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PROTOCOL AMENDING THE 1950 CONSULAR CONVENTION  
WITH IRELAND

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SEPTEMBER 29, 2000.—Ordered to be printed

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Mr. HELMS, from the Committee on Foreign Relations,  
submitted the following

REPORT

[To accompany Treaty Doc. 106-43]

The Committee on Foreign Relations, to which was referred the Protocol Amending the 1950 Consular Convention Between the United States of America and Ireland, signed at Washington on June 16, 1998 (Treaty Doc. 106-43), having considered the same, reports favorably thereon with the declaration and proviso indicated below, and recommends that the Senate give its advice and consent to the ratification thereof as set forth in this report and the accompanying resolution of ratification.

CONTENTS

	Page
I. Purpose .....	1
II. Summary .....	1
III. Entry Into Force and Termination .....	3
IV. Committee Action .....	3
V. Committee Recommendation and Comments .....	4
VI. Text of Resolution of Ratification .....	4

I. PURPOSE

The 1950 bilateral consular convention between the United States and Ireland exempts diplomatic and consular personnel from taxation in the receiving state subject to several exceptions. The Protocol would eliminate two of these exceptions.

II. SUMMARY

A. GENERAL

Prior to the negotiation of the Vienna Convention on Diplomatic Relations (23 UST 3227; TIAS 7502) in 1961, the privileges and im-

munities of diplomatic officials and personnel were well established in customary international law and generally honored in State practice. That was not the case with respect to consular officers and personnel. Customary international law regarding their status, privileges, and immunities at that time was fragmentary and uncertain. As a consequence, the establishment of consular relations between States depended largely on the negotiation of bilateral agreements. Many consular agreements, including the agreement with Ireland, included a provision that diplomats would not receive less favorable treatment than consular officers received under the particular agreement.

The Vienna Convention on Consular Relations (21 UST 77; TIAS 6820) was negotiated in 1963 and provided a detailed international legal framework for consular relations. The Convention also eliminated the need to negotiate separate bilateral agreements on consular relations by providing that consent to the establishment of diplomatic relations between States would also constitute consent to the establishment of consular relations, unless otherwise stated by the Parties (Article 2(2)). But in recognition of the numerous bilateral agreements concerning consular relations that already existed, Article 73 of the Convention provided that “[t]he provisions of the present Convention shall not affect other international agreements in force as between States parties to them.” In addition, Article 73 allowed new consular agreements to be negotiated: “Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.”

Thus, the United States continues to have bilateral consular agreements with a number of states, even when both the United States and the other state are also Parties to the Vienna Convention. In the United States’ view, if the bilateral agreement and the Vienna Conventions address the same subject matter, the more generous provision controls.

Ireland and the United States are Parties to the Vienna Conventions as well as the 1950 bilateral Consular Convention. These Conventions provide a number of exemptions from taxes as well as a number of exceptions to the exemptions. Ireland interprets some of the key tax provisions of the Vienna Conventions more restrictively than does the United States. Thus, in order to provide the United States broader tax exemption, it was necessary for Ireland to conclude an agreement with the United States.

#### B. KEY PROVISIONS

The 1950 bilateral agreement affords consular personnel and diplomats (but not their families) an exemption from “all taxes or other similar charges of any kind which are or may be imposed or collected by the receiving state, or by any state, province, municipality, or other local subdivision thereof” (Article 13(4)). That exemption is subject to several exceptions, including the two that are the subject of the Protocol.

Article 13(5)(a) of the Consular Convention limits the tax exemption to those for which the officer or employee is personally liable and provides that it does not extend to taxes for which someone

else is legally liable, notwithstanding that the burden of such a tax is passed on to the consular officer or employee.

Article 13(5)(b)(iv) of the Consular Convention, in turn, excepts from the exemption “taxes on transactions or instruments effecting transactions, such as taxes on the sale or transfer of money or property, or stamp duties imposed or collected in connection therewith \* \* \*.”

The Protocol would eliminate these exceptions. Articles 1 and 2 provide generally that the Convention can be extended to include relief from the taxes for which §§ (5)(a) and (5)(b)(iv) of Article 13 of the bilateral agreement impose liability.

Article 3 provides that the Embassy and career Consulates of the United States in Ireland “shall be exempt from or be refunded all identifiable national, regional and municipal taxes whether or not incorporated in the price of goods or services supplied for official use.” Article 3 also provides that an identical exemption applies to U.S. diplomatic agents and administrative and technical staff of the Embassy, consular officers and employees, and the members of their families forming part of their households. The exemption extends not only to goods or services supplied for official use but also to those supplied for personal use.

Article 3 further provides reciprocal exemptions to Ireland regarding “federal, state and municipal taxes on the purchase or sale of goods and services supplied for official use” and, in the case of individuals, for personal use as well.

Article 4 states that the Parties “agree that a special reciprocal administrative arrangement will apply in respect of relief of taxation on motor vehicles.”

Article 5 denotes that the Protocol does not “prejudice” the positions of either the United States or Ireland regarding their interpretations of the Vienna Conventions on diplomatic and consular relations and, further, that the tax exemption granted by the United States under the Protocol has “the same scope as the grant of tax exemption accorded by the United States in implementation of the said Vienna Conventions.”

### III. ENTRY INTO FORCE AND DENUNCIATION

#### A. ENTRY INTO FORCE

The Protocol will enter into force 30 days after notification by both Parties that their “domestic requirements for its entry into force have been completed.”

#### B. TERMINATION

The Protocol may be terminated by either Party on six months notice.

### IV. COMMITTEE ACTION

The Committee on Foreign Relations held a public hearing on the proposed Protocol on September 12, 2000, (a transcript of the hearing and questions for the record can be found in Senate hearing 106-660 entitled, “Consideration of Pending Treaties”). The Committee considered the proposed Protocol on September 27, 2000,

and ordered it favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed Protocol subject to the declaration and proviso noted below.

#### V. COMMITTEE RECOMMENDATION AND COMMENTS

The Committee on Foreign Relations recommends favorably the proposed Protocol. The Committee believes that the proposed Protocol is in the interest of the United States and urges the Senate to act promptly to give its advice and consent to ratification.

#### VI. TEXT OF THE RESOLUTION OF RATIFICATION

*Resolved, (two thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of the Protocol Amending the 1950 Consular Convention Between the United States of America and Ireland, signed at Washington on June 16, 1998 (Treaty Doc. 106-43), subject to the declaration of subsection (a) and the proviso of subsection (b).

(a) DECLARATION.—The Senate's advice and consent is subject to the following declaration, which shall be binding upon the President:

TREATY INTERPRETATION.—The Senate affirms the applicability to all treaties of the constitutionally based principles of treaty interpretation set forth in Condition (1) of the resolution of ratification of the INF Treaty, approved by the Senate on May 27, 1988, and Condition (8) of the resolution of ratification of the Document Agreed Among the States Parties to the Treaty on Conventional Armed Forces in Europe, approved by the Senate on May 14, 1997.

(b) PROVISIO.—The resolution of ratification is subject to the following proviso, which shall not be included in the instrument of ratification:

SUPREMACY OF THE CONSTITUTION.—Nothing in this Protocol requires or authorizes legislation or other action by the United States of America that is prohibited by the Constitution of the United States as interpreted by the United States.