.

2. For the purposes of this article, "grave crime" means any offence which is punishable under the laws of the receiving State by deprivation of freedom for a term of five years or more.

3. If criminal proceedings are instituted against a consular officer, he must appear before the competent judicial or administrative authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, save in the case referred to in paragraph 1, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 41. NOTIFICATION OF PROSECUTION OR DEPRIVATION OF FREEDOM

In the event of criminal proceedings being instituted or of a measure involving deprivation of freedom being taken against a member of the consular staff or a member of his family, the judicial or administrative authorities of the receiving State shall promptly notify the head of the consular post.

Article 42. LIABILITY TO GIVE EVIDENCE

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. If a consular officer should decline to appear or to give evidence, no coercive measure or penalty may be applied to him. A consular employee or a member of the service staff of a consular post shall not, except in the cases mentioned in paragraph 3, decline to give evidence.

2. The judicial or administrative authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3. Members of a consular post shall be 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 shall also be entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

4. A consular officer who gives evidence may not be required to take an oath.

Article 43. EXEMPTION FROM PERSONAL SERVICES AND OTHER OBLIGATIONS

1. Members of a consular post shall be exempt in the receiving State from all obligations and other measures of a military nature, from personal services of all kinds and from any contribution required in lieu thereof.

2. Members of a consular post shall also be exempt from all obligations under the laws and regulations of the receiving State relating to the registration of aliens and residence permits.

Article 44. EXEMPTION FROM TAXATION

1. Consular officers and consular employees shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

- (a) Indirect taxes of a kind normally incorporated in the price of goods or services;
- (b) Dues and taxes on private immovable property situated in the territory of the receiving State;
- (c) Estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of article 46, paragraph (b);
- (d) Dues and taxes on private income having its source in the receiving State and on property situated in that State;
- (e) Charges levied for specific services rendered;
- (f) Registration, court or record fees, mortgage dues and stamp duties.

2. Members of the service staff of the consular post shall be exempt from dues and taxes on the wages which they receive for their services.

3. Members of the consular post who employ persons whose salaries or wages are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

Article 45. EXEMPTION FROM CUSTOMS DUTIES AND INSPECTION

1. The receiving State shall, in accordance with its laws and regulations, permit the entry and re-export of and grant exemption from all customs duties, taxes and related charges on:

- (a) Articles for the official use of the consular post;
- (b) Articles for the personal use of a consular officer or members of his family, including articles intended for his establishment; articles intended for consumption shall not exceed the quantities necessary for direct utilisation by the persons concerned.

The exemptions so granted shall not include charges for storage, cartage and similar services.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 in respect of articles imported at the time of the first installation.

3. Personal baggage accompanying consular officers shall be exempt from customs inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in paragraph 1 or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to quarantine. Such inspection shall be carried out in the presence of the consular officer.

Article 46. ESTATE OF A MEMBER OF THE CONSULAR POST

In the event of the death of a member of the consular post or of a member of his family, the receiving State:

- (a) Shall permit the export of the movable property of the deceased, with the

exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;

- (b) Shall not levy national, regional or municipal estate, succession or inheritance duties, or duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

Article 47. SOCIAL SECURITY EXEMPTION

1. Subject to the provisions of paragraph 3, members of the consular post shall, with respect to services rendered by them for the sending State, be exempt from any social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 shall also apply to members of the private staff who are in the sole employ of members of the consular post, on condition:

- (a) That they are not nationals of or domiciled in the receiving State; and,
(b) That they are covered by the social security provisions which are in force in the sending State or a third State.

3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

Article 48. WAIVER OF PRIVILEGES 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 38, 39, 40 and 42.

2. The waiver shall in all cases be express 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 articles 38 and 39 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 49. MEMBERS OF THE FAMILY OF MEMBERS OF THE CONSULAR POST

1. Members of the family of the head of a consular post shall enjoy immunity from criminal jurisdiction and personal inviolability provided that they are not nationals of the receiving State, are not domiciled in the receiving State and are not carrying on any gainful occupation in the receiving State.

2. The privileges and immunities accorded to consular officers and consular employees under articles 43, 44, 45 and 47 of this Convention shall also be accorded to members of their families provided that the latter are not nationals of the receiving State, are not domiciled in the receiving State and are not carrying on any gainful occupation in the receiving State.

3. The privileges and immunities accorded to members of the service staff under articles 43 and 47 shall also be accorded to members of their families provided that the latter are not nationals of the receiving State, are not domiciled in

the receiving State and are not carrying on any gainful occupation in the receiving State.

Article 50. MEMBERS OF THE CONSULAR POST WHO ARE NATIONALS OF THE RECEIVING STATE

Members of the consular post who are nationals of the receiving State or domiciled in that State shall enjoy, in the performance of their official duties, the immunity and personal inviolability provided for in articles 39 and 40 and the privilege provided for in article 42, paragraph 3.

Article 51. BEGINNING AND END OF PRIVILEGES AND IMMUNITIES

1. Members of the consular post shall enjoy the privileges and immunities provided for in this Convention from the moment when they enter the territory of the receiving State on proceeding to take up their post or, if they are already in its territory, from the moment when they enter on their duties.

2. Members of the family of the persons referred to in paragraph 1 and members of the private staff shall enjoy the privileges provided for in this Convention :

(a) From the moment when the member of the consular post begins to enjoy privileges and immunities in accordance with paragraph 1;

(b) From the moment when they enter the territory of the receiving State, if they do so after the date referred to in subparagraph (a);

(c) From the moment when they become members of the family or members of the private staff of the member of the consular post, if this occurs after the date referred to in subparagraph (b).

3. When the official functions of a member of the consular post have come to an end, his privileges and immunities and those of members of his family and of members of his private staff shall cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period enabling him to do so. The privileges and immunities of the persons referred to in paragraph 2 shall cease at the moment when the person concerned loses his status as a member of the family or member of the private staff of a member of the consular post. However, if such persons intend to leave the territory of 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 official functions, immunity from jurisdiction shall subsist without limitation of time.

5. In the event of the death of a member of the consular post, the members of his family shall continue to enjoy the privileges and immunities accorded to them under this Convention until they leave the territory of the receiving State or on the expiry of a reasonable period enabling them to do so.

Article 52. INSURANCE AGAINST THIRD PARTY RISKS

1. Vehicles, vessels and aircraft owned by the sending State and used by the consular post and those belonging to members of the consular post or members of their families must be appropriately insured against third party risks.

2. Save as otherwise provided by the laws and regulations of the receiving State, the provisions of paragraph 1 shall not apply to persons who are nationals of the receiving State or are domiciled in that State.

Article 53. RESPECT FOR THE LAWS AND REGULATIONS OF THE RECEIVING STATE

1. Without prejudice to the privileges and immunities provided for in this Convention, it is the duty of persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State and not to interfere in the internal affairs of that State.

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

CHAPTER V

FINAL PROVISIONS

Article 54. RATIFICATION

This Convention shall be ratified, and the exchange of the instruments of ratification shall take place at Bucharest as soon as possible.

Article 55. ENTRY INTO FORCE AND DENUNCIATION

This Convention shall enter into force on the 30th day after the date of the exchange of the instruments of ratification and shall remain in force until such time as one of the Contracting Parties denounces it on one year's written notice, such notice not to be given earlier than the 10th year after the date of its entry into force.

DONE at Vienna on 24 September 1970, in duplicate in the German and Romanian languages, both texts being authentic.

For the Republic of Austria:

RUDOLF KIRCHSCHLÄGER

For the Socialist Republic of Romania:

C. MĂNESCU
