

Lecture | 7

Establishment of Consular Relations

KEYWORDS:

Consular Relations | Consul | Consulate | General Consul | Vice- Consular| Vienna Convention on Consular Relations 1963 | Consular Post | Head of the Consular Post | Consular Officer | Consular Employee| Classification of Consular Posts |

Questions to be addressed:

- Which state for the first time conducted Consular Relations in the ancient history?
 - Which convention defines a framework for consular relations between sovereign states?
 - What are the main steps related to the establishment of Consular Relations between two states?
 - How states establish consular Relations?
 - What are the classes of head of Consular Posts?
 - when and in which cases the function of a consular post will be ended?
 - To what extent the Consular Post can be performed in or on behalf of a thirds state?
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Introduction

The conduction of the Consular Relations refers back to the ancient Greek in Egypt.

The international treaty that defines the framework work of the Consular Relations is "Vienna Convention on Consular Relations' that issued and adopted by United Nations in the 1963 and that entered into force in 1967. Approximately, 180 states ratified the treaty and available in 5 main languages. The convention is consisted of an introduction and 5 chapters (1st Establishment of CR, 2nd Immunities and Privileges, Honorary Consular, 4th General Provisions, 5th Final Provisions).

Establishment of Consular Relations

- What are the main steps related to the establishment of Consular Relations between two states?
- How states establish consular Relations?

There are key steps that requires from 2 states to follow when they desire to exchange and establish consulate:

1. Mutual Consent.
2. Appointing Head of the Consular Post.
3. Approval of the receiving (host) state.
4. Providing Head of CP with 'The consular commission or notification of appointment'.
5. 'The exequatur' that is provided by the Receiving State.

First| Mutual Consent:

Similarly, to the Establishment of Diplomatic relations, Consular Relations can be conducted between two sovereign states ONLY when both sides share and express agreement. By other words, common agreement and consent to exchange Consular relations.

This condition codified on **Article 2** of the 'Vienna Convention on Consular Relations' of 1963;

- 1.The establishment of consular relations between States takes place by mutual consent.
2. The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations.

After declaring mutual Consent in the next step both sides go through negotiation process to decide and come to agreement on the content of the agreement on subjects such as; type of the relation, level and degree of the representation, size of the mission, authority district and region of the mission, or any such necessary matters for both parties.

Second | Appointing Head of the Consular Post:

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In the next stage, it is the responsibility of the sending state to select a person to be appointed as '**The head of the consular Post**'. In accordance with **Article 4**;

1. A consular post may be established in the territory of the receiving State only with that State's consent.
2. The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State.
3. Subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State.
4. The consent of the receiving State shall also be required if a consulate-general or a consulate desires to open a vice-consulate or a consular agency in a locality other than that in which it is itself established.
5. The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consular post elsewhere than at the seat thereof.

Also, **Article 10**, related to the Appointment and admission of heads of consular posts

1. Heads of consular posts are appointed by the sending State and are admitted to the exercise of their functions by the receiving State.

The treaty in **article 9/1** also classified the classes related to the head of the consular Posts as below;

- (a) consuls-general;
- (b) consuls;
- (c) vice-consuls;
- (d) consular agents.

Article 22 related to the Nationality & **Article 23** for Persons declared as "Non Grata".

Third | Approval of the receiving State:

After appointment of the head of the consular Post, the receiving/host state granted the right to express approval or acceptance on the candidate. Article (4/2) mentioned that;

'The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State'.

Additionally, in the case of expressing **agreement** by the receiving state article 11/3 mentioned;

"If the receiving State agrees, the sending State may, instead of a commission or similar

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instrument, send to the receiving State a notification containing the particulars required by paragraph 1 of this article”.

However, in the case of **rejection and refusal** by the receiving state, Article 12/2 clarified that; 'A State which refused to grant an exequatur is not obliged to give to the sending State reasons for such refusal'.

Fourth| The consular commission or notification of appointment:

When head of the consular posts granted approval from the receiving state, the sending state shall be provided with a document that is known as 'Consular Commission' or 'Notification of Appointment', **Article 11;**

1.The head of a consular post shall be provided by the sending State with a document, in the form of a commission or similar instrument, made out for each appointment, certifying his capacity and showing, as a general rule, his full name, his category and class, the consular district and the seat of the consular post.

2.The sending State shall transmit the commission or similar instrument through the diplomatic or other appropriate channel to the Government of the State in whose territory the head of a consular post is to exercise his functions.

3. If the receiving State agrees, the sending State may, instead of a commission or similar instrument, send to the receiving State a notification containing the particulars required by paragraph 1 of this article.

- The document shall be addressed and directed as one of the following expressions;
 - To all whom it may concern;
 - To all who shall see these presents.

Fifth | The exequatur:

Based on **article 12**, when the receiving state approval and expressed agree on the head of the consular posts;

1.The head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State termed an exequatur, whatever the form of this authorization.

2.A State which refused to grant an exequatur is not obliged to give to the sending State reasons for such refusal.

3.Subject to the provisions of articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an exequatur.

Article 13, Pending delivery of the exequatur, the head of a consular post may be admitted on a provisional basis to the exercise of his functions. In that case, the provisions of the present Convention shall apply.

Conduction of Consular Relations in the absence of Diplomatic Representations or Recognition

- Breaking of DR will not lead to the cut or end of CR.
Egypt broke up its diplomatic relations with Germany during 1965 upon Germany's recognition to the state of Israel. As well as took the same action again UK as a reaction related to Sews Channel. But didn't break up or end its Consular relations towards both states.
'The severance of diplomatic relations shall not ipso facto involve the severance of consular relations. **Article 2/3.**
 - It is possible to establish CR in the absence of DR or recognition.
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Performing Consular Functions in a and on behalf of the Third State

A Consular Post can perform Consular functions **in** and on behalf of the third state **BUT** with prior approval from the receiving state as specified in article

- Exercise of consular functions **in a third State;**
'The sending State may, after notifying the States concerned, entrust a consular post established in a particular State with the exercise of consular functions in another State, unless there is express objection by one of the States concerned', **Article 7.**
 - Exercise of consular functions **on behalf of a third State;**
'Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State', **Article 8.**
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Termination & End of the Functions of a member of a Consular Post

The functions of a member of a consular post shall come to an end or terminated in these cases and situations with reference to **Article 25;**

- (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; breaking of Relations between both sides due to war and conflict.
- (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 staff.