

# DIPLOMATIC FUNCTION OF THE CONSULAR INSTITUTION

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**Abstract:**

*Changes in international relations in the age of globalization, the intense movement of capital by opening markets in the new global context, cultural values and especially the free movement of people require prompt and efficient consular services, on all meridians, at all points. Consular relations were initially enshrined in international custom, and long afterwards were codified in an international treaty, with the aim of creating a common regulatory framework. Recent developments generated by the victory of liberal ideas in the international system have led to the emergence of new values of the content of the consular institution. The present study highlights only one of the relevant aspects that resulted from these transformations, the diplomatic function of the consular institution.*

**Keywords:** *consular institution, political governance, foreign policy, diplomacy, state role*

## **Consular activity as an expression of state sovereignty**

The consular institution shall be established, as provided for in the relevant Vienna Convention, with the consent of the States to establish diplomatic relations, which includes consent to the establishment of consular relations, unless otherwise provided in that agreement.

The text of the Convention also stipulates that the ipso facto separation of diplomatic relations does not imply the separation of consular relations. [1] This regulation provides the state with the option to establish consular relations without the need for an agreement to establish diplomatic relations.

The legal basis for the representative function of the consular institution in relations between countries emerges from the above. Maintaining a certain degree of communication through non-diplomatic means may be useful even in special circumstances, when it is not possible to establish diplomatic relations and, consequently, not to set up resident diplomatic missions.

In order to maintain an open channel for dialogue between states, in these special situations, even if it cannot be said to be an international practice, honorary consular offices and sections, representative offices and apparent missions may be

used, which, in contrast to the offices and consular sections, are considered "disguised missions". [2]

Interference of the consular institution with the foreign policy objectives of a state

During the formation and crystallization of the consular institution, the assistance and commercial functions have largely overlapped. Therefore, it is understandable how the businessmen, who benefited from government services, had a special interest in maintaining friendly relations with the countries they visited or lived in.

The same cannot be said of tourists who travel frequently nowadays on short or itinerant trips. As citizens travel more and more across borders, they become more and more willing and able to make their complaints heard, including through the media and politicians, thus increasing the challenges consular activity must deal with. The recent reshaping of consular services and the blurring of the relationship between consular assistance and diplomacy has been largely the consequence of these developments.

In states with political systems based on democratic principles and transparency, especially those with developed economies, governments are directly under the pressure of public opinion and politicians, who call for improved consular and trade assistance.

At the same time, it has become a practice of states to open new consular offices for a target audience, especially in large countries, where the existence of a single diplomatic mission in the capital is not enough. In this regard, mention may be made of the Mexican consular offices in the USA, targeted at the support of the large number of American citizens of Mexican origin, the Indian ones in Canada, open to satisfy the Shiite population forming a major voting bloc in Canada or the representation offices in Western China, which many countries have opened to support trade in that region.

For a correct understanding of how the function of consular assistance business has evolved, it is imperative that the analysis takes into account the increase in government interventionism in the economy, which results from both the development of newly emerging countries and the changing mentality of industrialized countries. For example, the increase in the influence of China and other emerging countries, where there is no clear demarcation between the public and private area. In China, the 2008 Lehman shock provided a solid argument for restoring government intervention. [3]

A brief examination of these issues shows that consular activities are not easy to recalibrate, nor do they imply that long-term national interest that always precedes the interests of citizens. The mutually constitutive processes and interests involved in the new challenges the consular activity and diplomacy are facing must be clearly delineated so as not to misunderstand the consequences.

### **Consular affairs and diplomacy**

The inherent link between consular affairs and diplomacy stems from the very fact that the office of consul appeared before that of the resident ambassador and may, in a sense, be considered even before it. However, in the doctrine and literature there are different approaches to the relationship between the institution of the consul and diplomacy. In some papers on the emergence of diplomacy nothing is mentioned about consuls, whereas in others consuls are presented as forerunners of diplomacy and yet the third approach sees the diplomat and consul as people who have evolved in parallel. [4]

Nowadays, we can see a blurring of the line between consular affairs and diplomacy. This reality was synthetically expressed by an American diplomat, who observed that “in the 21st century, the overseas presence of the US State Department has gone far beyond the traditional diplomatic / consular dichotomy, in a much more complex environment where functions overlap”. [5]

The opinion on the overlap between consular affairs and diplomacy is directly related to the interpretation of what the consular institution means. The assistance function of consular affairs, which is in the spotlight of the consular departments of foreign ministries, is only a small part of what the daily work of a consul means.

Viewed in their broadest sense, consular affairs have the ability to change the traditional view over diplomacy, making it more visible to public opinion in the state of residence, especially in those countries that are more accessible and open to potential partnerships in service delivery. Although consular affairs certainly do not always involve a high degree of diplomacy or politics, the substantial developments of the late 1990s require a retraining of the assumptions about the traditional relationship between consular affairs and diplomacy.

Consular assistance increasingly involves a degree of consular diplomacy as the number of highly publicized consular cases increases and internationally coordinated efforts to bring consular services to a higher level are intensified. [6]

Two types of consular diplomacy can be distinguished. The first that concerns practical arrangements for internal consular assistance between states and that can be considered a form of preventive negotiation, and the second, which consists in the provision of high-impact assistance services, which are constantly in the watchful eye of the press and politicians.

Under the circumstances of globalization, more and more countries have adapted to the new conditions. In order to improve international cooperation and expand the scope and level of protection that the consular institution can provide, states have reconsidered the importance of bilateral consular agreements, as multilateral agreements prove inappropriate for the current circumstances and are not signed by all countries. Thus, in order to meet the current challenges, an increasing number of bilateral negotiations have been initiated, most of which have been signed. [7]

A contrary trend, generated by increasingly insistent calls for the establishment of a new multilateral treaty, is represented by the coordinated efforts between like-minded countries to bring consular services to a higher level. In this respect, the cooperation within the European Union (EU) can be mentioned. Regular consular meetings between EU missions are another indicator of the importance that foreign ministries place on consular work.

Another diplomatic tool offered by the consular activity is the so-called visa diplomacy, which will mean the use of issuing or refusing a visa, for a person or group of people, as a practice used in bilateral relations to influence the policies of another state. This practice specific to the consular field has a strong political character, not only consular, with effects in terms of general bilateral relations through its implementation, even going so far as to impose a regime of sanctions on a state. [8]

Visitor flow control has become a key diplomatic tool to facilitate cooperation and recognition of diplomatic signals between countries. The refusal to grant a visa indicates either a protest of the state issuing the visa to the state whose citizens are deprived of this facility, or even a non-recognition of a government or state entity. [9]

At the same time, visa diplomacy can control the access of individuals to the territory of a State whom there are reasonable grounds for suspecting terrorist acts or of individuals declared non-grata in that State, as well as of individuals with infectious diseases and who are travelling all over the world.

It can be seen that visa diplomacy is indeed a first line of defence for a state, of indirect prevention, which contributes to its national security, by avoiding allowing access to individuals or groups of people who can seriously harm the security and public order of the nation. [10]

On the other hand, at the individual level, visa diplomacy has effects on high-level policy, as can be seen from the practice of states such as the US, Japan or even international organizations such as the EU on the visa conditionalities they set for citizens of Taiwan. The political interests that those states and international organizations have in their relations with China, which sees Taiwan as a renegade province lie behind these conditionalities.

The economic/commercial function of consular affairs was constitutive of commercial and economic diplomacy, even if, as could be seen from the previous remarks, this function is increasingly performed by actors outside the consular institution. In this sense, the increasing share that the economic/commercial function, as well as the public diplomacy has in the daily activity of an honorary consul is noticed. Many outposts in different regions of the host country are perceived as cost-effective and necessary to complement the work of large embassies in foreign capitals.

As mentioned, consular officials are increasingly carrying out specific actions in the field of politics and public diplomacy. The representation function assigned to consular affairs, codified in Article 17 of the Vienna Convention on Consular Relations, allows, in special circumstances and with the consent of the host State, that consulates to be empowered to conduct diplomatic activity in the absence of diplomatic relations and/or embassies. [11] An example in this respect is the maintenance of a consular post throughout the Vietnam War, which "performed a significant political function, which would normally be assigned to a resident embassy" [12]

## **Consular and political governance**

At first glance, the political dimension of consular affairs can be overlooked. However, a thorough examination of the essence of consular activity, which is an area of governmental activity, can lead to the conclusion that it also contributes directly to the achievement of foreign policy objectives. It follows that consular affairs are not only an area of diplomacy, but can also be a tool.

This is the difference between the low political significance of most consular activities and that of great importance in foreign policy, sometimes called visa diplomacy or economic diplomacy.

The diversity of consular functions shows that consular affairs involve a variety of external and internal objectives. These can best be evaluated by a separate analysis of each function, viewed individually.

In terms of the economic/trade dimension, the motivations for providing assistance range from improving the country's economic prosperity to increasing the nation's political stability. [13] Until recently, the support for the private sector, other than through activities in trade and investment promotion offices, was outside the competencies assigned to consular activity by many countries in the 1990s. Recently, industrial policy, as it is also labelled in the literature, or industry-specific policy, is on the rise.

A significant part of this change, which takes place outside the consular institution, involves a rearrangement and deepening of the links between the public and private sectors. [14]

The modernization of consular assistance that began in the 1990s was motivated by both defensive and offensive reasons. The defensive aspect results from the mode of action of the foreign ministries in relation to the public, in the desire to respond as well and as quickly as possible to the growing requests of the citizens. The concrete management of responses to citizens' expectations, as well as the level of accountability they entail, leads foreign ministries to avoid criticism from citizens, who have become increasingly influential in recent times, through politicians and high rank government officials.

At the same time, the offensive aspect derives from the recognition of the potential marketing value of consular affairs. It is already well known that a proper treatment of this subject can bring many and unexpected benefits to foreign ministries, which can improve their image among the public by communicating with citizens about consular protection, in general, and individual consular assistance, in particular.

In general, the defensive approach is preferred by foreign ministries, with their exposure to the media increasing, as consular issues enter the spotlight of high-circulation dailies, television and the Internet. Therefore, the consular institution relates directly to the internal dimension of public diplomacy. The US State Department even has a specialized office for communication with the local public. [15]

On the other hand, the practice of states using the opportunities offered by the consular institution has generated the emergence of a new dimension of modern diplomacy, which has been labelled in the literature as network diplomacy. Consular affairs, seen as a high-level policy, are still largely a matter of network diplomacy, involving actors, other than government officials, but they can only be a tool, but not a subject or an entrepreneur.

The trend towards network diplomacy in consular affairs is part of a broader development of the nature of international relations in the age of globalization, in which the limits of state action evolve horizontally, including the private sector and non-governmental organizations, and vertically at regional (internal and external) and global level.

To improve consular services, foreign ministries turn to tour operators, insurance companies and non-governmental organizations. An example is the contribution of new actors in consular work in terms of psychological support they can provide to citizens in prisons abroad or their families at home. Foreign ministries are also increasingly turning to the practice of outsourcing consular services, by transferring visa issuance to the private sector, a practice that is coordinated at the European Union level between certain Member States.

Developments in consular affairs are thus part of a trend towards increasing diplomacy in the relations with the general public and network diplomacy, as evidenced

by the proactive efforts of foreign ministries and the European Commission to involve as much public opinion as possible, and this is just one aspect in this regard. [16]

### **Transformations in the traditional role of the state**

The element of novelty in the constant characteristic of permanent change and adaptation of the activity of the consular institution comes from the change of the role of the state and from the subsequent blurring of the distinction between consular affairs and diplomacy. These developments are part of the "normalization" of diplomatic practice in general, essentially changing the nature of consular affairs. In this respect, some of the notable changes that have taken place in the actual work of consular agents can be mentioned, which:

- no longer takes place only between the elites and it is no longer conducted exclusively by them, but involves an increasing number of actors, creating a new dimension of modern diplomacy, which can be labelled as network diplomacy;
- involves more and more service tasks that acquire a diplomatic dimension, which highlights another new dimension of diplomacy, which can be called consular diplomacy;
- it is much more oriented towards the domestic and foreign public, an aspect that defines one of the characteristic features of public diplomacy.

In order to recalibrate consular activity and adapt it to increasing interference with the attributes of diplomacy, as a tool to promote a state's foreign policy, there is a need to deepen international cooperation to address differences in consular standards and increase the effectiveness of relations between them. This is a typical example in which "the content and practice of diplomacy is outlined by the changing nature of sovereign political actors".

Opinions on consular governance and how far government assistance should go in specific cases must be expressed in the context of the relationship between government, citizens and the balance of perceived, valued and treated national interests. In other words, the context in which an issue of consular and economic/trade assistance has an impact on the balance of national interests needs to be identified.

Individual perceptions are influenced by various factors, which determine the level of prioritization of issues of interest to the governmental authority and which, consequently, are placed on or removed from the political agenda. [17]

Even if the setting of the political agenda is seen primarily in elitist terms, it cannot be said that it does not reflect those issues that key decision-makers want to focus on at some point, influenced by actors outside the government, including parliamentarians and the media. Diplomats of all ranks must be prepared to involve the public opinion and the media in resolving consular cases, taking the risk that they will attract the attention of the media and politicians..

While most consular activities involve standardized procedures, which interfere with domestic and international policy, they have the potential to make consular acts a diplomatic concern.

All this reinforces the argument that foreign ministries will not be able to meet today's consular challenges without a new strategy that reflects the evolving balance of national interests, which obviously must not lack the individual interests of citizens.

## **Conclusion**

In the age of globalization, governments are overwhelmed by simultaneous events and developments in the consular institution, which have in common the somewhat paradoxical effect of politicizing workloads, and governments risk being lost in detail and miss the point.

As consular challenges increase, foreign ministries need a future consular and diplomatic strategy to balance the growing tension between ensuring major national interests and protecting the more limited interests of citizens, whether they travel, live or do business abroad.

While consular activities involve a growing network of actors, the state of government is expanding, leading to a blurring of the distinction between consular affairs and diplomacy. Consular activities do not always involve a high rank diplomacy or international politics degree.

However, the consular institution as a whole also has specific responsibilities for diplomacy, continuing to encompass economic and trade diplomacy, consular diplomacy, visa diplomacy and even political and public diplomacy.

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