CANADIAN DELEGATION TO THE UNITED NATIONS GENERAL ASSEMBLY
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STATEMENT BY
MR. GILLES SICOTTE, CANADIAN REPRESENTATIVE
ON THE SIXTH COMMITTEE
December 3 , 1962

Mr. Chairman,

On behalf of my Delegation, I wish to congratulate the International Law Commission for their most worthwhile work in preparing the draft articles on consular relations and the commentaries on these articles. These draft articles are, in my Delegation's view, an excellent example of the type of useful codification of international law and practice which the International Law Commission is so well equipped to prepare. The Commission's previous reports on this subject have been extremely useful in our examination of the provisions of the draft articles. Generally speaking, my Delegation is in favour of the draft articles as a useful and satisfactory basis for the formulation of an international convention, although the Canadian Government has already submitted to the United Nations Secretariat specific suggestions for amendment of some of the draft articles and the Canadian Delegation to the Vienna Conference on Consular Relations will be submitting views on a number of the other draft articles. My Government is also studying with interest the helpful comments published so far by other Governments on the International Law Commission's draft articles.

In the Sixth Committee last year, the Canadian Delegation urged that the discussion of the draft articles at this session be restricted to the character of a general debate rather than to attempt a discussion of each article in detail. In the view of our Delegation, many of these draft articles are highly technical and in these circumstances, it would seem that the only practical approach would be to reserve any detailed discussions for the special conference in March, 1962. My Delegation will at this

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time, however, submit a few general comments which we hope will be of assistance to governments when preparing for the historic conference which is to take place next March.

We are somewhat concerned with the emphasis placed in some of the draft articles, for example Articles 8-14, 17 and 18, on the special position of the head of a consular post. They leave us with the impression that the position of a head of a consular post is comparable to that of a head of a diplomatic mission, and in our view this should not be so. An Ambassador, Minister or Charge d'Affaires is the official representative of his government and the members of his mission assist him in the performance of his functions, deriving their status from the fact that they are part of his official suite. On the other hand, the status of a consular official derives from his personal appointment. In Canada, it is not only the head of post but all consular officials who are required to be admitted individually to the exercise of their functions by the Canadian Government. Furthermore, under Canadian law and regulations affecting privileges and immunities, no special rights are granted to consular officials solely by fact of their being head of consular post. We would hope that this point of view would find broad sympathy in the Assembly and, if so, that it may be borne in mind in the future revision of the draft Articles

My Delegation also considers that the rights of unrestricted communication by consular officials in the receiving state with nationals of the sending states should be spelled out unequivocally in the Convention. The freedom of communication between consular officials and nationals of the sending state is so implicit in the exercise of consular functions that its absence would make the establishment of consular relations largely meaningless. A consulate should have the right of free access to its own nationals; and this right must not be unduly restricted by the authorities in the receiving state, except in the case where a national of the sending state clearly indicates an unwillingness to communicate with the consular officials of the sending state.

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With this concept in mind, my Delegation recommends the strengthening of sub-paragraphs (a) and (c) of draft Article 36, one of the most important of the draft Articles to be considered.

As for the articles dealing with tax exemptions for members of consular posts, it is our view that the present draft articles should in most instances be made more restrictive. In this regard, I would direct the attention of the Committee to my Government's written comments, in particular, on Draft Articles 47, 48, 50 and 69 in United Nations Document A/5171 of August 21, 1962. The rationale behind my Government's views is that tax exemptions should only be granted where it can be clearly shown that they are necessary for the proper functioning of the consulate.

As federal states such as Canada may, because of the nature of their constitutional arrangements, eventually be faced with certain difficulties in regard to the implementation of certain of the provisions of the draft articles, consideration might be given to including a federal state clause in the draft Convention. On the general subject of reservation, I should like to remind the Committee of the provisions of Resolution 598 (VI) of January 12, 1952, which recommends:

> "that organs of the United Nations, specialized agencies and states should, in the course of preparing multilateral conventions, consider the insertion therein of provisions relating to the admissibility or non-admissibility of reservations; and to the effect to be attributed to them."

Lastly, we feel compelled to remark that the privileges and immunities accorded to honorary consular officials are far greater in the draft articles than is either desirable or even recognized by current international practice. Considering that honorary consular officials are most often nationals or permanent representatives of the receiving state, there would seem to be no particular justification for according them extensive privileges and immunities which usually serve only to reduce the private rights of their fellow citizens (and permanent neighbours). The question of honorary consular officials' privileges and immunities should be carefully

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examined in view of their other occupations and activities to ensure that they are not enabled to unduly abuse their part-time position as honorary consular officials.

These are only a few general comments on some of the principles involved in any examination of the draft Articles. In contrast to the Convention on Diplomatic Relations, the draft Articles on Consular Relations deal with a large number of principles and problems relating to a field of international law and practice which is neither so well-developed nor as universally accepted. Much intensive study must be devoted to the draft Articles and to the views of Governments before the Conference in March; and in turn, much of the success of a final Convention on Consular Relations will depend on the goodwill and understanding of Governments and delegations attending the Conference.