

CONSULAR AGENTS: DUTIES, RIGHTS, PREROGATIVES, AND IMMUNITIES (INTER-AMERICAN)

Convention signed at Havana February 20, 1928

Senate advice and consent to ratification January 22, 1932

Ratified by the President of the United States February 1, 1932

*Ratification of the United States deposited with the Pan American Union
February 8, 1932*

*Entered into force September 3, 1929; for the United States February 8,
1932*

Proclaimed by the President of the United States February 11, 1932

47 Stat. 1976; Treaty Series 843

CONVENTION

The governments of the Republics represented at the Sixth International Conference of American States, held in the city of Habana, Republic of Cuba, in the year nineteen hundred and twenty-eight, desirous of defining the duties, rights, prerogatives and immunities of consular agents, in accordance with the usages and agreements on the matter;

Have decided to conclude a convention to that end and have appointed the following plenipotentiaries:

Perú: Jesús Melquiades Salazar, Víctor Maúrtua, Enrique Castro Oyanguren, Luis Ernesto Denegri.

Uruguay: Jacobo Varela Acevedo, Juan José Amézaga, Leonel Aguirre, Pedro Erasmo Callorda.

Panamá: Ricardo J. Alfaro, Eduardo Chiari.

Ecuador: Gonzalo Zaldumbide, Víctor Zevallos, Colón Eloy Alfaro.

Mexico: Julio García, Fernando González Roa, Salvador Urbina, Aquiles Elorduy.

Salvador: Gustavo Guerrero, Héctor David Castro, Eduardo Alvarez.

Guatemala: Carlos Salazar, Bernardo Alvarado Tello, Luis Beltranena, José Azurdia.

Nicaragua: Carlos Cuadra Pazos, Joaquín Gómez, Máximo H. Zepeda.

Bolivia: José Antezana, Adolfo Costa du Rels.

Venezuela: Santiago Key Ayala, Francisco Gerardo Yanes, Rafael Angel Arraiz.

Colombia: Enrique Olaya Herrera, Jesús M. Yepes, Roberto Urdaneta Arbeláez, Ricardo Gutiérrez Lee.

Honduras: Fausto Dávila, Mariano Vázquez.

Costa Rica: Ricardo Castro Beeche, J. Rafael Oreamuno, Arturo Tinoco.

Chile: Alejandro Lira, Alejandro Alvarez, Carlos Silva Vildósola, Manuel Bianchi.

Brazil: Raúl Fernandes, Lindolfo Collor, Alarico da Silveira, Sampaio Correa, Eduardo Espínola.

Argentina: Honorio Pueyrredón, (Later resigned), Laurentino Olascoaga, Felipe A. Espil.

Paraguay: Lisandro Díaz León.

Haiti: Fernando Dennis, Charles Riboul.

Dominican Republic: Francisco J. Peynado, Gustavo A. Díaz, Elías Brache, Angel Morales, Tulio M. Cestero, Ricardo Pérez Alfonseca, Jacinto R. de Castro, Federico C. Alvarez.

United States of America: Charles Evans Hughes, Noble Brandon Judah, Henry P. Fletcher, Oscar W. Underwood, Dwight W. Morrow, Morgan J. O'Brien, James Brown Scott, Ray Lyman Wilbur, Leo S. Rowe.

Cuba: Antonio S. de Bustamante, Orestes Ferrara, Enrique Hernández Cartaya, José Manuel Cortina, Aristides Agüero, José B. Alemán, Manuel Márquez Sterling, Fernando Ortiz, Néstor Carbonell, Jesús María Barraqué.

Who, after having deposited their full powers found to be in good and due form, have agreed to the following provisions:

Section I. Appointments and functions

ARTICLE 1

States may appoint in the territory of others, with the express or tacit consent of the latter, consuls who shall there represent and defend their commercial and industrial interests and render to their nationals such assistance and protection as they may need.

ARTICLE 2

The form and requirements for appointment, the classes and the rank of the consuls, shall be regulated by the domestic laws of the respective state.

ARTICLE 3

Unless consented to by the state where he is to serve, one of its nationals may not act as consul. The granting of an exequatur implies such consent.

ARTICLE 4

The consul having been appointed, the state shall forward through diplomatic channels to the other state the respective commission which shall contain the name, category and authority of the appointee.

As to a vice consul or commercial agent appointed by the respective consul, where there is authorization by law, the commission shall be issued and communicated to the latter.

ARTICLE 5

States may refuse to accept consuls appointed in their territory or subject the exercise of consular functions to certain special obligations.

ARTICLE 6

The consul can be recognized as such only after having presented his commission and obtained the exequatur of the state in whose territory he is to serve. Provisional recognition can be granted upon the request of the legation of the consul pending the delivery in due form of the exequatur.

Officials appointed under the terms of Article 4 are likewise subject to this formality and in such case it rests with the respective consul to request the exequatur.

ARTICLE 7

The exequatur having been obtained, it shall be presented to the authorities of the consular district, who shall protect the consul in the exercise of his functions and guarantee to him the immunities to which he is entitled.

ARTICLE 8

The territorial government may at any time withdraw the consul's exequatur, but, except in urgent cases, it shall not have recourse to this measure without previously attempting to obtain from the consul's government his recall.

ARTICLE 9

In case of the death, disability or absence of consular agents any of the assistant employees whose official position has been previously made known to the ministry of foreign affairs or the department of state, may temporarily

assume the consular functions; while thus engaged he shall enjoy all the rights and prerogatives corresponding to the permanent official.

ARTICLE 10

Consuls shall exercise the functions that the law of their state confers upon them, without prejudice to the legislation of the country where they are serving.

ARTICLE 11

In the exercise of their functions, consuls shall deal directly with the authorities of their district. Should their representations not be heeded, they may then pursue them before the government of the state through the intermediary of their diplomatic representative, but should not communicate directly with the government except in the absence or non-existence of a diplomatic representative.

ARTICLE 12

In case of the absence of a diplomatic representative of the consul's state, the consul may undertake such diplomatic actions as the government of the state in which he functions may permit in such cases.

ARTICLE 13

A person duly accredited for the purpose may combine diplomatic representation and the consular function provided the state before which he is accredited consents to it.

Section II. Prerogatives of consuls

ARTICLE 14

In the absence of a special agreement between two nations, the consular agents who are nationals of the state appointing them, shall neither be arrested nor prosecuted except in the cases when they are accused of committing an act classed as a crime by local legislation.

ARTICLE 15

In criminal cases, the prosecution or the defense may request attendance of consular agents at the trial, as witnesses. This request must be made with all possible consideration to consular dignity and to the duties of the consular office and shall be complied with by the consular official.

Consular agents shall be subject to the jurisdiction of the courts in civil cases, although with the limitation that when the consul is a national of his state and is not engaged in any private business with purposes of gain, his testimony shall be taken either verbally or in writing, at his residence or office, with all the consideration to which he is entitled.

The consul may, nevertheless, of his own free will appear as a witness when such appearance does not seriously hinder the discharge of his official duties.

ARTICLE 16

Consuls are not subject to local jurisdiction for acts done in their official character and within the scope of their authority. In case a private individual deems himself injured by the consul's action, he must submit his complaint to the government, which, if it considers the claim to be relevant, shall make it valid through diplomatic channels.

ARTICLE 17

In respect to unofficial acts, consuls are subject, in civil as well as in criminal matters, to the jurisdiction of the state where they exercise their functions.

ARTICLE 18

The official residence of the consuls and places used for the consulate's offices and archives are inviolable and in no case may the local authorities enter them without the permission of the consular agents; neither shall they examine nor seize, under any pretext whatsoever, documents or other objects found in a consular office. No consular officer shall be required to present his official files before the courts or to make declaration with respect to their contents.

When consular agents are engaged in business within the territory of the state where they are exercising their duties, the files and documents of the consulate shall be kept in a place entirely separate from the one where private or business papers are kept.

ARTICLE 19

Consuls are obliged to deliver, upon the simple request of the local authorities, persons accused or condemned for crimes who may have sought refuge in the consulate.

ARTICLE 20

Consular agents, as well as the employees of the consulate who are nationals of the state appointing them, not engaged in business with purposes of gain, in the state where they perform their functions, shall be exempt from all national, state, provincial, or municipal taxes levied upon their person or property, except such taxes as may apply to the possession or ownership of real estate located in the state where discharging their duties or to the proceeds of the same. Consular agents and employees who are nationals of the state they represent, are exempt from tax on the salaries, honorariums, or wages which they receive in return for their consular services.

ARTICLE 21

The employee who substitutes for the consular agent in his absence, or for another cause, shall enjoy during his temporary term of office the same immunities and prerogatives as the latter.

ARTICLE 22

Consuls engaged in business or exercising other functions apart from those pertaining to their consular duties are subject to local jurisdiction in all their activities not pertaining to the consular service.

Section III. Suspension and termination of consular functions

ARTICLE 23

Consular agents suspend their functions because of illness or leave of absence, and terminate their office:

- a) By death;
- b) By retirement, resignation, or dismissal; and
- c) By the cancellation of the exequatur.

ARTICLE 24

The present convention does not affect obligations previously undertaken by the contracting parties through international agreements.

ARTICLE 25

After being signed, the present convention shall be submitted to the ratification of the signatory states. The Government of Cuba is charged with transmitting authentic certified copies to the governments for the aforementioned purpose of ratification. The instrument of ratification shall be deposited in the archives of the Pan American Union in Washington, the Union to notify the signatory governments of said deposit. Such notification shall be considered as an exchange of ratifications. This convention shall remain open to the adherence of non-signatory states.

In witness whereof, the aforementioned plenipotentiaries sign the present convention in Spanish, English, French, and Portuguese, in the city of Habana, the 20th day of February, 1928.

Peru:

JESÚS M. SALAZAR
VÍCTOR M. MAÚRTUA
LUIS ERNESTO DENEGRÍ
E. CASTRO OYANGUREN

Panama:

R. J. ALFARO
EDUARDO CHIARI

Uruguay:

VARELA
PEDRO ERASMO CALLORDA

Ecuador:

GONZALO ZALDUMBIDE
VÍCTOR ZEVALLOS
C. E. ALFARO

Mexico:

JULIO GARCÍA
 FERNANDO GONZÁLEZ ROA
 SALVADOR URBINA
 AQUILES ELORDUY

Salvador:

J. GUSTAVO GUERRERO
 HÉCTOR DAVID CASTRO
 ED. ALVAREZ

Guatemala:

CARLOS SALAZAR
 B. ALVARADO
 LUIS BELTRANENA
 J. AZURDIA

Nicaragua:

CARLOS CUADRA PAZOS
 MÁXIMO H. ZEPEDA
 JOAQUÍN GÓMEZ

Bolivia:

JOSÉ ANTEZANA
 A. COSTA DU R.

Venezuela:

SANTIAGO KEY AYALA
 FRANCISCO G. YANES
 RAFAEL ANGEL ARRAIZ

Colombia:

ENRIQUE OLAYA HERRERA
 R. GUTIÉRREZ LEE
 J. M. YEPES

Honduras:

F. DÁVILA
 MARIANO VÁZQUEZ

Costa Rica:

RICARDO CASTRO BEECHE
 J. RAFAEL OREAMUNO
 A. TINOCO JIMÉNEZ

Chile:

ALEJANDRO LIRA
 ALEJANDRO ALVAREZ
 C. SILVA VILDÓSOLA
 MANUEL BIANCHI

Brazil:

RAÚL FERNANDES
 LINDOLFO COLLOR

Argentina:

LAURENTINO OLASCOAGA
 FELIPE A. ESPIL
 CARLOS ALBERTO ALCORTA

Paraguay:

LISANDRO DÍAZ LEÓN
 JUAN VICENTE RAMÍREZ

Haiti:

FERNANDO DENNIS

Dominican Republic:

FRACO. J. PEYNADO
 TULIO M. CESTERO
 JACINTO R. DE CASTRO
 ELÍAS BRACHE
 R. PÉREZ ALFONSECA

United States of America:

CHARLES EVANS HUGHES
 NOBLE BRANDON JUDAH
 HENRY P. FLETCHER
 OSCAR W. UNDERWOOD
 MORGAN J. O'BRIEN
 JAMES BROWN SCOTT
 RAY LYMAN WILBUR
 LEO S. ROWE

Cuba:

ANTONIO S. DE BUSTAMANTE
 ORESTES FERRARA
 E. HERNÁNDEZ CARTAYA
 ARÍSTIDES DE AGÜERO BETHENCOURT
 M. MÁRQUEZ STERLING
 NÉSTOR CARBONELL

Reservation of the Delegation of Venezuela

On behalf of the Government that I represent, I make a reservation with respect to the coincidence of diplomatic and consular functions in the same person, because it is totally opposed to our tradition, maintained since it was established until the present time, in a way that admits of no change.