

INTERNATIONAL COURT OF JUSTICE

THE JADHAV CASE

**THE REPUBLIC OF INDIA v. THE ISLAMIC REPUBLIC OF
PAKISTAN**

**COUNTER-MEMORIAL OF THE ISLAMIC REPUBLIC OF
PAKISTAN**



13TH DECEMBER 2017

EXHIBIT

VOLUME 5: ANNEXURES 82 – 121

Jadhav Case (India v Pakistan)

Counter-Memorial on behalf of the Islamic Republic of Pakistan

Index of Annexures

(5) VOLUME 5 (ANNEXURES 82 – 121)

<i>TREATIES / STATUTES / UN RESOLUTIONS</i>	
82	Sections 154 and 164 of Pakistan's Code of Criminal Procedure 1898
83	Section 59 of the Pakistan Army Act 1952
84	Section 3 of the Official Secrets Act 1923 (as applied in Pakistan)
85	India's Passports Act 1967
86	India's Passport Rules 1980
87	Optional Protocol to the Vienna Convention on Consular Relations 1963
88	Vienna Convention on Consular Relations 1963
89	UN Security Council Resolution 1373 (2001)
90	ILC Yearbook 1957, volume 1, page 159, paragraph 16, column 2
91	Official Records of the UN Conference on Consular Relations, volume 1, page 3, paragraph 22
92	Sir Arthur Watts QC, <i>The International Law Commission 1949-1998</i> (1999), volume 1, pages 273-274
93	ILC Yearbook 1960, volume 1, pages 57-59
94	ILC Yearbook 1961, volume 1, page 288, paragraphs 71-73, column 2
95	ILC Yearbook 1961, volume 2, page 62, column 2
96	ILC Yearbook 1961, volume 2, page 141, column 2
97	Official Records of the UN Conference on Consular Relations, volume 1, page 338, paragraphs 8-9
98	UK's Police and Criminal Evidence Act 1984, Code C, paragraph 7
99	Ireland's Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Siochana Stations) Regulations 1987, regulation 14(4)
100	Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) (the Fourth Geneva Convention), Article 5
101	Sir Arthur Watts QC, <i>The International Law Commission 1949-1998</i> (1999), volume 1, pages 298-299
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103	Articles 30, 31 and 41 of the Vienna Convention of the Law of Treaties 1969
104	Article 102 of the Charter of the United Nations
105	Section 133B of the Pakistan Army Act 1952
106	Section 143 of the Pakistan Army Act 1952
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THE CODE OF CRIMINAL PROCEDURE , 1898

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CONTENTS

SECTIONS:

PART I PRELIMINARY

CHAPTER I

1. Short title.
Commencement.
Extent.
2. [Repealed.]
3. References to Code of Criminal Procedure and other repealed enactments.
Expressions in former Acts.
4. Definitions.
Words referring to acts.
Words to have same meaning as in Pakistan Penal Code.
5. Trial of offences under Penal Code.
Trial of offences against other laws.

PART II CONSTITUTION AND POWER OF CRIMINAL COURTS AND OFFICES.

CHAPTER II OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES

A.-Classes of Criminal Courts

6. Classes of Criminal Courts

B.-Territorial Divisions

7. Sessions divisions and districts.
Power to alter divisions and districts.
Existing divisions and districts maintained till altered.
8. Power to divide districts into sub-divisions.
Existing sub-divisions maintained.

C.-Courts and Offices

9. Court of Session.
10. District Magistrate.
11. Officers temporarily succeeding to vacancies in office of District Magistrate.
12. Subordinate Magistrates.
Local limits of their jurisdiction.
13. Power to put Magistrate in charge of sub-division.
Delegation of powers to District Magistrate.

14. Special Magistrates.
15. Benches of Magistrates.
Powers exercisable by Bench in absence of special direction.
16. Power to frame rules for guidance of Benches.
17. Subordination of Magistrates and Benches to District Magistrate; to sub-divisional Magistrate.
Subordination of Assistant Sessions Judges to Sessions Judge.

D.-Courts of Presidency Magistrates

- 18-21. [Omitted.]

E.-Justice of the Peace

22. Appointment of Justices of the peace.
- 22A. Powers of Justices of the peace.
- 22B. Duties of Justices of the peace.
- 23-24. [Repealed.]
25. Ex-officio Justices of the peace.

F.-Suspension and Removal.

- 26-27. [Repealed.]

**CHAPTER III
POWERS OF COURTS**

A.-Description of Offences cognizable by each Court.

28. Offences under Penal Code.
29. Offences under other laws.
- 29A. [Omitted.]
- 29B. Jurisdiction in the case of Juveniles.
30. Offences not punishable with death.

B.-Sentences which may be passed by Courts of various classes.

31. Sentences which High Courts and Sessions Judges may pass.
32. Sentences which Magistrates may pass.
33. Power of Magistrates to sentence to imprisonment in default of fine.
Proviso as to certain cases.
34. Higher powers of certain District Magistrates.
- 34A. [Omitted.]
35. Sentence in case of conviction of several offences at one trial.
Maximum term of punishment.

C.-Ordinary and Additional Powers.

36. Ordinary powers of Magistrates.
37. Additional powers conferrable on Magistrates.
38. Control of District Magistrates investing power.

D.-Conferment, Continuance and Cancellation of Powers.

39. Mode of conferring powers.
40. Powers of officers appointed.
41. Powers may be cancelled.

**PART III
GENERAL PROVISIONS**

**CHAPTER IV
OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE
AND PERSONS MAKING ARRESTS.**

- 42. Public when to assist Magistrates and police.
- 43. Aid to person, other than police-officer, executing warrant.
- 44. Public to give information of certain offences.
- 45. Village-headmen, accountants, landholders and others bound to report certain matters.
Appointment of village-headmen by District Magistrate or sub-divisional Magistrate in certain cases for purposes of this section.

**CHAPTER V
OF ARREST, ESCAPE AND RETAKING**

A.-Arrest generally.

- 46. Arrest how made.
Resisting endeavour to arrest.
- 47. Search of place entered by person sought to be arrested.
- 48. Procedure where ingress not obtainable.
Breaking open zanana.
- 49. Power to break open doors and windows for purposes of liberation.
- 50. No unnecessary restraint.
- 51. Search of arrested persons.
- 52. Mode of searching women.
- 53. Power to seize offensive weapons.
- 53A. Examination of person accused of rape, etc. by medical practitioner.

B.-Arrest without warrant.

- 54. When police may arrest without warrant.
- 55. Arrest of vagabonds, habitual robbers, etc.
- 56. Procedure when police-officer deposes subordinate to arrest without warrant.
- 57. Refusal to give name and residence.
- 58. Pursuit of offenders into other jurisdictions.
- 59. Arrest by private persons and procedure on such arrest.
- 60. Person arrested to be taken before Magistrate or officer in charge of police-station.
- 61. Person arrested not to be detained more than twenty-four hours.
- 62. Police to report apprehensions.
- 63. Discharge of person apprehended.
- 64. Offence committed in Magistrate's presence.
- 65. Arrest by or in presence of Magistrate.
- 66. Power, on escape, to pursue and retake.
- 67. Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

**CHAPTER VI
OF PROCESSES TO COMPEL APPEARANCE**

A.-Summons.

- 68. Form of summons.
Summons by whom served.
- 69. Summons how served.
Signature of receipt for summons.
- 70. Service when person summoned cannot be found.
- 71. Procedure when service cannot be effected as before provided.
- 72. Service on servant of State, statutory body or a Company.
- 73. Service of summons outside local limits.

74. Proof of service in such cases and when serving person not present.

B.-Warrant of arrest.

75. Form of warrant of arrest.
Continuance of warrant of arrest.
76. Court may direct security to be taken.
Recognizance to be forwarded.
77. Warrants to whom directed.
Warrants to several persons.
78. Warrant may be directed to landholders, etc.
79. Warrant directed to police-officer.
80. Notification of substance of warrant.
81. Person arrested to be brought before Court without delay.
82. Where warrant may be executed.
83. Warrant forwarded for execution outside jurisdiction.
84. Warrant directed to police-officer for execution outside jurisdiction.
85. Procedure on arrest of person against whom warrant issued.
86. Procedure by Magistrate before whom person arrested is brought.
- 86A. Procedure for removal in custody to Tribal Areas.

C.-Proclamation and Attachment.

87. Proclamation for person absconding.
88. Attachment of property of person absconding.
89. Restoration of attached property.

D.-Other Rules regarding Processes.

90. Issue of warrant in lieu of, or in addition to, summons.
91. Power to take bond for appearance.
92. Arrest on breach of bond for appearance.
93. Provisions of this Chapter generally applicable to summons and warrants of arrest.

E.-Special Rules regarding processes issued for service or execution outside Pakistan and processes received from outside Pakistan for service or execution within Pakistan.

- 93A. Sending of summons for service outside Pakistan.
- 93B. Sending of warrants for execution outside Pakistan.
- 93C. Service and execution in Pakistan of processes received from outside Pakistan.

**CHAPTER VII
OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS
AND OTHER MOVEABLE PROPERTY, AND FOR THE DISCOVERY
OF PERSONS WRONGFULLY CONFINED.**

A.-Summons to Produce.

94. Summons to produce document or other thing.
95. Procedure as to letters and telegrams.

B.-Search Warrants.

96. When search-warrant may be issued.
97. Power to restrict warrant.
98. Search of house suspected to contain stolen property, forged documents, etc.
99. Disposal of things found in search beyond jurisdiction.
- 99A. Power to declare certain publications forfeited and to issue search-warrants for the same.

- 99B. Application to High Court to set aside order of forfeiture.
99C. [Omitted.]
99D. Order of High Court setting aside forfeiture.
99E. Evidence to prove nature or tendency of newspapers.
99F. Procedure in High Court.
99G. Jurisdiction barred.

C.-Discovery of Persons wrongfully confined.

100. Search for persons wrongfully confined.

D.-General Provisions relating to Searches.

101. Direction, etc., of search-warrants.
102. Persons in charge of closed place to allow search.
103. Search to be made in presence of witnesses.
Occupant of place searched may attend.

E.-Miscellaneous.

104. Power to impound document, etc., produced.
105. Magistrate may direct search in his presence.

**PART IV
PREVENTION OF OFFENCES**

**CHAPTER VIII
OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD
BEHAVIOUR.**

A.-Security for keeping the Peace on Conviction.

106. Security for keeping the peace on conviction.

***B.-Security for keeping the Peace in other Cases and Security for Good
Behaviour.***

107. Security for keeping the peace in other cases.
Procedure of Magistrate not empowered to act under sub-section (1).
108. Security for good behaviour from persons disseminating seditious matter.
109. Security for good behaviour from vagrants and suspected persons.
110. Security for good behaviour from habitual offenders.
111. [Repealed.]
112. Order to be made.
113. Procedure in respect of person present in court.
114. Summons or warrant in case of person not so present.
115. Copy of order under section 112 to accompany summons or warrant.
116. Power to dispense with personal attendance.
117. Inquiry as to truth of information.
118. Order to give security.
119. Discharge of person informed against.

C.-Proceedings in all Cases subsequent to Order to furnish Security.

120. Commencement of period for which security is required.
121. Contents of bond.
122. Power to reject sureties.
123. Imprisonment in default of security.
Proceedings when to be laid before High Court or Court of Sessions.
Kind of imprisonment.
124. Power to release persons imprisoned for failing to give security.

125. Power to District Magistrate to cancel any bond for keeping the peace or good behaviour.
126. Discharge of sureties.
- 126A. Security for unexpired period of bond.

**CHAPTER IX
UNLAWFUL ASSEMBLIES**

127. Assembly to disperse on command of Magistrate or police-officer.
128. Use of civil force to disperse.
129. Use of military force.
130. Duty of officer commanding troops required by Magistrate to disperse assembly.
131. Power of commissioned military officers to disperse assembly.
- 131A. Power to use military force for public Security and maintenance of law and order.
132. Protection against prosecution for acts done under this chapter.
- 132A. Definitions.

**CHAPTER X
PUBLIC NUISANCES**

133. Conditional order for removal of nuisance.
134. Service or notification of order.
135. Person to whom order is addressed to obey or show cause or claim jury.
136. Consequence of his failing to do so.
137. Procedure where he appears to show cause.
138. Procedure when he claims jury.
139. Procedure where jury finds Magistrate's order to be reasonable.
- 139A. Procedure where existence of public right is denied.
140. Procedure on order being made absolute.
Consequences of disobedience to order.
141. Procedure on failure to appoint jury or omission to return verdict.
142. Injunction pending inquiry.
143. Magistrate may prohibit repetition or continuance of public nuisance.

**CHAPTER XI
TEMPORARY ORDERS IN URGENT CASES OF NUISANCE OR
APPREHENDED DANGER.**

144. Power to issue order absolute at once in urgent cases of nuisance or apprehended danger.

**CHAPTER XII
DISPUTES AS TO IMMOVEABLE PROPERTY**

145. Procedure where dispute concerning land, etc, is likely to cause breach of peace.
Inquiry as to possession.
Party in possession to retain possession until legally evicted.
146. Power to attach subject of dispute.
147. Disputes concerning rights of use of immovable property, etc.
148. Local inquiry.
Order as to costs.

**CHAPTER XIII
PREVENTIVE ACTION OF THE POLICE**

149. Police to prevent cognizable offences.
150. Information of design to commit such offences.
151. Arrest to prevent such offences.

152. Prevention of injury to public property.

153. Inspection of weights and measures.

**PART V
INFORMATION TO THE POLICE AND THEIR POWERS TO
INVESTIGATE.**

CHAPTER XIV

154. Information in cognizable cases.

155. Information in non-cognizable cases.
Investigation into non-cognizable cases.

156. Investigation into cognizable cases.

156A. Investigation of offence under section 295C, Pakistan Penal Code.

156B. Investigation against a women accused of the offence of zina.

157. Procedure where cognizable offence suspected.
Where local investigation dispensed with.
Where police-officer in charge sees no sufficient ground for investigation.

158. Reports under section 157 how submitted.

159. Power to hold investigation or preliminary inquiry.

160. Police-officer's power to require attendance of witnesses.

161. Examination of witnesses by police.

161A. Legal representation of victim of rape, etc.

162. Statement to police not to be signed, use of such statements in evidence.

163. No inducement to be offered.

164. Power to record statements and confessions.

164A. Medical examination of victim of rape, etc.

164B. DNA test.

165. Search by police-officer.

166. When officer incharge of police station may require another to issue search warrant.

167. Procedure when investigation cannot be completed in twenty-four hours.

168. Report of investigation by subordinate police-officer.

169. Release of accused when evidence deficient.

170. Case to be sent to magistrate when evidence is sufficient.

171. Complaints and witnesses not to be required to accompany police-officer.
Complainants and witnesses not to be subjected to restraint.
Recusant complainant or witness may be forwarded in custody.

172. Diary of proceedings in investigation.

173. Report of police-officer.

174. Police to inquire and report on suicide, etc.

175. Power to summon persons.

176. Inquiry by magistrate into cause of death.
Power to disinter corpses.

**PART VI
PROCEEDINGS IN PROSECUTIONS**

**CHAPTER XV
OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES
AND TRIALS.**

A.-Place of Inquiry or Trial.

177. Ordinary place of inquiry and trial.

178. Power to order cases to be tried in different sessions divisions.
179. Accused triable in district where act is done or where consequence ensues.
- 180.. Place of trial where act is offence by reason of relation to other offence.
181. Being a thug or belonging to a gang of dacoits, escape from custody, etc.
Criminal misappropriation and criminal breach of trust.
Theft.
Kidnapping and abduction.
182. Place of inquiry or trial where scene of offence is uncertain or not in one district only or where offence is continuing or consists of several acts.
183. Offence committed on a journey.
184. [Repealed.]
185. High Court to decide, in case of doubt, district where inquiry or trial shall take place.
186. Power to issue summons or warrant for offence committed beyond local jurisdiction.
Magistrate's procedure on arrest.
187. Procedure where warrant issued by subordinate Magistrate.
188. Liability for offences committed outside Pakistan.
Political Agents to certify fitness of inquiry into charge.
189. Power to direct copies of depositions and exhibits to be received in evidence.

B.-Conditions requisite for initiation of Proceedings.

190. Cognizance of offences by Magistrates.
191. Transfer or commitment on application of accused.
192. Transfer of cases by Magistrates.
193. Cognizance of offences by Courts of Session.
194. Cognizance of offences by High Court.
195. Prosecution for contempt of lawful authority of public servants.
Prosecution for certain offences against public justice.
Prosecution for certain offences relating to documents given in evidence.
196. Prosecution for offences against the state.
- 196A. Prosecution for certain classes of criminal conspiracy.
- 196B. Preliminary inquiry in certain cases.
197. Prosecution of judges and public servants.
Power of President or Governor as to prosecution.
198. Prosecution for breach of contract, defamation and offences against marriage.
- 198A. Prosecution for defamation against public servants in respect of their conduct in the discharge of public functions.
199. Prosecution for adultery or enticing a married woman.
- 199A. Objection by lawful guardian to complaint by person other than person aggrieved.
- 199B. Form of authorisation under second proviso to section 198 or 199.

**CHAPTER XVI
OF COMPLAINTS TO MAGISTRATES**

200. Examination of complainant.
201. Procedure by Magistrate not competent to take cognizance of the case.
202. Postponement of issue of process.
203. Dismissal of complaints.

**CHAPTER XVII
OF THE COMMENCEMENT OF PROCEEDINGS BEFORE
MAGISTRATES**

204. Issue of process.
205. Magistrate may dispense with personal attendance of accused.

CHAPTER XVIII
[Omitted.]

CHAPTER XIX
OF THE CHARGE
Form of Charges

221. Charge to state offence.
Specific name of offence sufficient description.
How stated where offence has no specific name.
What implied in charge.
Language of charge.
Previous conviction when to be set out.
222. Particulars as to time, place and person.
223. When manner of committing offence must be stated.
224. Words in charge taken in sense of law under which offence is punishable.
225. Effect of errors.
226. [Omitted.]
227. Court may alter charge.
228. When trial may proceed immediately after alteration.
229. When new trial may be directed, or trial suspended.
230. Stay of proceedings if prosecution of offence in altered charge require previous sanction.
231. Recall of witnesses which charge altered.
232. Effect of material error.

Joinder of Charges

233. Separate charged for distinct offences.
234. Three offences of same kind within year may be charged together.
235. Trial for more than one offence.
Offence falling within two definitions.
Acts constituting one offence, but constituting when combined a different offence.
236. When it is doubtful what offence has been committed.
237. When a person is charged with one offence, he can be convicted of another.
238. When offence proved included in offence charged.
239. What persons may be charged jointly.
240. Withdrawal of remaining charges on conviction on one of several charges.

CHAPTER XX
OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES

241. Procedure in trial of cases.
- 241A. Supply of statements and documents to the accused.
242. Charge to be framed.
243. Conviction on admission of truth of accusation.
244. Procedure when no such admission is made.
- 244A. Statement made under section 164.
245. Acquittal.
Sentence.
- 245A. Procedure in cases of previous convictions.
246. [Omitted.]
247. Non-appearance of complainant.

248. Withdrawal of complaint.
249. Power to stop proceeding when no complaint.
249A. Power of magistrate to acquit accused at any stage.

Frivolous Accusations in cases tried by Magistrate

250. False, frivolous or vexatious accusations.

**CHAPTER XXI
[Omitted.]**

**CHAPTER XXII
OF SUMMARY TRIALS**

260. Power to try summarily.
261. Power to invest Bench of Magistrates invested with less powers.
262. Procedure prescribed in Chapter XX applicable.
Limit of imprisonment.
263. Record in cases where there is no appeal.
264. Record in appealable cases.
265. Language of record and judgment.

Bench may be authorized to employ clerk

**CHAPTER XXIIA
TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION**

- 265A. Trials before Court of Session to be conducted by Public Prosecutor.
265B. Procedure in cases triable by High Courts and Courts of Session.
265C. Supply of Statements and documents to the accused.
265D. When charge to be framed.
265E. Plea.
265F. Evidence for prosecution.
265G. Summoning up by prosecutor and defence.
265H. Acquittal or conviction.
265I. Procedure in case of previous conviction.
265J. Statement under section 164 admissible.
265K. Power of Court to acquit accused at any stage.
265L. Power of Advocate General to stay prosecution.
265M. Time of holding sittings.
265N. Place of holding sittings.
266-336. [Omitted.]

**CHAPTER XXIII
[Omitted.]**

**CHAPTER XXIV
GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS**

337. Tender of pardon to accomplice.
338. Power to grant or tender of pardon.
339. Commitment of person to whom pardon has been tendered.
339A. Procedure in trial of person under section 339.
340. Right of person against whom proceedings are instituted to be defended and his competency to be a witness.
341. Procedure where accused does not understand proceedings.
342. Power to examine the accused.

- 343. No influence to be used to induce disclosures.
- 344. Power to postpone or adjourn proceedings.
Remand.
Reasonable cause for remand.
- 344A. Conclusion of trial.
- 345. Compounding offences.
- 346. Procedure of magistrate in cases which he cannot dispose of.
- 347. Procedure when after commencement of trial, Magistrate finds case should be tried by Court of Session or High Court.
- 348. Trial of persons previously convicted of offences against coinage, stamp-law or property.
- 349. Procedure when magistrate cannot pass sentence sufficiently severe.
- 350. Conviction or evidence partly recorded by one presiding officer and partly by another.
- 350A. Changes in constitution of Benches.
- 351. Detention of offenders attending Court.
- 352. Courts to be open.

**CHAPTER XXV
OF THE MODE OF TAKING AND RECORDING EVIDENCE IN
INQUIRIES AND TRIALS.**

- 353. Evidence to be taken in presence of accused.
- 354. Manner of recording evidence.
- 355. Record in trials of certain cases by first and second class Magistrates.
- 356.. Record in other cases.
Evidence given in English.
Memorandum when evidence not taken down by the Magistrate or Judge himself.
- 357. Language of record of evidence.
- 358. Option to Magistrate in cases under section 355.
- 359. Mode of recording evidence under section 356 or section 357.
- 360. Procedure in regard to such evidence when completed.
- 361. Interpretation of evidence to accused or his pleader.
- 362. [Omitted.]
- 363. Remarks respecting demeanour of witness.
- 364. Examination of accused how recorded.
- 365. Record of evidence in High Court.

**CHAPTER XXVI
OF THE JUDGEMENT**

- 366. Mode of delivering judgment.
- 367. Language of judgment.
Contents of judgment.
Judgement in alternative.
- 368. Sentence of death.
- 369. Court not to alter judgment.
- 370. [Omitted.]
- 371. Copy of judgment, etc, to be given to accused.
Case of person sentenced to death.
- 372. Judgment when to be translated.
- 373. Court of Session to send copy of finding and sentence to District Magistrate.

CHAPTER XXVII

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION

- 374. Sentence of death to be submitted by Court of Session.
- 375. Power to direct further inquiry to be made or additional evidence to be taken.
- 376. Power to High Court to confirm sentence or annul conviction.
- 377. Confirmation of new sentence to be signed by two judges.
- 378. Procedure in case of difference of opinion.
- 379. Procedure in cases submitted to High Court for confirmation.
- 380. Procedure in cases submitted by Magistrate not empowered to act under section 562.

CHAPTER XXVIII OF EXECUTION

- 381. Execution of order passed under section 376.
- 382. Postponement of capital sentence on pregnant woman.
- 382A. Postponement of execution of sentences of imprisonment under section 476 or for a period of less than one year.
- 382B. Period of detention to be considered while awarding sentence of imprisonment.
- 382C. Scandalous or false and frivolous pleas to be considered in passing sentence.
- 383. Execution of sentences of imprisonment for life or imprisonment in other cases.
- 384. Direction of warrant for execution.
- 385. Warrant with whom to be lodged.
- 386. Warrant for levy of fine.
- 387. Effect of such warrant.
- 388. Suspension of execution of sentence of imprisonment.
- 389. Who may issue warrant.
- 390. Execution of sentence of whipping only.
- 391. Execution of sentence of whipping, in addition to imprisonment.
- 392. Mode of inflicting punishment.
Limit of number of stripes.
- 393. Not to be executed by instalments.
Exemptions.
- 394. Whipping not to be inflicted if offender not in fit state of health.
Stay of execution.
- 395. Procedure if punishment cannot be inflicted under section 394.
- 396. Execution of sentence on escaped convicts.
- 397. Sentence on offender already sentenced for another offence.
- 398. Saving as to sections 396 and 397.
- 399. Confinement of youthful offenders in reformatories.
- 400. Return of warrant on execution of sentence.

CHAPTER XXIX OF SUSPENSIONS, REMISSIONS AND COMMUNICATIONS OF SENTENCES.

- 401. Power to suspend or remit sentences.
- 402. Power to commute punishment.
- 402A. Sentence of death.
- 402B. Certain restrictions on the exercise of powers by Provincial Government.

CHAPTER XXX OF PREVIOUS ACQUITTALS OR CONVICTIONS

- 403. Person once convicted or acquitted not to be tried for same offence.

**PART VII
OF APPEAL, REFERENCE AND REVISION.**

**CHAPTER XXXI
OF APPEALS**

404. Unless otherwise provided, no appeal to lie.
405. Appeal from order rejecting application for restoration of attached property.
406. Appeal from order requiring security for keeping the peace or for good behaviour.
- 406A. Appeal from order refusing to accept or rejecting a surety.
407. Appeal from sentence of Magistrate of the second or third class.
Transfer of appeals to first class Magistrate.
408. Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.
409. Appeals to Court of Session how heard.
410. Appeal from sentence of Court of Session.
411. [Omitted.]
- 411A. Appeal from sentence of High Court.
412. No appeal in certain cases when accused pleads guilty.
413. No appeal in petty cases.
414. No appeal from certain summary convictions.
415. Proviso to sections 413 and 414.
- 415A. Special right of appeal in certain cases.
416. [Repealed.]
417. Appeal in case of acquittal.
418. Appeal on what matters admissible.
419. Petition of appeal.
420. Procedure when appellant in jail.
421. Summary dismissal of appeal.
422. Notice of appeal.
423. Powers of Appellate Court in disposing of appeal.
424. Judgments of subordinate Appellate Courts.
425. Order by High Court on appeal to be certified to lower Court.
426. Suspension of sentence pending appeals.
Release of appellant on bail.
427. Arrest of accused in appeal from acquittal.
428. Appellate court may take further evidence or direct it to be taken.
429. Procedure where judges of Court of Appeal are equally divided.
430. Finality of orders on appeal.
431. Abatement of appeals.

**CHAPTER XXXII
OF REFERENCE AND REVISION**

- 432-434. [Omitted.]
435. Power to call for records of inferior Courts.
436. Power to order inquiry.
437. [Omitted.]
438. Report to High Court.

439. High Court's powers of revision.
439A. Sessions Judge's powers of revision.
440. Optional with Court to hear parties.
441. [Omitted.]
442. High Court's order to be certified to lower Court or Magistrate.

**PART VIII
SPECIAL PROCEEDINGS**

CHAPTER XXXIII

[Omitted.]

CHAPTER XXXIV

LUNATICS

464. Procedure in case of accused being lunatic.
465. Procedure in case of person sent for trial Court of Session or High Court being lunatic.
466. Release of lunatic pending investigation or trial.
Custody of lunatic.
467. Resumption of inquiry or trial.
468. Procedure on accused appearing before Magistrate or Court.
469. When accused appears to have been insane.
470. Judgment of acquittal on ground of lunacy.
471. Person acquitted on such ground to be detained in safe custody.
Power of Provincial Government to relieve Inspector General of certain functions.
472. [Repealed.]
473. Procedure where lunatic prisoner is reported capable of making his defence.
474. Procedure where lunatic detained under section 466 or 471 is declared fit to be released.
475. Delivery of lunatic to care of relative or friend.

**CHAPTER XXXV
PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE
ADMINISTRATION OF JUSTICE.**

476. Procedure in cases mentioned in section 195.
476A. Forwarding of cases for trial by Courts having jurisdiction.
476B. [Omitted.]
477. [Repealed.]
478. [Omitted.]
479. [Omitted.]
480. Procedure in certain cases of contempt.
481. Record in such cases.
482. Procedure where Court considers that case should not be dealt with under section 480.
483. When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.
484. Discharge of offender on submission of apology.
485. Imprisonment or committal of person refusing to answer or produce document.
486. Appeals from convictions in contempt cases.
487. Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

CHAPTER XXXVI

[Omitted.]

**CHAPTER XXXVII
DIRECTIONS OF THE NATURE OF A HABEAS CORPUS**

491. Power to issue directions of the nature of a habeas corpus.
491A. [Omitted.]

**PART IX
SUPPLEMENTARY PROVISIONS**

**CHAPTER XXXVIII
OF THE PUBLIC PROSECUTOR**

492. Power to appoint Public Prosecutors.
493. Public Prosecutor may plead in all Courts in cases under his charge. Pleaders privately instructed to be under his direction.
494. Effect of withdrawal from prosecution.
495. Permission to conduct prosecution.

**CHAPTER XXXIX
OF BAIL**

496. In what cases bail to be taken.
497. When bail may be taken in case of non-bailable offence.
498. Power to direct admission to bail or reduction of bail.
498A. No bail to be granted to a person not in custody, in court or against whom no case is registered, etc.
499. Bond of accused and sureties.
500. Discharge from custody.
501. Power to order sufficient bail when that first taken is insufficient.
502. Discharge of sureties.

**CHAPTER XL
OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES**

503. When attendance of witness may be dispensed with.
504. [Omitted.]
505. Parties may examine witnesses.
506. Power of Magistrate to apply for issue of commission.
507. Return of commission.
508. Adjournment of inquiry or trial.
508A. Application of this Chapter to Commissions issued in Burma.

**CHAPTER XLI
SPECIAL RULES OF EVIDENCE**

509. Deposition of medical witness.
Power to summon medical witness.
510. Report of Chemical Examiner, Serologist, etc.
511. Previous conviction or acquittal how proved.
512. Record of evidence in absence of accused.
Record of evidence when offender unknown.

**CHAPTER XLII
PROVISIONS AS TO BONDS**

513. Deposit instead of recognizance.
514. Procedure on forfeiture of bond.
514A. Procedure in case of insolvency or death of surety or when a bond is forfeited.
514B. Bond required from a minor.
515. Appeal from, and revision of, orders under section 514.

516. Power to direct levy of amount due on certain recognizances.

**CHAPTER XLIII
OF THE DISPOSAL OF PROPERTY**

- 516A. Order for custody and disposal of property pending trial in certain cases.
517. Order for disposal of property regarding which offence committed.
518. Order may take form of reference to District or Sub-divisional Magistrate.
519. Payment to innocent purchaser of money found on accused.
520. Stay of order under section 517, 518 or 519.
521. Destruction of libellous and other matter.
522. Power to restore possession of immovable property.
- 522A. Power to restore possession of movable property.
523. Procedure by police upon seizure of property taken under section 51 or stolen.
Procedure where owner of property seized unknown.
524. Procedure where no claimant appears within six months.
525. Power to sell perishable property.

**CHAPTER XLIV
OF THE TRANSFER OF CRIMINAL CASES**

526. High Court may transfer case or itself try it.
Notice to Public Prosecutor of application under this section.
Adjournment on application under this section.
- 526A. [Omitted.]
527. Power of Provincial Government to transfer cases and appeals.
528. Sessions Judge may withdraw cases from Assistant Sessions Judge.

**CHAPTER XLIV A
[Omitted.]**

**CHAPTER XLV
OF IRREGULAR PROCEEDINGS**

529. Irregularities which do not vitiate proceedings.
530. Irregularities which vitiate proceedings.
531. Proceedings in wrong place.
532. [Omitted.]
533. Non-compliance with provisions of section 164 or 364.
534. [Omitted.]
535. Effect of omission to prepare charge.
536. [Omitted.]
537. Finding or sentence when reversible by reason of error or omission in charge or other proceedings.
538. Attachment not illegal, person making same not trespasser for defect or want of form in proceedings.

**CHAPTER XLVI
MISCELLANEOUS**

539. Courts and persons before whom affidavits may be sworn.
- 539A. Affidavit in proof of conduct of public servant.
- 539B. Local inspection.
540. Power to summon material witness or examine person present.
- 540A. Provision for inquiries and trial being held in the absence of accused in certain cases.
541. Power to appoint place of imprisonment.
Removal to criminal jail of accused or convicted persons who are in

confinement in civil jail, and their return to the civil jail.

- 542. [Repealed.]
- 543. Interpreter to be bound to interpret truthfully.
- 544. Expenses of complainants and witnesses.
- 544A. Compensation to the heirs to the person killed, etc.
- 545. Power of Court to pay expenses of compensation out of fine.
- 546. Payments to be taken into account in subsequent suit.
- 546A. Order of payment of certain fees paid by complainant in non-cognizable cases.
- 547. Moneys ordered to be paid recoverable as fines.
- 548. Copies of proceedings.
- 549. Delivery to military authorities of persons liable to be tried by Court-martial. Apprehension of such persons.
- 550. Powers to police to seize property suspected to be stolen.
- 551. Powers of superior officers of police.
- 552. Powers to compel restoration of abducted females.
- 553. [Repealed.]
- 554. Power of High Courts to make rules for inspection of records of subordinate Courts.
Power of High Courts to make rules for other purposes.
- 555. Forms.
- 556. Case in which Judge or Magistrate is personally interested.
- 557. Practising pleader not to sit as Magistrate in certain Courts.
- 558. Power to decide language of Courts.
- 559. Provision for powers of Judges and Magistrates being exercised by their successors in office.
- 560. Officers concerned in sales not to purchase or bid for property.
- 561. [Repealed.]
- 561A. Saving of inherent power of High Court.

First offenders

- 562. Powers of Court to release certain convicted offenders on probation of good conduct instead of sentencing to punishment.
Conviction and release with admonition.
- 563. Provision in case of offender failing to observe conditions of his recognizances.
- 564. Conditions as to abode of offender.

Previously convicted offenders

- 565. Order for notifying address of previously convicted offender.

SCHEDULE I. [Repealed.]

SCHEDULE II. TABULAR STATEMENT OF OFFENCES.

SCHEDULE III. ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

SCHEDULE IV. ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

SCHEDULE V. FORMS

CHAPTER XIII
PREVENTIVE ACTION OF THE POLICE

149. Police to prevent cognizable offences.—Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

150. Information of design to commit such offences. Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

151. Arrest to prevent such offences.—A police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

152. Prevention of injury to public property. A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immovable, or the removal or injury of any public landmark or buoy or other mark used for navigation.

153. Inspection of weights and measures.—(1) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(2) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V
INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

CHAPTER XIV

154. Information in cognizable cases. Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant ; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the ¹[Provincial Government] may prescribe in this behalf [:]²

²[Provided that if the information is given by the woman against whom an offence under section 336B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, than such information shall be recorded by an investigating officer in presence of a female police officer or a female family member or any other person with consent of the complainant, as the case may be.

¹Subs. by A.O., 1937, for "L.G."

²Added by Act XLIV of 2016,s.8.

Provided further that if the information, given by the woman against whom an offence under section 336B, section 354, section 354A, section 376 or section 509 of the Pakistan Penal Code, 1860 (Act XLV of 1860) is alleged to have been committed or attempted, is distressed such information shall be recorded by an investigating officer at residence of the complainant or at a convenient place of the complainant's choice in presence of a police officer or family member or any other person with consent of the complainant, as the case may be.].

155. Information in non-cognizable cases.—(1) When information is given to an officer incharge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

(2) **Investigation into non-cognizable cases.** No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case ¹[or send the same for trial to the Court of Session].

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

156. Investigation into cognizable cases.—(1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

(2) No proceeding of a police-office in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.

²[(4) Notwithstanding anything contained in sub-sections (1), (2) or (3), no police-officer shall investigate an offence under section 497 or section 498 of the Pakistan Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had the care of such woman on his behalf at the time when such offence was committed.].

³[**156A. Investigation of offence under section 295 C, Pakistan Penal Code.**— Notwithstanding anything contained in this Code, no police officer below the rank of a Superintendent of Police shall investigate the offence against any person alleged to have been committed by him under section 295 C of the Pakistan Penal Code, 1860 (Act XLV of 1860).

156B. Investigation against a woman accused of the offence of zina.—Notwithstanding anything contained in this Code, where a person is accused of offence of zina under the Offence of zina (Enforcement of Hudood) Ordinance, 1979 (VII of 1979), no police officer below the rank of a Superintendent of Police shall investigate such offence nor shall such accused be arrested without permission of the court.

Explanation.— In this section 'zina' does not include 'zina-bil-jabr'.]

¹ Subs. by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch., for "or commit the same for trial or of a Presidency Magistrate".

² Sub-section (4) added by the Law Reforms Ordinance, 1972 (12 of 1972), s.2 and Sch.

³ Ins. by Act. I of 05, s. 13.

When any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination :

Provided, further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefor) and shall exclude such part from the copy of the statement furnished to the accused.]

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of section 32, clause (1), of the Evidence Act, 1872 ¹[or to affect the provisions of Section 27 of that Act].

163. No inducement to be offered.— (1) No police-officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Evidence Act, 1872 (I of 1872), section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

164. Power to record statements and confessions.— (1) ²[³* * *, Any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the ⁴[Provincial Government] may, if he is not a police-officer] record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

⁵[(1-A) Any such statement may be recorded by such Magistrate in the presence of the accused, and the accused given an opportunity of cross-examining the witness making the statement.]

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) ⁶[A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate] shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect :—

¹ Added by the Code of Criminal Procedure (Second Amdt.) Act, 1941 (15 of 1941), s. 2.

² Subs. by the Code of Criminal Procedure (Amdt.) Act, 1923 (18 of 1923), s. 35, for "Every Magistrate not being a police-officer may".

³ The words "Any Presidency Magistrate", omitted by A. O. 1949, Sch.

⁴ Subs. by A.O., 1937, for "L.G."

⁵ Sub-section (1-A) added by the Law Reforms Ordinance, 1972 (12 of 1972) s.2 and Sch.

⁶ Subs. by Act 18 of 1923, s. 35, for "No Magistrate".

¹["I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe] that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A.B.,

Magistrate."

Explanation.—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

²**164A. Medical examination of victim of rape, etc.**— (1) Where an offence of committing rape, unnatural offence or sexual abuse or attempt to commit rape, unnatural offence or sexual abuse under section 376, section 377 or section 377B respectively of the Pakistan Penal Code, 1860(Act XLV of 1860) is under investigation, the victim shall be examined by a registered medical practitioner, in the case of female victim by a female registered medical practitioner, immediately after commission of such offence:

Provided that in all cases, where possible, the female victim shall be escorted by a female police officer or a family member from a place of her convenience to the place of medical examination.

(2) The registered medical practitioner to whom such victim is sent under sub-section (1) shall, without delay, examine the victim and prepare a report of examination giving the following particulars, namely:—

- (a) name and address of the victim and of the person by whom she was escorted;
- (b) age of the victim;
- (c) description of material taken from body of the victim for DNA profiling;
- (d) marks of injury, if any, on body of the victim;
- (e) general mental condition of the victim; and
- (f) other material particulars in reasonable detail.

(3) The report under sub-section (2) shall state precisely the reasons for each conclusion arrived at.

(4) The report under sub-section (2) shall specifically record that consent of the victim or of his or her natural or legal guardian to such examination had been obtained.

(5) The exact time of commencement and completion of the examination under sub-section (1) shall also be noted in the report.

¹Subs. *ibid.*, for "I believe".

²Ins. by Act XLIV of 2016,s.11.

The Pakistan Army Act, 1952

¹ACT XXXIX OF 1952

[13th, 1952]

An Act to consolidate and amend the law relating to the Pakistan Army.

WHEREAS it is expedient to consolidate and amend the law relating to the Pakistan Army; It is hereby enacted as follows:---

CHAPTER I.—PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Pakistan Army Act, 1952.

(2) It shall come into force on such date² as the ³[Federal Government] may, by notification in the Official Gazette, appoint in this behalf.

¹ For Statement of Object and Reasons, see Gaz. of P., (1951 Pt. V, dated the 23rd November 1951, P. 71; and for Report of Select Committee, see *ibid.* 1952. Ext., pp. 347-400.

The Act has been extended to Khairpur State, by the Khairpur (Federal Laws) Extension) Order, 1953 (G.G.O. 5 of 1953).

It has been extended to the Baluchistan States Union by the Baluchistan States Union (Federal Laws) (Extension) Order, 1953 (G.G.O. 4 of 1953), as amended.

The Act has been and shall be deemed always to have been applied to Baluchistan and the Federated Areas of Baluchistan with effect from the 1st April, 1955, see Gaz. of P., 1955, see Gaz. of P., 1955. Pt. I p. 204.

The Act has been extended to the whole of Pakistan by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3, and 2nd Sch. (with effect from the 14th October, 1955).

The Act has been and shall be deemed to have been brought into force in Gwadur with effect from the 8th September, 1958, by the Gwadur (Application of Central Laws) Ordinance, 1960 (37 of 1960), s. 2.

The Act, rules, notifins, and orders made under it, have been applied to the Tribal Areas or to the part of those areas to which they have not been already applied, see the Tribal Areas (Application of Acts) Reason 1965. Gaz. of P. 1965., Ext., pp 1016-1018.

The Provisions of this Act and rules made thereunder have been applied in their application to non-commissioned officer and men of the Pakistan Mujahid Force. When embodied for or otherwise undergoing training with certain modification specified in Sch. II to rule 12 of the Pakistan Mujahid Force Rules, 1965, see Gaz. of P., 1965, Ext., pp. 1105-1107.

² The 1st day of April, 1955, see Gaz. of P., 1955, Ext. p. 389.

³ Subs. by the Pakistan Army (Amdt.) Act, 1973 (51 of 1973), s. 3, for "Central Government".

Force Act, 1953 ([VI of 1953](#)),] or in the ²[Pakistan Navy Ordinance, 1961 ([XXXV of 1961](#))], as the case may be, or with such less punishment as in this Act mentioned.

59. Civil offences.—(1) Subject to the provisions of subsection (2), any person subject to this Act who at any place in or beyond Pakistan commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be ⁴[dealt with under this Act],

¹ Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3, and 2nd Sch.

² Subs. by the Pakistan Army (Amdt.) Ordinance, 1965 (40 of 1965), ss. 5 and 6, for “Pakistan Navy (Discipline) Act, 1934”.

³ Ins. by the Central Laws (Statute Reform) Ordinance 1960 (21 of 1960), s. 3, and 2nd Sch., (with effect from 14th October, 1955).

⁴ Subs. by Ordinance, 1965 (40 of 1965), s. 6, for “tried by court material”.

and, on conviction, to be punished as follows, that is to say,---

(a) if the offence is one which would be punishable under any law in force in Pakistan with death or with¹[imprisonment for life], he shall be liable to suffer any punishment ²* * * assigned for the offence by the aforesaid law or such less punishment as is in this Act mentioned; and

(b) in any other case, he shall be liable to suffer any punishment ²* * * assigned for the offence by the law in force in Pakistan, or ¹* rigorous imprisonment for a term which may extend to five years or ¹* such less punishment as is in this Act mentioned [:]²

²[Provided that, where the offence of which any such person is found guilty is an offence liable to *hadd* under any Islamic law, the sentence awarded to him shall be that provided for the offence in that law.

(2) A person subject to this Act who commits an offence of murder against a person not subject to this Act ³* * *⁴[or the Pakistan Air Force Act, 1953 ([VI of 1953](#))], or to the ⁵[Pakistan Navy Ordinance, 1961 ([XXXV of 1961](#))], or of culpable homicide not amounting to murder against such a person or of ²[Zina or Zina-bil-Jabr] in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be ⁶[dealt with under this Act] unless he commits any of the said offences,---

(a) while on active service, or

(b) at any place outside Pakistan, or

¹ Subs. and omitted by the Pakistan Army (Amdt.) Act, 1976 (51 of 1976), s. 11.

² Omitted, subs. and added by the Pakistan Army (Amdt.) Ordinance, 1984 (36 of 1984), s. 5.

³ Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3, and 2nd Sch.

⁴ Ins. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3, and 2nd Sch. (with effect from the 14th the October, 1955).

⁵ Subs. by the Pakistan Army (Amdt.) Ordinance 1965 (40 of 1965), ss. 5 and 6, for "Pakistan Navy (Discipline) Act, 1934".

⁶ Subs. *ibid.*, s.6, for "tried by Court martial".

(c) at a frontier post specified by the Central Government by notification in this behalf.

(3) The powers of a Court martial ²[or an officer exercising authority under section 23] to charge and punish any person under this section shall not be affected by reason of the fact that the civil offence with which such person is charged is also an offence against this Act.

³[⁴ Notwithstanding anything contained in this Act or in any other law for the time being in force a person who becomes subject to this Act by reason of his being accused of an offence mentioned in clause (d) of sub-section (1) of section 2 shall be liable to be tried or otherwise dealt with under this Act for such offence as if the offence were an offence against this Act and were committed at a time when such person was subject to this Act; and the provisions of this section shall have effect accordingly].

¹ Subs. by the Pakistan Army (Amdt.) Act, 1973 (51 of 1973), s. 3, for "Central Government".

² Ins. by the Pakistan Army (Amdt.) Ordinance, 1965 (40 of 1965), s. 6.

³ Added by the Defence Services Laws (Second Amendment) Ordinance, 1967 (4 of 1967), s. 2.

THE OFFICIAL SECRETS ACT, 1923
1 Act No. XIX of 1923

**An Act to consolidate and amend the law in 2{Pakistan}
Relating to official secrets**

Preamble 3

1 For Statement of Objects and Reasons, see Gazette of India, 1922, Pt. V, p. 210 and for Report of Selection Committee, see *ibid.*, 1923, Pt. V, p. 61.

For temporary amendment of this Act during the continuance of war and for a period of six months thereafter, see s. 6 of the Defence of India Act, 1939 (35 of 1939), since expired.

The Act has been extended to the Leased Areas of Balochistan, see the Leased Areas (Laws) Order, 1950 (G.G.O. 3 of 1950), and applied in the Federated Areas of Balochistan, see Gazette of India, 1937, Pt. I, p. 1499.

This Act has been extended to the Balochistan States Union, see the Balochistan States Union (Federal Laws Extensions) Order, 1953 (G.G.O. 4 of 1953), as amended by the Balochistan States Union {Federal Laws (Extension)(Second Amdt.) Order, 1953 (G.G.O. 19 of 1953)}.

It has also been extended to the Kaipur State, see G.G.O. 5 of 1953, as amended by G.G.O. 24 of 1953.

It has also been extended to the State of Bahawalpur by the Bahawalpur (Extension of Federal Laws) Order, 1953 (G.G.O. 11 of 1953), as amended.

The Act has been and shall be deemed to have been brought into force in Gwadur with effect from the 8th September, 1958, by the Gwadur (Application of Central Laws) Ordinance, 1960 (37 of 1960), s. 2.

This Act has been applied with certain modifications to the Tribal Areas of West Pakistan by Regulation No. 1 of 1963, s. 2 and Sch. (with effect from the 30th December, 1964).

For notification of Procedure provided under this Act, see the Enemy Agents Ordinance, 1943 (1 of 1943).

Whereas it is expedient that the law relating to official secrets in 2{Pakistan} should be consolidated and amended:

It is hereby enacted as follows:-

1. **Short title, extent and application.**- - (1) This Act may be called the 4ⁿ Official Secrets Act, 1923.

security of the State, such declaration may be made by an order a copy or notice of which shall be prominently displayed at the point of entry to, or at a conspicuous place near, the prohibited place.}

(9) "sketch" includes any photograph or other made of representing any place or thin; and

(10) "Superintendent of Police" includes any police officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by the 3{appropriate Government], 7 * * *

3. **Penalties for spying.** (1) If any person for any purpose prejudicial to the safety or interests of the State-

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to any enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy;

5 Subs. by the official Secrets (Amdt) Act, 1966 (8 or 1966), s. 2 for semicolon.

6 Provisions. *ibid.*

7 The words "or by any L.G." omitted by A.O., 1937. he shall be 1{guilty of an offence under this section.}

(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years, it shall not be necessary to show that the accuse person was guilty of any particular act tending to State, and notwithstanding that no such act is proved against him, he may be convicted, if from the

circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interest of the State; and if any sketch, plan, model, article, note, document, or relating to any thing in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his purchase prejudicial to the safety or interests of the State, such shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interest of the State.

2 {(3)} A person guilty of an offence under this section shall be punishable,-

(a) where the offence committed is intended or calculated to be, directly or indirectly, in the interest or for the benefit of a foreign power, or is in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine-field, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Pakistan or in relation to any secret official code, 3 {with}

1 Subs. by the Official Secrets (Amdt.) Act, 1966, 98 or 1966), s. 3, for certain words which were previously amended by A.O., 1961, Art, 2.

2 Sub-section 93), added by Act 8 of 1966 s. 3.

3 Ins. by Act No. VIII of 1968, s. 2.

658 MEDIA AND THE MASS COMMUNICATION LAWS OF PAKISTAN

death or} with imprisonment for a term which may extend to fourteen years; and

(b) in any other case, with imprisonment for a term which may extend to three years.}

1 {3 A. Restriction against photographs, sketches, etc. of prohibited and notified area - - (1) No person shall, except under the

authority of a written permit granted by or on behalf of the 2{appropriate Government}, make any photograph, sketch, plan, model, note or representation of any kind of any prohibited place or of any other place of area with regard to which such restriction appears to that Government to be expedient in the interests of the security of Pakistan, or of any part of or object in any such place or area.

The 2 {appropriate Government} may, by general or special order make provision for securing that no photograph, sketch, plan, model, note or representation of any kind made under that authority of a permit granted in pursuance of subsection (1) shall be published unless and until the same has been submitted to and approved by such authority or person as may be specified in the order, and may retain or destroy or otherwise dispose of anything so submitted.

(3) If any person contravenes any of the provisions of this section, he shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

(4) The 3 {Federal Government} may by notification in the official Gazette empower any provincial Government. To

1 S. 3A, ins. by the Official Secrets (Amdt.) Act, 1956 (10 of 1956), s. 2.

2 Subs. by A.O., 1964, Art. 2 and Sch., for "Central Government".

3 For notification empowering the Provincial Governments, the Chief Commissioner of Karachi and the Agent to the Governor-General and Chief Commissioner in Balochistan to exercise the powers exercisable by the Central Government under this section and under cls. © and (d) of sub-section (8) of section 2 and sub-section (10) of section 2, see Gaz. Of P., 1955, Ext., pp. 1019, 1338 and 1470.

For notification declaring certain places in the province of East Pakistan as "Prohibited places", see Decca Gazette, 1958, Pt. I, p. 1631.

Exercise all or any of the powers exercisable by the 4{Federal Government} under this section, of under sub-clause © or sub-clause (d) of clause (8) of section 2, or under clause (10) of that section.}

- 4. Communications with foreign agents to be evidence of commission of certain offences - -** (1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without 5 {Pakistan}, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated

THE PASSPORTS ACT, 1967

[Act No. 15 of 1967 dated 24th. June, 1967]

[THE PASSPORTS ACT, 1967](#) [click here for important note]

[1. Short title and extent](#)

[2. Definitions](#)

[3. Passport or travel document for departure from India](#)

[4. Classes of passports and travel documents](#)

[5. Applications for passports, travel documents, etc., and orders thereon](#)

[6. Refusal of passports, travel documents. etc.](#)

[7. Duration of travel document](#)

⁴[\[8. Extention of period of passport](#)

[9. Conditions and forms of passports and travel documents](#)

[10. Variation, impounding and revocation of passports and travel documents](#)

[11. Appeals](#)

[12. Offences and penalties](#)

[13. Power to arrest](#)

[14. Power of search and seizure](#)

[15. Previous sanction of Central Government necessary](#)

[16. Protection of action taken in good faith](#)

[17. Passport and travel document to be property of Central Government](#)

¹³[\[***\]](#)

[19. Passports and travel documents to be invalid for travel to certain countries](#)

[20. Issue of passports and travel documents to persons who are not citizens of India](#)

[21. Power to delegate](#)

[22. Power to exempt](#)

[23. Act to be in addition to certain enactments](#)

[24. Power to make rules](#)

[25. Change of short title of Act 34 of 1920](#)

²⁰[\[***\]](#)

[27. Repeal and saving](#)

[Foot Notes](#)

An Act to provide for the issue of passports and travel documents, to regulate the departure from India of citizens of India and for other persons and for matters incidental or ancillary thereto.

Be it enacted by Parliament in the Eighteenth Year of the Republic of India as follows: -

1. Short title and extent

(1) This Act may be called the Passports Act, 1967.

(2) It extends to the whole of India and applies also to citizens of India who are outside India.

2. Definitions

In this Act, unless the context otherwise requires,

(a) "departure", with its grammatical variations and cognate expressions, means departure from India by water, land or air;

(b) "passport" means a passport issued or deemed to have been issued under this Act;

(c) "passport authority" means an officer or authority empowered under rules made under this Act to issue passports or travel documents and includes the Central Government;

(d) "Prescribed" means prescribed by rules made under this Act;

(e) "travel document" means a travel document issued or deemed to have been issued under this Act.

3. Passport or travel document for departure from India

No person shall depart from, or attempt to depart from, India unless he holds in this behalf a valid passport or travel document.

Explanation.- For the purposes of this section,-

(a) "passport" includes a passport which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed under the Passport (Entry into India) Act, 1920 in respect of the 34 of 1920 class of passports to which it belongs;

(b) "travel document" includes a travel document which having been issued by or under the authority of the Government of a foreign country satisfies the conditions prescribed.

4. Classes of passports and travel documents

(1) The following classes of passports may be issued under this Act, namely: -

- (a) ordinary passport;
- (b) official passport;
- (c) diplomatic passport.

(2) The following classes of travel documents may be issued under this Act, namely: -

- (a) emergency certificate authorising a person to enter India;
- (b) certificate of identity for the purpose of establishing the identity of person;
- (c) such other certificate or document as may be prescribed.

(3) The Central Government shall, in consonance with the usage and practice followed by it in this behalf, prescribe the classes of persons to whom the classes of passports and travel documents referred to respectively in sub-section (1) and sub-section (2) may be issued under this Act.

5. Applications for passports, travel documents, etc., and orders thereon

¹[(1) An application for the issue of a passport under this Act for visiting such foreign country or countries (not being a named foreign country) as may be specified in the application may be made to the passport authority and shall be accompanied by ²[Such fee as may be prescribed to meet the expenses incurred on special security paper, printing, lamination and other connected miscellaneous services in issuing passports and other travel documents].

Explanation.- In this section, "named foreign country" means such foreign country as the Central Government may, by rules made under this Act, specify in this behalf.

(1A) An application for the issue of-

- (i) a passport under this Act for visiting a named foreign country; or
- (ii) a travel document under this Act, for visiting such foreign country or countries (including a named foreign country) as may be specified in the application or for an endorsement on the passport or travel document referred to in this section,

may be made to the passport authority and shall be accompanied by such fee (if any) not exceeding rupees fifty, as may be prescribed.

(1B) Every application under this section shall be in such form and contain such particulars as may be prescribed.]

(2) On receipt of an application ³[under this section], the passport authority, after making such inquiry, if any, as it may consider necessary, shall, subject to the other provisions of this Act, by order in writing,-

(a) issue the passport or travel documents with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of the foreign country or countries specified in the application; or

(b) issue the passport or travel document with endorsement, or, as the case may be, make on the passport or travel document the endorsement, in respect of one or more of the foreign countries specified in the application and refuse to make an endorsement in respect of the other country or countries; or

(c) refuse to issue the passport or travel document or, as the case may be, refuse to make on the passport or travel document any endorsement.

(3) Where the passport authority makes an order under clause (b) or clause (c) of sub-section (2) on the application of any person, it shall record in writing a brief statement of its reasons for making such order and furnish to that person on demand a copy of the same unless in any case the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such copy.

6. Refusal of passports, travel documents. etc.

(1) Subject to the other provisions of this Act, the passport authority shall refuse to make an endorsement for visiting any foreign country under clause (b) or clause (c) of sub-section (2) of section 5 on any one or more of the following grounds, and no other ground, namely: -

(a) that the applicant may, or is likely to, engage in such country in activities prejudicial to the sovereignty and integrity of India:

(b) that the presence of the applicant in such country may, or is likely to, be detrimental to the security of India;

(c) that the presence of the applicant in such country may, or is likely to, prejudice the friendly relations of India with that or any other country,

(d) that in the opinion of the Central Government the presence of the applicant in such country is not in the public interest.

(2) Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause

(c) of sub-section (2) of section 5 on any one or more of the following grounds, and on no other ground, namely: -

(a) that the applicant is not a citizen of India.,

(b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.,

(c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India;

(d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country;

(e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(f) that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;

(g) that a warrant or summons for the appearance, or a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court;

(h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation;

(i) that in the opinion of the Central Government the issue of a passport or travel document to the applicant will not be in the public interest.

7. Duration of travel document

A passport or travel document shall, unless revoked earlier, continue in force for such period as may be prescribed and different periods may be prescribed for different classes of passports or travel documents or for different categories of passports or travel documents under each such class:

Provided that a passport or travel document may be issued for a shorter period than the prescribed period-

(a) if the person by whom it is required so desires; or

(b) if the passport authority, for reasons to be communicated in writing to the applicant, considers in any case that the passport or travel document should be issued for a shorter period.

⁴[8. Extention of period of passport

Where a passport is issued for a shorter period than the prescribed period under section 7, such shorter period shall, unless the passport authority for reasons to be recorded in writing otherwise determines, be extendable for a further period (which together with the shorter period shall not exceed the prescribed period) and provision of this Act shall apply to such extension as they apply to the issue thereof.]

9. Conditions and forms of passports and travel documents

The conditions subject to which, and the form in which, a passport or travel document shall be issued or renewed shall be such as may be prescribed:

Provided that different conditions and different forms may be prescribed for different classes of passports or travel documents or for different categories of passports or travel documents under each such class:

Provided further that a passport or travel document may contain in addition, to the prescribed conditions such other conditions as the passport authority may, with the previous approval of the Central Government, impose in any particular case.

10. Variation, impounding and revocation of passports and travel documents

(1) The passport authority may, having regard to the provisions of sub-section (1) of section 6 or any notification under section 19, vary or cancel the endorsements on a passport or travel document or may, with the previous approval of the Central Government, vary or cancel the conditions (other than the prescribed conditions) subject to which a passport or travel document has been issued and may, for that purpose, require the holder of a passport or a travel document, by notice in writing, to deliver up the passport or travel document to it within such time as may be specified in the notice and the holder shall comply with such notice.

(2) The passport authority may, on the application of the holder of a passport or a travel document, and with the previous approval of the Central Government also vary or cancel the conditions (other than the prescribed conditions) of the passport or travel document.

(3) The passport authority may impound or cause to be impounded or revoke a passport or travel document,-

(a) if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;

(b) if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;

⁵[Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport]

(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;

(d) if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

(e) if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India.

(f) if any of the conditions of the passport or travel document has been contravened;

(g) if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;

(h) if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made.

(4) The passport authority may also revoke a passport or travel document on the application of the holder thereof.

(5) Where the passport authority makes an order varying or cancelling the endorsements on, or varying the conditions of, a passport or travel document under sub-section (1) or an order impounding or revoking a passport or travel document under sub-section (3), it shall record in writing a brief statement of the reasons for making such order and furnish to the holder of the passport or travel document on demand a copy of the same unless in any case, the passport authority is of the opinion that it will not be in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country or in the interests of the general public to furnish such a copy.

(6) The authority to whom the passport authority is subordinate may, by order in writing, impound or cause to be impounded or revoke a passport or travel document on any ground on which it may be impounded or revoked by the passport authority and the foregoing provisions of this section shall, as far as may be, apply in relation to the impounding or revocation of a passport or travel document by such authority.

(7) A court convicting the holder of a passport or travel document of any offence under this Act or the rules made thereunder may also revoke the passport or travel document:

Provided that if the conviction is set aside on appeal or otherwise the revocation shall become void.

(8) An order of revocation under sub-section (7) may also be made by an appellate court or by the High Court when exercising its powers of revision.

(9) On the revocation of a passport or travel document under this section the holder thereof shall, without delay, surrender the passport or travel document, if the same has not already been impounded, to the authority by whom it has been revoked or to such other authority as may be specified in this behalf in the order of revocation.

11. Appeals

(1) Any person aggrieved by an order of the passport authority under clause (b) or clause (c) of sub-section (2) of section 5 or clause (b) of the proviso to section 7 or sub-section (1), or sub-section (3) of section 10 or by an order under sub-section (6) of section 10 of the authority to whom the passport authority is subordinate, may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed:

Provided that no appeal shall lie against any order made by the Central Government.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor:

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(3) The period prescribed for an appeal shall be computed in accordance with the provisions of the Limitation Act, 1963, (36 of 1963) with respect to the computation of the periods of limitation thereunder.

(4) Every appeal under this section shall be made by a petition in writing and shall be accompanied by a copy of the statement of the reasons for the order appealed against where such copy has been furnished to the appellant and ⁶[by such fee as may be prescribed for meeting the expenses that may be incurred in calling for relevant records and for connected services]

(5) In disposing of an appeal, the appellate authority shall follow such procedure as may be prescribed:

Provided that no appeal shall be disposed of unless the appellant has been given a reasonable opportunity of representing his case.

(6) Every order of the appellate authority confirming, modifying or reversing the order appealed against shall be final.

12. Offences and penalties

(1) Whoever-

(a) contravenes the provisions of section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him,

shall be punishable with imprisonment for a term which may extend to ⁷[two years or with fine which may extend to five thousand rupees] or with both.

⁸[(1A) Whoever, not being a citizen of India,-

(a) makes an application for a passport or obtains a passport by suppressing information about in nationality, or

(b) holds a forged passport or any travel document,

shall be punishable with imprisonment for a term which shall not be less than one year but may extend to five years and with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees] or with both.

(2) Whoever abets any offence punishable under ⁹[sub-section (1) or sub-section (1A)] shall, if the act abetted is committed in consequence of the abetment, be punishable with the punishment provided in that sub-section for that offence.

(3) Whoever contravenes any condition of a passport or travel document or any provision of this Act or any rule made thereunder for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) Whoever, having been convicted of an offence under this Act, is again convicted of an offence under this Act shall be punishable with double the penalty provided for the latter offence,

13. Power to arrest

(1) Any officer of customs empowered by a general or special order of the Central Government in this behalf and any ¹⁰[officer of police or emigration officer] not below the rank of a sub-inspector may arrest without warrant any person against whom a reasonable suspicion exists that he has committed any offence punishable under section 12 and shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a magistrate having jurisdiction in the case or to the officer in charge of the nearest police station and the provisions of ¹¹[section 57 of the Code of Criminal Procedure, 1973 (2 of 1974)] shall, so far as may be, apply in the case of any such arrest.

14. Power of search and seizure

(1) Any officer of customs empowered by a general or special order of the Central Government in this behalf and any ¹⁰[officer of police or emigration officer] not below the rank of a sub-inspector may search any place and seize any passport or travel document from any person against whom a reasonable suspicion exists that he has committed any offence punishable under section 12.

(2) The provisions of the ¹²[Code of Criminal Procedure, 1973 (2 of 1974)] relating to searches and seizures shall, so far as may be, Apply to searches and seizures under this section.

15. Previous sanction of Central Government necessary

No prosecution shall be instituted against any person in respect of any offence under this Act without the previous sanction of the Central Government or such officer or authority as may be authorized by that Government by order in writing in this behalf.

16. Protection of action taken in good faith

No suit, prosecution or other, legal proceeding shall lie against the Government or any officer or authority for anything which is in good faith done or intended to be done under this Act.

17. Passport and travel document to be property of Central Government

A passport or travel document issued under this Act shall in all times remain the property of the Central Government.

¹³[***]

19. Passports and travel documents to be invalid for travel to certain countries

Upon the issue of notification by the Central Government that a foreign country is-

- (a) a country which is committing external aggression against India; or
- (b) a country assisting the country committing external aggression against India;
or
- (c) a country where armed hostilities are in progress; or
- (d) a country to which travel must be restricted in the public interest because such travel would seriously impair the conduct of foreign affairs of the Government of India,

a passport or travel document for travel through or visiting such country shall cease to be valid for such travel or visit unless in any case a special endorsement in that behalf is made in the prescribed form by the prescribed authority.

20. Issue of passports and travel documents to persons who are not citizens of India

Notwithstanding anything contained in the foregoing provisions relating to issue of a passport or travel document, the Central Government may issue, or cause to be issued, a passport or travel document to a person who is not a citizen of India if that Government is of the opinion that it is necessary so to do in the public interest.

21. Power to delegate

The Central Government may, by notification in the Official Gazette, direct that any power or function which may be exercised or performed by it under this Act other than the power under clause (d) of sub-section (1) of section 6 or the power under clause (i) of sub-section (2) of that section or the power under section 24, may, in relation to such matters and subject to such conditions, if any, as it may specify in the notification, be exercised or performed-

- (a) by such officer or authority subordinate to the Central Government; or
- (b) by any State Government or by any officer or authority subordinate to such Government; or
- (c) in any foreign country in which there is no diplomatic mission of India, by such Consular Officer;

as may be specified in the notification.

22. Power to exempt

Where the Central Government is of the opinion that it is necessary or expedient in the public interest so to do, it may, by notification in the Official Gazette and subject to such conditions, if any, as it may specify in the notification,-

- (a) exempt any person or class of persons from the operation of all or any of the provisions of this Act or the rules made thereunder; and

(b) as often as may be, cancel any such notification and again subject, by a like notification, the person or class of persons to the operation of such provisions.

23. Act to be in addition to certain enactments

The provisions of this Act shall be in addition to and not in derogation of the provisions of the Passport (Entry into India) Act, 1920 (34 of 1920), the ¹⁴[Emigration Act, 1983 (31 of 1983), the Registration of Foreigners Act, 1939 (16 of 1939), the Foreigners Act, 1946 (31 of 1946), ¹⁵[***] the Trading with the Enemy (Continuance of Emergency Provisions) Act, 1947 (16 of 1947), the Foreigners Law (Application and Amendment) Act, 1962 (42 of 1962), ¹⁶[the Foreign Exchange Regulation Act, 1973] and other enactments relating to foreigners and foreign exchange.

24. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the appointment, jurisdiction, control and functions of passport authorities,

(b) the classes of persons to whom passport and travel documents referred to respectively in sub-section (1) and sub-section (2) of section 4 may be issued;

(c) the form and particulars of application for the issue or renewal of a passport or travel document or for endorsement on a passport or travel document and where the application is for the renewal, the time within which it shall be made;

(d) the period for which passports and travel documents shall continue in force;

(e) the form in which and the conditions subject to which the different classes of passports and travel documents may be issued, renewed or varied;

¹⁷[(ee) specifying the foreign country for the purposes of the Explanation to sub-section (1) of section 5];

(f) the fees payable in respect of ¹⁸[[any application for the issue of a passport under sub-section (1) of section 5 or issue of a passport] for visiting a foreign country referred to in sub-section (1A) of section 5 or issue of a passport]] or travel document or for varying any endorsement or making a fresh endorsement on a passport or a travel document and the fees payable in respect of any appeal under this Act:

(g) the appointment of appellate authorities under sub-section (1) of section 11, the jurisdiction of, and the procedure which may be followed by, such appellate authorities;

(h) the services (including the issue of a duplicate passport or travel document in lieu of a passport or travel document lost, damaged or destroyed) which may be rendered in relation to a passport or travel document and the fees therefor,

(i) any other matter which is to be or may be prescribed or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government, necessary for the proper implementation of the Act.

(3) Every rule made under this Act shall be laid as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or ¹⁹[in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid] in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity or anything previously done under that rule.

25. Change of short title of Act 34 of 1920

In the Indian Passport Act, 1920, in sub-section (1) of section 1, for the words and figures "the Indian Passport Act, 1920", the words, brackets and figures "the Passport (Entry into India) Act, 1920" shall be substituted.

²⁰[***]

27. Repeal and saving

(1) The Passports Ordinance, 1967 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purporting to have been done or taken under the said Ordinance shall be deemed to have been done or taken under this Act as if this Act had commenced on the 5th day of May, 1967.

Foot Notes

1. Inserted by Act 31 of 1978, w.e.f. 18th. August, 1978.
2. Substituted. for the words "a fee of rupees fifty" by the passports (Amendment) Act 1993 (Act No. 35 of 1993) dated 13th April, 1993.
3. Inserted by Act 31 of 1978, w.e.f. 18th. August, 1978.
4. Substituted by Act No. 35 of 1993 dated 13th. April, 1993 for earlier section 8.
5. Proviso inserted by Act No. 35 of 1993 dated 13th. April, 1993.
6. Substituted by Act No. 35 of 1993 dated 13th. April 1993, for the words and brackets "by such fee (if any) not exceeding rupees twenty five as may be prescribed".

7. Substituted by Act No. 35 of 1993 dated 13th. April 1993, for the words "Six months or with fine which may extend to two thousand rupees".
8. Inserted by Act No. 35 of 1993 dated 13th April 1993.
9. Substituted by Act. No. 35 of 1993 dated 13th April 1993.
10. Substituted by Act No. 35 of 1993 dated 13th April 1993 for the words "Officer of Police".
11. Substituted by Act No. 31 of 1978, w.e.f. 18th. August 1978.
12. Substituted by Act No. 31 of 1978.
13. Earlier section 18 omitted by Act No. 35 of 1993 dated 13th. April 1993.
14. Substituted by Act No. 35 of 1993 dated 13th. April, 1993 for the words and figures "The Emigration Act, 1922".
15. Omitted by Act No. 31 of 1978, w.e.f. 18th. August, 1978.
16. Inserted by Act No. 31 of 1978, w.e.f. 18th. August, 1978.
17. Inserted by Act No. 31 of 1978, w.e.f. 18th. August, 1978.
18. Substituted by Act No. 35 of 1993 dated 13th April, 1993, for the words "any application for the issue or the renewal of a passport".
19. Substituted by Act No. 31 of 1978, w.e.f. 18th. August, 1978.
20. Earlier section 26 omitted by Act No. 35 of 1993 dated 13th April, 1993.

Note: The Passports Act, 1967 (Act Nos.15 of 1967 dated. 24.6.1967) along with the The Passport Rules, 1980 as amended by The Passports (Amendment) Rules 2006, vide GSR No. 768(E), dated 23.12.2006, w.e.f. 23.12.2006 is available in the leading book store.

THE PASSPORTS RULES, 1980¹

In exercise of the powers conferred by section 24 of the Passports Act, 1967 (15 of 1967), the Central Government hereby makes the following rules, namely:—

1. **Short title and commencement.**—(1) These rules may be called the Passports Rules, 1980.

(2) They shall come into force from the date² of their publication in the Official Gazette.

2. **Definitions.**—In these Rules, unless the context otherwise requires,—

(a) "Act" means the Passports Act, 1967 (15 of 1967);

(b) "Form" means a Form set out in Schedule III;

(c) "miscellaneous service", in relation to a passport or travel document includes—

(i) varying the entries in a passport or travel document;

(ii) making additional endorsement on a passport or travel document in respect of foreign countries;

³(iii) issuing a fresh passport booklet when the pages in the booklet held are almost exhausted; or

(iv) any other service in respect of a passport or travel document which the holder thereof may require;

(d) "Schedule" means a Schedule appended to these Rules;

(e) "section" means a section of the Act.

3. **Passport authorities.**—(1) In addition to the Central Government, the officers specified in column (2) of Schedule I shall, subject in the provisions of sub-rule (2), be the passport authorities for all purposes of the Act and these Rules.

(2) An officer referred to in column (2) of Schedule 1 shall, for the purpose of issue of a passport or travel document, exercise jurisdiction in respect of applications for such issue made by persons ordinarily residing in the territories specified in the corresponding entries in column 3 of the said Schedule:

⁴[Provided that in exceptional and urgent cases the said officer may entertain an application for the issue of a passport or travel document from a person not

1. *vide* G.S.R. 691 (E), dated 11th December, 1980, published in the Gazette of India, Extra., Pt II, Sec. 3(i), dated 11th December, 1980 and as amended in recent past. *vide*

G.S.R. 235(E), dated 28-3-2002.

G.S.R. 417(E), dated 29-5-2002.

G.S.R. 718(E), dated 28-10-2004

G.S.R. 674(E), dated 27-10-2006

G.S.R. 768(E), dated 23-12-2006

G.S.R. 396(E), dated 25-5-2007

G.S.R. 526(E), dated 2-8-2007.

G.S.R. 43(E), dated 22-1-2008.

G.S.R. 103(E), dated 22-2-2008.

G.S.R. 850(E), dated 11-12-2008.

G.S.R. 390(E), dated 4-6-2009.

G.S.R. 93, dated 26-6-2009.

G.S.R. 372(E), dated 27-4-2010.

G.S.R. 675(E), dated 26-6-2010.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

G.S.R. 633(E), dated 23-8-2011.

ordinarily residing within his jurisdiction and may issue a passport or travel document to such a person for a period not exceeding twenty-four months.]

4. **Classes of persons to whom the different classes of passports and travel documents may be issued.**—The classes of persons to whom the classes of passports or travel documents referred to respectively in sub-section (1) and sub-section (2) of section 4 may be issued, shall be as specified respectively in Part I or Part II, as the case may be, of Schedule II.

5. **Form of applications.**—¹[(1)] An application for the issue of a passport or travel document or for the renewal thereof or for any miscellaneous service shall be made in the appropriate Form set out therefore in Part I of Schedule III and in accordance with the procedure and instructions set out in such form:

²[Provided that every application for any of the aforesaid purposes shall be made only in the form printed and supplied by—

(a) the Central Government; or

³[(b)] Any other person whom the Central Government may by notification specify, subject to the condition that such person complies with the conditions specified by that Government in this behalf;

Provided further that] in the course of any inquiry under sub-section (2) of section 5, a passport authority may require an applicant to furnish such additional information, documents or certificates, as may be considered necessary by such authority for the proper disposal of the application.

⁴[(2) The price of the new application forms referred to in sub-rule (1) shall be as specified in column 3 or 4, as the case may be, of Schedule III A for that particular category:

⁵[***]

⁶[***]

⁶[(3) The Passport Authority may authorise any person or authority to collect passport applications on its behalf for issue of a passport or travel document or for the renewal thereof or for any miscellaneous service on payment of a service charge specified by the Central Government under sub-rule (2) of rule 8 in addition to the fee payable under sub-rule (1) of rule 8 and the service charge shall be paid by the applicant to such person or authority.]

⁷[***]

7. **Named foreign country.**—Each of the following countries shall be a named foreign country for the purposes of the *Explanation* to sub-section (1) of section 5, namely:—

(i) Bangladesh; and

(ii) Sri Lanka.

⁸[(iii) Saudi Arabia]

1. Rule 5 re-numbered as sub-rule (1) thereof by G.S.R. 100(E), dated 4th March, 1991 (w.e.f. 4-3-1991).

2. Subs. by G.S.R. 100(E), dated 4th March, 1991 (w.e.f. 4-3-1991).

3. Clause (b) omitted and clause (c) re-numbered as clause (b) by G.S.R. 721 (E), dated 7th August, 1992, (w.e.f. 17-8-1992).

4. Ins. by G.S.R. 100(E), dated 4th March, 1991 (w.e.f. 4-3-1991).

5. Proviso omitted by G.S.R. 516 (E), dated 13th July, 1999 (w.e.f. 13-7-1999). Also *see* G.S.R. 485(E), dated 23rd May, 2000 (w.e.f. 1-8-2000). Ed. Proviso to sub-rule (2) has already been omitted by G.S.R. 516 (E), dated 13th July, 1999. It is not clear as to why it has again been omitted by G.S.R. 485 (E), dated 23rd May, 2000.

6. Ins. by G.S.R. 529 (E), dated 8th June, 2000 (w.e.f. 8-6-2000).

7. Rule 6 omitted by G.S.R. 860 (E), dated 1st November, 1985 (w.e.f. 1-11-1985).

8. Ins. by G.S.R. 390(E), dated 4th June, 2009 (w.e.f. 5-6-2009).

8. **Fee payable on applications.**—¹[(1)] The fee payable on every application mentioned in column (2) of Schedule IV shall be at the rates specified in the corresponding entry in ²[column (3), 4 or (5), as the case may be], of that Schedule.

³[(2) The Central Government may specify service charge payable by the applicant to the person or authority for collection of passport applications under sub-rule (3) of rule 5.

⁴[9. **Collection of fees.**—(1) All fees payable in respect of applications under sub-rule (1) of rule 8 be remitted by demand draft drawn in favour of the passport authority or paid in cash at the counter of the passport authority concerned stating in the receipt the particulars in respect of which such fees have been remitted or paid.

(2) The service charge payable under sub-rule (2) of rule 8 shall be paid to the person or the authority referred to in sub-rule (3) of rule 5.]

10. **Refund of fees.**—Fees shall be refunded if applied for within one year from the date of payment thereof in the following cases:—

(i) if after paying the fee, a person does not submit the application for issue of passport or travel document or for any service on a passport or travel document already held by him, as the case may be;

(ii) if the fee paid is in excess of the prescribed fee; and

(iii) if the fee paid is for a service for which no fee has been prescribed.

11. **Forms of passport or travel document.**—A passport or travel document issued under the Act shall be in the appropriate form set out in Part III of Schedule III:

⁵[Provided that with effect from the date after commencement of the Passport (2nd Amendment) Rules 1992 the forms of diplomatic, official and India-Sri Lanka passports shall be as specified in Form P-1A, Form P-2A and Form P-7A respectively, of Part III of Schedule III.]

12. **Duration of passports or travel documents.**—⁶[(1) An ordinary passport for persons other than children below the age of 15 years, containing thirty-six pages or sixty pages shall be in force for a period of 10 years ⁷[***], from the date of its issue.

(1A) An ordinary passport for a child below the age of 15 years, containing thirty-six pages shall be in force for a period of 5 years from the date of its issue or until the child attains the age of 15 years, whichever is earlier.]

(2) An India-Bangladesh passport shall continue in force for a period of three years from the date of its issue.

1. Rule 8 renumbered as sub-rule (1) thereof by G.S.R. 529(E), dated 8th June, 2000 (w.e.f. 8-6-2000).
2. Subs. by G.S.R. 633(E), dated 23rd August, 2011, for "column (3) or column (4), as the case may be" (w.e.f. 22-8-2011). Earlier it was substituted by G.S.R. 860(E), dated 1st November, 1985 (w.e.f. 1-11-1985).
3. Ins. by G.S.R. 529 (E), dated 8th June, 2000 (w.e.f. 8-6-2000).
4. Subs. by G.S.R. 529 (E), dated 8th June, 2000 (w.e.f. 8-6-2000).
5. Ins. by G.S.R. 684 (E), dated 15th June, 1992 (w.e.f. 23-7-1992).
6. Subs. by G.S.R. 605 (E), dated 5th October, 1998 (w.e.f. 8-10-1998).
7. The words "or 20 years as the case may be" omitted by G.S.R. 633(E), dated 23rd August, 2011 (w.e.f. 23-8-2011).

(3) An India-Sri Lanka passport shall continue in force for a period of four years from the date of its issue.

(4) An emergency certificate shall continue in force for a period of [three months] from the date of its issue.

²[(5) A certificate of identity shall continue in force for a period of ten years from the date of its issue.]

(6) A diplomatic and an official passport shall continue in force for a period which is decided in each case by the Central Government or the passport authority which issues the passport:

Provided that the total life of a diplomatic or an official passport shall be ten years from the date of its issue.

³[(7) The passport for Haj pilgrims shall be valid for a period of eight months from the date of issue.]

13. **Issue of additional passport or travel document in special circumstances.**—A person holding a passport or travel document shall not be entitled to another passport or travel document unless he surrenders to the passport authority the passport or travel document already held by him:

Provided that separate passports or travel documents may be issued to the same person in respect of different countries if it is necessary so to do so facilitating his visits to such countries.

14. **Appellate authorities.**—For the purpose of the Act and these Rules, the appellate authority to whom an appeal shall lie from an order specified in column (1) of the Table below shall be that specified in the corresponding entry of column (2) thereof and every such appeal shall be filed within thirty days from the date on which the order sought to be appealed against is communicated to the appellant.

TABLE

Orders appealed against	Appellate authority
(1)	(2)
1. An order of the passport authority, other than the Central Government, under—	The Chief Passport Officer, Ministry of External Affairs, New Delhi.
(i) clause (b) or clause (c) of sub-section (2) of section 5; or	
(ii) clause (b) of the proviso to section 7; or	
(iii) sub-section (1) or sub-section (3) of section 10.	
2. An order under sub-section (6) of section 10 of the authority to whom passport Delhi, authority is subordinate.	Additional Secretary or Secretary, Ministry of External Affairs, New Delhi.

15. **Fee payable in respect of appeal.**—Every petition for appeal shall be accompanied by a fee of twenty-five rupees which shall be paid in cash at the treasury and a copy of the receipted challan shall be enclosed with such petition

1. Subs. by G.S.R. 633(E), dated 23rd August, 2011, for "six months" (w.e.f. 23-8-2011).
2. Subs. by G.S.R. 527 (E), dated 9th July, 2001 (w.e.f. 13-7-2001).
3. Ins. by G.S.R. 390(E), dated 4th June, 2009 (w.e.f. 5-6-2009).

16. Procedure to be followed by appellate authority.—On receipt of an appeal, the appellate authority may call for the records of the case from the authority which passed the order appealed against and after giving the appellant a reasonable opportunity of representing his case, pass final order.

17. Authority and Form for special endorsement under section 19.—(1) The authority for the purposes of section 19 shall be the passport authority.

(2) Every special endorsement referred to in section 19 shall be in the following Form, namely:—

FORM

This passport is hereby made valid under section 19 of the Passports Act, 1967 (15 of 1967), for travel through, or visiting,..... for a maximum period of..... days/months from the date of this endorsement.

18. Inspection of passport or travel document.—The authorities for the purposes of clause (c) of sub-section (1) of section 12 shall be—

- (i) any passport authority;
- (ii) any officer of Police not below the rank of a Sub-Inspector; and
- (iii) any officer of Customs empowered by general or special order of Central Government in this behalf.

19. The conditions of a passport or travel document.—The conditions subject to which a passport or travel document shall be issued or renewed shall be as set out in Schedule V.

20. Repeal.—The Passports Rules, 1967 are hereby repealed:

Provided that such repeal shall not affect the previous operation of the said Rules or anything duly done or suffered, or any right, privilege, obligation or liability acquired, accepted or incurred, thereunder.

SCHEDULE I
(See rule 3)

Sl. No.	Passport authorities	Jurisdiction
(1)	(2)	(3)
¹ [1.	(a) Regional Passport Officer, Ahmedabad, (Regional Passport Office, Ahmedabad).	The State of Gujarat and the Union Territory of Diu.
	(b) Assistant Passport Officer, Ahmedabad, (Regional Passport Office, Ahmedabad).	-do-
	(c) Public Relations Officer, Ahmedabad, (Regional Passport Office, Ahmedabad).	-do-
	(d) Superintendent, Ahmedabad, (Regional Passport Office, Ahmedabad).	-do-

1. Subs. by G.S.R. 84(E), dated 11th February, 1988, for Serial No. 1 (w.e.f. 11-2-1988).

(1)	(2)	(3)
¹ [2.	(a) Regional Passport Officer, Calcutta, (Regional Passport Office, Calcutta).	The States of West Bengal, Tripura and Sikkim.
	(b) Assistant Passport Officer, Calcutta, (Regional Passport Office, Calcutta).	-do-
	(c) Public Relations Officer, Calcutta (Regional Passport Office, Calcutta).	-do-
	(d) Superintendent, Calcutta, (Regional Passport Office, Calcutta).	-do-]
² [3.	(a) Regional Passport Officer, (Regional Passport Office, Delhi).	Delhi and the districts of Gurgaon, Faridabad, Sonapat, Jhajjar, Rohtak, Mahendergarh and Rewari in the State of Haryana.
	(b) Assistant Passport Officer, (Regional Passport Office, Delhi).	-do-
	(c) Public Relation Officer, (Regional Passport Office, Delhi).	-do-
	(d) Superintendent, (Regional Passport Office, Delhi).	-do-]
³ [4.(i)	(a) Passport Officer (Passport Office, Chandigarh)	The districts of Bhatinda, Ludhiana, Fategarh Sahib, Patiala, Moga, Mansa, Sangrur and Ropar in the State of Punjab, the districts of Ambala, Bhiwani, Hissar, Jind, Karnal, Sirsa, Kaithal, Rewari, Kurukshetra, Mohindergarh, Panipat, Yamunanagar, Panchkula and Fatehabad in the State of Haryana and Union Territory of Chandigarh.
	(b) Deputy Passport Officer, (Passport Office, Chandigarh)	-do-
	(c) Assistant Passport Officer, (Passport Office, Chandigarh)	-do-
	(d) Superintendent, (Passport Office, Chandigarh)	-do-
⁴ (ii)	(a) Passport Officer (Passport Office, Amritsar)	Ferozepur, Faridkot, Mukisar, Amritsar, Gurdaspur, Tarn Taran
	(b) Deputy Passport Officer (Passport Office, Amritsar)	-do-
	(c) Assistant Passport Officer (Passport Office, Amritsar)	-do-
	(d) Superintendent (Passport Office, Amritsar)	-do-

1. Subs. by G.S.R. 1155(E), dated 21st November, 1988, for Serial No. 2 (w.e.f. 8-12-1988).
2. Subs. by G.S.R. 718(E), dated 28th September, 2004, for Serial No. 3 (w.e.f. 29-10-2004). Earlier Serial No. 3 was substituted by G.S.R. 576(E), dated 27th July, 2001 (w.e.f. 2-8-2001), by G.S.R. 833(E), dated 2nd December, 1994 (w.e.f. 2-12-1994) and by G.S.R. 1155(E), dated 21st November, 1988 (w.e.f. 8-12-1988).
3. Subs. by G.S.R. 850(E), dated 11th December, 2008, for Serial No. 4 (w.e.f. 11-12-2008). Earlier Serial No. 4 was substituted by G.S.R. 526(E), dated 2nd August, 2007 (w.e.f. 2-8-2007).

(1)	(2)	(3)
4.(iii)	(a) Passport Officer, (Passport Office, Shimla) (b) Deputy Passport Officer (Passport Office, Shimla) (c) Assistant Passport Officer (Passport Office, Shimla) (d) Superintendent (Passport Office, Shimla)	All districts of the State of Himanchal Pradesh -do- -do- -do-]
1]5.(i)	(a) Passport Officer, (Passport Office, Chennai)	The districts of Chennai, Chengelpet (E), Kanchipuram, Vellore, Thiruvannamalai, Cuddalore, Villupuram, Dharmapuri, Karaikkal, Thiruvallur of the State of Tamil Nadu and Union territory of Pondicherry.
	(b) Deputy Passport Officer, (Passport Office, Chennai) (c) Assistant Passport Officer, (Passport Office, Chennai) (d) Superintendent, (Passport Office, Chennai)	-do- -do- -do-
5.(ii)	(a) Passport Officer (Passport Office, Coimbatore) (b) Deputy Passport Officer (Passport Office, Coimbatore) (c) Assistant Passport Officer (Passport Office, Coimbatore) (d) Superintendent (Passport Office, Coimbatore)	Coimbatore, Salem, Erode, Namakkal, Nilgiris -do- -do- -do- -do-
2]6.(i)	(a) Regional Passport Officer, (Regional Passport Office, Cochin) (b) Assistant Passport Officer, (Regional Passport Office, Cochin) (c) Public Relation Officer, (Regional Passport Office, Cochin) (d) Superintendent, (Regional Passport Office, Cochin)	The districts of Alappuzha, Kottayam, Idukki, Thrissur, Ernakulam of the State of Kerala and Union territory of Lakshadweep. -do- -do- -do-]
3]6.(ii)(a)	Passport Officer, Passport Office, Kozhikode	The districts of Wayanad, Kozhikode, Kannur and Kasargod of the State of Kerala.

1. Subs. by G.S.R. 850(E), dated 11th December, 2008, for Serial No. 5 (w.e.f. 11-12-2008). Earlier Serial No. 5 was substituted by G.S.R. 576(E), dated 27th July, 2001 (w.e.f. 2-8-2001).
2. Subs. by G.S.R. 576(E), dated 27th July, 2001, for Serial No. 6(i) (w.e.f. 2-8-2001). Earlier Serial No. 6(i) was substituted by G.S.R. 111(E), dated 22nd January, 1992 (w.e.f. 19-2-1992) and by G.S.R. 1155(E), dated 21st November, 1988 (w.e.f. 8-12-1988).
3. Subs. by G.S.R. 674(E), dated 27th October, 2006, for Serial No. 6(ii) (w.e.f. 27-10-2006). Earlier Serial No. 6(ii) was substituted by G.S.R. 576(E), dated 27th July, 2001 (w.e.f. 2-8-2001).

(1)	(2)	(3)
	(b) Assistant Passport Officer, (Passport Office, Kozhikode) (c) Public Relations Officer, (Passport Office, Kozhikode) (d) Superintendent, (Passport Office, Kozhikode)	-do- -do- -do-
6.(iii)(a)	Passport Officer, Passport Office, Malappuram (b) Public Relations Officer, (Passport Office, Malappuram) (c) Superintendent, (Passport Office, Malappuram)	The districts of Malappuram and Palakkad in the State of Kerala. -do- -do-]
1]7.(A)	(a) Regional Passport Officer, (Regional Passport Office, Mumbai) (b) Assistant Passport Officer, (Regional Passport Office, Mumbai) (c) Public Relation Officer, (Regional Passport Office, Mumbai) (d) Superintendent, (Regional Passport Office, Mumbai)	The Union territory of Dadra and Nagar Haveli and Daman and the districts of Mumbai, Ratnagiri, Sindhudurg, Aurangabad and Beed of the State of Maharashtra. -do- -do- -do-
7.(B)	(a) Passport Officer, (Passport Office, Nagpur) (b) Assistant Passport Officer, (Office, Nagpur) (c) Public Relation Officer, (Passport Office, Nagpur) (d) Superintendent, (Passport Office, Nagpur)	The districts of Amravati, Akola, Bhandara, Buldhana, Chandrapur, Latur, Hingoli, Gadchiroli, Gondia, Jalna, Nagpur (Urban), Nagpur (Rural), Nanded, Osmanabad, Parbhani, Washin Waydha, Yavatmal of the State of Maharashtra and Bhilai Steel Plant. -do- -do- -do-]
2]8.(i)	(a) Passport Officer, Lucknow Office, Lucknow) (b) Assistant Passport Officer, (Office, Nagpur) (c) Public Relation Officer, (Passport Office, Nagpur) (d) Superintendent, (Passport Office, Nagpur)	The State of Uttar Pradesh (excluding the districts of Pilibhit, Shahjahanpur, Mainpuri, Agra, Mathura, Aligarh, Etah, Etah, Bulandshahr, Budauln, Bareilly, Rampur, Meerut, Ghazipur, Moradabad, Nainital, Bijnor, Muzaffarnagar, Saharanpur, Garhwal, Almora, Pithoragarh, Chamoli, Tehri-Carhwal, Dehradun and Uttar-kash).

1. Subs. by G.S.R. 576(E), dated 27th July, 2001, for Serial No. 7 (w.e.f. 2-8-2001). Earlier Serial No. 7 was substituted by G.S.R. 586(E), dated 21st June, 1991 (w.e.f. 16-9-1991).
2. Subs. by G.S.R. 494(E), dated 16th June, 1983, for Serial No. 8 (w.e.f. 17-6-1983).

(1)	(2)	(3)
	(b) Assistant Passport Officer, Lucknow (Passport Office, Lucknow).	-do-
	(c) Public Relations Officer, Lucknow (Passport Office, Lucknow).	-do-
	(d) Superintendent, Lucknow (Passport Office, Lucknow).	-do-
¹ [8 (ii) (a)	Passport Officer (Passport Office, Bareilly)	The districts of Bareilly, Budaun, Etah, Bijnor, Moradabad, Rampur, Pilibhit, Shahjahanpur, Mainpuri, Firozabad and Jyotiba Phule Nagar in the State of Uttar Pradesh.
	(b) Deputy Passport Officer (Passport Office, Bareilly)	-do-
	(c) Assistant Passport Officer (Passport Office, Bareilly)	-do-
	(d) Superintendent (Passport Office, Bareilly)	-do-
8 (ii) (a)	Passport Officer, (Passport Office, Dehradun)	All districts of the State of Uttaranchal.
	(b) Deputy Passport Officer (Passport Office, Dehradun)	-do-
	(c) Assistant Passport Officer (Passport Office, Dehradun)	-do-
	(d) Superintendent (Passport Office, Dehradun)	-do-
² [9. (a)	Passport Officer, (Passport Office, Hyderabad).	The districts of Adilabad, Nizamabad, Medak, Karimnagar, Warangal, Khammam, Ranga Reddy, Hyderabad, Ranga Mahabubnagar, Kurnool, Parkasani, Ananthapur, Krishna, Nalgonda, Cuddapha, Chittoor, Secunderabad in the State of Andhra Pradesh.
	(b) Assistant Passport Officer, (Passport Office, Hyderabad).	The districts of Adilabad, Nizamabad, Medak, Karimnagar, Warangal, Khammam, Ranga Reddy, Hyderabad, Kurnool, Mahabubnagar, Guntur, Krishna, Parkasani, Ananthapur, Nellore, Nalgonda, Cuddapha, Chittoor, Secunderabad in the State of Andhra Pradesh.
	(c) Public Relations Officer, (Passport Office, Hyderabad).	-do-

- Subs. by G.S.R. 850(E), dated 11th December, 2008, for Serial No. 8(ii) (w.e.f. 11-12-2008). Earlier Serial No. 8(ii) was substituted by G.S.R. 576(E), dated 27th July, 2001 (w.e.f. 2-8-2001).
- Subs. by G.S.R. 576(E), dated 27th July, 2001, for Serial No. 9 (w.e.f. 2-8-2001).

(1)	(2)	(3)
	(d) Superintendent, (Passport Office, Hyderabad).	-do-
10. (a)	Passport Officer, Bangalore (Passport Office, Bangalore).	The State of Karnataka.
	(b) Assistant Passport Officer, Bangalore (Passport Office, Bangalore).	-do-
	(c) Public Relations Officer, Bangalore (Passport Office, Bangalore).	-do-
	(d) Superintendent, Bangalore, (Passport Office, Bangalore).	-do-
11. (a)	Passport Officer, Jaipur, (Passport Office, Jaipur).	The State of Rajasthan.
	(b) Assistant Passport Officer, Jaipur (Passport Office, Jaipur).	-do-
	(c) Public Relations Officer, Jaipur (Passport Office, Jaipur).	-do-
	(d) Superintendent, Jaipur (Passport Office, Jaipur).	-do-
¹ [12. (a)	Passport Officer, (Passport Office, Bhopal).	All Districts of the State of the Madhya Pradesh.
	(b) Deputy Passport Officer, (Passport Office, Bhopal).	-do-
	(c) Assistant Passport Officer, (Passport Office, Bhopal).	-do-
	(d) Superintendent (Passport Office, Bhopal).	-do-
	(e) Passport Officer (Passport Office, Raipur).	All Districts of the State of Chhattisgarh.
	(f) Assistant Passport Officer (Passport Office, Raipur).	-do-
	(g) Superintendent (Passport Office, Raipur).	-do-
13. (a)	Passport Officer, Bhubaneswar (Passport Office, Bhubaneswar).	The State of Orissa.
	(b) Assistant Passport Officer, Bhubaneswar (Passport Office, Bhubaneswar).	-do-
	(c) Public Relations Officer, Bhubaneswar (Passport Office, Bhubaneswar).	The State of Orissa.
	(d) Superintendent, Bhubaneswar (Passport Office, Bhubaneswar).	-do-
² [14. (a)	Passport Officer, (Passport Office, Patna).	The States of Bihar and Jharkhand.

- Subs. by G.S.R. 43(E), dated 22nd January, 2008, for Serial No. 12 (w.e.f. 22-1-2008). Earlier Serial No. 12 was substituted by G.S.R. 576(E), dated 27th July, 2001 (w.e.f. 2-8-2001).
- Subs. by G.S.R. 576(E), dated 27th July, 2001, for Serial No. 14 (w.e.f. 2-8-2001).

(1)	(2)	(3)
	(b) Assistant Passport Officer, (Passport Office, Patna).	-do-
	(c) Public Relation Officer, (Passport Office, Patna).	-do-
	(d) Superintendent, (Passport Office, Patna).	-do-]
¹ [15.	(a) Regional Passport Officer, Guwahati, (Regional Passport Office, Guwahati).	The States of Arunachal Pradesh, Assam, Manipur, Mizoram, Meghalaya and Nagaland.
	(b) Assistant Passport Officer, Guwahati (Regional Passport Office, Guwahati).	-do-
	(c) Public Relations Officer, Guwahati (Regional Passport Office, Guwahati).	-do-
	(d) Superintendent, Guwahati (Regional Passport Office, Guwahati).	-do-]
² [16.	(a) Passport Officer, (Passport Office, Jammu).	The districts of Jammu, Poonch, Kathua, Doda, Rajouri, Udhampur in the State of Jammu and Kashmir.
	(b) Assistant Passport Officer, (Passport Office, Jammu).	-do-
	(c) Public Relation Officer, (Passport Office, Jammu).	-do-
	(d) Superintendent, (Passport Office, Jammu).	-do-]
17.	(a) Passport Officer, Panaji, (Passport Office, Panaji).	The State of Goa
	(b) Assistant Passport Officer, Panaji (Passport Office, Panaji).	-do-
	(c) Public Relations Officer, Panaji (Passport Office, Panaji).	-do-
	(d) Superintendent, Panaji (Passport Office, Panaji).	-do-

1. Subs. by G.S.R. 1155(E), dated 21st November, 1988, for Serial No. 15 (w.e.f. 8-12-1988).

2. Subs. by G.S.R. 576(E), dated 27th July, 2001, for Serial No. 16 (w.e.f. 2-8-2001). Earlier Serial No. 16 was substituted by G.S.R. 833(E), dated 2nd December, 1994 (w.e.f. 2-12-1994).

(1)	(2)	(3)
¹ [18.	(a) Passport Officer, (Passport Office, Jalandhar)	The districts of Jalandhar, Kapurthala, Nawanshahar, Hoshiarpur in the State of Punjab.
	(b) Deputy Passport Officer, (Passport Office, Jalandhar)	-do-
	(c) Assistant Passport Officer, (Passport Office, Jalandhar)	-do-
	(d) Superintendent, (Passport Office, Jalandhar)	-do-]
² [19.	(a) Passport Officer, (Passport Office, Ghaziabad)	The districts of Agra, Mathura, Aligarh, Bulandshahar Meerut, Muzaiffarnagar, Bagpat, Saharanpur, Ghaziabad, Hathras and Gautam Budh Nagar in the State of Uttar Pradesh.
	(b) Assistant Passport Officer, (Passport Office, Ghaziabad)	-do-
	(c) Public Relation Officer, (Passport Office, Ghaziabad)	-do-
	(d) Superintendent, (Passport Office, Ghaziabad)	-do-]
³ [20.	(a) Passport Officer, (Passport Office, Pune)	The districts of Pune, Satara, Sangli, Kolhapur, Ahmadnagar and Sholapur in the State of Maharashtra.
	(b) Assistant Passport Officer, (Passport Office, Pune)	-do-
	(c) Public Relation Officer, (Passport Office, Pune)	-do-
	(d) Superintendent, (Passport Office, Pune)	-do-]

1. Subs. by G.S.R. 850(E), dated 11th December, 2008, for Serial No. 18 (w.e.f. 11-12-2008). Earlier Serial No. 18 was substituted by G.S.R. 576(E), dated 27th July, 2001 (w.e.f. 2-8-2001).

2. Subs. by G.S.R. 576(E), dated 27th July, 2001, for Serial No. 19 (w.e.f. 2-8-2001).

3. Subs. by G.S.R. 576(E), dated 27th July, 2001, for Serial No. 20 (w.e.f. 2-8-2001). Earlier Serial No. 20 was substituted by G.S.R. 1155(E), dated 21st November, 1988 (w.e.f. 8-12-1988).

(1)	(2)	(3)
¹ [21. (a)	Passport Officer, (Passport Office, Thane)	The districts of Dhule, Jalgaon, Nasik, Navi Mumbai, Raigad, Thane, Nandurbar in the State of Maharashtra.
(b)	Public Relation Officer, (Passport Office, Thane)	-do-
(c)	Superintendent, (Passport Office, Thane)	-do-]
² [22. (a)	Passport Officer, (Passport Office, Srinagar)	The districts of Srinagar Anantnag, Baramulla, Budgam, Kargil, Kupwara, Laddakh and Pulwama in the State of Jammu & Kashmir.
(b)	Superintendent, (Passport Office, Srinagar)	-do-]
³ [23. (a)	Passport Officer, (Passport Office, Tiruchirappalli)	Tiruchirappalli, Karur Perambalur, Arivalur, Nagappattinam, Thanjavur, Thiruvavur & Pudukkottai
(b)	Deputy Passport Officer (Passport Office, Tiruchirappalli)	-do-
(c)	Assistant Passport Officer (Passport Office, Trichy)	-do-
(d)	Superintendent (Passport Office, Trichy)	-do-
(e)	Passport Officer, (Passport Office, Madurai)	Madurai, Theni, Sivagangai, Dindigul, Virudhunagar, Ramanthapuram, Thoothukudi, Tirunelveli & Kanyakumari
(f)	Deputy Passport Officer (Passport Office, Madurai)	-do-
(g)	Assistant Passport Officer (Passport Office, Madurai)	-do-
(h)	Superintendent (Passport Office, Madurai)	-do-]
⁴ [24. (a)	Passport Officer, (Passport Office, Visakhapatnam)	The districts of Godawari (West), Godawari (East), Srikakulam, Vizianagaram and Visakhapatnam in the State of Andhra Pradesh.
(b)	Public Relation Officer, (Passport Office, Visakhapatnam)	-do-
(c)	Superintendent, (Passport Office, Visakhapatnam)	-do-]

1. Subs. by G.S.R. 576(E), dated 27th July, 2001, for Serial No. 21 (w.e.f. 2-8-2001). Earlier Serial No. 21 was added by G.S.R. 485(E), dated 1st July, 1993 (w.e.f. 1-7-1993).

2. Subs. by G.S.R. 103(E), dated 22nd February, 2008, for serial No. 23 (w.r.e.f. 17-12-2007). Earlier it was substituted by G.S.R. 576(E), dated 27th July, 2001 (w.e.f. 2-8-2001).

(1)	(2)	(3)
¹ [25. (a)	Director General, India Taipei Association, Taiwan	Taiwan
(b)	Deputy Director General, India Taipei Association, Taiwan	-do-
(c)	Assistant Director, India Taipei Association, Taiwan	-do-]
¹ [26. (a)	Chief Secretary, Andaman Nicobar Administration, Port Blair.	Union territory of Andaman and Nicobar Islands.
(b)	Secretary (Passport), Andaman Nicobar Administration, Port Blair.	-do-
(c)	Deputy Commissioner, Andaman District, Port Blair.	-do-
(d)	Assistant Secretary (Passports), Andaman Nicobar Administration, Port Blair.	-do-]
¹ [27.	Consular Officer or Consular Agents in the Indian Mission or Posts outside India.	The area within the consular jurisdiction of the Indian Mission or Posts concerned.]
¹ [28. (a)	Joint Secretary (Consular Passport Visa) and Chief Passport Officer	Whole of India in respect of diplomatic, official and ordinary passports.
(b)	Director, Passport and Visa Division, Ministry of External Affairs, New Delhi.	-do-
(c)	Deputy Secretary, Passport and Visa Division, Ministry of External Affairs, New Delhi.	-do-
(d)	Under Secretary, Passport and Visa Division, Ministry of External Affairs, New Delhi.	-do-
(e)	Section Officer, Passport and Visa Division, Ministry of External Affairs, New Delhi	-do-]
¹ [29.	Any other Officer as may be designated by the Central Government from time to time.]	Area to be specified by the Central Government from time to time.]

1. Subs. by G.S.R. 576(E), dated 27th July, 2001, for Serial No. 21 (w.e.f. 2-8-2001).

SCHEDULE II

(See rule 4)

PART I

PASSPORTS

Classes of Passport	Classes of persons to whom issuable
1	2
1. Ordinary Passport	Citizens of India.
2. India-Bangladesh Passports	-do-
3. India-Sri Lanka Passports	-do-
4. India-Sri Lanka Passports (for Repatriates—1964 and 1974 agreements)	Persons who have been granted Indian citizenship under the India-Sri Lanka Repatriation Agreements of 1964 and 1974.
5. Official Passports	<p>(i) Government officials and non-officials when their passages are paid by the Government and the members of their families, when such members of their families also proceed out of India at the expenses of Government.</p> <p>(ii) Officials of Reserve Bank of India, the State Bank of India, nationalised banks, Corporations, Undertakings and other institutions owned or controlled by the State and officials of autonomous bodies set up by the State, proceeding out of India on the official work of their respective organisations; and the members of their families when such members also proceed out of India at the expense of such organisations.</p> <p>(iii) Permanent Government officials on deputation to foreign Governments, the United Nations Organisations and its specialised Agencies and other inter-Governmental Organisations/agencies recognised by the Government of India, and the members of their families, provided such deputation is arranged through the Government of India.</p> <p>(iv) Government officials sponsored by the Ministries in the Government of India and their departments, for attending international conferences, seminars and meetings or for undergoing training either independently or under any of the scholarship schemes for the time being in force, provided the deputation out of India is treated as duty and the Government official is allowed to draw</p>

2

his duty pay and allowances in India and the members of the family of such official deputed out of India for a period not less than twelve months, when travelling with or joining such official at his post abroad.

- (v) Fully dependent mother/father/mother-in-law/brother/sister of an officer belonging to Indian Foreign Service (Branch B) and fully dependent mother-in-law/brother/sister of an officer belonging to Indian Foreign Service (Branch A), when proceeding out of India, with the permission of the Government, to reside with the officer at the place of his posting abroad.

- (vi) Any other person who, in the opinion of the Government of India should have an official passport because of the nature of his foreign mission.

Note.—The following persons shall not be entitled to the issue of official passports, namely—

- (a) persons sponsored by a Government department for attending international conferences, seminars and meetings or for studies of training outside India either independently or under any of the scholarship schemes for the time being in force when such persons go on study leave or leave of any other kind,
- (b) persons proceeding outside India at their own expense on commercial or other purposes although a department of the Government certifies that such purpose would be to Government interest.

- (i) Officers of the Indian Foreign Service (Branch A) when proceeding out of India on official business.

(b) Such Officers of the Indian Foreign Service (Branch B) and other officers of the Ministry of External Affairs or other Ministries of Department of the Government of India who are proceeding abroad on official business or are posted to Indian Missions or Posts abroad, as may be determined by the Foreign Service Board in the Ministry of External Affairs.

6. Diplomatic Passports

1

2

¹(c) [wife or official hostess or husband, as the case may be, dependent son, dependent unmarried, separated, divorced or widowed daughter, dependent parents of an officer referred to in (a) and (b) above when travelling with or joining such officer at his post abroad, on condition of dependent status being recognised by the Ministry.]

Note.—Any member of the family referred to in (c) above of an officer who is actually holding a diplomatic assignment abroad may also be issued a diplomatic passport for staying in a country other than the country of accreditation of the officer for study or other purposes approved by the Central Government; a diplomatic passport issued in such a case shall, however, be surrendered when the diplomatic assignment of the officer is terminated or when the officer is posted back to the headquarters.

(ii) (a) A person having or having been granted a diplomatic status either because of the nature of his foreign mission or because of the position he holds, as may be determined by the Central Government.

(b) Wife or husband, as the case may be, of a person referred to in (a) above when accompanying the said person.

PART II

TRAVEL DOCUMENTS

Classes of Travel Documents	Classes of persons to whom issuable
1	2
1. Emergency Certificate	(i) Citizens of India abroad who have been refused passport, or whose passports have been impounded or revoked, or who have to be repatriated to India. (ii) Persons who have produced <i>prima facie</i> evidence of Indian citizenship but the evidence is considered insufficient to justify the issue of a passport without further verification.

1. Subs. by G.S.R. 477(E), dated 16th June, 1993 (w.e.f. 24-6-1993).

1

2

(iii) Citizens of India abroad whose passports have been lost, stolen or damaged, and to whom new passports cannot be issued without verification of their passport particulars by reference to the offices of Issue.

(iv) Persons of Indian origin abroad when allowed to come to India for settling down here.

2. Certificate of Identity

(i) Stateless persons residing in India, foreigners, whose country is not represented in India, or whose national status is in doubt.

(ii) Persons exempted under section 22 from the operation of the provisions of clause (a) of sub-section (2) of section 6.

(i) Persons holding Haj allotment number for the relevant year from the Haj Committee.

Provided that name and allotment number match with the list given by the Haj Committee to the Passport Office.]

1[3. Passport for Haj pilgrims

SCHEDULE III

(See rules 5, 6 and 11)

PART I

(See rule 5)

Regional Code & Number.....

Price: Rs. 5 (India)

Rs. 10 (Outside India)

GOVERNMENT OF INDIA
REGIONAL PASSPORT OFFICE

ACKNOWLEDGEMENT**

Received your application form along with.....fee and other documents mentioned below. Your reference is No.*.....dated..... Please bring this card or quote this reference for enquiries, which should be made only after 40 days.

Signature
for Regional Passport Office

Details of documents received:

1. Postal Orders/Bank Drafts/Special Passport Stamp
Amount Number Date

2. No. of photographs ()
3. Old Passport, if issued.

* For official use.

** Only for applications received by post or through TAs.

1. Ins. by G.S.R. 390(E), dated 4th June, 2009 (w.e.f. 5-6-2009).

(For Official Use Only)

Checked by Name	Signature/date
Granted by Name	Signature/date
Scanned by Name	Signature/date
Dispatched by Name	Signature/date

PERSONAL PARTICULARS FORM
(In Duplicate)

Paste your cross
signed recent colour
photograph
Size: 3.5 X 3.5 cm

- Full name (Initials not allowed).....
- Sex: Male/Female.....
- (a) Has the applicant ever changed name?
(b) If, yes, previous name:.....
- Date of Birth:..... 5. Place of Birth.....
- Profession.....
- (a) Father..... (Surname) (Name)
(b) Mother..... (Surname) (Name)
(c) Husband/wife..... (Surname) (Name)
- (a) Permanent Address & Tel. No. alongwith Police Station
.....
.....
(b) Present Residential Address & Tel. No. alongwith Police Station and
residing since
.....
.....
- If you have not been resident at the address given at COLUMN 8(b)
continuously for the last one year, please furnish other address(es) with
duration(s) resided (Please furnish an additional set of PP Forms for each
address with Police Station.
From.....To..... From.....To.....
.....
.....
.....

- References: Names and Address of two responsible persons in the applicant's locality who can vouch for the applicant.

(1) Name, Address & Tel. No.

.....

.....

.....

(2) Name, Address & Tel. No.

.....

.....

.....

11. Citizenship of India by: Birth Descent Registration Naturalisation

12. Furnish details of previous passport/travel document, if any:

(i) Passport/Travel document No.....

(ii) Date & Place of issue.....

For Police Use Only

.....
Signature or Thumb Impression
of the applicant

(Left Hand Thumb Impression if male and
Right Hand Thumb Impression if female)

Recommended Passport: YES/NO

PASSPORT INFORMATION BOOKLET
(APPLICANT MAY KEEP THIS BOOKLET FOR FUTURE HANDY REFERENCE)

CAUTION

A passport is issued under the Passports Act, 1967. It is an offence knowingly to furnish false information OR suppress information, which attracts penal and other action under relevant sections of the said Act. Passport is a valuable document. All holders are required to take due care that it does not get damaged, mutilated or lost. Passports should not be sent out to any country by post.

Loss of passport should be immediately reported to the nearest Police Station and to the nearest Passport Office/Indian Mission. Passport holder shall be responsible for misuse of passport, due to non-intimation of loss to the concerned Passport Office/Indian Mission. Passport is a Government property and should be surrendered when demanded in writing by any Passport Issuing Authority.

I. ISSUE OF FRESH PASSPORT BOOKLET
SECTION I - GENERAL INFORMATION

1. HOW TO APPLY

An application for a passport may be submitted personally OR through a representative carrying an authority letter (specimen given below). All original documents should be shown and self attested copies attached.

To, The Passport Officer Passport Office...	
Sir,	
I hereby authorise Sh./Smt./Kum.....son/wife/daughter of.....resident of.....whose signature is attested below to submit application on my behalf and to collect my old passport and other original documents on my behalf.	Yours faithfully,
Signature of authorised representative	(Signature with name of the applicant)
Attested	
Signature of the applicant	
NB: It is essential for the representative to have some identity document bearing his/her photograph. Copy of identity document to be attached with authority letter.	

2. FEE AND MODE OF PAYMENT: The following all-inclusive fee is to be paid along with the application form, either by Bank Draft in favour of the Passport Officer concerned or in cash. In case of DD, full name of applicant and application number to be written on the reverse of the draft. Details of payment of fee may be mentioned in the relevant boxes. If the fee is paid by Demand Draft, then the Bank Code of Issuing Bank, the Demand Draft Number and date of issue of the Demand Draft should be mentioned.

1.	Fresh Passport (36 pages of 10 years validity (including minors between 15 to 18 years of age, who wish to get a 10 years full validity passport)	Rs. 1,000
2.	Fresh Passport (60 pages) of 10 years validity	Rs. 1,500
3.	Fresh Passport for Minors (below 18 years of Age) of 5 years validity or till the minor attains the age of 18 which ever is earlier.	Rs. 600
4.	Duplicate Passport (36 pages) in lieu of lost, damaged or stolen passport	Rs. 2500
5.	Duplicate Passport (60 pages) in lieu of lost, damaged or stolen passport	Rs. 3000

In case of re-issue, the fee leviable will be the same, depending on the age of the applicant.

3. DELIVERY OF PASSPORTS:

Passport may be delivered only to the applicant or dispatched by speed post to the address given in the application form.

SECTION II - INSTRUCTIONS AND GUIDELINES FOR FILLING UP THE APPLICATION FORM

The Passport Application Form is Machine Readable. It will be scanned on computer. Therefore, the following instructions may be followed strictly:

<ul style="list-style-type: none"> Use capital letters only. Particulars given in the form will be printed in the passport. Therefore, please be careful in filling up the form and avoid any mistakes. 	<ul style="list-style-type: none"> Write clearly within the box without touching the boundaries.
<ul style="list-style-type: none"> Use black/blue ball pen only. 	<ul style="list-style-type: none"> Adjust the information to fit within the number of given boxes.
<ul style="list-style-type: none"> Do not fill the form with pencils or ink-pen. While filling up the boxes, kindly leave one box blank after each completed word. 	<ul style="list-style-type: none"> Do not write anything outside the box. Avoid over-writing. Incomplete application will not be accepted.
<p>Important Note.—All original documents are to be shown at the time of submission of the passport application form. With the Original Passport Application Form, self-attested copies of all required documents need to be attached. Illiterate applicants should put only thumb impression in the box meant for thumb impression/signature. In case an applicant has stayed at more than one address during the last one year, he/she should furnish two additional photocopies of the PP form for each additional place of stay.</p>	

SECTION III - COLUMN-WISE GUIDELINES FOR FILLING UP THE APPLICATION FORM

At the beginning of the Application Form there are boxes for affixing photograph, appending signature and thumb impression and giving details of payment of the fee.

PHOTOGRAPHS: Recent passport size photographs (Three) in colour showing frontal view of full face are required. One photograph is to be pasted on form and two on the PP forms, which is to be filled in duplicate. **Black and white photograph, photograph with coloured or dark glasses or in uniform, Polaroid prints or computer prints will not be accepted.** In the box meant for affixing the photograph, please paste your recent and identical colour photograph of size 3.5 cm x 3.5 cm. **Photograph should have a white or a light coloured background.** Photograph should fit exactly in the box and in any case not smaller than the box provided in the form. For Jumbo booklets, two additional photographs are required.

Signature/thumb impression should be strictly within the box without touching the boundaries. Thumb impression should be of left hand in case of males and right hand in case of females.

COLUMN 1—NAME (WITH DOCUMENTARY PROOF)

The name up to 75 character long name can be given and filled in the Form. The full name as it should appear in the Passport should be furnished here. For example,

Name: KARUR VAIKUNTA SUBRAMANIYAN RAMANATHAN PILLAI -

Write the Surname as "PILLAI" in the boxes provided for Surname and put a comma and write "VAIKUNTA SUBRAMANIYAN RAMANATHAN" as the Given name in the rest of the columns. In case you do not have a surname, just write the given name. *No initials should be written and they should be expanded.*

COLUMN 2—If you have ever changed your name, please indicate the previous name or full. This will be applicable to a person who has even marginally changed the name or a lady who has changed her name/surname subsequent to the marriage. If there is no change in name at all, kindly write: Not applicable.

COLUMN 3—In case of Male/Female option, please write M or F as applicable in the box space provided.

COLUMN 4—DATE OF BIRTH: The date of birth is filled as dd/mm/yyyy and in words as shown in the birth certificate issued by Municipal/Government Authorities. Proof of date of birth is to be attached. Please see section IV concerning documents to be attached.

COLUMN 5—PLACE & COUNTRY OF BIRTH: In case born in India, please mention name of place like Village/Town, District, State and if born outside India, mention name of place and country. If born before partition of India, at a place, which now falls within Pakistan or Bangladesh, please fill up the name of place followed by Country as "Undivided India". Undivided India means India as defined in the Government of India Act, 1935, as originally enacted.

COLUMNS 6, 7 AND 8—The name of Father, Mother and Spouse is to be entered in the respective columns. Surnames, if any, in these columns should be mentioned after the given names. In case the applicant is unmarried, column 8 asking for information on name of spouse may be filled as NOT APPLICABLE.

COLUMNS 9 AND 10—Please give relevant details alongwith date since residing at the given address, telephone No. with area code is required for the purpose of contacting in case additional information or document is required by Passport Office. Mobile phone No. would be useful for sending SMS message to the applicant for the same purpose. If the period of residence given in Column 9 is less than one year on the date of application, please furnish the other addresses with duration of residence. Students staying away from their parents have the option of applying from place of study. In such cases, for proof of address a *bona fide* certificate from the Principal/Director/Registrar/Dean of the educational institution is must.

COLUMN 11—Please give details of previous passport(s) held. Either the Previous Passport Number or the file number may be mentioned here alongwith date of issue and place of issue in the relevant boxes. In case previously applied for passport but the same was not received/issued, then the details such as file number, date applied and place where applied should be furnished here. Suppression of facts may attract penal provisions as per the section 12 of the Passports Act, 1967.

COLUMN 11(a)—If ever travelled on Emergency Certificate (EC) or ever deported or repatriated to India at Government cost, then the details of EC number, date and place of issue alongwith original seizure memorandum, place and country from where deported or repatriated should be furnished in this column. Even if the EC details are not available readily, at least the place and country from where deported or repatriated should invariably be given here. All such applicants should furnish details of circumstances of their repatriation/loss of passport in a form of notarized affidavit.

COLUMN 12—Details like educational qualifications, visible distinguishing mark and the height in centimeters are to be provided against the respective item.

COLUMN 13—The relevant entry as 'Yes' or 'No' should be marked in the box space provided. If working in Central/State Government, Public Sector Undertakings. Statutory Bodies, a "Identity Certificate" from the concerned office should be attached as per 'Annexure B'.

COLUMN 14—Regarding citizenship, whether it is by birth, descent, registration or naturalization is to be recorded in the box space provided by either B/D/R/N as the case may be. If held any other citizenship before Indian citizenship, then please furnish the previous citizenship in the blank space provided.

COLUMN 15—Please write Y or N as applicable. It may be mentioned here that Indian citizens categorized as ECR before leaving the country are required to get a

clearance from the Protector General of Emigrants. Applicants in ECR category will have the ECR Stamp put on their passports. In case the passport booklet does not have ECR stamp, the applicant would be deemed to have been granted ECR status. No ECR stamp will be affixed on the passport. An applicant would be eligible for ECR status if he/she falls in any one of the following categories and provides documentary proof thereof:

PERSONS ON WHOSE PASSPORTS ECR STAMPS WOULD NOT BE AFFIXED:

- (i) All holders of Diplomatic/Official Passports.
- (b) All GAZETTED Government servants.
- (c) All Income-Tax payers (including Agricultural Income-Tax Payees) in their individual capacity. Proof of assessment of income-tax and actual payment of income-tax for last one year or copy of PAN card to be insisted upon, and not merely payment of advance tax. However, in most cases as an assessment order is not issued separately by the income-tax department, income-tax returns which are stamped by income tax authorities can be accepted.
- (d) All professional Degree holders, such as Doctors holding MBBS degree or equivalent degree in AYURVED or HOMEOPATHY, accredited Journalists, Engineers, Chartered Accountants, Cost Accountants, Lecturers, Teachers, Scientists, Advocates, etc.
- (e) Spouses and dependent children of category of persons listed from (b) to (d).
- (f) All persons having educational qualifications of matriculation and above.
- (g) Seamen who are in possession of CDC or Sea Cadets, Deck Cadets:
 - (i) who have passed final examination of three years B.Sc. Nautical Sciences Courses at T.S. CHANAKYA, MUMBAI; and
 - (ii) who have undergone three months Pre-Sea training at any of the Government approved Training Institutes such as T.S. CHANAKYA, T.S. REHMAN, T.S. JAWAHAR, MTI (SCI) and NIPM, CHENNAI, after production of identity cards issued by the Shipping Master, MUMBAI/KOLKATA/CHENNAI.
- (h) Persons holding Permanent Immigration Visa, such as the visas of UK, USA and Australia.
- (i) Persons possessing two years diploma from any institute recognised by the National Council for Vocational Training (NCVT) or State Council of Vocational Training (SCVT) or persons holding three years' diploma/equivalent degree from institutions like Polytechnics recognised by Central/State Governments.
- (j) Nurses possessing qualifications recognised under the Indian Nursing Council Act, 1947.

(k) All persons above the age of 50 years.

(l) All persons who have been staying abroad for more than three years (the period of three years could be either in one stretch or broken) and their spouses.

(m) All children upto the age of 18 years of age. (At the time of re-issue at the age of 18 years, ECR stamping shall be done, if applicable).

(II) Emigration clearance is required for visiting United Arab Emirates (UAE), The Kingdom of Saudi Arabia (KSA), Qatar, Oman, Kuwait, Bahrain, Malaysia, Libya, Jordan Yemen, Sudan, Brunei, Afghanistan, Indonesia, Syria, Lebanon, Thailand and Iraq (emigration banned).

The eligible category should be mentioned in the blank space provided under this column and supportive documents should be attached with the application. It may be mentioned that passport holders with 'ECR' endorsement travelling to countries mentioned above for any non-employment purposes are required to have the 'ECR' endorsement suspended each time from the offices of the Protector of Emigrants (POE) or designated Passport Offices, before they undertake the travel. For employment purposes, such passport holders require emigration clearance from the offices of POEs. Otherwise, they will be stopped from travelling at the port of exit. Applicants are, therefore, advised to apply for ECNR, if they are eligible, to ensure hassle-free travel abroad. It may be noted that the passport booklet will only have ECR category stamped and in case the passport booklet does not have ECR stamp, the applicant would be deemed to have been granted ECNR status.

COLUMN 16—In this column, while applying for the first time for the minor children who are less than 18 years of age, the details of valid passports held by **BOTH OR EITHER** parents should be furnished in the relevant column. In such cases, passport to their minor child will be issued without any police verification. Further, in the cases where the parents do not hold valid passports, applications for such minors can be made on the basis of three documents of parents details of which are given in para C(B) of section IV of the Passport Information Booklet alongwith Standard Affidavit Annexure I. In all such cases, passport to their minor child will be issued on post-police verification basis. A declaration on plain paper as given at Annexure H is needed to be filled up in each case. In case the minor child who is between 15 and 18 years of age wishes to obtain a full validity passport for 10 years, the same can be issued only on submission of Standard Affidavit as in Annexure "1" and any three of the 14 documents as mentioned in para C(B) of section IV of Passport Information Booklet by the parents and on payment of fee equivalent to the normal passport fee i.e. Rs. 1000 for a 36 pages passport, as applicable for an adult. Otherwise the validity of the passport is restricted to five years or attaining the age of 18, whichever is earlier. In case of single parent and children born out of wedlock or in case of parents who are judicially separated, a sworn affidavit before a Magistrate, stating the facts of the case alongwith documentary proof to be submitted as per Annexure "C". In the **NORMAL COURSE** the signature/consent of both parents is required for issue of a passport to the minor (Annexure "H"). However, if in case the applicant parent is not in a position to get the consent of the other parent, **FOR WHATEVER REASON**, the parent applying for the passport of the minor may sign the form and submit a sworn affidavit as per Annexure "G" stating the facts and circumstances of the case alongwith the application. The affidavit should also state that in case of a court case he/she would be responsible and not the passport office. In such cases, where only one parent is applying, the physical appearance of the child may be requested to ensure the applicant parent has the actual custody of the child.

COLUMN 17—The applicant should give correct information. Suppression of any fact may lead to fine up to Rs. 5000 per offence and other penal provisions as applicable under the provisions of the Passports Act, 1967 as amended from time to time.

COLUMN 18—In this column, the name and address alongwith Mobile or Telephone number/e-mail of person to be intimated in the event of death or accident is to be furnished.

COLUMN 19—This column is a self declaration made by the applicant about owing allegiance to the sovereignty, unity and integrity of India, not voluntarily acquiring the citizenship or travel document from any other country etc. Also this column contains declaration in furnishing true information in the application form and aware that it is an offence under the Passports Act, 1967 for any wrong information or suppression of any material information in getting the passport. The applicant also declares that he has no

other passport or travel document. Under the space provided, the signature or Thumb Impression (left hand thumb impression for male and right hand thumb impression for female) should be furnished alongwith date and place of application.

COLUMN 20—Photocopies of all documents that are attached as enclosures alongwith the application form should be listed in the blank spaces provided and each document self attested by the applicant.

SECTION IV - DOCUMENTS TO BE ATTACHED WITH THE APPLICATION

(In case the applicant is submitting the application himself/herself, self attested copies of all documents are required to be attached with the application form. Original documents should, however, also be produced for verification and are returned. In case the application is not being submitted by the applicant himself, he can authorise any member of his family to do so with on authority letter. In case of applications sent by post, the copies of original documents are to be attested by a GAZETTED Officer or Notary public.

(A) PASSPORTS

(1) While applying for a fresh passport attach two copies of the following documents:

(a) Proof of address (attach one of the following):

Applicant's ration card, certificate from Employer of reputed companies on letter head, water/telephone/Gas Connection bill/electricity bill/statement of running bank account/Income Tax Assessment Order/Election Commission ID card, Spouse's passport copy, parent's passport copy in case of minors. In addition to above, applicant may submit any of the 14 documents given in Section IV, para C(B)(a) of the Passport Information Booklet as admissible proof of resident, if such documents have residential address similar to the one given in the Passport Application form under present address. (NOTE: If any applicant submits only ration card as proof of address, it should be accompanied by one more proof of address out of the above categories).

(b) Proof of Date of Birth (attach one of the following):

Birth certificate issued by a Municipal Authority or district office of the Registrar of Births & Deaths;
Date of birth certificate from the school last attended by the applicant or any other recognised educational institution; or an Affidavit sworn before a Magistrate/Notary stating date/place of birth as per the specimen in ANNEXURE 'A' by illiterate or semi-illiterate applicants.
N.B.: In the case of applicants, born on or after 26-01-89, only Birth Certificate issued by the Municipal Authority or the Office of the Registrar of Births & Deaths is acceptable.

(c) Citizenship document if applicant is a citizen of India by Registration or Naturalisation.

(d) Government/Public Sector/Statutory body employees should submit "Identity Certificate" in original (ANNEXURE B) alongwith Standard Affidavit Annexure I.

(e) If the applicant is eligible for "ECNR", attach attested copy of supporting document (see COLUMN 15 of the INSTRUCTIONS AND GUIDELINES FOR FILLING UP THE APPLICATION FORM).

(f) If the applicant was repatriated at Government cost, enclose documents to show that the expenditure, if any, incurred by the Government of India on his/her repatriation has been fully refunded to the Government of India, Ministry of External Affairs.

(g) If the applicant was ever deported to India, give details of Emergency Certificate/Passport.

(2) When applying for reissue of a passport after 10 years, attach:

- (a) Old passport in original with self-attested photocopy of its first four and last four pages, including ECR/ECNR page.
- (b) Document mentioned at (1)(d), if applicable.
- (c) Document mentioned at (1)(e), if the old passport did not have ECNR stamp or it was issued when the applicant was a minor.
- (d) If there is any change in address, document mentioned at 1(a).
- (e) If the old passport does not contain spouse name, copy of marriage certificate issued by the Registrar of Marriage or affidavit as per specimen in Annexure 'D'.

(3) When applying for a minor's passport attach:

- (a) A Declaration from the parents/single parent/applicant parent/legal guardians, as the case may be, affirming the particulars furnished in the application about the minor child as per Annexure H (for all minor applicants). Annexure "C" (Single parents who are separated but not formally divorced/Single parent of the child born out of wedlock). Annexure "G" (when passport is being applied for by single parent or legal guardian). Annexure "I" (when a minor between 15-18 years of age applies for a full validity 10 year passport OR in case either parents who do not hold valid Indian passport while applying passport for their minor child), as the case may be. Single Parents applying for the passport for their child should fill up Annexure "C" and or Annexure "G", as the case may be.
- (b) Attested photocopy of passport, if any, of both parents, if applicable.
- (c) Original passports of parents should be presented for verification of particulars.
- (d) If one parent is, resident abroad, a sworn affidavit by the parent resident abroad attested by the Indian Mission alongwith affidavit from parent residing in India as well be submitted.

N.B.—Ordinarily the consent of both parents is required for issue of a passport to a minor (below 18 years of age). However if it is absolutely not possible due to any reason, the parent applying for a passport for his/her minor child may submit an affidavit (Annexure G) and based on the same passport application will be processed. In case where the parent(s) is/are resident outside India, such consent from the parent(s), in the form of a sworn affidavit, duly attested by the Indian Mission abroad, is acceptable. In the cases where the minor children who are less than 18 years of age, the details of valid passports held by **BOTH OR EITHER** parents should be furnished. In such cases, passports to their minor child will be issued without any police verification basis. Further, in this cases where the parents do not hold valid passports, applications for such minors can be made on the basis of three documents of parents details of which are given in para C(B) of section IV of the Passport Information Booklet alongwith Standard Affidavit Annexure I. In all such cases, passport to their minor child will be issued on post-police verification basis. Children of all age must apply for separate passports. However, those below 15 years will be given 5 years validity passport or passport till 18 years of age. In case the minor child who is between 15 and 18 years of age wishes to obtain a full validity passport for 10 years, the same can be issued only on post-police verification basis on submission of Standard Affidavit as in Annexure "I" and three of the 14 document as

mentioned in para C(B) of section IV of Passport Information Booklet by the parents and on payment of fee equivalent to the normal passport fee *i.e.* Rs. 1000 for a 36 pages passport, as applicable for an adult. In the case of single parents or of parents who are separated but not formally divorced, an affidavit at Annexure C' is to be submitted.

For Adopted Children:

In case of Adopted Children the following documents are to be furnished:

- (i) Valid adoption deed registered as per Indian laws.
- (ii) In the case of Christians, Muslims and Parsis, a court order granting guardianship and allowing the child to be taken out of the Country.
- (iii) Copy of the guarantee executed before the Court concerned.

(B) CHANGE OF NAME

I. Following marriage, remarriage or divorce:

- (a) A woman applying for change of name/surname in existing passport due to marriage must furnish:
 - (i) Photocopy of the Husband's passport, if any, and
 - (ii) An attested copy of marriage certificate issued by Registrar of Marriage OR an affidavit from the husband and wife alongwith a joint photograph, (Specimen at Annexure D).
- (b) Divorcees applying for change of name OR for deletion of spouse's name in existing passport must furnish:
 - (i) Certified copy of Divorce decree.
 - (ii) Deed poll/sworn affidavit (ANNEXURE 'E')
- (c) Re-married applicants applying for change of name/spouse's name must furnish:
 - (i) Divorce deed/death certificate as the case may be in respect of first spouse, and
 - (ii) Document as at (a) above relating to second marriage.

II. In other circumstances for change of name, the applicant (both male and female) should furnish:

- (i) Deed poll/sworn affidavit (ANNEXURE 'E');
- (ii) Paper cuttings of two leading daily newspapers (one daily newspaper should be of the area of applicant's permanent and present address or nearby area).

(C) OUT OF TURN ISSUE OF PASSPORT UNDER TATKAAL SCHEME

(A) If an applicant desires to obtain his passport under the Tatkaal Scheme, a verification certificate as per the specimen at ANNEXURE 'F' and standard affidavit as Annexure "I" should be submitted alongwith the TATKAAL fee. The Passport Issuing Authority shall retain the right to verify in writing the authenticity of the Verification Certificate from the official who has issued it. All applicants seeking a passport out of turn under the TATKAAL Scheme are advised to submit their application, documentation and fee as specified under. No proof of urgency is required for Out-of-Turn issue of passport. Post Police Verification shall be done in all cases of issue of passport under Tatkaal Scheme.

(B) The applicant also has the option to obtain a passport under Tatkaal Scheme on submission of three documents from the Fourteen documents as mentioned below, provided one of the three documents is a photo identity document and atleast one of the

three is amongst the documents indicated at (a) to (i) and standard affidavit duly attested by a Notary as at Annexure 'I'. All applicants seeking a passport out of turn under the TATKAAL Scheme are advised to submit their application, documentation and fee as specified below.

Proof of Identity and Nationality (please attach three documents from the following fourteen documents, provided one of three documents is a photo identity document and at least one of the three is amongst the documents indicated at (a) to (i) below and alongwith standard affidavit as given in Annexure 'I' on non-judicial stamp paper to be attested by public notary):

(a) Electors Photo Identity Card (EPIC); (b) Service Identity Card issued by State/Central Government, Public Sector Undertakings, local bodies or Public Limited Companies; (c) SC/ST/OBC Certificates; (d) Freedom Fighter Identity Cards; (e) Arms Licenses; (f) Property Documents such as Pattas, Registered Deeds etc.; (g) Rations Cards; (h) Pension Documents such as ex-servicemen's Pension Book/Pension Payment order, ex-servicemen's Widow/Dependent Certificates, Old Age Pension Order, Widow Pension Order; (i) Railway Identity Cards; (j) Income-Tax Identity (PAN) Cards; (k) Bank/Kisan/Post Office Passbooks; (l) Student Identity Cards issued by Recognised Educational Institutions; (m) Driving Licenses; and (n) Birth Certificates issued under the RBD Act.

(All above documents to be produced in original alongwith self-attested copies)

The TATKAAL fee is in addition to the applicable passport fee and payable either in cash or DD in favor of Passport Officer concerned. The additional fee for out of turn TATKAAL passport would be as follows:

Fresh Passport

1. Within 1-7 days of the date of Application	Rupees 1,500 plus the passport fee as applicable
2. Within 8-14 days of the date of Application	Rupees 1,000 plus the passport fee as applicable

Duplicate Passport

1. Within 1-7 days of the date of Application	Rupees 2,500 plus the duplicate passport fee as applicable
2. Within 8-14 days of the date of Application	Rupees 1,500 plus the passport fee as applicable

Re-issue cases after expiry of 10 years validity

1. Within 3 working days of the date of application	Rupees 1,500 plus the passport fee as applicable
---	--

(D) For issue of passports to owner, partners and directors of Companies which are members of CII, FICCI & ASSOCHAM. The applicants have to submit Verification Certificate as at Annexure 'I' alongwith Standard Affidavit at Annexure 'I'.

(E) In case an applicant is in possession of a Verification Certificate (VC) and or three (3) documents as mentioned in para C(B) (a) of section IV, but does not wish to pay the additional fees as required under Tatkaal. In such a case, the applicants will be issued passport on post-police verification basis in the normal course.

(F) CASES OF LOST/DAMAGED PASSPORTS: The applicant has to fill the passport application form and submit the same alongwith following deeds:

- (i) FIR in original
- (ii) First and last four pages of old passport.
- (iii) If there is any change in address, proof of address.

SECTION V - SPECIMEN OF AFFIDAVITS/DECLARATIONS ANNEXURE 'A'

SPECIMEN AFFIDAVIT TO BE SUBMITTED BY ILLITERATE APPLICANTS AS PROOF OF DATE OF BIRTH IN CASE NO OTHER DOCUMENT MENTIONED AT PARA A(b) OF SECTION IV IS AVAILABLE

(To be executed on non-judicial stamp paper)

I, S/o W/o D/o presently residing at hereby state as follows:

I was born on at situated in the District in the State of I have no documentary proof in support of my place and date of birth. I do not possess any educational qualification and I am an illiterate person. I take oath and solemnly declare/affirm that the particulars furnished by me above are correct and that I have not concealed or misrepresented any facts.

Place
Date

Verified on this day of of the year that the contents of my above affidavit are true and correct to the best of my knowledge and belief and nothing in material has been concealed therefrom.

The contents of the affidavit has been read out to me.

Deponent
Attested

.....
Signature and official seal of attesting authority
In case of notary, notarial stamp would be required

ANNEXURE 'B'

ALL CENTRAL GOVERNMENT EMPLOYEES STATE GOVERNMENT EMPLOYEES, EMPLOYEES OF STATUTORY BODIES AND PUBLIC SECTOR UNDERTAKINGS AND DEPENDANT FAMILY MEMBERS (SPOUSE AND DEPENDANT CHILDRENS) ARE REQUIRED TO PRODUCE A IDENTITY CERTIFICATE (STRIKE OUT PORTION NOT APPLICABLE)

(To be given in Duplicate on Original Stationery)

Certified that SHRI/SHRIMATI/KUM. Son/Wife of Shri. of is a temporary/permanent employee of this (office address) from (date) and is at present holding the post of Shri/Smt./Miss/Mst. is/are a dependent family member(s) of Shri/ Smt. and his/her identity is certified. This Ministry/Department/ Organisation has no objection to his/her acquiring Indian Passport. The undersigned is duly authorised to sign this Identity Certificate. I have read the provisions of section 6(2) of the Passports Act, 1967 and certify that these are not attracted in case of this applicant. I recommend issue of an Indian Passport to him/her. It is certified that this organisation is a Central/State Government/Public Sector/undertaking/statutory body. The Identity Card Number of Shri/Smt (employee) is

Ref. No. &

Date

Applicant's
photo to be
attested by
certifying
authority

Name, Designation, address & Tel No.

ANNEXURE 'C'

AFFIDAVIT TO BE SUBMITTED WITH THE APPLICATION FOR A PASSPORT OF A MINOR CHILD BY EITHER PARENT (WHO ARE SEPARATED BUT NOT FORMALLY DIVORCED) OR BY A SINGLE PARENT OF THE CHILD BORN OUT OF WEDLOCK

(To be executed on non-judicial stamp paper)

1. (name of single parent) solemnly declare and affirm as follows:
1. That I am the mother/father of (name of the child) who is a minor child and on whose behalf I have made an application for his/her passport.
 2. That I am judicially separated from the mother/father of (name of minor).

OR

That no legally valid marriage ever existed between me and Mr./Ms. (the father/mother the minor child).

OR

The father/mother of (name of the child) has deserted me after conception/delivery.

3. That (name of the minor) is exclusively under my care and custody since separation/delivery.

.....
Signature & address of Deponent

Date.....

(Sworn before the First Class Judicial Magistrate or Notary Public)

ANNEXURE 'D'

SPECIMEN AFFIDAVIT TO BE SUBMITTED ALONG WITH APPLICATION FOR PASSPORT BY A WOMAN APPLICANT FOR CHANGE OF NAME AFTER MARRIAGE (JOINT AFFIDAVIT TO BE SUBMITTED ALONG WITH HER HUSBAND)

(To be executed on non-judicial stamp paper)

- We 1.
(maiden name of wife)
2.
(name of husband)

solemnly declare and affirm as under:

1. That we are married under.....Marriage Act/Rights/Customs and are living together as married couple since.....
(date of marriage)
2. That..... would henceforth be known as.....
(maiden name of wife) (name of wife after marriage)
3. That our joint photograph is affixed below.

Date:.....

.....
Signature & address of Deponents

1.....

2.....

Note.—1. This affidavit may be sworn before a Magistrate/Notary.

2. The joint photograph of the couple is to be pasted on the bottom left hand side of the affidavit paper and attested by the Magistrate/Notary with his/her signature and rubber stamps (half on the photograph and half on the affidavit)
3. Declaration 2 above to be ignored by applicants who seek endorsement of name of spouse in respect of reissue of a previously issued passport.

ANNEXURE 'E'

SPECIMEN AFFIDAVIT FOR CHANGE IN NAME/DEED POLL/SWORN AFFIDAVIT

(On non-judicial stamp paper)

By this deed I, the undersigned..... (New Name) previously called..... (Old Name), doing..... (give profession or vocation) and resident of..... (address) solemnly declare:—

1. That for and on behalf of myself and my wife and children and remitter issue wholly renounce/relinquish and abandon the use of my former name/surname of..... and in place thereof I do hereby assume from this date the name/surname..... and so that I and my wife, children and remitter issue may hereafter be called, known and distinguished not by my former name/surname, but assumed name/surname of.....
2. That for the purpose of evidencing such my determination declare that I shall at all times hereafter in all records, deeds and writings and in all proceedings, dealings and transactions, private as well as upon all occasions whatsoever use and sign the name of..... as my name/surname in place and in substitution of my former name/surname.
3. That I expressly authorise and request all persons in general and relatives and friends in particular, at all times hereafter to designate and address me, my wife, my children, remitter issue by such assumed name/surname of..... accordingly.
4. In witness whereof I have hereunto subscribed my former and adopted name/surname of.....and..... affix my signature and seal, if any, this..... day of.....

Signed sealed and delivered by the above name
Former name.....

Date.....

In the presence of:

Name..... Name.....

Address..... Address.....

(This deed poll/affidavit may be signed and attested in presence of a Magistrate/Notary or Consular Officer in an Indian Mission abroad)

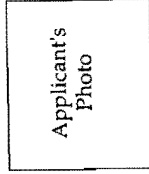
Note.—In case of change of name, applicant should insert advertisements in two reputed newspapers (one local newspaper of the area in which he/she is residing and 2nd in newspaper of the area of permanent address) and submit original newspapers at time of applying for passport in his/her new name.

ANNEXURE 'F'
SPECIMEN VERIFICATION CERTIFICATE (FOR PASSPORT UNDER
TATKAL ONLY)

(On official stationery of verifying authority)

(To be given in Duplicate* along with Standard Affidavit as at Annexure "1")

Reference Number



Applicant's
Photo

(Verification Certificate issuing officer should attest the photograph of the applicant with his/her signature and rubber stamp in such a way that half the signature and stamp appear on the photograph and half on the certificate).

Verification Certificate

This is to certify that Shri/Smt./Kum.....son of/wife of/
daughter of..... whose personal particulars are given below has good moral
character and reputation and that after having read the provisions of section 6(2) of the
Passports Act, 1967. I certify that these provisions are not attracted in case of this
applicant and I recommend issue of an Indian Passport to him/her. Applicant has been
staying at his/her address continuously for the last one year.

Date of Birth

Place of Birth

Educational Qualification

Profession (Govt./Private Service/Others)

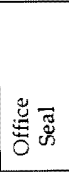
Permanent Address

Present Address

Place.....

Office Address with location.....

Date.....



Signature.....

Full Name.....

Designation.....

I Card No.....

(Enclose a photocopy of I Card)

Telephone No. (O)..... (R)

Mobile No.....

Notes.—1. The applicant's passport size photograph is also required to be affixed on the Verification Certificate and attested by the officer issuing the Verification Certificate with his/her signature and rubber stamp in such a way that half the signature and stamp appear on the photograph and half on the certificate.

2. If the applicant has resided at more than one place during the last one year then all previous addresses with the relevant dates should be mentioned.

3. This Verification Certificate may be got signed by any of the following:

- (i) An Under Secretary/Deputy Secretary/Director/Joint Secretary/Add. Secretary/Special Secretary/Secretary/Cabinet Secretary to Government of India.
 - (ii) A Director/Joint Secretary/Additional Secretary/Special Secretary/Chief Secretary to a State Government.
 - (iii) A Sub-Divisional Magistrate/First Class Judicial Magistrate/Additional DM/District Magistrate of the district of residence of applicant.
 - (iv) A District Superintendent of Police Range, DIG/IG/DGP of district of residence of applicant.
 - (v) A Major and above in the Army, Lt. Commander and above in the Navy and Sq. Leader and above in the Air Force.
 - (vi) The General Manager of a Public Sector Undertaking
 - (vii) All members of any All India Service or Central Service who are equivalent to or above the rank of an Under Secretary to the Government i.e. in the pay scale of Rupees 10,000-15,200 or above.
 - (viii) Resident Commissioners/Additional Resident Commissioners of all State Governments based in Delhi.
 - (ix) Concerned Tehsildars or Concerned SHO's for an applicant staying in the area under his/her jurisdiction.
 - (x) The Chairmen of the Apex Business Organisations i.e. FICCI, CII and ASSOCHAM in respect of owners, partners or directors of the companies that are members of the concerned Chamber in prescribed performa as at Annexure "1".
4. Anyone who issues incorrect verification certificate may be prosecuted under section 12(2) of the Passports Act, 1967.
5. SECTION 6(2) OF THE PASSPORT ACT, 1967
- "Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (C) sub-section 5 of anyone or more of the following grounds, and on no other ground, namely:—
- (a) that the applicant is not a citizen of India.
 - (b) that the applicant may, or is likely to engage outside India in activities prejudicial to the sovereignty and integrity of India.
 - (c) that the departure of the applicant from India may, or is likely to be detrimental to the security of India.
 - (d) that the presence of the applicant outside India may, or is likely to prejudice the friendly relations of India with any foreign country.
 - (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application been convicted by a court of India for any offence involving moral turpitude and sentenced in respect thereof imprisonment for not less than two years.
 - (f) that criminal proceedings in respect of an offence alleged to have been committed by the applicant are pending before a court in India.

(g) that a warrant or summons for the appearance, of a warrant for the arrest, of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court.

(h) That the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation.

ANNEXURE 'G'

DECLARATION OF APPLICANT PARENT OR GUARDIAN IF PASSPORT IS FOR MINOR (one parent not given consent): IN THE FORM OF A SWORN AFFIDAVIT BEFORE JUDICIAL MAGISTRATE ON NON-JUDICIAL STAMP PAPER

I/We (Name of the Parent/Guardian applying for passport) solemnly declare and affirms as follows:—

1. That I/We am/are the mother/father/parents/guardians of (Name of the Minor Child) who is a minor child and on whose behalf I/We have made an application for his/her passport.
2. Signature/Consent of Mr/Mrs (Name of the Father/Mother) who is father/mother/parents of the child has not been obtained by me for the following reasons:
3. That I/We only am/are taking care of (Name of the minor child) he/she is exclusively in my physical custody.
4. I/We also affirm that in the case of a court case arising due to issue of a passport to the minor child (Name of the minor child) I/We would be solely responsible for defending the case and not the Passport Issuing Authority.

Date.....

Signature & Address of the parent(s)/ guardians(s) applying for the Passport

ANNEXURE 'H'

DECLARATION OF APPLICANT PARENT OR GUARDIAN IF PASSPORT IS FOR MINOR: ON PLAIN PAPER

I/We affirm that the particulars given above are in respect of (name of the child) and Shrimati..... of whom I/we am/are the Parents/Single Parents/Applicant Parent/Guardians. He/She is a Citizen of India. His/Her date of birth/place of Birth is..... I/We undertake the entire responsibility for his/her expenses. I/We solemnly declare that he/she has not lost, surrendered or been deprived of his/her citizenship of India and that the information given in respect of him/her in this application is true. It is also certified that I/we am/are holding/not holding valid Indian passport(s) and the name of the child mentioned is not included in Passport of either parent.

...../
Father (Signature)

.....
Mother (Signature)

OR.....

.....
Legal Guardian (Signature)

ANNEXURE 'I'

AFFIDAVIT

(To be executed on appropriate non-judicial stamp paper and attested by a Notary Public)

(One original and one self-attested photocopy)

I, name), Son of.....
residing at..... Date of Birth..... being an applicant for issue of passport, do hereby solemnly affirm and state as follows:

1. That the names of my parents and spouse are as follows:

(i) Father

(ii) Mother

(iii) Wife/Husband

2. That I am continuously resident at the above mentioned address from.....

3. That I am citizen of India by birth/descent/registration/naturalisation and that I have neither acquired the citizenship of another country nor have surrendered or been terminated/deprived of my citizenship of India.

4. That I have not, at any time during the period of five years immediately preceding the date of this affidavit, been convicted by any court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;

5. That no proceedings in respect of any criminal offence alleged to have been committed by me are pending before any criminal court in India;

6. That no warrant or summons for my appearance, and no warrant for my arrest, has been issued by a court under any law for the time being in force, and that my departure from India has not been prohibited by order of any such court

7. That I have never been repatriated from abroad back to India at the expense of Government of India/I was repatriated from abroad back to India at the expense of Government of India, but reimbursed expenditure incurred in connection with such repatriation.

8. That I will not engage outside India in activities prejudicial to the sovereignty and integrity of India.

9. That my departure from India will not be detrimental to the security of India

10. That my presence outside India will not prejudice the friendly relations of India with any foreign country.

Place.....

Date.....

DEPONEN'

VERIFICATION

Verified on..... (date) at..... (place) that the contents of the above mentioned affidavit are true and correct and nothing material has been concealed.

DEPONEN'

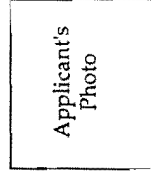
ANNEXURE 'J'

SPECIMEN VERIFICATION CERTIFICATE

[To be given (in Duplicate* along with Standard Affidavit as at Annexure 'I'] by
Chairmen of Apex Business Organisations to the Owners, Partners Or Directors of the
Companies having Membership of the Concerned Chambers)

(Official stationery of verifying authority)

Reference Number



(Verification Certificate issuing officer should attest the photograph of the applicant
with his/her signature and rubber stamp in such a way that half the signature and stamp
appear on the photograph and half on the certificate).

Verification Certificate

This is to certify that Shri/Smt./Kum..... son/
wife/daughter of..... whose personal particulars are given below
has good moral character and reputation and that after having read the provisions of
section 6(2) of the Passports Act, 1967. I certify that these provisions are not attracted in
case of this applicant and I recommend issue of an Indian Passport to him/her. Applicant
has been staying at his/her address continuously for the last one year

Date of Birth

Place of Birth

Educational Qualification

Profession

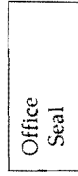
Permanent Address

Present Address

Place.....

Office Address with location.....

Date.....



Signature.....

Full Name.....

Designation.....

Name of the Chamber.....

Telephone No. (O)..... (R)

Mobile No.....

Notes.—1. The applicant's passport size photograph is also required to be affixed on
the Verification Certificate and attested by the officer issuing the Verification Certificate
with his/her signature and rubber stamp in such a way that half the signature and stamp
appear on the photograph and half on the certificate.

2. If the applicant has resided at more than one place during the last one year then
all previous addresses with the relevant dates should be mentioned.

3. Anyone who issues incorrect verification certificate may be prosecuted under
section 12(2) of the Passports Act, 1967.

4. SECTION 6(2)(C) OF THE PASSPORTS ACT, 1967

"Subject to the other provisions of this Act, the passport authority shall refuse to
issue a passport or travel document for visiting any foreign country under clause (C) sub-
section 5 of anyone or more of the following grounds, and on no other ground, namely:—

- (a) that the applicant is not a citizen of India.
- (b) that the applicant may, or is likely to engage outside India in activities
prejudicial to the sovereignty and integrity of India.
- (c) that the departure of the applicant from India may, or is likely to be
detrimental to the security of India.
- (d) that the presence of the applicant outside India may, or is likely to prejudice
the friendly relations of India with any foreign country.
- (e) that the applicant has, at any time during the period of five years immediately
preceding the date of his application been convicted by a court of India for any
offence involving moral turpitude and sentenced in respect thereof
imprisonment for not less than two years.
- (f) that criminal proceedings in respect of an offence alleged to have been
committed by the applicant are pending before a court in India.
- (g) that a warrant or summons for the appearance, of a warrant for the arrest, of
the applicant has been issued by a court under any law for the time being in
force or that an order prohibiting the departure from India of the applicant has
been made by any such court.
- (h) That the applicant has been repatriated and has not reimbursed the
expenditure incurred in connection with such repatriation.

PENALTY FOR OFFENCES UNDER PASSPORTS ACT, 1967

Imposition of penalties for suppression of information under section 12(1)(B) of
Passports Act, 1967 is as given below:

S. No.	Nature of suppression of information	Amount (in Rs.) for Literate applications	Amount (in Rs.) for Illiterate applicants
(i)	In case the applicant's name has been endorsed on the parents' passport and the applicant is less than 18 years old and while applying for a separate passport, does not mention the fact that the name is endorsed in the parents' passport.	500	Nil
(ii)	In case the applicant's name has been endorsed on the parents' passport and the applicant is more than 18 years old and while applying for a separate passport, does not mention the fact that his name is endorsed in the parents' passport.	1000	500
(iii)	In both the above cases, if the parents' passport has already expired	No fine	No fine

S. No.	Nature of suppression of information	Amount (in Rs.) for Literate applications	Amount (in Rs.) for Illiterate applicants
(iv)	If the applicant had previously applied for a passport and the file was closed without issue of a passport or returned undelivered and provided there is no change in the personal particulars and the applicant does not mention about the application made earlier.	1000	500
(v)	If the previous passport has expired and the information is not given	2000	500
(vi)	When an applicant holds/held a diplomatic/official passport and does not mention in his application at the time of applying for an ordinary passport.	500	500
(vii)	If a student studying in a hostel away from his permanent address, does not mention his present address with proof in his passport application form while applying at RPO/PO in which jurisdiction his permanent address falls.	500	500 (in case of minor, where applicant's parent is illiterate)
(viii)	In case where an applicant does not disclose that he had applied for a passport earlier claiming that he never received the passport and there is, however, no record of passport "Returned Undelivered", then the applicant may be asked to apply for duplicate passport with FIR.	2500 + 2500 (Duplicate passport fee)	1000 + 2500 (Duplicate passport fee)
(ix)	(a) In case, there is forgery of the stamp of ECNR/PCC or any other observation in the passport, then applicant may be interviewed and in case some agent has done this then his name and address should be taken in writing. The forged endorsement should be cancelled and passport restored to the applicant. (b) If another booklet is required by the applicant, duplicate passport fee of Rs. 2500 should be charged.	5000	1000
(x)	In case the passport with forgery has expired, then fresh passport may be issued with normal fee of Rs. 1000 plus.	5000 + 2500 (Duplicate passport fee)	1000 + 2500 (Duplicate passport fee)
(xi)	A Government servant who does not give details of his employment in his application form for ordinary passport.	2500 + 1000 (normal passport fee)	1000 + 1000 (normal passport fee)
(xii)	In case applicant does not disclose correct marital status and a case is registered regarding marital dispute.	2500	2500
(xiii)	If applicant gives wrong information regarding his date of birth/place of birth (minor changes)	1000	500
(xiv)	Minor suppressions of information regarding marital status/name of spouse etc. inadvertently.	500	500
(xv)	When an applicant holds a valid passport or suppresses/changes the personal particulars or where a criminal case is pending against him and this information is not disclosed in the application.	5000	2500

Note.—(1) Under section 12 of the Passports Act, 1967 – whoever contravenes the provisions of the Act by traveling without a valid passport, knowingly furnishes wrong information or attempts to alter entries made on the passports or travel documents, fails to produce his/her passport for inspection, knowing uses a passport or travel document used to another person or knowingly allows another person to use a passport or travel document issued to him shall be punishable with imprisonment for a term up to 2 years or with fine up to Rs. 5,000 or with both.

(2) Whoever not being a citizen of India makes an application for a passport or obtains a passport by suppression of information about his nationality or holds a forged Indian passport or travel document shall be punishable by imprisonment up to 5 years and with fine up to Rs. 50,000.]

**FORM EA(P)-1 EXTERNAL
APPLICATION FORM FOR INDIAN PASSPORT
AT AN INDIAN MISSION/POST**

(for the issue of an ordinary international passport Fresh/ After 10

years
(Final)/and for duplicate in lieu of lost damaged passport)

(Please delete inapplicable)

Payment of Fee (to be filled by applicant)

Amount paid \$/.....by.....Mode of payment

For delivery by mail \$/extra to be paid as postal charges for each passport

1. (A) Full name.....
(expanded initials) (Surname)
- (B) Aliases, if any.....
- (C) Has applicant ever changed his/her name?
If so, give previous name in full.....
- (D) Maiden name, if applicant is a married woman.....
2. Date of birth place of birth Country
- Height(cms.) Colour of eyes Hair
- Visible distinguishing marks, if any
3. Permanent Address
(a) In India
- (b) In country of domicile
4. (i) Name of father Country of his birth
- (ii) Name of mother Country of her birth
- (iii) Nationality of father at the time of applicant's birth
- (iv) Nationality of mother at the time of applicant's birth
5. Married/Unmarried (Tick mark).....
6. Name and Nationality of Spouse

Please Staple
one 35 mm x
45 mm
photograph
and enclose
two more
photographs

7. (i) Name of applicant's eldest son or daughter (first child)
 (ii) Name of applicant's eldest brother or sister
8. Present Passport/national identity card, if any. No....Date and Place of issue....
9. Local car driving Licence No.....Date and Place of issue.....
10. Educational qualification.....
 (In order to determine emigration status)
11. When did applicant first leave India?.....When was he/she in India last?
12. How long has applicants continuously resided abroad?
13. Present Emigration Status (ECR or ECRN)
- (with documentary evidence)
14. Profession and business address Telephone
15. Please mention, if citizen of India by birth/descent/naturalisation/Registration.
16. Did applicant ever possess any other nationality or travel document of any other country, if so, please give detail.
17. Was applicant ever refused an Indian Passport? (Yes/No)
18. Was applicant's passport ever impounded/revoked? (Yes/No)
 If so, details please.
19. Name and address of two relatives/friends

Name	Address
(i)
(ii)

20. Is applicant in Government Service/Public Undertaking Service/Statutory Bodies Service of India? If so, please give details and enclose 'No Objection Certificate' from your employer in original.....

21. (i) Are any criminal proceedings pending against applicant in any court in India? If so, please give details.....

(ii) Has applicant ever been repatriated from abroad to India at the expense of the Government of India? If so, details please.....

22. No. of lost/damaged passport Place of issue

Date of issue Valid until

23. (i) Briefly state circumstances of loss/theft/damage of passport on a plain paper and attach copy of report lodged with local police in case of loss/theft.

(ii) Details of restriction, if any, put on applicant's damaged/lost passport.

(iii) Did applicant avail transfer of residence, foreign travel scheme facility on lost/damaged passport. If so, details please.....

24. Is applicant registered with Indian Mission/Post? If not, is he a member of any Indian Organisation?

25. Particulars of children, if any, to be included/deleted.

Name	Place and Date of birth	Sex (M/F)

Note.—In case of fresh inclusion or inclusion on a new passport in lieu of lost/damaged passport, enclose (i) birth certificate(s) bearing names of both parents (ii) passports of both parents and (iii) marriage certificate of parents. Children below fifteen years of age can either apply for inclusion in their parent's passports, generally mother's or apply for separate passport. Children above fifteen years must apply for separate passport.

26. Declaration:

I solemnly affirm that

- (i) I owe allegiance to the sovereignty and integrity of India, and
- (ii) Information given above in respect of myself, my son/daughter/ward is correct and nothing has been concealed and I am aware that it is an offence under the Passports Act, 1967 to knowingly furnish false information or suppress material information, which attract penal and other punishments under the Acts, and
- (iii) I undertake to be entirely responsible for expenses of my son/daughter/ward.

.....
 Signature of applicant or T.I. or his legal Guardian (Left hand T.I. of male and right hand T.I. of female).

Place

Date

Specimen signature or T.I. within the space given below:

For Office use

FORM EA(P)-EXTERNAL

APPLICATION FORM FOR MISCELLANEOUS SERVICES ON INDIAN PASSPORTS

(For use in Indian Mission/Post) (a) Renewal (b) Additional Visa Sheet (c) Additional Booklet, (d) Change of Address (e) PCC (f) Additional Endorsement (g) Child Inclusion/Deletion, (h) Any Other Service (Specify) (Please delete inapplicable)

Please staple one Photograph of size of 35 mm. x 45 mm. & enclose three for additional booklet
--

Payment of Fee (to be filled by applicant)

Amount Paid.....by.....(Mode of Payment).....

For delivery by mail \$....., extra to be paid as postal charges for each passport

1. Full Name
2. Applicant's Car Driving Licence No.Date and Place of Issue.....
3. Residential address:
 - (i) In India
 - (ii) In country of domicile
- Tel..... Tel.....
4. Profession and business address Tel.....

5. Is applicant registered with the Indian Mission/Post ? If not, is he a member of any Indian Organisation? Give details

6. (i) Name of Father
- (ii) Name of Mother
- (iii) Name of Spouse and Nationality
7. Current Passport No.....Place of its issue.....
- Date of issue.....Valid until.....

8. Particulars of children to be included/deleted:

Name	Place and Date of issue	Sex (M/F)
.....
.....
.....

Note.—In case a fresh inclusion of name(s), enclose (i) birth certificate(s) bearing names of both parents, (ii) marriage certificate of parents and (iii) passports of both parents. Children below fifteen years of age can either apply for inclusion in their parent's generally mother's passport or apply for separate passports. Children above fifteen years must apply for separate passports.

9. *Declaration:*

- I solemnly affirm that
- (i) I owe allegiance to the sovereignty and integrity of India.
 - (ii) Information given above is correct and nothing has been concealed and I am aware that it is an offence under the Passports Act, 1967 to knowingly furnish false information or suppress material information; and
 - (iii) I undertake to be entirely responsible for expenses of my son/daughter/ward.

.....
Signature of applicant or T.I or his legal guardian (Left thumb impression of male and right hand thumb impression of female)

Place

Date

10. Two specimen signatures or thumb impressions required for service(s) within the space given below:

For office use

FORM EA(P)-2
GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS

APPLICATION FORM FOR MISCELLANEOUS SERVICES ON INDIAN PASSPORT FOR (USE IN INDIA) (A) RENEWAL (B) ADDITIONAL VISA SHEET, (C) ADDITIONAL BOOKLET, (D) CHANGE OF ADDRESS, (E) PCC (F) ADDITIONAL ENDORSEMENT (G) CHIEF INCLUSION/ DELETION (H) ANY OTHER SERVICE (SPECIFY)

(Please delete inapplicable)

Amount of Fee paid Rs.....by.....(Mode of Payment) Mode of Submission of application (A) and Delivery (D).

- (i) Personally, (ii) By Post, (iii) Through Rec. Travel Agent, (iv) Through auth rep.
- (A) (D) (A) (D) (A) (D) (A) (D)

Please tick mode (i) and (ii) only if previous Passport containing valid visa for U.K., U.S.A. etc. submitted with application.

(For delivery tick marked by post Rs. 10 extra to be paid as postal charges or each passport enclosing self-addressed envelop of size 16cm. x 10cm.)

1. Name (Please give expanded initials).....
2. (a) Father's Name
- (b) Mother's Name
- (c) Husband/Wife Name

3. Passport No..... Place of issue..... date of issue..... Valid up to.....

4. File No. of passport

5. Are any criminal proceedings pending against applicant in criminal court in India or any other disqualifications under section 10(3).

6. Particulars of children to be included/deleted.

Name	Place and Date of Birth	Sex (M/F)
.....
.....
.....

7. *Declaration.*—I solemnly affirm that—

- (i) I owe allegiance to the sovereignty and integrity of India, and
- (ii) Information given above in respect of myself, my son/daughter/ward is correct and nothing has been concealed and I am aware that it is an offence under the Passports Act, 1967 to knowingly furnish false information or suppress material information, which attract penal and other punishments under the acts, and
- (iii) I undertake to be entirely reponsible for expenses of my son/daughter/ward,
- (iv) I declare that I have not lost or surrendered my citizenship of India since the above passport or travel document was issued to me. I further declare that I have no other passport.

.....
 Signature of applicant or Thumb Impression or his legal guardian (Left hand Thumb Impression of male and right hand Thumb Impression of female)

Place

Date

8. Two specimen signatures or T.I. required for services at (c) within the space given below:

For Office Use

INSTRUCTIONS FOR FILLING UP EA(P)-2 FORM

This form is to be used for the Miscellaneous Services on ordinary Indian Passports, for

- (a) Renewal
- (b) Issue of Visa Sheet
- (c) Issue of Additional booklet on used up pages, taking separate passport for child/change in name/maiden name/date of birth
- (d) Change of address
- (e) Police Clearance Certificate (indicate the name of country or which PCC required and purpose)
- (f) Addition/Deletion of particulars of children
- (g) Additional Endorsement
- (h) Any other services

In case of fresh inclusion of name(s) of children please enclose (i) birth certificate(s) leaving name of both parent, (ii) Passports of both parents, Children below 15 years of age can either apply for inclusion in their parents (generally mother's passport) or apply for separate passports, Children above 15 years must apply for separate passport.

FORM EA(P)-3

APPLICATION FOR THE ISSUE OF A DIPLOMATIC/OFFICIAL PASSPORT

(This application must be accompanied by two passport size photographs—one of them duly attested on reverse.)

1. (a) Full name (in block letters)
- (b) Aliases, if any (in block letters)
2. Profession
3. Present appointment
4. Permanent home address
5. Present address
6. Place of birth
7. Date of birth
8. Father's/Husband's name
9. Personal particulars—
 - (a) Height
 - (b) Colour of eyes
 - (c) Colour of hair
 - (d) Visible distinguishing marks, if any

10. Particulars of children below 15 years of age, if to be included in the passport.

	Name	Date of birth	Place of birth	Relationship
1.
2.
3.
4.

11. (a) Have you ever applied to any other authority for any other passport?

(b) If so, please give details.

12. Particulars of the previous passport held, if any—

(a) Number

(b) Date of issue

(c) Authority and place of issue

(d) If diplomatic/official passport previously held by the applicant was returned to the Ministry of External Affairs or any other authority, please indicate where and when it was returned.

N.B.—The previous passport, if in the custody of the applicant, should be submitted together with this application.

13.

Countries to be visited on official duty	Exact nature of official duty	Period of stay giving approximate dates
---	----------------------------------	--

14. Mode of travel and route:

Place

Date

.....
Signature of applicant or parent in
case application is for a minor.

Certificate

1. *I hereby certify that Sh./Smt./Kum..... (Full name and designation)..... is proceeding abroad on official duty as indicated in Item 13 above.
2. *I hereby certify that Sh./Smt./Kum..... (Full name)..... is son/ wife/daughter of Sh/Smt. (Full name and designation)..... who is proceeding abroad on official duty as indicated in Item 13 above.

.....
Signature of Head of Office
Designation.....

Important—Categories of persons to whom official and diplomatic passports are issuable are mentioned in Part I of the Schedule II to the Passports Rules, 1980. Persons not covered by the said Schedule shall not be eligible for official and diplomatic passports.

.....
Please give two specimen signatures or thumb impressions (left in case of a male and right in case of a female) of the applicant in the space provided above.

* Strike out whichever is not applicable.

FORM EA(P)-4**APPLICATION FOR THE ISSUE OF AN EMERGENCY CERTIFICATE**

(This application must be accompanied by three passport size photographs.)

I. Fee

1. Amount paid
2. Date of payment
3. Mode of payment

II. Personal particulars

1. (a) Full name (in block letters)
(b) Aliases, if any
(in block letters)
2. Previous names, if you have ever changed your name
3. Maiden name in case of a married woman/widow/divorcee
4. Father's name
5. Husband's name in case of a married woman/widow/divorcee
6. Permanent address in India
7. Present address abroad
8. Present national status
9. Profession
10. Place of birth
11. Date of birth
12. Height
13. Colour of eyes
14. Colour of hair
15. Visible distinguishing marks, if any.

III. Particulars of Child/Children below 15 years of Age to be Included in the Emergency Certificates

Name	Date of birth	Place of birth	Relationship
1.
2.
3.
4.

IV. Particulars of the Passport/Travel Document previously held.

1. Did you ever hold a passport/travel document?
2. If so, please furnish the following particulars:—
 - (a) Number
 - (b) Date of issue
 - (c) Authority and place of issue.

N.B.—The Passport/travel document, if available, should be submitted together with this application.
3. If not in a position to submit the passport/travel document, please indicate the reasons therefor.

V. Reasons of applying for An Emergency Certificate

VI. Declaration of Applicant

- I solemnly declare that:—
- (i) I am citizen of India/person of Indian origin;
 - * (ii) I have not voluntarily acquired citizenship of another country; and
 - (iii) the information given by me in reply to the questions in this form is true.

Place.....

Date.....

.....
 Signature or thumb impression (left in case of
 a male and right in case of a female)
 of the applicant.

Two specimen signatures or thumb impressions (left in case of a male and right in case of a female) of the applicant.

1. 2.

*If in possession of a citizenship of any other country involuntarily please give details
 (Strike out whichever is not applicable).

FORM EA(P)-5

APPLICATION FOR THE ISSUE OF CERTIFICATE OF IDENTITY

(This application must be accompanied by three passport size photographs—one duly attested by local police authority—and residential permit).

I. Fee

1. Amount
2. Date of payment
3. Mode of payment

II. Personal Particulars

- (a) Full name
 (in block letters)
- (b) Aliases, if any
 (in block letters)
2. Previous name, if you have ever changed your name
3. Maiden name in case of a married woman/widow/divorcee
4. Father's name
5. Husband's name in case of a married woman/widow/divorcee
6. Last permanent address abroad
7. Present address
8. Place/Country of origin
9. Present national status
10. Period of residence in India
11. Profession
12. Place of birth
13. Date of birth
14. Height
15. Colour of eyes
16. Colour of hair
17. Visible distinguishing marks, if any

III. Particulars of Child/Children below 15 years of Age, to be included in the Certificate of Identity

	Name	Date of birth	Place of birth	Relationship
1.
2.
3.
4.

IV. 1. Purpose of Applying for the Certificate of Identity

2. Countries for which the Certificate of Identity is Required

V. Declaration of Applicant

I solemnly declare that:—

- (a) I am of nationality/stateless
 (b) I have not obtained an Indian/foreign travel document before because

 (c) The information given by me in reply to the questions in this form is true.

Place

Date

.....
 Signature or thumb impression (left in case of a male and right in case of a female) of the applicant

Two specimen signatures or thumb impressions (left in case of a male and right in case of a female) of the applicant.

1. 2.

1[***]

2[***]

3[***]

4[***]

5[***]

6[***]

FORM EA(P)-12

APPLICATION FOR INDIA/SRI LANKA PASSPORT

(For repatriates—1964 and 1974 agreement)

(Three unmounted passport size bust photographs, taken full face, of the applicant should be enclosed with application. The photographs should have, on the reverse, certificate "true photo of....." signed by the Estate Superintendent in the case of applicants from estates, and by D.R.O., Gram Sevaka or M.P. for the area in the case of others.)

CAUTION.—Applicants are warned that if any of the information supplied by them below is found to be false or inaccurate, not only will their applications be liable to be rejected or their passports, if already granted be liable to be cancelled but they will themselves be liable to prosecution.

1. (i) Full name, with alias, if any (in block letters)
- (ii) Have you ever changed your name? If so, what was your previous name?
2. Are you married or single?
3. If married woman/widow, state maiden name
4. Place (Village, town, district, etc.) and date of birth (attach documents in support if possible).
5. Profession
6. Educational qualifications
7. Present occupation
8. (i) Personal particulars of applicant:—
 - (a) Height in cm.
 - (b) Colour of eyes
 - (c) Colour of hair
 - (d) Visible distinguishing marks, if any
- (ii) Of children below 15 years if to be included in the passport

	Full Name	Sex	Date of birth
1.
2.
3.
4.

1. Form EA(P)-6 omitted by G.S.R. 100(E), dated 4th March, 1991 (w.e.f. 4-3-1991).
2. Form EA(P)-7 omitted by G.S.R. 860(E), dated 1st November, 1985 (w.e.f. 1-11-1985).
3. Form EA(P)-8 omitted by G.S.R. 100(E) dated 4th March, 1991 (w.e.f. 4-3-1993).
4. Form EA(P)-9 omitted by G.S.R. 860(E), dated 1st November, 1985 (w.e.f. 1-11-1985).
5. Form EA(P)-10 omitted by G.S.R. 100(E), dated 4th March, 1991 (w.e.f. 4-3-1991).
6. Form EA(P)-11 omitted by G.S.R. 860(E), dated 1st November, 1985 (w.e.f. 1-11-1985).

9. Father's name and place and date of birth.
10. If married woman or widow, husband's or late husband's nationality, name and place of birth.
11. How long have you been continuously residing in Sri Lanka?
12. Have you at any time resided in any other country including Pakistan? State countries and period.
13. What was your occupation while residing in the countries mentioned in column 12?
14. Have you ever applied for a travel document and been refused? If so, when and under what circumstances?
15. Have you ever been issued with a passport which was later impounded or cancelled? If so give particulars.
16. Present address in Sri Lanka.
17. Names and addresses of two responsible persons in India who would be prepared to vouch for you—

(1)

(2)

18. Whether applicant prefers an India-Sri Lanka passport or an Emergency Certificate?

Two specimen signatures or thumb impressions of wife if to be included in passport

I solemnly declare that I am an Indian citizen and that I have not lost, surrendered or been deprived of my Indian citizenship and that the information given by me in reply to the questionnaire is true.

Place.....

Date.....

Signature or thumb impression of applicant
 residing at.....holder of India-
 Sri Lanka passport/Emergency Certificate No..... dated.....
 hereby apply for the grant of passport to.....whose parent/legal guardian I am.
 I undertake to be entirely responsible for all his/her expenses

Signature/Thumb impression of Parent/Guardian
 This certificate is required only when the application is made on behalf of a person below 18 years of age.

[JA(P)-13

GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
PASSPORT APPLICATION FORM AND SUPPLEMENTARY
FORM WITH INSTRUCTIONS

Steps to be followed by applicant to complete the passport application submission process:

- Read general Instructions given in Section A
- Fill-up the form as described in Section B "Column-wise guidelines for filling-up Passport Application Form" and Section C "Column-wise guidelines for filling-up Supplementary Form"
- Attach the documents mentioned in Section D "List of Supporting Documents"
- Pay fee as given in Section E "Fee List"
- Submit the filled-in Passport Application Form at the application submission centers mentioned in Section F "Where to Apply"

File Number (For Office Use Only)

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GOVERNMENT OF INDIA, MINISTRY OF EXTERNAL AFFAIRS
PASSPORT APPLICATION FORM

Please read the Passport Instruction Booklet carefully before filling the form. Fill this form in CAPITAL LETTERS using blue/black ink ball point pen only. Furnishing of incorrect information or suppression of information would lead to rejection of the application and would attract penal provisions as prescribed under the Passports Act, 1967. Please produce your original documents at the time of submission of the form.

1. Service Required**1.1 Applying for**

- Fresh Passport
- Re-issue of Passport
- 1.2 If re-issue, specify reason(s)**
- Validity Expired within 3 years/Due to Expire
- Exhaustion of Pages
- Validity Expired more than 3 years ago
- Lost Passport
- Change in Existing Personal Particulars
- Damaged Passport

1.3 If change in existing personal particulars, specify reason(s)

- Appearance Signature Given Name
- Surname Date of Birth Spouse Name
- Address Delete ECR Others,
- Please specify

--	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

Signature/Left Hand
 Thumb Impression of
 Illiterate Applicant and
 Minors who cannot
 sign.

1. Ins. by G.S.R. 372(E), dated 27th April, 2010 (w.e.f. 3-5-2010).

- 2.1 Type of Application Normal Tatkaal
 2.2 Type of Passport Booklet 36 Pages 60 Pages
 2.3 Validity Required 10 Years Up to age 18
 (Only for minors between 15 and 18 years)

2. Applicant Details

- 2.1 Applicant's Given Name (Given Name means First name followed by Middle name (If any) (Initials not allowed))

_____ Surname _____

- 2.2 Are you known by any other names (aliases)? Yes No

If yes, provide details in Column 1 of Supplementary Form

- 2.3 Have you ever changed your name? Yes No

If yes, provide details in Column 2 of Supplementary Form

- 2.4 Date of Birth (DD-MM-YYYY) _____

- 2.5 Place of Birth (Village or Town or City) _____

District (if born in India) _____

State/UT (if born in India) _____

- Country (If born abroad) If born before 15/08/1947 in a place now in Pakistan or Bangladesh, write "Undivided India"

- 2.6 Gender Male Female

- 2.7 Marital Status Single Married Divorced Widow/Widower Separated

- 2.8 Citizenship of India by Birth Descent Registration/
Naturalisation

- 2.9 PAN (If available) _____

- 2.10 Voter ID (If available) _____

2.11 Employment Type

- PSU Government Statutory Body Retired Government Servant
 Self-Employed
 Private Homemaker Not Employed Retired-Private Service
 Student

- Others Owners, Partners & Directors of companies who are members of CII, FICCI & ASSOCHAM

- 2.12 If employed in Government/ Statutory Body/PSU, specify organisation name

- 2.13 Is either of your parent (in case of minor)/spouse, a Government servant?
 Yes No

2.14 Educational Qualification

- 5th pass or less Between 6th and 9th Standard
 10th pass and above Graduate and above

- 2.15 Are you eligible for Non-ECR category? Yes No
 For details, see Column 2.15, section B of Instruction Booklet

2.16 Visible Distinguishing Mark

3. Family Details

- 3.1 Father's Given Name (Given Name means First name followed by Middle name (If any)) (Initials not allowed)

Surname _____

- 3.2 Mother's Given Name (Given Name means First name followed by Middle name (If any)) (Initials not-allowed)

Surname _____

- 3.3 Legal Guardian's Given Name (If applicable) (Initials not allowed)

Surname _____

- 3.4 Spouse's Given Name (Given Name means First name followed by Middle name (If any)) (Initials not allowed)

Surname _____

- 3.5 If applicant is minor, provide following details

- Parent's Passport Details (If passport has been applied for but not received, give File Number)

Father/Legal Guardian's File/
Passport Number _____

Father/Legal Guardian's Nationality,
if not Indian _____

Mother/Legal Guardian's File/
Passport Number _____

Mother/Legal Guardian's Nationality,
if not Indian _____

PIN

Mobile Number Telephone Number

First Reference Name and Address

Mobile Number Telephone Number

Second Reference Name and Address

Mobile Number Telephone Number

3.2. Previous Residence 2
 From (MM-YYYY) - To (MM-YYYY) -
 House No. and Street Name

 Village or Town or City

District

Police Station

State/UT

Country

PIN

Mobile Number Telephone Number

First Reference Name and Address

Mobile Number Telephone Number

Second Reference Name and Address

Mobile Number Telephone Number

4. Permanent Residential Address (If it is different from present residential address)
 House No. and Street Name

 Village or Town or City

District

Police Station

State/UT

Country

PIN

Mobile Number Telephone Number

5. Present Residential Address (If you are on a temporary visit to India)
 House No. and Street Name

 Village or Town or City

District/County

State/Province

Country

PIN

Mobile Number Telephone Number

E-mail ID

6. Diplomatic/Official Passport Details

Passport Number

Date of Issue (DD-MM-YYYY) - -

Date of Expiry (DD-MM-YYYY) - -

Place of Issue

7. Other Details

7.1 Provide the following details if there are any criminal proceedings/warrant pending against you and '[attach written permission from the court] to depart from India.

Name of Court and Place

Case/FIR/Warrant Number

Law and Section(s)

7.2 Provide details if you have ever been convicted by a court of Law in India and attach copy of judgment

Name of Court and Place

Case/FIR/Warrant Number

Law and Section(s)

7.3 Reason for refusal or denial of passport

7.4 Impounded/Revoked Passport Details

Passport Number

Reason for impounding/revocation

7.5 Name of the country if ever applied for/been granted political asylum to/by any foreign country

7.6 Emergency Certificate Details

EC No.

Date of Issue (DD-MM-YYYY) (Give MM-YYYY in case cannot recall the exact date) - -

Issuing Authority

Country from where deported/repatriated

1. Subs. by G.S.R. 633(E), dated 23rd August, 2011, for "attach NOC for the court" (w.e.f. 23-8-2011).

Reason for deportation/repatriation

8. Self Declaration

I owe allegiance to the sovereignty, unity and integrity of India, and have not voluntarily acquired citizenship or travel document of any other country. I have not lost, surrendered or been deprived of the citizenship of India and I affirm that the information given by me in this form and the enclosures is true and I am solely responsible for its accuracy, and I am liable to be penalised or prosecuted if found otherwise. I am aware that under the Passports Act, 1967 it is a criminal offence to furnish any false information or to suppress any material information with a view to obtaining passport or travel document.

Place

Signature/Left Hand Thumb Impression of Applicant (If applicant is minor, either parent to sign)

Date (DD-MM-YYYY)

- -

INSTRUCTIONS FOR FILLING OF PASSPORT APPLICATION FORM AND SUPPLEMENTARY FORM

CAUTION

A passport is issued under the Passports Act, 1967. It is an offence punishable with imprisonment or fine or both, to furnish false information or suppress information, which attracts penal and other action under relevant provisions of Section 12 of the Passports Act, 1967. Passport is a very valuable document. Hence, all holders are required to take due care that it does not get damaged, mutilated or lost. Passports should not be sent out to any country by post/courier.

Loss of passport should be immediately reported to the nearest Police Station and to the Passport Office or Indian Mission, if abroad. Passport holder shall be responsible for misuse of passport, due to non-intimation of loss, to the concerned Passport Office/Indian Mission. Passport is a government property and should be surrendered when demanded in writing by any Passport Issuing Authority.

This booklet is an abridged version of all the important instructions. In case of any doubt please visit our website www.passportindia.gov.in

A. GENERAL INSTRUCTIONS - Please read these instructions carefully before filling the application form

The Application Form consists of two Forms, i.e., Passport Application Form and Supplementary Form. References for columns to be filled in the Supplementary Form have been given in the Passport Application Form, which has to be filled only if they are applicable to you, else leave them blank.

This Passport Application Form and Supplementary Form, issued by the Government of India, is machine-readable. It will be scanned by Intelligent Character Recognition (ICR) enabled scanners. Incomplete or inappropriately-filled application form will not be accepted. Please follow the instructions given below while filling the Form.

- Use CAPITAL LETTERS only, throughout the application form, as shown in the image below—

Applicant's Given Name				
s	h	a	s	i

Incorrect

Applicant's Given Name				
S	H	A	S	I

Correct

- Use standard fonts and avoid stylized writing.
- Use black or blue ball point pen only. Do NOT fill the application form with ink-pen or pencil.
- Write as clearly as possible. Use a pen with a thinnest possible tip.
- Put a cross (X) in the boxes where you have to choose one or more options as your answer and leave the other option(s) blank. For example, if your gender is male, put a cross in the box against male as shown in the image Gender Male Female
- Do Not put dots (•), tick marks (✓), etc., in the boxes, to choose the appropriate option as your answer.
- Write clearly within the boxes without touching the boundaries. Try and write in the centre of the box, as shown in the image below—

M	E	H	T	A
---	---	---	---	---

 Incorrect
- Leave one box blank after each complete word, while filling-up the boxes.

D	E	V	A	N	G	J	I	G	N	E	S	H
---	---	---	---	---	---	---	---	---	---	---	---	---

 Father's Given Name Father's Given Name
 Incorrect Correct

- Do NOT write anything outside the given boxes. Adjust the information you need to fill, within the given number of boxes.

- Do NOT overwrite in case of a mistake. Just strikeout the character and continue to write in the next box.

S	R	I	D	H	A	R
---	---	---	---	---	---	---

 Incorrect

S	R	I	D	X	H	A	R
---	---	---	---	---	---	---	---

 Correct

- Do NOT fold or smudge the application form.

- Do NOT write 'NA' or 'N/A' or "NOT APPLICABLE" in any boxes in the form to convey that the column is not relevant for your case. Leave that column blank.

Particulars given in the application form will be printed in the passport booklet Therefore, you must be careful in filling up the Application Form and submit the Form without mistakes. The applicant shall be held responsible for any mistake in the application form submitted.

[WHERE TO APPLY: Please see section F]

Depending on whether an application is for issue of fresh passport or re-issue of passport, Passport Office shall decide whether Police Verification is required for issuance of Passport to you. In most cases of issue of fresh passport, pre-police verification would be required, exception being Government servants on submission of 'Identity Certificate' as per Annexure 'B', or minors whose parent(s) hold valid passport etc. In most cases of re-issue, depending on records available in the Passport Office system, police verification would not be required or only post police verification would be required, exceptions being re-issue of passport in-lieu of lost passport or complete change of name.

1. Subs. by G.S.R. 633(E), dated 23rd August, 2011 (w.e.f. 23-8-2011).

Type of Application	Type of Police verification	Dispatch of Passport
Normal	Police Verification is not required	Passport is expected to be dispatched on third working day excluding the date of submission of application.
	Police Verification is required on a Post-Passport Issuance basis	Passport is expected to be dispatched on third working day excluding the date of submission of application – without waiting for the Police Verification Report.
	Police Verification is required on Pre-Passport Issuance basis	Passport is expected to be dispatched within three working days of receipt of a "Recommendatory" Police Verification Report (PVR) from the Police Department. This does not include date of receipt of "Recommendatory" PVR.
Tatkaal	Police Verification is not required	Passport is expected to be dispatched within one working day excluding the date of submission of application.
	Police Verification is required on a Post-Passport Issuance basis	Passport is expected to be dispatched on third working day excluding the date of submission of application – without waiting for the Police Verification Report.

Notes.—

- (i) In complex cases, such as adoption, application on behalf of a minor from single parent, major change in name, duplicate passport, doubtful documentation, the processing time will be approximately 30 days excluding the date of submission of application. Mandatory Pre-Police Verification cases such as J&K and Nagaland subjects would also need additional processing time.

- (ii) Issue of passport is subject to data check in the system and finding no adverse entry/report.

B. Column-wise guidelines for filling-up "Passport Application Form"

Photograph:

Photograph is NOT REQUIRED for applications submitted at Passport Seva Kendra (PSK), Mini-PSK.

For other applications i.e. the ones submitted at any other Collection Centre (i.e. District Passport Cell (DPC), Authorized Speed Post Centre (SPC), or other Citizen Service Centre (CSC) e.g. Bangalore One, e-Seva, e-Sampark etc.) following are the DOs and DON'Ts to be followed while affixing the photograph:

Table 1: DOs and DON'Ts concerning Photograph to be submitted at DPC/SPC/CSC

DOs	DON'Ts
<ul style="list-style-type: none"> • Paste ONLY ONE COLOUR photograph as per the specifications given below • Paste your recent passport size photograph (4.5 cm length x 3.5 cm width) in colour in the box meant for affixing the photograph • Background of the photograph should be plain white and the dress should be in dark colour • Photograph should fit within the given box • Frontal view of the full face should be visible in the photograph • Photograph should be printed on good quality photo paper • Print of the photograph should be clear and with a continuous-tone quality • Expression of the face should be natural (no grinning, frowning or raised eyebrows) • Eyes must be open and both edges of face must be clearly visible • Head should be in the centre of the frame and both ears should be visible 	<ul style="list-style-type: none"> • Do NOT paste black and white photographs • Dimensions of photograph should not be smaller than the box (<i>i.e.</i> 4.5 cm length x 3.5 cm width) provided in the application form • Photograph with dark background or in uniform, or with eyes hidden under coloured or dark glasses will not be accepted • Photograph in computer print will not be accepted • Photograph is NOT to be signed • Distracting shadows on the face or on the background should not be there • Eyes must not be covered by hair. • Glares on eyeglasses should be avoided with a slight upward or downward tilt of the head • Photograph should not be damaged, for example: torn, creased or marked • Head coverings are not permitted except for religious reasons, but the facial features from bottom of chin to top of forehead and both edges of the face must be clearly visible • Photographs cut from group photographs are not acceptable

Signature/Thumb Impression:

a. This signature/thumb impression will be scanned and printed in the passport. Therefore, it must be kept strictly within the box, without touching the boundaries.

b. Illiterate applicants should put left hand thumb impression instead of signature. Use right hand thumb in case the applicant's left thumb is permanently disfigured and unfit for use. Clearly mention under the signature box that right hand thumb impression has been put.

c. In case of minor applicants, this box should contain the minor's signature or thumb impression as the case may be. Minor's parents should not put their signature or thumb impression in this box.

d. Use only blue/ black ball point pen for signature.

Column 1: Service Required**<Column 1.1: Applying for>**

Put a cross against **Fresh Passport** if you have never held a passport. See the instructions booklet **Section D "Table-2 - (I)"** while applying for fresh passport for the particular category you belong to and attach the self attested photocopies of documents, as given in Table-3". Attach appropriate documents for Normal and Tatkaal Application for which you are applying.

<Column 1.2: If re-issue, specify reason(s)>

Put a cross against **Re-issue of Passport** if you are applying for another passport in lieu of an existing passport for any of the following reasons:—

- Your passport has either expired or is about to expire. You can apply for a re-issue of passport up to 1 year before the expiry or within 3 years after the expiry of the existing passport without fresh police verification, provided there is clear police report with respect to your previous passport and there is no adverse entry in the system.
- Your last passport expired more than three years ago.
- You want to change the personal particulars or other details specified in your current passport and get a booklet with changed details.
- Pages in the existing passport booklet are exhausted.
- Passport is lost.
- Passport is damaged. The booklet may be damaged beyond recognition or damaged but recognizable (*i.e.*, Passport number is readable, name is legible and photograph is intact).

See the instructions booklet "Table-2 - (II)" while applying for re-issue of passport for the particular category you belong to and attach the concerned documents needed as given in the same table. Attach appropriate documents for Normal and Tatkaal Application for which you are applying.

For re-issue of passport, details of latest held/existing/lost/damaged passport must be furnished in Column 7.1 of passport application form.

<Column 1.3: If change in existing personal particulars, specify reason(s)>

Put cross in the appropriate box due to which the change(s) is/are required in the personal particulars.

<Column 1.4: Type of Application

1. Put a cross against the Tatkaal box, if you need the passport urgently under the Tatkaal scheme or else put a cross against the Normal box.

- Under Tatkaal scheme, you need to submit a Verification Certificate as per specimen at Annexure 'F' and Standard Affidavit as per the specimen at Annexure 'I' or three documents out of the list of sixteen documents and Standard Affidavit as per the specimen at Annexure 'J'. Please refer Table 2: List of Applicant Categories and Documents to be submitted for complete list of documents and Table 3: Overall List of Documents - Document No. 54 for 'List of sixteen documents'.

- The Passport Issuing Authority has the right to verify the authenticity of the Verification Certificate from the official who has issued it.

- Under Tatkaal scheme, no proof of urgency is required, except in cases of exemption of Tatkaal fee sought on account of specialised medical treatment and consultation abroad, and post police verification shall be done in all such cases.
- Fee for a passport under Tatkaal scheme is in addition to normal passport application fee. For details on fees, see section E of the passport instruction booklet.

- For certain categories, Tatkaal Application is not permitted. Refer "Table 2" - for list of categories who cannot apply under Tatkaal scheme.]

<Column 1.5: Type of Passport Booklets>

Put a cross in the appropriate Box indicating if you need a 36 pages Booklet or a 60 pages Booklet. Fee for a 60 pages booklet is higher than that of 36 pages booklet. For details on fees, see Section E of the passport instruction booklet.

1. Subs. by G.S.R. 633(E), dated 23rd August, 2011 (w.e.f. 23-8-2011).

<Column 1.6: Validity Required>

Minors less than 15 years of age must leave the "Validity Required" column blank. The validity of their passport will be restricted to five years or till they attain the age of 18, whichever is earlier.

Minors between 15 to 18 years of age can apply either for a 10 year validity passport or they can apply for a passport which is valid till they attain the age of 18 years.

Different fees are applicable depending upon which category they are applying for. For fee details, see Section E "Table-4" of the passport instruction booklet.

Column 2: Applicant Details**<Column 2.1: Applicant's Given Name & Surname>**

You must furnish your full name as you want it to appear on your passport. For instance, if you have filled in your surname as [JAIN] and your given name as [PIYUSH KUMAR] the same will appear on your passport as:

Surname: JAIN

Given Name: PIYUSH KUMAR

Note.—

- In case you do not use a surname - leave the "Surname" column blank and write your full name in "Applicant's Given Name" column. Some Embassies (Embassy of U.S.A., etc.) insist on surname for issue of visa. If you use a surname you must furnish the same here.
- No initials should be written and all initials (if any) in the applicant's name should be expanded. For instance, for the name used above, writing the Given Name as "P.K.JAIN" or "PIYUSH K JAIN" is not correct.
- No honorifics, titles such as Major, Doctor etc., should be written.
- Surname could have two words like Roy Choudhary or Das Gupta.

<Column 2.2: Are you known by any other names (aliases)?>

- If you are known by any other name (*alias*), put a cross in the Yes box and provide the details in Column 1 of the Supplementary Form. For example, if your name is Rajesh Bansal and your *alias* name is Raja, put a cross in the Yes box.
- If you are not known by any other name (*alias*), put a cross in the No box.

<Column 2.3: Have you ever changed your name?>

- If you have ever changed your name, put a cross in the Yes box and provide the details in Column 2 of the Supplementary Form. For example, if you have changed your name from Vidhi Mehta to Aditi Mehta put a cross in the Yes box.
- This will be applicable to an applicant who has even marginally changed the name or a female who has changed her name or surname after marriage. For example, if you have changed your name from Harvinder to Harjinder or Ritesh to Reetesh put a cross in the Yes box.
- If you have not changed your name ever, put a cross in the No box.

<Column 2.4: Date of Birth>

- Write your date of birth in the DD-MM-YYYY (date-month-year) format.
- You need to attach the documents for proof of your date of birth. Refer Section D "Table-3 Document No. 2" of the passport instruction booklet for details.

Note.—

- For applicants born on or after 26-01-89, only Birth Certificate issued by the Municipal Authority or any office authorized to issue Birth and Death Certificate by the Registrar of Births & Deaths is accepted. No other document will be

accepted as proof of date of birth. In case of any doubt please visit our website www.passportindia.gov.in

- The Birth Certificate should contain the name of child, name of father and mother, date of birth, place of birth, sex, registration number and date of registration. If the Birth Certificate doesn't contain the name of child, a declaration on plain paper signed by parents, is required to be submitted specifying the name of the child.

<Column 2.5: Place of Birth>

- If you were born in India, write the place of birth (such as village or town or city), district, and the State or Union Territory in which the place is located, under the respective headings.
- If you were born outside India, write the country in which the place is located. In this case, leave the Place of birth (village or town or city). District and State/UT boxes blank.
- If you were born before the partition of India (*i.e.*, before 15/08/1947), at a place that now lies in Pakistan or Bangladesh, write the place of birth (such as village or town or city) and the country as "Undivided India". In this case, leave the District and State/UT boxes blank.

<Column 2.6 & 2.7> Put a cross on appropriate box for 'Gender' and 'Marital Status'**<Column 2.8: Citizenship of India by>**

- Put a cross against the appropriate box to specify the basis of your citizenship, whether it is by birth or by descent (*i.e.*, born to Indian parent(s) outside India); by registration or naturalization (*i.e.*, who have been granted citizenship by the Ministry of Home Affairs).
- Attach documents as mentioned in Section D of the passport instruction booklet "Case No. 1 (A) (1), Case No. 1 (A) (2), Case No. 1 (A) (3) in Table 2: List of Applicant Categories and Documents to be submitted".

<Column 2.9, 2.10 & 2.11> Write your 'PAN (if available)', 'Voter ID (if available)' and put cross mark on your 'Employment Type'**<Column 2.12> If employed in Government/Statutory Body/PSU, Specify organization name**

- If you are employed in a Government office or Statutory Body or Public Sector Undertaking, specify the name of the organization in the boxes provided.
- Please see Section D of the passport instruction booklet "Case No. 1 (A) (6) in Table 2: List of Applicant Categories and Documents to be submitted with the application".

<Column 2.13: Is either of your parent (in case of minor)/ spouse, a government servant?>

Put a cross in the appropriate box to specify if either of your parent (in case of minor)/spouse is working in a government organization. For list of documents to be attached, see Section D of the passport instruction booklet.

<Column 2.14: Educational Qualification> Put a cross in the appropriate box applicable to you**<Column 2.15 - Are you eligible for Non-ECR Category?>**

In order to protect the interests of vulnerable sections of society such as children, illiterate workers etc., from being taken overseas and exploited, office of Protector of Emigrants, Ministry of Overseas Indian Affairs has placed certain categories of citizens in the Emigration Check Required (ECR) category. Most citizens who are not in the working

age or are not illiterate, or are well qualified educationally will fall in the Non-Emigration Check Required (Non-ECR) category. Indian citizens categorized as ECR, are required to get a clearance from the office of Protector of Emigrants, Ministry of Overseas Indian Affairs before leaving the country for employment purpose. For further clarification refer website www.moia.gov.in

If you are in the ECR category, ECR status will be printed on your passport. If ECR is not printed on your passport, you would be deemed to have been granted Non-ECR status. Non-ECR status will not be printed on your passport.

- Put a cross against Yes if you are eligible for Non-Emigration Check Required (Non-ECR). An applicant will be eligible for non-ECR status if the applicant falls in any one of the following categories and provides documentary proof thereof:
 - (a) All holders of Diplomatic/Official passports,
 - (b) All Gazetted Government servants, their spouses and dependent children,
 - (c) All persons having educational qualification of matriculation (pass) and above,
 - (d) All persons above the age of 50 years,
 - (e) All children up to the age of 18 years. (For re-issue of passport, after they attain the age of 18 years, documents to prove their non-ECR category have to be submitted, else ECR stamping will be done),
 - (f) Income-Tax payers (including Agricultural Income-Tax payees) in their individual capacity, their spouses and dependent children. Following documents have to be submitted:
 - Proof of assessment of income tax and actual payment of income tax for last one year; or
 - Income-Tax return statement (with income-tax being paid by the applicant) for last one year that is stamped by income-tax authorities and a copy of the PAN card. Applicants submitting NIL income-tax return statements are not eligible.

- (g) Persons possessing two years diploma from any institute recognized by the National Council for Vocational Training (NCVT) or State Council of Vocational Training (SCVT), or persons holding three years diploma/equivalent degree from institutions, such as Polytechnics recognized by the Central/State Governments of India,
- (h) Nurses possessing qualifications recognized under the Indian Nursing Council Act, 1947,

(i) All professional degree holders, their spouses and dependent children. Examples of professional degree holders are Doctors holding MBBS degree or equivalent degree in Ayurved or Homeopathy, accredited Journalists, Engineers, Chartered Accountants, Cost Accountants, Lecturers, Teachers, Scientists, Advocates, etc.,

(j) All persons who have been staying abroad for more than three years (the period of three years may or may not be continuous) and their spouses. For the purpose of verification, spouse name should be endorsed on each others passport,

(k) Seamen who are in possession of Continuous Discharge Certificate (CDC), or Sea Cadets and Deck Cadets—

- (i) Who have passed the final examination of three years B.Sc. Nautical Sciences courses at T.S. Chanakya, Mumbai; and
- (ii) Who have undergone three months pre-sea training at any of the Government approved training institutes, such as T.S. Chanakya, T.S. Rehman, T.S. Jawahar, MTI (SCI) and NIPM, CHENNAI, after production

of identity cards issued by the Shipping Master at Mumbai/Kolkata/Chennai.

- (l) Persons holding Permanent Immigration visa or documents like Green Card, Permanent Residence Card etc.

- If you do not fall under any of the above mentioned categories (a-l), put a cross against No.

At present Emigration control is exercised by the Ministry of Overseas Indian Affairs, through Protector of Emigrants (POE) under the Emigration Act, 1982. Emigration clearance is required for employment in the following countries (18 in total):

United Arab Emirates (UAE), Kingdom of Saudi Arabia (KSA), Qatar, Oman, Kuwait, Bahrain, Malaysia, Libya, Jordan, Yemen, Sudan, Brunei, Afghanistan, Indonesia, Syria, Lebanon, Thailand and Iraq.

ECR passport holders taking up employment in the above mentioned countries require emigration clearance from the office of the Protector of Emigrants (POE) before leaving India; otherwise, they will be stopped from traveling at the port of exit. For further clarification refer website www.moia.gov.in

With effect from October 1, 2007 Government of India has abolished Emigration Check Required Suspension (ECRS). Therefore, ECR passport holders travelling abroad for purpose other than employment, to any of the above mentioned 18 countries, will be allowed to leave the country on production of valid passport, valid visa and return ticket at the immigration counters at international airport in India.

Note—A passport holder having employment visa in passport does not require clearance from POE when they go back after short visit to India.

<Column 2.16: Visible distinguishing mark>

Write details of visible distinguishing mark (if any) on your body, in the space provided, else leave the column blank. For example, if there is a mole or birth mark on your forehead, write the details in the space provided.

Column 3: Family Details

<Column 3.1, 3.2, 3.3 & 3.4> Write your family details as asked in the Passport Application Form

- You need to attach Court decree/order in respect of your legal guardian.
- If your spouse has a passport, write his/her name in Column 3.4 as written in the passport.

<Column 3.5: If applicant is minor, provide following details>

If you are applying for a passport of a minor (below 18 years of age), following details of valid passports (if any) held by BOTH OR EITHER parent(s) or legal guardian must be furnished in the relevant column.

- Write the passport number of the minor's parent(s) or legal guardian. If the minor's parent(s) or legal guardian do not hold a passport, but have applied for it, enter the file number.

Note: If either parent holds a valid passport with spouse name endorsed, passport will be issued to the minor without any police verification. Original passport of parent(s) should be presented for the verification of particulars. If parent(s) hold a valid passport, but spouse name is not endorsed, then they must get the spouse name added in their passport. For this they have to apply for a reissue of passport and get the specified change in personal particulars. Processing of minor's passport would be much faster if the parents apply for endorsement of spouse name along with the minor's passport application form.

- Write the nationality of the minor's parent(s) or legal guardian if it is other than Indian.

If either parent does not hold a valid passport, passport will be issued to the minor only after police verification.

Please see Section D of the passport instruction booklet "Case No. 1 (B) in Table 2: List of Applicant Categories and Documents to be submitted with the application".

Column 4: Present Residential Address Details (where applicant presently resides)

Please note that heavy penalty is applicable if the applicant provides false information or suppresses information regarding present residential address details.

<Column 4.1: Residing Since>

Write the date (in the MM-YYYY format) since when you have been residing at your present address.

- If you have been residing at your present residential address for less than one year, you are required to furnish details of the previous address(es) where you have resided along with the duration of residence in Column 3 of the Supplementary Form.
- If you are on a temporary visit to India, leave Column 4.2 blank, and fill Column 5 of the Supplementary Form.

Students staying away from their parents have the option of applying for a passport from their place of study. In such cases, a *bonafide* certificate from the Principal/Director/Registrar/Dean of the educational institution is required to be submitted as proof of address. Please see Section D of the passport instruction booklet "Case No. 17 in 1 (A) and Case No. 14 in 1 (B) in Table 2: List of Applicant Categories and Documents to be submitted with the application".

<Column 4.2 & 4.3> 'House No. and Street Name' and 'Is permanent address same as present address?' - Self Explanatory

Column 5: Emergency Contact Details - Self Explanatory

Column 6: Reference in your Village or Town or City - Self Explanatory

<Column 6.1 and 6.2: First Reference Name and Address and Second Reference Name and Address> - Self Explanatory

Column 7: Previous Passport/Application Details - Self Explanatory

<Column 7.1 & 7.2: 'Details of latest held/existing/lost/damaged ordinary passport' and 'Have you ever applied for passport, but not issued?'> - Self Explanatory

Column 8: Other Details

If a criminal case is pending against an applicant in any Court, applicant can apply for a passport subject to the condition that he/she encloses a written permission granted by the court allowing the applicant to travel abroad. Normally a short validity passport valid for one year is issued, subject to conditions if any, mentioned in the Court order as per GSR 570 (E) dated 25 August, 1993. For any clarification please visit our website www.passportindia.gov.in

Column 9: Fee Details: Applicants submitting the application form at the Passport Seva Kendra are NOT required to fill the fee details.

<Column 9.1: Fee amount in Rs.>

Only applicants submitting forms at District Passport Cell (DPC) or Speed Post Centre (SPC) or Citizen Service Centre (CSC) like Bangalore-1, E-Seva, E-Sampark etc., are required to fill the fee amount in Rupees. For fee details, see Section E of the passport instruction booklet.

Note.—

- You can pay at a Passport Seva Kendra (PSK)/ Mini Passport Seva Kendra (Mini PSK) in cash only.
- If you are submitting your application at a District Passport Cell (DPC), you can pay only by demand draft.
- If you are submitting your application at a Speed Post Centre (SPC), you can pay in cash or by demand draft.
- If you are submitting your application at a Citizen Service Centre (CSC), you can pay in cash or credit/ debit card as applicable.

<Column 9.2: If paid by Demand Draft (DD), provide the following details>

If you are paying the fee by a Demand Draft (DD), write the DD Number, DD issue date, DD expiry date, name of the bank that has issued the DD, and bank branch location under the respective headings.

Note.—

- Demand Draft should be in favour of "PAO-MEA" payable at the city where the RPO is located.
- Full name and date of birth of applicant must be written on the back side of the demand draft.

Column 10: Enclosures

Self-attested photocopies of documents that are attached as enclosures along with the passport application form must be listed in the blank space provided. Please ensure that your signature does not cover any important detail. For list of documents to be attached, see Section D of the passport instruction booklet.

C. Column-wise guidelines for filling-up "supplementary form"

Column 1: Alias Name Details (if you are also known by any other names)

<Column 1.1 & 1.2> 'Alias Name 1, Given Name and Surname' and 'Alias Name 2, Given Name and Surname'

- If you are also known by any alias name other than that mentioned in Column 2.1 of the Passport Application Form, write the alias name in the given boxes.
- For example, if your name is Rajesh Bansal and your alias name is Raja, write the given name in the boxes provided for Alias Name 1, Given Name. Leave the "Surname" column blank; if you do not use a surname in your alias name.
- Please follow the instructions as given in Column 2.1 of Section B for filling-up details in this column.

Column 2: Previous Name Details (If you have ever changed your name)

<Column 2.1> 'Previous Name 1, Given Name and Surname' and 'Previous Name 2, Given Name and Surname'

- If you have ever changed your name, write your earlier name in the given boxes. This will be applicable to an applicant who has even marginally changed the name or a female who has changed her name or surname after marriage.
- For example, if you have changed your name from Vidhi Mehta to Aditi Mehta write the details in this column.
- Please follow the instructions as given in Column 2.1 of Section B for filling-up details in this column.

Column 3: Previous Residence with Reference Details (Maximum two residences of longest period of stay)

<Column 3.1 & 3.2> Previous Residence 1 and Previous Residence 2

- Write the time period (in MM-YYYY format) for which you resided at the given address, in the From and To boxes.
- Write the complete postal address of your previous address, and the contact details if any.

Column 4, 5 & 6: Permanent Residential Address (If it is different from present residential address), Present Residential Address (If you are on a temporary visit to India) and Diplomatic/Official Passport Details

Column 7: Other Details - Please fill the details as specified in this column. Also attach the documentary proof along with it.

D. List of supporting documents

Applicants are required to attach self-attested photocopies of all documents with the application form. In case of submission at Citizen Service Centre (CSC) particularly at Bangalore-1, applicants are requested to attach attested photocopies (either gazetted official or notary) of all documents with the application form. Original documents must also be produced at the counter, which will be returned after verification.

For fresh passport, normally an applicant is required to submit proof of address, proof of date of birth and documentary proof that the applicant is eligible for Non-ECR category (previously ECRNR). Refer Table 3, Document No. 1 and 2 for documents which have to be submitted as proof of address and proof of date of birth. Refer Column 2.15 in Section B for applicants who are eligible for Non-ECR category. Additional documentation is required for specific cases such as adoption, name change, any particular difference in documents, taikaal cases etc.

For re-issue of passport, an applicant is required to submit old Passport in original with self-attested photocopy of its first two and last two pages, including ECR/Non-ECR page (previously ECRNR) and the page of observation (if any), made by Passport Issuing Authority and validity extension page, if any, in respect of short validity passport. Proof of address has to be submitted only if it is different from the old passport.

This Section has been divided into two sub-sections for documents which have to be submitted in different applicant cases:

<D.1> List of Categories of Applicants and Documents (document No. is given here) to be submitted by them

<D.2> Overall List of Documents

<D.1: LIST OF CATEGORIES OF APPLICANTS AND DOCUMENTS TO BE SUBMITTED BY THEM>

In the given table, list of applicant categories along with their document numbers have been listed. "Document No." is the reference given to the document mentioned in Table-3 "Overall List of Documents". For instance, Case I (A) 8 given in Table-2 refers to an applicant who is a retired government official and wants to apply for a fresh passport under Taikaal Scheme. He/she is required to submit the following documents as given in Table-3:—

1. Document No. 1: Proof of Current Address
2. Document No. 2: Proof of Date of Birth
3. Document No. 52: Standard Affidavit Annexure "I"
4. Document No. 10 or 49 or 54; Pension Payment Order or Verification Certificate as per the specimen at Annexure 'F' or 3 out of 16 as per 'List of 16 documents'. The List of 16 documents has been given in Table-3, Refer Document No. 54.]

1. Subs. by G.S.R. 633(E), dated 23rd August, 2011, for Serial No. 4 (w.e.f. 23-8-2011).

CASE NO	PASSPORT SERVICES	DOCUMENTS TO BE SUBMITTED
(I)	Fresh Passport	Document No. - Normal Application
	Adult	Document No. - Taikaal Application
1	Ordinary Case (Citizen of India by birth)	(i) 1, 2, 3 (if the applicant is eligible for Non ECR) (ii) 4 or 5 or 6
2	Citizen of India by Descent (Born to Indian parent(s) outside India)	(i) 1, 2, 3 (if the applicant is eligible for Non ECR), 7
3	Citizen of India by Registration/Naturalization (Granted citizenship by MHA)	(i) 1, 2, 3 (if the applicant is eligible for Non ECR), 7
4	Applicants repatriated from abroad at Government cost	1, 2, 3 (if the applicant is eligible for Non ECR), 5 (if available), 8, 9
5	Applicants deported to India/ Emergency Certificate cases	1, 2, 3 (if the applicant is eligible for Non ECR), 5 (if available), 8 (if any), 9
6	Government/Public Sector/ Statutory body employees	(i) 1, 2 (ii) 45 (if No Police Verification is required) or 22 (if Post Police Verification is required)
7	Dependent family members of Government/Public Sector/ Statutory body employees (For &k children in age group 10-15 years are covered. For rest of India children in [age group 15-18] are covered)	(i) 1, 2, 3 (if the applicant is eligible for Non ECR), 52 (ii) 45 (of dependent) and 52 (if No Police Verification is required)
8	Retired government officials	(i) 1, 2, 52 (ii) 10 or 49 or 54

CASE NO	PASSPORT SERVICES	DOCUMENTS TO BE SUMITTED	
		Document No. – Normal Application	Document No. – Tatkaal Application
(I)	Fresh Passport		
9	Applicants having Diplomatic/ Official Passport and applying for ordinary Passport while in service	(i) 1, 2, 11 (12 if surrender certificate is not available) (ii) 45 or 22 if applicant is Government/ Public Sector/Statutory body employee Note: In case the applicant submits "12", "2" is not required	(i) 1, 2, 11 (12 if surrender certificate is not available), 52 (ii) 45 or 22 if applicant is a Government/ Public Sector/Statutory body employee (iii) 49 or 54 if applicant is not a Government/Public Sector/Statutory body employee Note: In case the applicant submits "12", "2" is not required
10	Dependent family members of Diplomatic/Official Passport holders who are not government servants (For J&K Children in age group 10-15 years are covered)	1, 2, 3 (if the applicant is eligible for Non ECR), 57	(i) 1, 2, 3 (if the applicant is eligible for Non ECR), 57, 52 (ii) 49 or 54
11	Owner, partners and directors of Companies which are members of CII, FICCI & ASSOCHAM.	(i) 1, 2 (ii) 52 and 53 if Post PV is required	(i) 1, 2, 52 (ii) 53 or 54
12	Minor change in name	1 (in new name), 2 (in old name), 3 (if the applicant is eligible for Non ECR - Documents in old name are allowed), 48	(i) 1 (in new name), 2 (in old name), 3 (if the applicant is eligible for Non ECR - Documents in old name are allowed), 48, 52 (ii) 49 or 54
13	Major change in name	1 (in new name), 2 (in old name), 3 (if the applicant is eligible for Non ECR - Documents in old name are allowed), 13, 48	Cannot apply under Tatkaal Scheme

CASE NO	PASSPORT SERVICES	DOCUMENTS TO BE SUMITTED	
		Document No. – Normal Application	Document No. – Tatkaal Application
(I)	Fresh Passport		
14	Change/Addition in surname due to marriage	(i) 1, 2, 3 (if the applicant is eligible for Non ECR) (ii) 14 or 47	(i) 1, 2, 3 (if the applicant is eligible for Non ECR), 52 (ii) 14 or 47 (iii) 49 or 54
15	Change in name in case of Government/Public Sector/ Statutory body employees	1, 2, 15, 16, 48	(i) 1, 2, 15, 16, 48, 52 (ii) 49 or 54
16	Nagaland Residents	1, 2, 3 (if the applicant is eligible for Non ECR) Note: Additional PV required from Guwahati through MHA	Cannot apply under Tatkaal Scheme
17	Naga origins residing outside Nagaland	1, 2, 3 (if the applicant is eligible for Non ECR) Note: Additional PV required from centralized MHA office	
18	Jammu and Kashmir Residents	1, 2, 3 (if the applicant is eligible for Non ECR)	Cannot apply under Tatkaal Scheme Note: Mandatory Pre-Police Verification required
19	Students staying away from their parent's current residence	1, 2, 3 (if the applicant is eligible for Non ECR), 17, 18	(i) 1, 2, 3 (if the applicant is eligible for Non ECR), 17, 18, 52 (ii) 49 or 54
20	Senior Citizens (For J&K: Men - 65 + years, Women - 60+ years; For rest of India 65+ years)	1, 2, 3 (if the applicant is eligible for Non ECR), 19 (if Post Police Verification is required)	(i) 1, 2, 3 (if the applicant is eligible for Non ECR), 52 (ii) 19 or 49 or 54

CASE NO	PASSPORT SERVICES	DOCUMENTS TO BE SUMMITTED	
		Document No. - Normal Application	Document No. - Tatkaal Application
(I)	Fresh Passport		
B	Minor		
1	Either/Both parent(s) hold a valid Passport with spouse name endorsed	(i) 1 (of parents), 2, 27 (with spouse name endorsed) (ii) 51 (signed by both parents) or 50 (one parent not given consent)	(i) 1 (of parents), 2, 27 (with spouse name endorsed) (ii) 51 (signed by both parents) or 50 (one parent not given consent)
2	Neither of the parent holds a valid Passport	(i) 1 (of parents), 2 (ii) 51 (signed by both parents) or 50 (one parent not given consent)	(i) 1 (of parents), 2, 52 (ii) 51 (signed by both parents) or 50 (one parent not given consent) (iii) 49 or 54
3	Either/Both parent(s) resident abroad	(i) 1 (of parents or Legal Guardian if both parents are resident abroad), 2, 20, 27 (with spouse name endorsed) (ii) 51 (signed by the parent or the legal guardian) or 50 (one parent not given consent)	(i) 1 (of parents or Legal Guardian if both parents are resident abroad), 2, 20, 27 (with spouse name endorsed) (ii) 51 (signed by the parent or the legal guardian) or 50 (one parent not given consent)
4	Minors who are between 15 and 18 years of age wishes to obtain a full validity Passport for 10 years	1 (of parents), 2, 27 (if any - with spouse name endorsed)	(i) 1 (of parents), 2, 27 (if any - with spouse name endorsed), 52 (ii) 49 or 54
5	Children of Government/Public Sector/Statutory body employees	(i) 1 (of parents), 2 (ii) 51 (signed by both parents) or 50 (one parent not given consent) (iii) 27 (if any - with spouse name endorsed), 45 (of dependent) and 52 in case No Police Verification is required	(i) 1 (of parents), 2, 27 (if any - with spouse name endorsed), 52 (ii) 51 (signed by both parents) or 50 (one parent not given consent) (iii) 45 (of dependent) or 49 or 54
6	Children adopted by Indian parents	(i) 1 (of Adopter parents), 2, 21, 27 (if any - with spouse name endorsed) (ii) 51 (signed by both adoptive parents) or 50 (one parent not given consent)	

CASE NO	PASSPORT SERVICES	DOCUMENTS TO BE SUMMITTED	
		Document No. - Normal Application	Document No. - Tatkaal Application
(I)	Fresh Passport		
7	Children adopted by foreign parents	1 (of parents), 2, 21, 23, 24, 27	Cannot apply under Tatkaal Scheme
8	Parents are divorced	(i) 1 (of the parent who has the custody of the child), 2, 25, 27 (if any) (ii) 51 (signed by both parents - If other parent has visiting rights) or 50 (one parent not given consent)	
9	Parents are separated but not divorced	1 (of the parent with whom the child is residing), 2, 27 (if any-with spouse name endorsed), 46	
10	Single parent of the child born out of wedlock	1 (of parent), 2, 27 (if any), 46	
11	Applied by one parent/guardian when consent of one or both parents not possible	1 (of parent), 2, 27 (if any-with spouse name endorsed), 50	(i) 1 (of parent), 2, 27 (if any-with spouse endorsed), 50, 52 (ii) 49 or 54
12	Applied by Legal Guardian	1 (of parents), 2, 27 (if any-with spouse name endorsed), 34, 51 (signed by legal guardian)	(i) 1 (of parents), 2, 27 (if any-with spouse name endorsed), 34, 51 (signed by legal guardian) 52 (ii) 49 or 54
13	Minors with single parent (One parent deceased)	1 (of parent), 2, 27 (if any), 28 (of deceased parent), 51	
14	Minors from Nagaland (below 18 years)	(i) 1 (of parents), 2, 27 (if any-with spouse name endorsed) (ii) 51 (signed by both parents) or 50 (one parent not given consent) Note: Additional PV required from Guwahati through MHA	Cannot apply under Tatkaal Scheme
15	Minors from Jammu and Kashmir	(i) 1 (of parents), 2, 27 (if any-with spouse name endorsed)	

CASE NO	PASSPORT SERVICES	DOCUMENTS TO BE SUBMITTED	
		Document No. – Normal Application	Document No. – Tatkaal Application
(I)	Fresh Passport		
		(ii) 51 (signed by both parents) or 50 (one parent not given consent)	
16	Minor students staying away from parents	(i) 1 (of parents), 2, 17, 18, 27 (if any-with spouse name endorsed) (ii) 51 (signed by both parents) or 50 (one parent not given consent)	(i) 1 (of parents), 2, 17, 18, 27 (if any-with spouse name endorsed), 52 (ii) 51 (signed by both parents) or 50 (one parent not given consent) (iii) 49 or 54
(II)	Re-issue of Passport		
A	Additional Booklet (Exhaustion of Visa pages)	1 (if address is different from old Passport), 5	1 (if address is different from old Passport), 5
B	Expiry of old passport		
1	Within the time period of one year before expiry and three year after expiry of old Passport	1 (if address is different from old Passport), 5	1 (if address is different from old Passport), 5
2	After three years of expiry of old passport	1 (if address is different from old Passport), 5	(i) 1, 5, 52 (ii) 49 or 54
3	Renewal of Short Validity Passport (SVP)	1 (if address is different from old Passport), 5, 29	Cannot apply under Tatkaal Scheme
4	Government/Public Sector/ Statutory body employees (Still serving)	1 (if address is different from old Passport), 5, 22	1 (if address is different from old Passport), 5, 22
5	Retired government official	1 (if address is different from old Passport), 5, 10	1 (if address is different from old Passport), 5, 10
6	Students going for higher studies abroad upto 2 years from expiry of Passport	1 (if address is different from old Passport), 5, 30	(i) 1 (if address is different from old Passport), 5, 30

CASE NO	PASSPORT SERVICES	DOCUMENTS TO BE SUBMITTED	
		Document No. – Normal Application	Document No. – Tatkaal Application
(I)	Re-issue of Passport		
C	Damaged Passport (Passport number is readable, name is legible and Photo is intact)	1 (if address is different from old Passport), 2, 5, 31	1 (if address is different from old Passport), 2, 5, 31
D	Lost/Damaged beyond recognition/Stolen Passport	1, 2, 31, 32, 33 (if available) Note: Other documents which have to be submitted are as per the case, as in the case of fresh Passport.	Cannot apply under Tatkaal Scheme
E	Change in Particulars		
1	A woman applying for change of name/surname in existing Passport due to marriage	(i) 5, 35 (if he has Passport) (ii) 14 or 26 or 47	(i) 5, 35 (if he has Passport) (ii) 14 or 26 or 47
2	Divorcees applying for change of name OR for deletion of spouse's name in existing Passport	(i) 5, 48 (ii) 36 or 37 (issued by Qazi)	(i) 5, 48 (ii) 36 or 37 (issued by Qazi)
3	Re-married applicants applying for change of name/spouse's name	(i) 5, 35 (of present husband, if he has Passport) (ii) 14 (Re-marriage certificate) or 26 or 47 (iii) 28 or 37 (as the case may be in respect of first spouse)	(i) 5, 35 (of present husband, if he has Passport) (ii) 14 (Re-marriage certificate) or 26 or 47 (iii) 28 or 37 (as the case may be in respect of first spouse)
4	Change of name in other circumstances (minor change in name-both male and female i.e., spelling discrepancy between Passport and documents which phonetically does not result in total change in name)	5, 48,	5, 48,

CASE NO	PASSPORT SERVICES	Document No. - Normal Application	Document No. - Tatkal Application
(II)	Re-issue of Passport	5, 13, 48	Cannot apply under Tatkal Scheme
5	Major change in name (cases different from minor change case)	5, 15, 16, 48	5, 15, 16, 48
6	Change in name in case of Government/Public Sector/ Statutory body employees	5, 38, 39	Cannot apply under Tatkal Scheme
7	Change in Sex	5, 40	Cannot apply under Tatkal Scheme
8	Change of Appearance	2, 5, 41 (if change in Dob is more than 2 years or in case of conflicting documents), 55	Cannot apply under Tatkal Scheme
9	Change/Correction of Dob	5, 41 (if change in place of birth involves State change or Country change), 42, 56	Cannot apply under Tatkal Scheme
10	Change/Correction of place of birth	1 (changed address), 5	1 (changed address), 5
11	Change in Current Address	5	Cannot apply under Tatkal Scheme
12	Change in Signature	(i) 5 (ii) 14 or 26 or 47	Cannot apply under Tatkal Scheme
13	Addition of Spouse Name	5, 6 (of father/mother with changed name - if available) or 43 or 44	Cannot apply under Tatkal Scheme
14	Change of Father/Mother name	1 (if address is different from old Passport), 3, 5	1 (if address is different from old Passport), 3, 5
15	ECR Deletion		1 (Not applicable)

1. Subs. by G.S.R. 633(E), dated 23rd August, 2011 (w.e.f. 23-8-2011).

<D.2 OVERALL LIST OF DOCUMENTS>

If the following table, the complete list of documents and their document numbers have been given. "Document No." is the reference given to the document, which the applicant has to submit. Please refer Table 2: "List of Applicant Categories and Document to be submitted" and Table 3: "Overall List of Documents" for the documents which have to be submitted.

Table 3: Overall List of Documents

Document No.	List of Documents
1.	Proof of Present Address. For Proof of Address attach one of the following documents:
a.	Water/Telephone (landline or post-paid mobile bill)/Electricity bill/Statement of running bank account (Scheduled Commercial bank excluding Regional Rural banks and local area banks)/Income-Tax Assessment Order/Election Commission Photo ID card/Ga connection bill/Certificate from Employer of reputed and wide-known companies on letter head
b.	Spouse's passport copy (First and last page including family details), (provided the applicant's present address matches the address mentioned in the spouse's passport)
c.	Parent's passport copy, in case of minors (First and last page)
d.	Applicant's current and valid ration card NOTE 1: If any applicant submits only ration card as proof of address, it should be accompanied by one more proof of address out of the given categories.
2.	Proof of Date of Birth. For Proof of Date of Birth attach one of the following documents: For applicants born on or after 26-1-89, only Birth Certificate issued by the Municipal Authority or any office authorized to issue Birth and Death Certificate by the Registrar of Births & Deaths is acceptable. The Birth Certificate should ordinarily contain the name of child, name of father and mother, date of birth, place of birth, sex, registration number and date of registration. If the Birth Certificate doesn't contain the name of child, a declaration on plain paper signed by parents, is required to be submitted specifying the name of the child.
a.	Birth certificate issued by a Municipal Authority or any office authorized to issue Birth and Death Certificate by the Registrar of Births & Deaths
b.	School leaving certificate/Secondary school leaving certificate/Certificate of Recognized Boards from the school last attended by the applicant or any other recognized educational institution
c.	Affidavit sworn before a Magistrate/Notary stating date/place of birth as per the specimen in Annexure "A" by illiterate or semi-illiterate applicants (Less than 5th class).
3.	Documentary proof for any one of the Non-ECR (previously ECR) categories. Refer Column 2.15 under Section-B of passport information booklet

Document No.	List of Documents
4.	Birth Registration Certificate issued by Embassy/High Commission/Consulate of India
5.	Old Passport in original with self-attested photocopy of its first two and last two pages, including ECR/Non-ECR page (previously ECNR) and the page of observation (if any), made by Passport Issuing Authority and validity extension page, if any, in respect of short validity passport.
6.	Passport of parents in original with self-attested photocopy of its first two and last two pages, including ECR/Non-ECR page (previously ECNR) and the page of observation (if any), made by Passport Issuing Authority and validity extension page, if any, in respect of short validity passport
7.	Citizenship Certificate issued by Ministry of Home Affairs
8.	Proof of refund of repatriation/deportation cost (if any) to Ministry of External Affairs
9.	Original Emergency Certificate/Seizure Memo issued by Airport Immigration Authorities on applicant's arrival in India
10.	Pension Payment Order
11.	Proof of surrender or cancellation of Diplomatic/official Passport
12.	Cancelled Passport (if surrender certificate is not available), with a letter explaining why surrender certificate is not available
13.	Paper clipping of two leading daily newspapers in original (one daily newspaper should be of the area of Applicant's Permanent Address and the other at Current Address or nearby area)
14.	An attested copy of marriage certificate issued by Registrar of Marriage
15.	Gazette Notification changing name in applicant's department
16.	Fresh ID Certificate in changed name
17.	Student Identity Card issued by Government Recognized Educational Institutions, in respect of full time courses
18.	<i>Bona fide</i> Letter from authorized signatory of college (On official letter head of UGC recognized College)
19.	Copy of child's (Age>18) Passport, who is staying abroad (with page having parent's name)
20.	A sworn affidavit by the parent(s) resident abroad attested by the Indian Mission along with affidavit from parent residing in India as well (as per Annexure 'H')
21.	Valid adoption deed with photo of the child duly attested by the Court (in the case of Christians, Muslims and Parsis, a court decree/order granting adoption/guardianship and allowing the child to be taken out of the Country).
22.	No Objection Certificate (NOC) (as per Annexure 'M')
23.	CARA No Objection Certificate

Document No.	List of Documents
24.	Copy of the guarantee executed before the Court concerned
25.	Certified copy of the court order for custody of the child in favour of the applicant's parent
26.	Affidavit sworn before First Class Judicial Magistrate on Non-Judicial stamp paper for re-issue of passport (which was obtained prior to marriage) by married applicants who are unable to provide the prescribed marriage certificate or joint affidavit with spouse, due to marital discord, separation or without formal divorce decree by the Court or due to total desertion by the spouse as per specimen at Annexure 'K'
27.	Attested photocopy of Passport of both or either parent
28.	Death Certificate
29.	Proof of documents which eliminate the cause of issuance of Short Validity Passport (SVP)
30.	Proof of going abroad for studies like Copy of college admission letter or Copy of application submitted for visa or Copy of bank loan paper etc
31.	Affidavit stating how and where the Passport got lost/damaged (Annexure 'L')
32.	Police report in original
33.	Self-attested photocopy of first two and last two pages, including ECR/Non-ECR page of old Passport
34.	Court Decree/order in respect of legal guardian
35.	Self attested photocopy of the spouse's Passport
36.	Court certified copy of Divorce decree
37.	Self attested copy of Divorce certificate
38.	Sworn affidavit regarding change of sex
39.	Certification from hospital where he/she underwent sex change operation successfully
40.	Recent photograph (required only in case of DPC/SFC/CSC applications). The photo should be most recent showing the latest appearance. A notarised statement is required in case of request from Sikhs who want to change from turban photo to clean shaven ones or the other way.
41.	First class judicial magistrate/Sub-divisional magistrate civil court order (if change in date of birth is more than 2 years/in case of conflicting documents/if change in place of birth involves change of State or Country) (In case change of place of birth involves change of country, also attach Document No. 7)
42.	Affidavit stating the reason for change in Place of Birth
43.	Proof such as service record/pension order/property documents showing that parents had changed their name

Document No.	List of Documents
44.	If parents are deceased such proof that they had changed their name during life-time
45.	"Identity Certificate" in original as per Annexure "B"
46.	A Declaration affirming the particulars furnished in the application about the minor child as per Annexure "C" (by single parent or by either parent who are separated but not formally divorced)
47.	A joint affidavit from husband and wife along with a joint photograph, (Specimen at Annexure "D") When joint affidavit is not possible the affidavit should indicate the reason for it. If applying for passport for the first time, this affidavit is required only if there is a change in the first name
48.	Deed poll/sworn affidavit as per Annexure "E"
49.	Verification Certificate as per the specimen as per Annexure "F"
50.	A Declaration affirming the particulars furnished in the application about the minor as per Annexure "G" (one parent not given consent)
51.	A Declaration affirming the particulars furnished in the application about the minor as per Annexure "H"
52.	Standard Affidavit as per Annexure "I"
53.	Verification Certificate as per Annexure "J"
[54.	3 out of 16 documents listed are as under:

NOTE 2.—

- For three documents to be submitted from the sixteen documents listed below, one of the three documents should be a photo identity document and at least one of the three must be amongst the documents indicated at (a) to (j) below
- Name in all the three documents should be same.

(a)	Electors Photo Identity Card (EPIC);
(b)	Service Photo Identity Card issued by State/Central Government, Public Sector Undertakings, local bodies or Public Limited Companies.
(c)	SC/ST/ OBC Certificates.
(d)	Freedom Fighter Identity Cards.
(e)	Arms Licences.
(f)	Property Documents such as Pattas, Registered Deeds etc.
(g)	Ration Cards.
(h)	Pension Documents such as ex-servicemen's Pension Book/Pension Payment Order, ex-servicemen's Widow/Dependent Certificates, Old Age Pension Order. Widow Pension Order.
(i)	Railway Identity Cards.
(j)	Self-Passport (unrevoked and undamaged).
(k)	Income-Tax Identity (PAN) Cards.
(l)	Bank/Kisan/Post Office Passbooks.

1. Subs. by G.S.R. 633(E), dated 23rd August, 2011, for Serial No. 54 (w.e.f. 23-8-2011).

Document No.	List of Documents
(m)	Student Photo Identity Cards issued by Government Recognized Educational Institutions in respect of full-time courses.
(n)	Driving Licences (valid and within the jurisdiction of the State of submission of application).
(o)	Birth Certificates issued under the Registration of Births and Deaths Act, 1969.
(p)	Gas Connection Bill (of one year before and current bill).]
55.	NOTE 3: All above documents are required to be produced in original along with self-attested copies.
56.	Affidavit stating the reason for change in Date of Birth
57.	Proof of Place of Birth Photocopy of Diplomatic/Official Passport

E. FEE LIST

Details of fee to be paid along with the application form for various services are listed in the table below

Payment of Fee:

(A) At Passport Seva Kendra (PSK)/Mini Passport Seva Kendra (Mini PSK): By Cash only

(B) At other collection centres:

- District Passport Cell (DPC): By Demand Draft (DD) drawn in favour of "PAO-MEA" payable at the city where the RPO is located.
- Speed Post Centre (SPC): By Cash or by Demand Draft (DD) drawn in favor of "PAO-MEA" payable at the city where the RPO is located.
- Citizen Service Centre (CSC): By Cash or Credit/Debit card as applicable.

Note.—(i) Applicant name, date of birth and date of submission of the application must be mentioned behind the DD, (ii) Only applications for fresh passports will be entertained at the collection centres, (iii) Penalty is to be paid in cash only

[Table 4: Fee List

Sl. No.	Service Required	Application Fee	Additional Tatkaal Fee
1.	Fresh Passport or re-issue of Passport including additional booklet due to exhaustion of visa pages (36 pages) of 10 years validity (including minors between 15 to 18 years of age, who wish to get a 10 years full validity passport)	Rs. 1,000	Rs. 1,500
2.	Fresh Passport or re-issue of Passport including additional booklet due to exhaustion of visa pages (60 pages) of 10 years validity (including minors between 15 to 18 years of age, who wish to get a 10 years full validity passport)	Rs. 1,500	Rs. 1,500

1. Subs. by G.S.R. 633(E), dated 23rd August, 2011, for Table 4 (w.e.f. 23-8-2011).

Sl. No.	Service Required	Application Fee	Additional Tatkaal Fee
3.	Fresh Passport or re-issue of Passport for minors (below 18 years of age) of 5 years validity or till the minor attains the age of 18 whichever is earlier (36 pages)	Rs. 600	Rs. 1,500
4.	Replacement of Passport (36 pages) in lieu of lost, damaged or stolen passport	Rs. 2,500	Rs. 1,500
5.	Replacement of Passport (60 pages) in lieu of lost, damaged or stolen passport	Rs. 3,000	Rs. 1,500
6.	Replacement of Passport (36 pages) for change in personal particulars (10 years validity)	Rs. 1,000	Rs. 1,500
7.	Replacement of Passport (36 pages) for change in personal particulars (10 year validity)	Rs. 1,500	Rs. 1,500
8.	Replacement of Passport (36 pages) for change in personal particulars for Minors (below 18 years of age), of 5 years validity or till the minor attains the age of 18, whichever is earlier.	Rs. 600	Rs. 1,500
9.	Replacement of Passport (60 pages) for deletion of ECR (10 years validity)	Rs. 1,000	Not applicable
10.	Replacement of Passport (60 pages) for deletion of ECR (10 years validity)	Rs. 1,500	Not applicable
11.	Issue of Police Clearance Certificate (PCC) or Surrender Certificate or Certificate of Date of Birth or any other miscellaneous certificates based on the Passport.	Rs. 500	Not applicable

Note.—

1. Tatkaal application shall be accepted only if an applicant is eligible for submission of a Tatkaal application under the rules.
2. Tatkaal fee is to be paid in addition to the application fee mentioned above.]

F. WHERE TO APPLY

You can submit the filled-in Passport Application Form at the following locations

- Any Passport Seva Kendra (PSK)/Mini Passport Seva Kendra (Mini PSK) within the jurisdiction of your Passport Office
- District Passport Cell (DPC) of your district
- Select Speed Post Centre(s) (SPC) in your district
- Citizen Service Centre (CSC) if any, in your area

Note.—

1. While PSKs offer all kinds of passport services, only fresh passport applications are accepted at DPCs/SPCs and CSCs.
2. In order to locate the application submission centre please visit our website www.passportindia.gov.in

G. SPECIMEN OF AFFIDAVITS/DECLARATIONS
ANNEXURE 'A'

SPECIMEN AFFIDAVIT TO BE SUBMITTED BY ILLITERATE APPLICANTS AS PROOF OF DATE OF BIRTH IN CASE NO OTHER DOCUMENTS MENTIONED IN DOCUMENT NUMBER 2 OF TABLE 3 IN SECTION D IS AVAILABLE

(To be executed on non-judicial stamp paper of minimum value)

I,....., S/o W/o D/o.....presently residing at.....hereby state the following:—

I was born on.....at.....situated in the district.....in the State of..... I have no documentary proof in support of my place and date of birth.

I do not possess any educational qualification and I am an illiterate person.

I take oath and solemnly declare/affirm that the particulars furnished by me above are correct and that I have not concealed or misrepresented any facts.

Place.....

Date.....

Verified on this.....day of.....of the year.....that the contents of my above affidavit are true and correct to the best of my knowledge and belief, and nothing in material has been concealed there from.

The contents of the affidavit have been read out to me.

Deponent

Attested

Signature and official seal of attesting authority

Note: Affidavit to be attested by the Magistrate/Notary (In case of notary, notarial stamp would be required)

ANNEXURE 'B'

ALL CENTRAL GOVERNMENT EMPLOYEES, STATE GOVERNMENT EMPLOYEES, EMPLOYEES OF STATUTORY BODIES AND PUBLIC SECTOR UNDERTAKINGS, THEIR SPOUSE AND CHILDREN UPTO THE AGE OF 18 YEARS ARE REQUIRED TO PRODUCE AN IDENTITY CERTIFICATE (STRIKE OUT OPTIONS THAT ARE NOT APPLICABLE)

(To be given in Duplicate on Original Stationery)

Certified that Shri/Smt/Miss.....Son/Wife/Daughter of Shri....., who is an Indian national, is a temporary/permanent employee of (office address).....from (date).....and is at present holding the post of.....Shri/Smt./Miss/Mst....., who is also an Indian national, is/are a dependent family member(s) of Shri/Smt.....and his/her identity is certified. This Ministry/Department/Organization has no objection to his/her acquiring Indian Passport. I, the undersigned, am duly authorized to sign this Identity Certificate I have read the provisions of section 6(2) of the Passports Act, 1967 and certify that these are not attracted in case of this applicant I recommend issue of an Indian Passport to him/her. It is certified that this organization is a Central/State Government/Public Sector Undertaking/Statutory body. The Identity Card Number of Shri/Smt./Miss (employee).....is.....

Ref No. & Date.....

Name, Designation, Address & Tel No.

Applicant's
photo to
be attested

Note.—Refer Annexure 'F' for details of section 6(2) of the Passports Act, 1967.

ANNEXURE 'C'

AFFIDAVIT TO BE SUBMITTED WITH THE APPLICATION FOR A PASSPORT OF A MINOR CHILD BY EITHER PARENT (WHO ARE SEPARATED BUT NOT FORMALLY DIVORCED) OR BY A SINGLE PARENT OF THE CHILD BORN OUT OF WEDLOCK

(To be executed on non-judicial stamp paper of minimum value)

1.(name of single parent), solemnly declare and affirm the following:—
1. That I am the mother/father of.....(name of the child), who is a minor and on whose behalf I have made an application for his/her passport.
2. That I am judicially separated from the mother/father of.....(name of the child).

OR

That no legally valid marriage ever existed between me and Mr./Ms.(name of father/mother of the minor child).

OR

The father/mother of.....(name of the child) has deserted me after conception/delivery.

3. That.....(name of the child) is exclusively under my care and custody since separation/delivery.

Date.....

(Sworn before the First Class Judicial Magistrate or Notary Public)

Signature & address of Deponent

ANNEXURE 'D'

SPECIMEN AFFIDAVIT TO BE SUBMITTED ALONG WITH APPLICATION FOR PASSPORT BY A WOMAN APPLICANT FOR CHANGE OF NAME AFTER MARRIAGE (JOINT AFFIDAVIT TO BE SUBMITTED ALONG WITH HER HUSBAND)

(To be executed on non-judicial stamp paper of minimum value)

- We, 1.....
 (maiden name of wife)
 2.....
 (name of husband)

solemnly declare and affirm the following:—

1. That we are married under..... Marriage Act/Rights/Customs and are living together as married couple since.....(date of marriage).
2. That.....(maiden name of wife) would henceforth be known as.....(name of wife after marriage) by virtue of our marriage.
3. That our joint photograph is affixed below.

Date.....

Signature & address of Deponents
 1.....
 2.....

Note: 1. This affidavit may be sworn before a Magistrate/Notary.

2. The joint photograph of the couple is to be pasted on the bottom left hand side of the affidavit paper and attested by the Magistrate/Notary with his/her signature and rubber stamps (half on the photograph and half on the affidavit).

3. Declaration 2 above to be ignored by applicants who seek endorsement of name of spouse in respect of re-issue of a previously issued passport.

4. If a joint photograph cannot be affixed, then affidavit should indicate the reason why it cannot be affixed.

ANNEXURE 'E'

SPECIMEN AFFIDAVIT FOR CHANGE IN NAME/DEED POLL/SWORN AFFIDAVIT

(On non-judicial stamp paper of minimum value)

By this deed I, the undersigned.....(new name) previously called.....(old name), doing.....(give profession or vocation) and resident of.....(old address) solemnly declare—

1. That for and on behalf of myself and my wife, children and remitter issue, I wholly renounce/relinquish and abandon the use of my former name/surname of.....and in place thereof, I do hereby assume from this date the name/surname.....so that I and my wife, children and remitter issue may hereafter be called, known and distinguished not by my former name/surname, but assumed name/surname of.....

2. That for the purpose of evidencing such my determination declare that I shall at all times hereafter in all records, deeds and writings and in all proceedings, dealings and transactions, private as well as upon all occasions whatsoever, use and sign the name of.....as my name/surname in place and in substitution of my former name/surname.

3. That I expressly authorize and request all persons in general and relatives and friends in particular, at all times hereafter to designate and address me, my wife, my children, and remitter issue by such assumed name/surname of.....

4. In witness whereof I have hereunto subscribed my former and adopted name/surname of.....and.....affix my signature and seal, if any, this.....day of.....

Date..... Signed, sealed and delivered by the above name
 In the presence of: Former name.....

Name..... Name.....
 Address..... Address.....

(This deed poll/affidavit may be signed and attested in presence of a Magistrate/Notary or Consular Officer in an Indian Mission abroad) Note: In case of change of name, applicant should insert advertisements in two reputed newspapers (one local newspaper of the area in which he/she is residing and 2nd in newspaper of the area of permanent address) and submit original newspapers at the time of applying for passport in his/her new name.

ANNEXURE 'F'
SPECIMEN VERIFICATION CERTIFICATE (FOR PASSPORT
UNDER TATKAAL ONLY)

(On official letter-head of verifying authority)

(To be given in Duplicate* along with Standard Affidavit as at Annexure "I")

Reference Number



Verification Certificate

This is to certify that Sh./Smt./Kum.....son/wife/daughter of.....whose personal particulars are given below, has good moral character and reputation and that after having read the provisions of section 6(2) of the Passports Act, 1967, I certify that these provisions are not attracted in case of this applicant and I, recommend issue of an Indian Passport to him/her. Applicant has been staying at his/her address continuously for the last one year.

Date of Birth

Place of Birth

Educational Qualification

Profession (Govt./Private Service/Others)

Permanent Address

Present Address

Place.....

Office Address with location

Date.....



Signature.....

Full Name.....

Designation.....

I Card No.....

(Enclose a photocopy of I Card)

Telephone No. (O).....(R).....

Mobile No.....

[Fax No.]

[E-mail Id.....]

Notes.—

1. The applicant's passport size photograph is also required to be affixed on the Verification Certificate and attested by the officer issuing the Verification Certificate with his/her signature and rubber stamp put in such a way that half the signature and stamp appear on the photograph and half on the certificate,

2. If the applicant has resided at more than one place during the last one year, then all previous addresses with the relevant dates should be mentioned.

3. This Verification Certificate may be got signed by any of the following:

- (i) An Under Secretary/Deputy Secretary/Director/Joint Secretary/Addl. Secretary/Special Secretary/Cabinet Secretary to Government of India

1. Ins. by G.S.R. 633(E), dated 23rd August, 2011 (w.e.f. 23-8-2011).

- (ii) A Director/Joint Secretary/Additional Secretary/Special Secretary/Chief Secretary to a State Govt.
- (iii) A Sub-Divisional Magistrate/First class Judicial Magistrate/Additional DM/District Magistrate of the district of residence of applicant.
- (iv) A District Superintendent of Police, DIG/IC/DGP of the district of residence of applicant.
- (v) A Major and above in the army, Lt. Commander and above in the Navy and Sq. Leader and above in the Air Force.
- (vi) The General Manager and above of a Public Sector Undertaking.
- (vii) All members of any All India Service or Central Service who are equivalent to or above the rank of an Under Secretary to the Government, i.e., with Grade pay of Rs. 6,600 and above.
- (viii) Resident Commissioners/Additional Resident Commissioners of all State Governments based in Delhi.
- (ix) Concerned Tehsildars or concerned SHOs for an applicant staying in the area under his/her jurisdiction.
- (x) The Chairmen of the Apex Business Organizations, i.e., FICCI, CII and ASSOCHAM in respect of owners, partners or directors of the companies that are members of the concerned Chamber in prescribed performa as at Annexure "J". (The certificate should specify applicant is a owner/ partner/ director of the company).

4. Anyone who issues incorrect verification certificate may be prosecuted under section 12(2) of the Passports Act, 1967.

5. SECTION 6(2) (C) OF THE PASSPORTS ACT, 1967—

"Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under clause (C) sub-section 5 of any one or more of the following grounds, and on no other ground, namely:

- (a) that the applicant is not a citizen of India.
- (b) that the applicant may, or is likely to, engage outside India in activities prejudicial to the sovereignty and integrity of India.
- (c) that the departure of the applicant from India may, or is likely to, be detrimental to the security of India.
- (d) that the presence of the applicant outside India may, or is likely to, prejudice the friendly relations of India with any foreign country.
- (e) that the applicant has, at any time during the period of five years immediately preceding the date of his application, been convicted by a court of India for any offence involving moral turpitude and sentenced in respect thereof imprisonment for not less than two years.
- (f) that criminal proceedings in respect of an offence alleged to have been committed by the applicant are pending before a court in India.
- (g) that a warrant or summons for the appearance, or a warrant for the arrest of the applicant has been issued by a court under any law for the time being in force or that an order prohibiting the departure from India of the applicant has been made by any such court.
- (h) that the applicant has been repatriated and has not reimbursed the expenditure incurred in connection with such repatriation.

ANNEXURE 'G'

DECLARATION BY APPLICANT PARENT OR GUARDIAN IF PASSPORT IS FOR MINOR WHEN ONE PARENT HAS NOT GIVEN CONSENT: IN THE FORM OF A SWORN AFFIDAVIT BEFORE JUDICIAL MAGISTRATE

(On non-judicial stamp paper of minimum value)

I/We..... (name of the Parent/Guardian applying for passport) solemnly declare and affirm the following:—

1. That I/We am/are the mother/father/parents/guardians of..... (name of the minor child) who is a minor and on whose behalf I/We have made an application for his/her passport.
2. Signature/Consent of Mr./Mrs.(name of the father/mother) who is father/mother/parents of the child has not been obtained by me for the following reasons:
3. That I/We only am/are taking care of.....(name of the minor child) and he/she is exclusively in my physical custody.
4. I/We also affirm that in the case of a court case arising due to issue of a passport to the minor child.....(name of the minor child) I/We would be solely responsible for defending the case and not the Passport Issuing Authority.

Date.....

Signature & Address of the parent(s)/guardian(s) applying for the Passport

ANNEXURE 'H'

DECLARATION OF APPLICANT PARENT OR GUARDIAN IF PASSPORT IS FOR MINOR (ON PLAIN PAPER)

I/We affirm that the particulars given above are of.....(name of the child) son/daughter of Shri.....and Smt.of whom I/we am/are the Parents/Single Parent/Applicant Parent/Guardians. He/She is a Citizen of India. His/Her date of birth/place of birth is.....I/We undertake the entire responsibility for his/her expenses. I/We solemnly declare that he/she has not lost, surrendered or been deprived of his/her citizenship of India and that the information given in respect of his/her in this application is true. It is also certified that I/we am/are holding/not holding valid Indian passport(s).

_____ / _____ OR _____
 Father (Signature) Mother (Signature) Legal Guardian (Signature)

ANNEXURE 'I'

AFFIDAVIT

(To be executed on appropriate non-judicial stamp paper of minimum value and attested by a Notary Public)

(One original and one self-attested photocopy to be submitted)

I.....(name), son/daughter/wife of Shri.....residing at..... Date of Birth.....being an applicant for issue of passport, do hereby solemnly affirm and state the following:

1. That the names of my parents and spouse are as follows:
 (i) Father:

(ii) Mother:

(iii) Wife/Husband:

2. That I am a continuous resident at the above mentioned address from.....
3. That I am a citizen of India by birth/descent/registration/naturalization and that I have neither acquired the citizenship of another country nor have surrendered or been terminated/deprived of my citizenship of India.
4. That I have not, at any time during the period of five years immediately preceding the date of this affidavit, been convicted by any court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years.
5. That no proceedings in respect of any criminal offence alleged to have been committed by me are pending before any criminal court in India.
6. That no warrant or summons for my appearance, and no warrant for my arrest, has been issued by a court under any law for the time being in force, and that my departure from India has not been prohibited by order of any such court.
7. That I have never been repatriated from abroad back to India at the expense of Government of India/I was repatriated from abroad back to India at the expense of Government of India, but reimbursed expenditure incurred in connection with such repatriation.
8. That I will not engage in activities prejudicial to the sovereignty and integrity of India.
9. That my departure from India will not be detrimental to the security of India.
10. That my presence outside India will not prejudice the friendly relations of India with any foreign country.

Place.....

Date.....
 DEPONENT

VERIFICATION

Verified on.....(date) at.....(place) that the contents of the above mentioned affidavit are true and correct and nothing material has been concealed.

DEPONENT

ANNEXURE 'J'

SPECIMEN VERIFICATION CERTIFICATE

(To be given 'in Duplicate' along with Standard Affidavit as at Annexure "I") by Chairmen of Apex Business Organizations to the Owners, Partners or Directors of the companies having membership of the concerned chambers) (Official letter head of verifying authority)

Reference Number

(Verification Certificate issuing officer should attest the photograph of the applicant with his/her signature and rubber stamp in such a way that half the signature and stamp appear on the photograph and half on the certificate.)

Verification Certificate

This is to certify that Sh./Smt./Kum.son/wife/daughter of.....whose personal particulars are given below has good moral character and reputation and that after having read the provisions of section 6(2) of the Passports Act, 1967. I certify that these provisions are not attracted in case of this applicant and I recommend issue of an

Applicant's
 Photo

Indian Passport to him/her. Applicant has been staying at his/her address continuously for the last one year.

Date of Birth

Place of Birth

Educational Qualification

Profession

Permanent Address

Present Address

Place

Office Address with location

Date



Signature

Full Name

Designation

Name of the Chamber

Telephone No. (O)

Mobile No.(R).....

1]Fax No.]

1]E-mail Id.....]

Notes:

1. The applicant's passport size photograph is also required to be affixed on the Verification Certificate and attested by the officer issuing the Verification Certificate with his/her signature and rubber stamp put in such a way that half the signature and stamp appear on the photograph and half on the certificate.
2. If the applicant has resided at more than one place during the last one year then all previous addresses with the relevant dates should be mentioned.
3. Anyone who issues incorrect verification certificate may be prosecuted under section 12(2) of the Passports Act, 1967.
4. Refer Annexure 'F' for details of section 6(2) of the Passports Act, 1967.

ANNEXURE 'K'

SPECIMEN AFFIDAVIT to be sworn before First Class Judicial Magistrate on non-judicial stamp paper for re-issue of passport, which was obtained prior to marriage, by married applicants who are unable to provide the prescribed marriage certificate or joint affidavit with spouse due to marital discord, separation or without formal divorce decree by the Court or due to total desertion by the spouse.

- I,.....(Name of the passport applicant) solemnly declare and affirm the following:—
1. That I am married under.....marriage Act/Rights/Customs and has been living together with.....(name of husband/ wife) as married couple since.....(date of marriage)
 2. That I am separated from my husband/my wife from.....(date) though we are not yet legally divorced by decree of a Court of Law.

OR

That I am separated from my husband/my wife from.....(date) though we are not yet legally divorced by decree of a Court of Law. I/My wife or husband have/has already filed a divorce petition which is pending before.....(name of the Court with place)

1. Ins. by G.S.R. 633(E), dated 23rd August, 2011 (w.e.f. 23-8-2011).

3. That my passport be re-issued in my maiden name or in my married name as.....(only for woman applicant).

4. That my passport be reissued with my spouse name as.....(name of spouse; OR

That my passport be re-issued without my spouse name. In the eventuality of a Court declining to decree divorce, I will get the passport re-issued with spouse name within three months thereof.

5. That I solemnly affirm that the information given above is correct to the best of my knowledge and in the case of litigation arising due to re-issue of my passport in my maiden name/married name or with/without spouse name. I would be solely responsible for defending the case and not the Passport Issuing Authority

Date.....

Signature & Address of Deponen

ANNEXURE 'L'

SPECIMEN AFFIDAVIT FOR A PASSPORT IN LIEU OF LOST/DAMAGED PASSPORT

(This affidavit is to be executed on non-judicial stamp paper of minimum value in the presence of First Class Magistrate/Notary Public on the following points)

I,.....S/o, D/o, W/o Shri.....residing at.....solemnly affirm as follows:—

1. State how and when the passport was lost/damaged and when FIR was lodged at which Police Station and how many passports were lost/ damaged earlier?
2. State whether you travelled on the lost/damaged passport, if so state flight number and date and port of entry into India?
3. State whether you availed of any TR concessions/FTs allowance and if so detail thereof?
4. State whether non-resident Indian and if resident abroad, the details of the residence as follows:—

S. No.	Name of the Country	Length of residence	Page Nos. of passport
	From..... To.....		bearing departure & arrival stamps

1.

2.

3.

5. State whether the Passport had any objection by the PIA and if so the detail thereof.

6. State whether you were deported at any time at the expense of the Government and if so was the expenditure incurred reimbursed to Government of India.

I further affirm that I will take utmost care of my passport if issued and the Government will be at liberty to take any legal action under the Passports Act, 1967, in the lapse is repeated.

Date.....

Deponen

Affirm before First Class Magistrate/Notary

ANNEXURE 'M'
MINISTRY/DEPARTMENT/OFFICE OF

No..... dated.....

(No Objection Certificate issuing officer should attest the photograph of the applicant with his/her signature and rubber stamp in such a way that half the signature and stamp appear on the photograph and half on the Certificate.)

Applicant's
Photo

NO OBJECTION CERTIFICATE

Shri/Smt/Miss.....s/o....., who is an Indian national, is employed in this office as.....from.....till date. This Ministry/Department/Office has no objection to his/her obtaining a passport.

Signature
Controlling/Administrative Authority
Telephone/Fax/e-mail

Note.—

- (a) The officer authorized to issue NOC should sign with name and stamp and must provide contact details for verification by Passport Authority.
(b) NOC will be valid for six months from date of issue.



FORM EA(P)-14

File Number (For Office Use Only)

**GOVERNMENT OF INDIA, MINISTRY OF EXTERNAL AFFAIRS
PASSPORT APPLICATION FORM (DIPLOMATIC/OFFICIAL)**

Please fill this form in CAPITAL LETTERS using blue/black ink ball point pen only. Furnishing of incorrect information/suppression of information would lead to rejection of the application and would attract penal provisions as prescribed under the Passports Act, 1967. Please produce your original documents at the time of submission of the form.

It is mandatory to fill each item. Incomplete form will be rejected summarily.

- (i) Please enclose original safe custody Certificate of Valid Ordinary Passport (if held) from your office.
(ii) If Diplomatic/Official passport previously held by the applicant was kept in the safe custody of the Ministry of External Affairs, the original certificate should be enclosed.
(iii) Official/Diplomatic/Ordinary Passport which is around 10 years old or more (from the date of issue) must be submitted with the application for cancellation.
(iv) Official retiring in less than six months from the date of application, is required to give an undertaking from his/her office that he/she will surrender dip./off. passport to his/her office immediately after return.

1. **Applying for** Fresh Passport Re-issue of Passport
2. **Type of Passport** Diplomatic Official

Please paste your unsigned recent colour photograph with white back-ground of size 4.5cm X 3.5cm.

Signature/Left Hand
Thumb Impression of
Illiterate Applicant and
Minors who cannot
sign.

3. Applicant Details

3.1 **Applicant's Given Name** (Given Name means First name followed by Middle name (If any)) (Initials not allowed)

Surname

3.2 **Date of Birth** (DD-MM-YYYY) [] - [] - []

3.3 **Place of Birth** (Village or Town or City)

District (If born in India)

State/UT (If born in India)

Country (if born abroad) if born before 15-08-1947 in a place now in Pakistan or Bangladesh, write "Undivided India"

3.4 **Gender** Male Female

3.5 **Employment Type** Government Statutory Body PSU Autonomous Bodies

3.6 **Name of the Organization**

3.7 **Designation**

3.8 **Pay Band** From [] To []

3.9 **Grade Pay** [] []

4. **Family Details**

4.1 **Father's Given Name** (Given name means First name followed by Middle name (if any)) (Initials not allowed)

Surname

4.2 **Mother's Given Name** (Given Name means First name followed by Middle name (if any)) (Initials not allowed)

Surname

4.3 **Spouse's Given Name** (Given Name means First name followed by Middle name (if any)) (Initials not allowed)

Surname

4.4 Legal Guardian's Given Name (If applicable) (Initials not allowed)

Surname

5. Present Residential Address Details

5.1 House No. and Street Name

Village or Town or City

District

Police Station

State/UT

Country

PIN

Mobile Number

Telephone Number

E-mail ID

5.2 Is permanent address same as present address? Yes No

If no, provide details in Column 6 below

6. Permanent Residential Address Details

House No. and Street Name

Village or Town or City

District

Police Station

State/UT

Country

PIN

Mobile Number

Telephone Number

E-mail ID

7. Previous Passport/Application Details (ordinary/official/diplomatic passport)**7.1 Details of latest held/existing/lost/damaged ordinary passport**

Passport Number

Date of Issue

Date of Expiry

(DD-MM-YYYY)

Place of Issue

7.2 Details of latest held/existing/lost/damaged diplomatic/official passport

Passport Number

Date of Issue

Date of Expiry

(DD-MM-YYYY)

Place of Issue

7.3 Have you ever applied for passport, but not issued? Yes No

If yes, provide the following details

File Number

Month and Year of applying

Name of passport office where applied

8. Details of countries to be visited/transited

8.1 Country to be visited on official duty

Country to be transited

Purpose and Duration of visit

8.2 Country to be visited on official duty

Country to be transited

Purpose and Duration of visit

8.3 Country to be visited on official duty

Country to be transited

Purpose and Duration of visit

8.4 Country to be visited on official duty

Country to be transited

Purpose and Duration of visit

Place

Signature/Left Hand

Thumb Impression of

Applicant (if applicant is

minor, either parent to

sign)

Date (DD-MM-YYYY)



सर्वदा अर्धे

FORM EA(P)-15

File Number (For Office Use Only)

GOVERNMENT OF INDIA, MINISTRY OF EXTERNAL AFFAIRS

PCC APPLICATION FORM

Please read the Passport Instruction Booklet carefully before filling the Form. Fill this form in CAPITAL LETTERS using blue/black ink ball point pen only. Furnishing of incorrect information or suppression of information would lead to rejection of the application and would attract penal provisions as prescribed under the Passports Act, 1967. Please produce your original documents at the time of submission of the Form.

Passport Number

Date of Issue

(DD-MM-YYYY)

Place of Issue

Country for which PCC is required

1. Applicant Details

1.1 Applicant's Given Name (Given Name means First name followed by Middle name (if any)) (Initials not allowed)

Surname

2. Family Details

Sch. III]

The Passports Rules, 1980

2.1 Father's Given Name (Given Name means First name followed by Middle name (if any)) (Initials not allowed)

Surname

2.2 Mother's Given Name (Given Name means First name followed by Middle name (if any)) (Initials not allowed)

Surname

2.3 Legal Guardian's Given Name (If applicable) (Initials not allowed)

Surname

2.4 Spouse's Given Name (Given Name means First name followed by Middle name (if any)) (Initials not allowed)

Surname

3. Present Residential Address Details

3.1 House No. and Street Name

Village or Town or City

District

Police Station

State/UT

PIN

Mobile Number

Telephone Number

E-mail ID

3.2 Is permanent address same as present address? Yes No

If no, provide details in Column 4 below

4. Permanent Residential Address (If it is different from present residential address)

House No. and Street Name

Village or Town or City

District

Police Station

State/UT

Country

PIN

Mobile Number

Telephone Number

E-mail ID

5. References in your Village or Town or City

5.1 First Reference Name and Address

Mobile Number

Telephone Number

- 5.2 Second Reference Name and Address

Mobile Number

Telephone Number

6. Other details

Any criminal proceedings pending against you before a court in India? Yes No
If yes, please attach relevant document.

7. Enclosures

- 1.
- 2.
- 3.
- 6.
- 7.
- 8.

- 4.
- 9.
- 5.
- 10.

8. Self Declaration

I owe allegiance to the sovereignty, unity and integrity of India, and have not voluntarily acquired citizenship or travel document of any other country. I have not lost, surrendered or been deprived of the citizenship of India and I affirm that the information given by me in this form and the enclosures is true and I am solely responsible for its accuracy, and I am liable to be penalised or prosecuted if found otherwise. I am aware that under the Passport Act, 1967 it is a criminal offence to furnish any false information or to suppress any material information with a view to obtaining passport or travel document.

Place

Signature/Left Hand Thumb Impression of Applicant (If applicant is minor, either parent to sign)

Date (DD-MM-YYYY)

INSTRUCTIONS FOR FILLING-UP THE POLICE CLEARANCE CERTIFICATE (PCC) APPLICATION FORM

A. GENERAL INSTRUCTIONS

This PCC Application Form is machine-readable. It will be scanned by the ICR scanners. Incomplete or inappropriately-filled application form will not be accepted. Please follow the instructions given below while filling the form.

- Use CAPITAL LETTERS only, throughout the application form, as shown in the image below—
- | | | | | | |
|------------------------|---|---|---|---|---|
| Applicant's Given Name | | | | | |
| S | H | A | S | H | I |
- Incorrect
- | | | | | | |
|------------------------|---|---|---|---|---|
| Applicant's Given Name | | | | | |
| s | h | a | s | h | i |
- Correct
- Use standard fonts and avoid stylized writing.
 - Use black or blue ball point pen only. Do NOT fill the application form with ink-pen or pencil.
 - Write as clearly as possible. Use a pen with a thinnest possible tip.
 - Put a cross (X) in the boxes where you have to choose one or more options as your answer and leave the other option(s) blank. For example, if your gender is male, put a cross in the box against male as shown in the image below—
- Gender (X) Male Female
- Do NOT put dots (.), tick marks (✓), etc. in the boxes, to choose the appropriate option as your answer.
- Write clearly within the boxes without touching the boundaries. Try and write in the centre of the box, as shown in the image below—
- | | | | | |
|---|---|---|---|---|
| M | E | H | T | A |
|---|---|---|---|---|
- Incorrect
- | | | | | |
|---|---|---|---|---|
| M | E | H | T | A |
|---|---|---|---|---|
- Correct
- Leave one box blank after each complete word, while filling up the boxes.
- Father's Given Name
- | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| D | E | V | A | N | G | J | I | G | N | E | S | H |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
- Incorrect
- | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| D | E | V | A | N | G | J | I | G | N | E | S | H |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
- Correct

- Do NOT write anything outside the given boxes. Adjust the information you need to fill, within the given number of boxes.

- Do NOT overwrite in case of a mistake. Just strikeout the character and continue to write in the next box.

S	R	I	D	H	A	R
---	---	---	---	--------------	---	---

Incorrect

S	R	I	D	X	H	A	R
---	---	---	---	--------------	---	---	---

Correct

- Do NOT fold or smudge the application form.

- Do NOT write "NA" or "N/A" or "NOT APPLICABLE" in any boxes in the form to convey that the column is not relevant for your case. Leave that column blank.

Furnishing of Incorrect information/suppression of information would lead to rejection of application and would attract penal provisions as prescribed under the Passports Act, 1967.

WHERE TO APPLY: You can apply at Passport Seva Kendra (PSK)/Mini Passport Seva Kendra (Mini PSK), within the jurisdiction of your Passport Office. In order to locate the application submission centre please visit our website www.passportindia.gov.in

S.No.	Police Verification Report (PVR)/ Observation in System	Service Levels
1.	Police Verification Report in respect of the existing passport is clear and there is no subsequent adverse entry in the system	PCC will be issued on the same day at PSK/ Mini PSK.
2.	(a) Police Verification was not required when the passport was issued as the applicant was then a minor and has now become a major (b) Police Verification was not required when the passport was issued as the applicant was a dependent of a government employee (c) Police Verification process could not be completed at the time of issuance of passport due to various reasons (d) Applicant's present address is different from that mentioned in the passport (e) Any other such cases where passport was issued without police verification	PCC will be issued only after completion of police verification process. After PVR is received, Passport Office will inform the applicant through e-mail/letter. Applicant has to come to the Passport Office with his/her passport to collect PCC. Country for which PCC is being issued will be stamped on the passport.

B. COLUMN-WISE GUIDELINES FOR FILLING-UP "PCC APPLICATION FORM"

Signature/Thumb impression:

- This signature/thumb impression will be scanned and captured in the system. Therefore, it must be kept strictly within the box, without touching the boundaries.
- Illiterate applicants should put their left hand thumb impression instead of signature. Use right hand thumb in case the applicant's left thumb to permanently disfigured and unfit for use.
- In case of minor applicants, this box should contain the minor's signature or thumb impression as the case may be. Minor's parents should not put their signature or thumb impression in this box.
- Use only blue/black ball point pen for signature.

Passport Details:

- In the box adjacent to the signature box, write details of your passport.
- Write the passport number, date on which the passport was issued to you, date on which the passport expires, and place at which the passport was issued to you.
- Write the Date of Issue and Date of Expiry in the DD-MM-YYYY (date-month-year) format.
- Write the country for which PCC is required, in the given boxes.

Column 1: Applicant Details

<Column 1.1: Applicant's Given Name & Surname>

- You must furnish your full name as it appears in the passport.
- For instance, if the details in your passport are given as:

Surname: JAIN

Given Name: PIYUSH KUMAR

Then write the given name as

P	I	Y	U	S	H		K	U	M	A	R
---	---	---	---	---	---	--	---	---	---	---	---

 in the boxes provided for Applicant's Given Name. Write the surname as

J	A	I	N
---	---	---	---

 in the boxes provided for Surname.

Column 2: Family Details

<Column 2.1, 2.2, 2.3 & 2.4> Write your family details as asked in the PCC Application Form>

- You need to attach Court decree/order in respect of your legal guardian.
- If your spouse has a passport, write his/her name in Column 2.4 as written in the passport.

DO NOT FILL COLUMNS 3, 4 and 5 UNLESS YOUR PRESENT ADDRESS IS DIFFERENT FROM THE ADDRESS MENTIONED IN YOUR PASSPORT

Column 3: Present Residential Address Details

Please note that heavy penalty is applicable if the applicant provides false information or suppresses information regarding present residential address details.

<Column 3.1: House No. and Street Name>

Write complete postal address of your present residence (house number, street name, village or town or city, district, police station, State or Union Territory, country and pin) under the respective headings.

You must also write your contact details, if any (mobile number, telephone number (with area code), and e-mail ID).

<Column 3.2: Is permanent address same as present address?>

Put a cross against Yes or No to indicate if your permanent address is the same as your present address.

If your permanent address is not the same as your present address, then you are required to furnish the details in Column 4.

Column 4: Permanent Residential Address (If it is different from present residential address)

If your permanent address is different from the present address (mentioned by you in Column 3), only then fill details in this Column.

Write complete postal address of your permanent address details (house number, street name, village or town or city, police district, police station, State or Union Territory, country and pin) under the respective headings, along with the contact details, if any (mobile number, telephone number (with area code), and e-mail ID) of the person residing at the permanent address.

Column 5: Reference in your village or town or city in respect of your present address <Column 5.1 and 5.2: First Reference Name and Address and Second Reference Name and Address>

Write the name, complete postal address and contact details (if any), including mobile number and telephone number (with area code), of two persons in your village or town or city who knows you and who can be contacted while carrying out police verification.

Column 6: Other Details

Put a cross against Yes or No to indicate if any criminal proceedings are pending against you before a court in India. If yes, you are required to attach the relevant documents with the PCC application Form.

Column 7: Enclosures - Please see Section C below.**Column 8: Self Declaration**

In the space provided below the self declaration, put your signature or left hand thumb impression (right hand thumb impression, if left hand is permanently disfigured or unfit for use), along with date (in DD-MM-YYYY format) and place.

If the applicant is a minor, either parent or legal guardian is required to sign.

C. LIST OF SUPPORTING DOCUMENTS

Self-attested photocopies of following documents must be attached along with the PCC application Form:—

1. Passport in original with self-attested photocopy of its first two and last two pages, including ECR/Non-ECR page (previously ECNR) and the page of observation (if any), made by Passport Issuing Authority and validity extension page, if any, in respect of short validity passport.
2. Proof of Present Address (if address is different From passport).

D. FEE DETAILS

- The fee to be paid along with the PCC application Form is Rs. 300.
- You can pay at Passport Seva Kendra (PSK)/ Mini Passport Seva Kendra (Mini PSK) in cash only.

Note.—

Fee schedule would be restructured after the nationwide rollout of the Passport Seva Project

3. The existing passport application Forms will continue to remain in force till the Passport Seva Project is implemented across the country.]

SCHEDULE III**PART II**

(See rule 6)

Form of Guarantee

¹[***]

²[PART III

(Rule 11)

Forms of Passport or travel document

***FORM P-1**

Form of Diplomatic Passport

****³[FORM P-1(A)]**

Form of Diplomatic Passport

***FORM P-2**

Form of Official Passport

****³[FORM P-2(A)]**

Form of Official Passport

***FORM P-3**

Passport

***FORM P-3(A)**

Form of Ordinary Passport

****⁴[FORM P-4]**

Form of Emergency Certificate

****⁵[FORM P-5]**

Form of Identity Certificate

***FORM P-6**

Form of India-Bangladesh Passport for Travel Between India and Bangladesh

***FORM P-7**

Form of India-Sri Lanka Passport

1. Form of Guarantee omitted by G.S.R. 860(E), dated 1st November, 1985 (w.e.f. 1-11-1985).
2. Subs. by G.S.R. 469(E), dated 24th June, 1982, for Part III (w.e.f. 1-6-1982).
* Ed. For relevant Form(s) contact concerned Passport Office.
3. Ins. by G.S.R. 684(E), dated 15th June, 1992 (w.e.f. 23-7-1992).
4. Subs. by G.S.R. 675(E), dated 26th July, 2010, for Form P-4 (w.e.f. 12-8-2010).
5. Subs. by G.S.R. 93, dated 26th June, 2009, for Form P-5 (w.e.f. 19-7-2009).

*[FORM P-7A]
Form of India-Sri Lanka Passport for Repatriates

*[FORM P-8]
[SCHEDULE IIIA
(See sub-rule (2) of rule 5)

Sl. No.	Description of passport application forms	Price in India	Price abroad
1	2	3	4
1.	Form No. 1 for issue of fresh passport (printed in black ink and available at all Passport Offices in India)	Price to be specified by the Government from time to time based on the cost of production and distribution	Not applicable
2.	Form No. 1 for issue of fresh passport (printed in blue/black ink and available at Post Offices of India)	-do-	Not applicable
3.	Form No. 1 for issue of fresh passport (printed in specified colour and available through persons specified under clause (b) of first proviso to sub-rule (1) of Rule 5	-do-	Not applicable
4.	Form No. 2 for miscellaneous services on passport (printed in brown/chocolate ink and available at Passport Offices in India and Post Offices in India)	-do-	Not applicable
5.	Form No. 2 for miscellaneous services on passport (printed in specified colour and available through persons specified under clause (b) of first proviso to sub-rule (1) of Rule 5	Price to be specified by the Government from time to time based on the cost of production and distribution	Not applicable
6.	Form No. 3 for passport to be issued in lieu of lost/damaged passport (printed in red ink and available at Passport Offices and Post Offices in India)	-do-	Not applicable

* Ed. For relevant Form(s) contact concerned passport office.

1. Ins. by G.S.R. 684(E), dated 15th June, 1992 (w.e.f. 23-7-1992).
2. Subs. by G.S.R. 485(E), dated 23rd May, 2000, for Schedule IIIA (w.e.f. 1-8-2000). Earlier Schedule IIIA was substituted by G.S.R. 516(E), dated 13th July, 1999 (w.e.f. 13-7-1999).

Sch. IV] The Passports Rules, 1980

1	2	3	4
7.	Form No. 3 for passport to be issued in lieu of lost/damaged passport (printed in specified colour and available through persons specified under clause (b) of the first proviso to sub-rule (1) of Rule 5	-do-	Not applicable
8.	Forms No. EA P-1 Ext. for issue of fresh passport and EA P-2 Ext. for miscellaneous services on passport.	Not applicable	Free
9.	Form No. EA P-5 for issue of Certificate of Identity.	Free	Not applicable

[SCHEDULE IV
(See rule 8)SCHEDULE OF FEES PAYABLE IN RESPECT OF APPLICATIONS FOR
PASSPORT AND TRAVEL DOCUMENTS

Sl. No.	Particulars of application	Scale of fees							
		Normal Fee	Tatkaal fee (includ- of normal fee		India		Abroad		
		Rs.	\$	€	Rs.	\$	€	(for Eur- countries	
1	2	3	4	5	6	7	8		
I. PASSPORT—									
1.	For issue of ordinary fresh passport or reissue of Passport containing 36 pages having validity of ten years (also applicable to minors in the age group of fifteen to eighteen years)	1500	75	60	3500	225	241		
2.	For issue of ordinary fresh passport or reissue of passport containing 60 pages having validity of ten years (also applicable to minors in the age group of fifteen to eighteen years)	2000	100	75	4000	250	251		
3.	For issue of ordinary fresh passport or reissue of passport of 36 pages for minors below eighteen years of age with validity of five years or till the minor attains the age of eighteen years, whichever is earlier	1000	50	40	3000	200	221		

1. Subs. by G.S.R. 731(E), dated 28th September, 2012, for Schedule IV (w.e.f. 1-10-2012). Earlier Schedule IV was substituted by G.S.R. 235(E), dated 28th March, 2002 (w.e.f. 1-4-2002) and amended by G.S.R. 396(E), dated 25th May, 2007 (w.e.f. 29-5-2007). G.S.R. 390(E), dated 4th June, 2009 (w.e.f. 5-6-2009).

	1	2	3	4	5	6	7	8
4. For issue of fresh or reissue of India-Bangladesh Passport or Passport for any other named foreign country with a maximum validity of ten years			1000	50	40	NA	NA	NA
5. Replacement of passport of 36 pages having validity of ten years for changes in personal particulars			1500	75	60	3500	225	240
6. Replacement of passport of 60 pages having validity of ten years for changes in personal particulars			2000	100	75	4000	250	255
7. Replacement of passport of 36 pages for changes in personal particulars for minors below the age of eighteen years with validity of five years or till the minor attains the age of eighteen years, whichever is earlier			1000	50	40	3000	200	220
8. Replacement of passport of 36 pages having validity of ten years for deletion of Emigration Check Required stamp			1500	75	60	3500	225	240
9. Replacement of passport of 60 pages having validity of ten years for deletion of Emigration Check Required stamp			2000	100	75	4000	250	255
II. SPECIAL TRAVEL DOCUMENT-								
10. Emergency Certificate			NA	15	12	NA	NA	NA
11. Certificate of Identity			1000	50	40	NA	NA	NA
12. Additional ordinary passport containing 36 pages for any country with validity upto one year			1500	75	60	NA	NA	NA
III. MISCELLANEOUS SERVICES--								
13. Issue of Police Clearance Certificate or Surrender Certificate or any other miscellaneous certificates based on the Passport			500	25	20	NA	NA	NA
IV. PASSPORTS IN LIEU OF LOST, DAMAGED OR STOLEN--								
14. For replacement of ordinary passport of 36 pages in lieu of lost, damaged or stolen passport			3000	150	110	5000	300	290
15. For replacement of ordinary passport of 60 pages in lieu of lost, damaged or stolen passport			3500	175	130	5500	325	310

Note.--

- 'NA' means 'not applicable'.
- Fee for a passport under Tatkaal scheme is inclusive of normal passport fee.
- Tatkaal fee will be charged for issue of fresh passport within 1-7 working days of the date of application. In case of reissue of passports, Tatkaal fee will be applicable for 1-3 working days. The prescribed time limit is subject to fulfillment of all documentary requirements and completion of requisite formalities.
- No Tatkaal fee is payable in the following cases, namely:
 - an applicant who has been advised to go abroad for specialised medical treatment and consultation (proof required for fee exemption), and an attendant;
 - death abroad of an applicant's spouse, father, mother, child, son-in-law, daughter-in-law, grandchild, brother or his spouse, sister or her spouse (applicant should provide sufficient details as to when and where death took place);
 - all Diplomatic or Official passport holders (except persons, who were issued short validity diplomatic or official passports for short visits abroad) who apply for an ordinary passport in lieu of their Diplomatic or Official passport up to three years after expiry of passport;
 - casual visitors from India, whose passports are stolen or lost or damaged while abroad;
 - in Missions or Posts abroad, if a passport is issued in normal course on first come first served basis even within Tatkaal timeframe;
 - inter-country adoption cases if passport is issued within Tatkaal period.]

SCHEDULE V

(See rule 19)

CONDITIONS RELATING TO THE ISSUE OF PASSPORT AND TRAVEL DOCUMENT

- A passport or travel document is available for travel only to the countries specified therein and must not be utilised for travel to other countries.
- A passport or travel document must not be utilised for travel to countries not recognised by the Government of India.
- A passport or travel document should not be sent out of any country by post.
- A passport or travel document should not be allowed to pass into the possession of any unauthorised person.
- The holder of a passport or travel document is personally responsible for its safe custody. It must not be wilfully lost, damaged or destroyed. In case of an unintentional loss or destruction, the fact and circumstances of such loss or destruction should be immediately reported to the nearest passport authority in India or (if the holder of the passport is abroad) to the nearest Indian Mission or Post and to the local police.
- A Passport or travel document must not be altered or mutilated in any way nor any endorsement made in it by any person other than a duly authorised official.
- If the particulars of children are included in the passport or travel document of parent or guardian, as the case may be, the children shall not travel alone.

8. Children, whose names are included in the passport or travel document of their parent or legal guardian, should apply for a separate passport on attaining the age of 15 years.
9. When a citizen of India abroad is to be repatriated to India at the expense of Government of India, he shall surrender his passport or travel document to the Indian Mission or Post repatriating him and obtain an Emergency Certificate for direct return to India.
10. The holder of an Emergency Certificate, on arrival in India, shall surrender it to the Immigration Check Post.
11. The passport or travel document should be surrendered to the passport authority if he ceases to be eligible to hold one.
12. A diplomatic or official passport shall automatically cease to be valid if the person to whom it was issued ceases to exercise the functions which rendered him eligible to receive a diplomatic or official passport. In such an event, the passport shall be surrendered to the passport authority.

THE PASSPORTS APPLICATION (FACILITATION AND PROCESSING) RULES, 2010¹

In exercise of the powers conferred by clause (i) of sub-section (2) of section 24 of the Passports Act, 1967 (15 of 1967), the Central Government hereby makes the following rules, namely:—

1. Short title and commencement.—(1) These rules may be called the Passports Application (Facilitation and Processing) Rules, 2010.

(2) They shall come into force on the date² of their publication in the Official Gazette.

2. Definitions.—(1) In these rules, unless the context otherwise requires,—

- (a) "Act" means the Passports Act, 1967 (15 of 1967);
- (b) "Mini-Passport Seva Kendra" means a small passport application processing centre under the Passport Seva Project;
- (c) "Passport Seva Kendra" means a passport application processing centre under the Passport Seva Project;
- (d) "Passport Seva Project" means the public private partnership model project to accept and process passport applications, issue of passport, maintain data thereto and all other works connected therewith;
- (e) "Schedule" means the Schedule annexed to these rules;
- (f) "section" means section of the Act;
- (g) "Service Provider" means a person or entity which is awarded the contract for implementing a Passport Seva Project.

(2) Words and expressions used herein and not defined, but defined in the Act shall have the meaning respectively assigned to them in the Act.

3. Passport Seva Kendras.—(1) The Passport Seva Kendras under the Passport Seva Project shall be set up by the Service Provider with the approval of the Central Government.

(2) The Passport Seva Kendra as specified in column (2) of Schedule I shall operate within the jurisdiction of the Passport Office shown against it in column (3) of the said Schedule.

4. Mini-Passport Seva Kendras.—The Mini-Passport Seva Kendra as specified in column (2) of Schedule II shall operate within the jurisdiction of the Passport Office shown against it in column (3) of the said Schedule.

1. Vide G.S.R. 371(E), dated 28th April, 2010, published in the Gazette of India, Extra, Pt. II, Sec. 3(f), dated 3rd May, 2010.

2. Came into force on 3-5-2010.

SCHEDULE I

[See sub-rule (2) of rule 3]

Sl. No.	Passport Seva Kendras	Passport Office
(1)	(2)	(3)
1.	Ahmedabad-1	Ahmedabad
2.	Ahmedabad-2	Ahmedabad
3.	Vadodara (Baroda)	Ahmedabad
4.	Rajkot	Ahmedabad
5.	Amritsar	Amritsar
6.	Bangalore-1	Bangalore
7.	Bangalore-2	Bangalore
8.	Hubli-Dharwad	Bangalore
9.	Mangalore	Bangalore
10.	Bareilly	Bareilly
11.	Bhopal	Bhopal
12.	Bhubaneswar	Bhubaneswar
13.	Chandigarh	Chandigarh
14.	Ludhiana	Chandigarh
15.	Ambala	Chandigarh
16.	Chennai-1	Chennai
17.	Chennai-2	Chennai
18.	Chennai-3	Chennai
19.	Kochi	Kochi
20.	Thrissur	Kochi
21.	Alappuzha	Kochi
22.	Ernakulam (Rural)	Kochi
23.	Kottayam	Kochi
24.	Coimbatore	Coimbatore
25.	Dehradun	Dehradun
26.	Delhi-1	Delhi
27.	Delhi-2	Delhi
28.	Gurgaon	Delhi
29.	Ghaziabad	Ghaziabad
30.	Guwahati	Guwahati
31.	Hyderabad-1	Hyderabad
32.	Hyderabad-2	Hyderabad
33.	Hyderabad-3	Hyderabad
34.	Vijayawada	Hyderabad
35.	Nizamabad	Hyderabad
36.	Tirupathi	Hyderabad
37.	Jaipur	Jaipur

(1)	(2)	(3)
38.	Jodhpur	Jaipur
39.	Sikar	Jaipur
40.	Jalandhar-1	Jalandhar
41.	Jalandhar-2	Jalandhar
42.	Hoshiarpur	Jalandhar
43.	Jammu	Jammu
44.	Kolkata	Kolkata
45.	Bahampur	Kolkata
46.	Kozhikode-1	Kozhikode
47.	Kozhikode-2	Kozhikode
48.	Kannur-1	Kozhikode
49.	Kannur-2	Kozhikode
50.	Lucknow	Lucknow
51.	Varanasi	Lucknow
52.	Kanpur	Lucknow
53.	Gorakhpur	Lucknow
54.	Madurai	Madurai
55.	Tirunelveli	Madurai
56.	Malappuram	Malappuram
57.	Mumbai-1	Mumbai
58.	Mumbai-2	Mumbai
59.	Mumbai-3	Mumbai
60.	Nagpur	Nagpur
61.	Panaji	Panaji
62.	Patna	Patna
63.	Pune	Pune
64.	Raipur	Raipur
65.	Ranchi	Ranchi
66.	Srinagar	Srinagar
67.	Surat	Surat
68.	Shimla	Shimla
69.	Thane	Thane
70.	Nashik	Thane
71.	Tiruchirappalli	Tiruchirappalli
72.	Thanjavur-1	Tiruchirappalli
73.	Thanjavur-2	Tiruchirappalli
74.	Thiruvananthapuram	Thiruvananthapuram
75.	Thiruvananthapuram (Rural)	Thiruvananthapuram
76.	Kollam	Thiruvananthapuram
77.	Visakhapatnam	Visakhapatnam

SCHEDULE II

(See rule 4)

Sl. No.	Mini Passport Seva Kendras	Passport Office
(1)	(2)	(3)
1.	Agartala	Kolkata
2.	Aizawl	Guwahati
3.	Darbhanga	Patna
4.	Gangtok	Kolkata
5.	Imphal	Guwahati
6.	Kharagpur	Kolkata
7.	Kohima	Guwahati
8.	Leh	Srinagar
9.	Gulbarga	Bangalore
10.	MEA Branch Secretariat, Kolkata	Kolkata
11.	Puducherry	Chennai
12.	Shillong	Guwahati
13.	Siliguri	Kolkata
14.	Itanagar	Guwahati



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No. 8640

**ARGENTINA, AUSTRIA, BELGIUM, CAMEROON,
CENTRAL AFRICAN REPUBLIC, etc.**

**Optional Protocol to the Vienna Convention on Consular
Relations concerning the Compulsory Settlement of Dis-
putes. Done at Vienna, on 24 April 1963**

Official texts: English, French, Chinese, Russian and Spanish.

Registered ex officio on 8 June 1967.

**ARGENTINE, AUTRICHE, BELGIQUE, CAMEROUN,
RÉPUBLIQUE CENTRAFRICAINE, etc.**

**Protocole de signature facultative à la Convention de Vienne
sur les relations consulaires, concernant le règlement
obligatoire des différends. Fait à Vienne, le 24 avril
1963**

Textes officiels anglais, français, chinois, russe et espagnol.

Enregistré d'office le 8 juin 1967.

No. 8640. OPTIONAL PROTOCOL¹ TO THE VIENNA CONVENTION ON CONSULAR RELATIONS² CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES. DONE AT VIENNA, ON 24 APRIL 1963

*The States Parties to the present Protocol and to the Vienna Convention on Consular Relations,*² hereinafter referred to as "the Convention", adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period,

Have agreed as follows :

Article I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

Article II

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

¹ In accordance with article VIII (1), the Protocol came into force on 19 March 1967, the date of entry into force of the Vienna Convention on Consular Relations, in respect of the following States, on behalf of which the instruments of ratification or accession (a) were deposited with the Secretary-General of the United Nations on the dates indicated :

Dominican Republic	4 March	1964
Gabon	23 February	1965 (a)
Kenya	1 July	1965 (a)
Liechtenstein	18 May	1966
Madagascar	17 February	1967 (a)
Nepal	28 September	1965 (a)
Philippines	15 November	1965
Senegal	29 April	1966 (a)
Switzerland	3 May	1965
Upper Volta	11 August	1964

² See p. 262 of this volume.

Article III

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.
2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

Article IV

States Parties to the Convention, to the Optional Protocol concerning Acquisition of Nationality, and to the present Protocol may at any time declare that they will extend the provisions of the present Protocol to disputes arising out of the interpretation or application of the Optional Protocol concerning Acquisition of Nationality. Such declarations shall be notified to the Secretary-General of the United Nations.

Article V

The present Protocol shall be open for signature by all States which may become Parties to the Convention as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article VI

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article VII

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VIII

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.
2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this Article, the Protocol shall enter

into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article IX

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention :

- (a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with Articles V, VI and VII;
- (b) of declarations made in accordance with Article IV of the present Protocol;
- (c) of the date on which the present Protocol will enter into force, in accordance with Article VIII.

Article X

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in Article V.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Protocol.

DONE at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

No. 8638

**ARGENTINA, AUSTRALIA, AUSTRIA, BELGIUM,
BOLIVIA, etc.**

**Vienna Convention on Consular Relations. Done at Vienna,
on 24 April 1963**

Official texts: English, French, Chinese, Russian and Spanish.

Registered ex officio on 8 June 1967.

**ARGENTINE, AUSTRALIE, AUTRICHE, BELGIQUE,
BOLIVIE, etc.**

**Convention de Vienne sur les relations consulaires. Faite à
Vienna, le 24 avril 1963**

Textes officiels anglais, français, chinois, russe et espagnol.

Enregistrée d'office le 8 juin 1967.

No. 8638. VIENNA CONVENTION¹ ON CONSULAR RELATIONS. DONE AT VIENNA, ON 24 APRIL 1963

The States Parties to the present Convention,

Recalling that consular relations have been established between peoples since ancient times,

Having in mind the Purposes and Principles of the Charter of the United Nation concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations which was opened for signature on 18 April 1961,²

Believing that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,

Affirming that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,

Have agreed as follows :

Article 1

DEFINITIONS

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them :

¹ The Convention was adopted on 22 April 1963 by the United Nations Conference on Consular Relations held at the Neue Hofburg in Vienna, Austria, from 4 March to 22 April 1963. The Conference also adopted the Optional Protocol concerning Acquisition of Nationality, the Optional Protocol concerning the Compulsory Settlement of Disputes, the Final Act and three resolutions annexed to that Act (see pp. 469, 487 and 458, respectively, of this volume). The Convention and the two Protocols were deposited with the Secretary-General of the United Nations. The Final Act, by unanimous decision of the Conference, was deposited in the archives of the Federal Ministry for Foreign Affairs of Austria. The text of the Final Act and of the annexed resolutions is published for the purpose of information on p. 458 of this volume. For the proceedings of the Conference, see *United Nations Conference on Consular Relations, Official Records*, Vol. I and II (United Nations Publications, Sales Nos. 63.X.2 and 64.X.1).

The Convention, in accordance with article 77, came into force on 19 March 1967, the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession. For the list of States on behalf of which the instruments of ratification or accession were deposited as at the date of registration of the Convention, see p. 454 of this volume.

² United Nations, *Treaty Series*, Vol. 500, p. 95.

- (a) “ consular post ” means any consulate-general, consulate, vice-consulate or consular agency;
- (b) “ consular district ” means the area assigned to a consular post for the exercise of consular functions;
- (c) “ head of consular post ” means the person charged with the duty of acting in that capacity;
- (d) “ consular officer ” means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;

- (e) “ consular employee ” means any person employed in the administrative or technical service of a consular post;
- (f) “ member of the service staff ” means any person employed in the domestic service of a consular post;
- (g) “ members of the consular post ” means consular officers, consular employees and members of the service staff;
- (h) “ members of the consular staff ” means consular officers, other than the head of a consular post, consular employees and members of the service staff;
- (i) “ member of the private staff ” means a person who is employed exclusively in the private service of a member of the consular post;

- (j) “ consular premises ” means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;
- (k) “ consular archives ” includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safekeeping.

2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern consular posts headed by honorary consular officers.

3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 7I of the present Convention.

CHAPTER I

CONSULAR RELATIONS IN GENERAL

Section I

*ESTABLISHMENT AND CONDUCT OF CONSULAR RELATIONS**Article 2*

ESTABLISHMENT OF CONSULAR RELATIONS

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.
3. The severance of diplomatic relations shall not *ipso facto* involve the severance of consular relations.

Article 3

EXERCISE OF CONSULAR FUNCTIONS

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

Article 4

ESTABLISHMENT OF A CONSULAR POST

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.

Article 5

CONSULAR FUNCTIONS

Consular functions consist in :

- (a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession *mortis causa* in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending

State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in sub-paragraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;
- (m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

Article 6

EXERCISE OF CONSULAR FUNCTIONS OUTSIDE THE CONSULAR DISTRICT

A consular officer may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district.

Article 7

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 8

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 9

CLASSES OF HEADS OF CONSULAR POSTS

1. Heads of consular posts are divided into four classes, namely :
 - (a) consuls-general;
 - (b) consuls;
 - (c) vice-consuls;
 - (d) consular agents.
2. Paragraph 1 of this Article in no way restricts the right of any of the Contracting Parties to fix the designation of consular officers other than the heads of consular posts.

Article 10

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.
2. Subject to the provisions of the present Convention, the formalities for the appointment and for the admission of the head of a consular post are determined by the laws, regulations and usages of the sending State and of the receiving State respectively.

Article 11

THE CONSULAR COMMISSION OR NOTIFICATION OF APPOINTMENT

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.

Article 12

THE EXEQUATUR

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 refuses 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

PROVISIONAL ADMISSION OF HEADS OF CONSULAR POSTS

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.

Article 14

NOTIFICATION TO THE AUTHORITIES OF THE CONSULAR DISTRICT

As soon as the head of a consular post is admitted even provisionally to the exercise of his functions, the receiving State shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of a consular post to carry out the duties of his office and to have the benefit of the provisions of the present Convention.

Article 15

TEMPORARY EXERCISE OF THE FUNCTIONS OF THE HEAD OF A CONSULAR POST

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.
2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.
3. The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity

which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4. When, in the circumstances referred to in paragraph 1 of this Article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

Article 16

PRECEDENCE AS BETWEEN HEADS OF CONSULAR POSTS

1. Heads of consular posts shall rank in each class according to the date of the grant of the *exequatur*.
2. If, however, the head of a consular post before obtaining the *exequatur* is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the provisional admission; this precedence shall be maintained after the granting of the *exequatur*.
3. The order of precedence as between two or more heads of consular posts who obtained the *exequatur* or provisional admission on the same date shall be determined according to the dates on which their commissions or similar instruments or the notifications referred to in paragraph 3 of Article 11 were presented to the receiving State.
4. Acting heads of posts shall rank after all heads of consular posts and, as between themselves, they shall rank according to the dates on which they assumed their functions as acting heads of posts as indicated in the notifications given under paragraph 2 of Article 15.
5. Honorary consular officers who are heads of consular posts shall rank in each class after career heads of consular posts, in the order and according to the rules laid down in the foregoing paragraphs.
6. Heads of consular posts shall have precedence over consular officers not having that status.

Article 17

PERFORMANCE OF DIPLOMATIC ACTS BY CONSULAR OFFICERS

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.

2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

Article 18

APPOINTMENT OF THE SAME PERSON BY TWO OR MORE STATES AS A CONSULAR OFFICER

Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.

Article 19

APPOINTMENT OF MEMBERS OF CONSULAR STAFF

1. Subject to the provisions of Articles 20, 22 and 23, the sending State may freely appoint the members of the consular staff.
2. The full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of Article 23.
3. The sending State may, if required by its laws and regulations, request the receiving State to grant an *exequatur* to a consular officer other than the head of a consular post.
4. The receiving State may, if required by its laws and regulations, grant an *exequatur* to a consular officer other than the head of a consular post.

Article 20

SIZE OF THE CONSULAR STAFF

In the absence of an express agreement as to the size of the consular staff, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the consular district and to the needs of the particular post.

Article 21

PRECEDENCE AS BETWEEN CONSULAR OFFICERS OF A CONSULAR POST

The order of precedence as between the consular officers of a consular post and any change thereof shall be notified by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

Article 22

NATIONALITY OF CONSULAR OFFICERS

1. Consular officers should, in principle, have the nationality of the sending State.
2. Consular officers may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 23

PERSONS DECLARED "NON GRATA"

1. The receiving State may at any time notify the sending State that a consular officer is *persona non grata* or that any other member of the consular staff is not acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his functions with the consular post.
2. If the sending State refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this Article, the receiving State may, as the case may be, either withdraw the *exequatur* from the person concerned or cease to consider him as a member of the consular staff.
3. A person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post. In any such case, the sending State shall withdraw his appointment.
4. In the cases mentioned in paragraphs 1 and 3 of this Article, the receiving State is not obliged to give to the sending State reasons for its decision.

*Article 24*NOTIFICATION TO THE RECEIVING STATE OF APPOINTMENTS,
ARRIVALS AND DEPARTURES

1. The Ministry for Foreign Affairs of the receiving State or the authority designated by that Ministry shall be notified of :
 - (a) the appointment of members of a consular post, their arrival after appointment to the consular post, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;
 - (b) the arrival and final departure of a person belonging to the family of a member of a consular post forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;
 - (c) the arrival and final departure of members of the private staff and, where appropriate, the termination of their service as such;
 - (d) the engagement and discharge of persons resident in the receiving State as members of a consular post or as members of the private staff entitled to privileges and immunities.
2. When possible, prior notification of arrival and final departure shall also be given.

Section II

*END OF CONSULAR FUNCTIONS**Article 25*

TERMINATION OF THE FUNCTIONS OF A MEMBER OF A CONSULAR POST

The functions of a member of a consular post shall come to an end *inter alia* :

- (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*;
- (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.

Article 26

DEPARTURE FROM THE TERRITORY OF THE RECEIVING STATE

The receiving State shall, even in case of armed conflict, grant to members of the consular post and members of the private staff, other than nationals of the receiving State, and to members of their families forming part of their households irrespective of nationality, the necessary time and facilities to enable them to prepare their departure and to leave at the earliest possible moment after the termination of the functions of the members concerned. In particular, it shall, in case of need, place at their disposal the necessary means of transport for themselves and their property other than property acquired in the receiving State the export of which is prohibited at the time of departure.

Article 27

PROTECTION OF CONSULAR PREMISES AND ARCHIVES AND OF THE INTERESTS OF THE SENDING STATE IN EXCEPTIONAL CIRCUMSTANCES

1. In the event of the severance of consular relations between two States :
 - (a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;
 - (b) the sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;
 - (c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.
2. In the event of the temporary or permanent closure of a consular post, the provisions of sub-paragraph (a) of paragraph 1 of this Article shall apply. In addition,
 - (a) if the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or
 - (b) if the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of sub-paragraphs (b) and (c) of paragraph 1 of this Article shall apply.

CHAPTER II

FACILITIES, PRIVILEGES AND IMMUNITIES
RELATING TO CONSULAR POSTS, CAREER CONSULAR OFFICERS
AND OTHER MEMBERS OF A CONSULAR POST

Section I

FACILITIES, PRIVILEGES AND IMMUNITIES
RELATING TO A CONSULAR POST*Article 28*

FACILITIES FOR THE WORK OF THE CONSULAR POST

The receiving State shall accord full facilities for the performance of the functions of the consular post.

Article 29

USE OF NATIONAL FLAG AND COAT-OF-ARMS

1. The sending State shall have the right to the use of its national flag and coat-of-arms in the receiving State in accordance with the provisions of this Article.
2. The national flag of the sending State may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.
3. In the exercise of the right accorded by this Article regard shall be had to the laws, regulations and usages of the receiving State.

Article 30

ACCOMMODATION

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending State of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way.
2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

Article 31

INVIOLABILITY OF THE CONSULAR PREMISES

1. Consular premises shall be inviolable to the extent provided in this Article.
2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.
3. Subject to the provisions of paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.
4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

Article 32

EXEMPTION FROM TAXATION OF CONSULAR PREMISES

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

Article 33

INVIOLABILITY OF THE CONSULAR ARCHIVES AND DOCUMENTS

The consular archives and documents shall be inviolable at all times and wherever they may be.

Article 34

FREEDOM OF MOVEMENT

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

Article 35

FREEDOM OF COMMUNICATION

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.
2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.
3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.
4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.
5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
6. The sending State, its diplomatic missions and its consular posts may designate consular couriers *ad hoc*. In such cases the provisions of paragraph 5

of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 36

COMMUNICATION AND CONTACT WITH NATIONALS OF THE SENDING STATE

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State :

- (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
- (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;
- (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the

proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

Article 37

INFORMATION IN CASES OF DEATHS, GUARDIANSHIP OR TRUSTEESHIP,
WRECKS AND AIR ACCIDENTS

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty :

- (a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;
- (b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;
- (c) if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

Article 38

COMMUNICATION WITH THE AUTHORITIES OF THE RECEIVING STATE

In the exercise of their functions, consular officers may address :

- (a) the competent local authorities of their consular district;
- (b) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

Article 39

CONSULAR FEES AND CHARGES

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

Section II

FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

Article 40

PROTECTION OF CONSULAR OFFICERS

The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

Article 41

PERSONAL INVIOABILITY OF CONSULAR OFFICERS

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.
2. Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.
3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 42

NOTIFICATION OF ARREST, DETENTION OR PROSECUTION

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

Article 43

IMMUNITY FROM JURISDICTION

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.
2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either :
 - (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
 - (b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

Article 44

LIABILITY TO GIVE EVIDENCE

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.
2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.
3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

Article 45

WAIVER OF PRIVILEGES AND IMMUNITIES

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.
2. The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.

3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

Article 46

EXEMPTION FROM REGISTRATION OF ALIENS AND RESIDENCE PERMITS

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

2. The provisions of paragraph 1 of this Article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee.

Article 47

EXEMPTION FROM WORK PERMITS

1. Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.

2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this Article.

Article 48

SOCIAL SECURITY EXEMPTION

1. Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.

2. The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition :
 - (a) that they are not nationals of or permanently resident in the receiving State; and
 - (b) that they are covered by the social security provisions which are in force in the sending State or a third State.
3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.
4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

Article 49

EXEMPTION FROM TAXATION

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except :
 - (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
 - (b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;
 - (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of Article 51;
 - (d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;
 - (e) charges levied for specific services rendered;
 - (f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.
2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.
3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations

which the laws and regulations of that State impose upon employers concerning the levying of income tax.

Article 50

EXEMPTION FROM CUSTOMS DUTIES AND INSPECTION

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on :

- (a) articles for the official use of the consular post;
- (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in sub-paragraph (b) of paragraph 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

Article 51

ESTATE OF A MEMBER OF THE CONSULAR POST
OR OF A MEMBER OF HIS FAMILY

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State :

- (a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;
- (b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

Article 52

EXEMPTION FROM PERSONAL SERVICES AND CONTRIBUTIONS

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 53

BEGINNING AND END OF CONSULAR PRIVILEGES AND IMMUNITIES

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.
2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.
3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.
4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.
5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

Article 54

OBLIGATIONS OF THIRD STATES

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.
2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.
3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.
4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to *force majeure*.

Article 55

RESPECT FOR THE LAWS AND REGULATIONS OF THE RECEIVING STATE

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.
2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.
3. The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In

No. 8638

that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

Article 56

INSURANCE AGAINST THIRD PARTY RISKS

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

Article 57

SPECIAL PROVISIONS CONCERNING PRIVATE GAINFUL OCCUPATION

- I. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.
2. Privileges and immunities provided in this Chapter shall not be accorded :
 - (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;
 - (b) to members of the family of a person referred to in sub-paragraph (a) of this paragraph or to members of his private staff;
 - (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

CHAPTER III

REGIME RELATING TO HONORARY CONSULAR OFFICERS
AND CONSULAR POSTS HEADED BY SUCH OFFICERS

Article 58

GENERAL PROVISIONS RELATING TO FACILITIES,
PRIVILEGES AND IMMUNITIES

1. Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 59, 60, 61 and 62.

No. 8638

2. Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.
3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.
4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

Article 59

PROTECTION OF THE CONSULAR PREMISES

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

Article 60

EXEMPTION FROM TAXATION OF CONSULAR PREMISES

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

Article 61

INVIOLABILITY OF CONSULAR ARCHIVES AND DOCUMENTS

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

Article 62

EXEMPTION FROM CUSTOMS DUTIES

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

Article 63

CRIMINAL PROCEEDINGS

If criminal proceedings are instituted against an honorary consular officer; he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 64

PROTECTION OF HONORARY CONSULAR OFFICERS

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

Article 65

EXEMPTION FROM REGISTRATION OF ALIENS AND RESIDENCE PERMITS

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

Article 66

EXEMPTION FROM TAXATION

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

Article 67

EXEMPTION FROM PERSONAL SERVICES AND CONTRIBUTIONS

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

*Article 68*OPTIONAL CHARACTER OF THE INSTITUTION
OF HONORARY CONSULAR OFFICERS

Each State is free to decide whether it will appoint or receive honorary consular officers.

CHAPTER IV

GENERAL PROVISIONS

Article 69

CONSULAR AGENTS WHO ARE NOT HEADS OF CONSULAR POSTS

1. Each State is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular post by the sending State.
2. The conditions under which the consular agencies referred to in paragraph 1 of this Article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending State and the receiving State.

Article 70

EXERCISE OF CONSULAR FUNCTIONS BY DIPLOMATIC MISSIONS

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.
3. In the exercise of consular functions a diplomatic mission may address :
 - (a) the local authorities of the consular district;
 - (b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.
4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

Article 71

NATIONALS OR PERMANENT RESIDENTS OF THE RECEIVING STATE

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.
2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

Article 72

NON-DISCRIMINATION

1. In the application of the provisions of the present Convention the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place :
 - (a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its consular posts in the sending State;
 - (b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

Article 73

RELATIONSHIP BETWEEN THE PRESENT CONVENTION
AND OTHER INTERNATIONAL AGREEMENTS

1. The provisions of the present Convention shall not affect other international agreements in force as between States parties to them.
2. Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.

CHAPTER V

FINAL PROVISIONS

Article 74

SIGNATURE

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article 75

RATIFICATION

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 76

ACCESSION

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 74. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 77

ENTRY INTO FORCE

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 78

NOTIFICATIONS BY THE SECRETARY-GENERAL

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 74 :

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 74, 75 and 76;
- (b) of the date on which the present Convention will enter into force, in accordance with Article 77.

Article 79

AUTHENTIC TEXTS

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 74.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.



Security Council

Distr.: General

28 September 2001

Resolution 1373 (2001)

Adopted by the Security Council at its 4385th meeting, on 28 September 2001

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,



1. *Decides* that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. *Decides also* that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. *Calls* upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. *Notes* with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard *emphasizes* the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. *Directs* the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. *Expresses* its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. *Decides* to remain seized of this matter.

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avail for seven years, and even though there had been considerable progress as regards traditional views on the general question of the legal status of aliens, the question of State responsibility had certainly not become any easier or less complex in the intervening years. In the three weeks that remained to it, there could therefore be no question of the Commission's reaching final decisions, either on the general principles laid down in articles 1 to 3 of the Special Rapporteur's draft, or even on any of the special cases dealt with in the remaining articles.

12. Part of the difficulty lay in the great diversity of source-material. Where different sources reflected different conceptions or laid down different rules, it was necessary to have some criterion by which to judge whether a particular source had general validity or was valid only under certain conditions, in certain areas, or as between certain States. He would therefore like to know which of the different types of source referred to in Article 38 of the Statute of the International Court of Justice should be regarded as the main source for the work of codification on which the Commission was engaged. Clearly, the Special Rapporteur had very definite ideas of his own on that subject, and he was to be commended for having the courage of his convictions; but his ideas might not be shared by other members. The question was of great importance, since, once it was decided one way or another, much light would be thrown, not only on the basic questions of the scope and origin of the existing obligations and the nature of the acts that gave rise to responsibility, but also on such detailed questions as the admissibility of a plea of *force majeure*, the imputability of the acts of ordinary private individuals, reparation for moral as well as physical injury and so on.

13. In Mr. Bartos's view, international conventions, which bound only the signatory States, could only be relevant to the extent that they reflected general international practice. He stressed the word "general", since he, personally, would have certain reservations about proceeding on the basis of "general" Latin American practice unless it coincided with practice in other parts of the world. The same remarks applied to the "general principles of law recognized by civilized nations"; those could only be determined by careful study of the whole field of case-law, and not just selected cases from one particular region. Judged by those criteria, there was at least one rule about which there could be no doubt, namely, that a State was responsible for injuries caused by acts which contravened its international obligations; for Article 36, paragraph 2d of the Statute of the International Court of Justice, which was based on that rule, had been accepted by all Members of the United Nations without reservation. Referring to the Court's judgment in the *Corfu Channel case*, he said he had considerable doubts whether a like responsibility existed in the event of negligence on the part of the State concerned.

14. The first question to decide, therefore, was what constituted the main source, and although that question could be decided on the basis of the Special Rapporteur's report, he doubted very much whether it could be finally decided at the current session.

15. Mr. MATINE-DAFTARY congratulated the special Rapporteur on his interesting and well-documented report; with due respect to Mr. García Amador, however, the articles which he proposed as a result of his studies failed, in large measure, to reflect the existing practice and present-day circumstances.

16. The Special Rapporteur had had a thankless task, because what the Commission was in effect trying to do was to transplant rules of municipal law into the field of international law, and the rules of municipal law relating to civil responsibility differed greatly from one country to another. Moreover, it was a singularly unpropitious moment for such a task, since distrust and suspicion reigned everywhere, and almost all countries, both great and small, in their efforts to ward off the supposed threat of subversion, had recourse to emergency laws and regulations whose effect amounted in practice to a denial of common law. In his view, it was no exaggeration to say that, no sooner had individual rights and freedoms been guaranteed by the constitutions of almost all countries, than the advent of the atomic era had rendered them almost illusory.

17. It was difficult to see how the Commission could give aliens a degree of protection in international law which even nationals no longer enjoyed under municipal law. The Special Rapporteur's text was therefore largely utopian: the work of a learned and idealistic scholar which, like many similar works before it, was likely to receive a cool welcome from responsible statesmen.

18. In trying to bridge the gulf between the theory of "due diligence"—to which he related the theory of an international standard of justice—and the Latin American theory of the equality of nationals and aliens, the Special Rapporteur had sought to take into account current preoccupation with national security and national economic interest. As in the case of most compromises, that had inevitably led him into inconsistency and ambiguity. For example, article 1, paragraph 2, stated that the international obligations of a State resulted from *any* of the sources of international law, whereas article 5, paragraph 1, referred only to fundamental human rights recognized and defined "in contemporary international instruments". Again, article 7 permitted the repudiation or breach of a contract or concession where such action was justified on grounds of public interest or of economic necessity, or where it did not involve discrimination between nationals and aliens, while article 8 permitted the repudiation or cancellation of public debts in similar cases. Again, it was an accepted principle in civilized countries that a State's responsibility to private persons for acts or omissions by its officials was limited to cases where such officials had acted within the limits of their competence; that principle was recognized in article 3, paragraph 1, but violated in paragraph 2. Again, article 4 stated that a denial of justice should be deemed to have occurred if an alien was prevented from exercising any of the rights specified in article 6, paragraph 1; under article 6, paragraph 2, however, the exercise of such rights could be subjected to such limitations or restrictions as the law expressly prescribed for reasons of internal security, economic well-being and so on, and the reservation constituted by that paragraph, expressed as it was in somewhat elastic terms, appeared also to be inconsistent with article 2, which prohibited a State from enacting legislative provisions which were incompatible with its international obligations. Finally, the rights listed in article 6, paragraph 1, included the right to a public hearing and the right to be tried without delay, or to be released, but the sub-paragraphs in which those rights were referred to did not come within the scope of paragraph 2: in other words they were absolute and subject to no limitation or restriction whatsoever; yet it was common knowledge that in practice these rights



**United Nations
Conference on
Consular Relations**

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amongst all States, the Conference should obviously be as representative as possible. And yet, a nation of 650 million was not admitted to the Conference and was being deprived of its legal right of representation, in violation of the Charter and the fundamental principles of the United Nations—in particular that of the sovereign equality of States. Manifestly, the representatives of Chiang Kai-shek did not and could not represent the Chinese people. The only representatives of the Chinese people were those appointed by the Government of the People's Republic of China. Consequently, the presence of followers of Chiang Kai-shek at the Conference was illegal.

19. The absence of so great a country as China from the proceedings of the Conference would be detrimental to the cause of international co-operation and would undoubtedly be reflected in the work of the Conference.

20. Furthermore, no representatives of the German Democratic Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam had been invited. In view of the importance of the questions to be discussed at the Conference, all States, and not only States Members of the United Nations and the specialized agencies, should participate. The Soviet delegation therefore considered that the absence of representatives of the States concerned, which could have made an important contribution to the Conference, was contrary to the Charter, to international law, and to the interests of all States.

21. Mr. CAMERON (United States of America) said that the USSR representative's remarks were clearly out of order. The question he had raised had been decided by the General Assembly in its resolution 1685 (XVI), under which the Conference had been convened; by that resolution, all States Members of the United Nations, States members of the specialized agencies and States parties to the Statute of the International Court of Justice had been invited to the Conference, and only representatives of those States could participate in its work. None of the regimes to which the USSR representative had referred satisfied those conditions, whereas the Republic of China was a Member of the United Nations and the specialized agencies. The government of that State alone was qualified to represent China at the Conference.

22. Mr. WU (China) regretted that, at the outset of the Conference, the friendly and harmonious atmosphere had been broken by a harsh and discordant statement merely repeating, for propaganda purposes, what the delegations of the State concerned had been saying for years in the United Nations. The United States representative had explained the situation clearly and succinctly. The reason why the Chinese communist regime had not been permitted to attend the Conference was that it had been created by Soviet imperialism as a tool of its policy of aggression in Asia and the Far East. That regime had violated every rule and principle the United Nations stood for; it was not qualified for membership of the United Nations or for representation at the Conference. Moreover, the question of participation had been settled at the sixteenth session of the General

Assembly, so that any attempt to revive the dispute at the Conference was out of order. The Government of the Republic of China had more right to be represented in the Conference than the government of the country whose delegation had challenged that right: China was a staunch supporter of the ideals and concepts of the United Nations and fulfilled its duties under the Charter; it did not restrict the movement of foreign diplomats and consuls to a radius of fifty miles from its capital, it did not arrest diplomatic and consular agents on false charges of espionage, and it did not violate the premises of embassies and consulates to attach apparatus to their telephones and desks.

23. Mr. TSYBA (Ukrainian Soviet Socialist Republic) said his delegation was convinced that most of the diplomats and jurists assembled at the Conference were aware of who really represented the Chinese people. The fact that the Conference was being attended by representatives of the Chiang Kai-shek group from the island of Taiwan would not enhance its prestige. The absence of the People's Republic of China was contrary to the United Nations Charter and to the principles of equal rights and State sovereignty. Only the government wielding *de facto* power, with the support of the people of the country, had the right to represent a State. The Central People's Government of the People's Republic of China was the only government which legally and effectively controlled the country with the support of the people, and accordingly, under international law, it was the only government that could represent China at the Conference.

24. The Charter accorded to all States the right to participate in the preparation of general international conventions, and it was a matter of concern to the United Nations that all States should act in accordance with its purposes and principles. Non-member States were therefore fully qualified to attend the Conference, and the Ukrainian delegation wished to protest against the discrimination practised against the German Democratic Republic, the Democratic People's Republic of Korea and the Democratic Republic of Viet-Nam.

25. Mr. von HAEFTEN (Federal Republic of Germany) said he deplored the statements made by the USSR and Ukrainian representatives to the effect that representation in the Conference had been wrongfully denied to what they referred to as the German Democratic Republic. The area in question was not a State in the legal sense, but merely the Soviet-occupied zone of Germany. It was governed by authorities forced upon the people, in violation of the right of self-determination, which was a principle embodied in the Charter of the United Nations.

26. As the United States representative had pointed out, the Conference was bound by General Assembly resolution 1685 (XVI), under which it had been convened. It followed that the question raised by the USSR and Ukrainian representatives was outside the terms of reference of the Conference, and was therefore irrelevant.

27. Mr. NGUYEN QUOC DINH (Republic of Viet-Nam) said that since the Republic of Viet-Nam was directly concerned by the statements of the USSR and

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VOLUME ONE: THE TREATIES
PART I

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4: Consular Relations

indispensable—and in this respect if followed article 27, paragraph 2, of the Vienna Convention on Diplomatic Relations—to insert in this draft a special provision affirming the inviolability of the official correspondence. In this way it meant to stress—as is, incidentally, explained in the commentary to article 1—that the official correspondence is inviolable at all times and wherever it may be, and consequently even before it actually becomes part of the consular archives.

Communication and contact with nationals of the sending State

ARTICLE 36

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) Nationals of the sending State shall be free to communicate with and to have access to the competent consulate, and the consular officials of that consulate shall be free to communicate with and, in appropriate cases, to have access to the said nationals;

(b) The competent authorities shall, without undue delay, inform the competent consulate of the sending State, if within its district, a national of that State is committed to prison or to custody pending trial or is detained in any other manner. Any communications addressed to the consulate by the person in prison, custody or detention shall also be forwarded by the said authorities without undue delay;

(c) Consular officials shall have the right to visit a national of the sending State who is in prison, custody or detention, for the purpose of consulting with him and arranging for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must not nullify these rights.

Commentary

(1) This article defines the rights granted to consular officials with the object of facilitating the exercise of the consular functions relating to nationals of the sending State.

(2) First, in paragraph 1 (a), the article establishes the freedom of nationals of the sending State to communicate with and have access to the competent consular official. The expression “competent consular official” means the consular official in the consular district in which the national of the sending State is physically present.

(3) The same provision also establishes the right of the consular official to

States. In all such cases, the rules governing the dispatch of diplomatic couriers, and defining their legal status, are applicable. The consular bag may either be part of the diplomatic bag, or may be carried as a separate bag shown on the diplomatic courier's way-bill. This last procedure is preferred where the consular bag has to be transmitted to a consulate en route.

(4) However, by reason of its geographical position, a consulate may have to send a consular courier to the seat of the diplomatic mission or even to the sending State, particularly if the latter has no diplomatic mission in the receiving State. The text proposed by the Commission provides for this contingency. The consular courier shall be provided with an official document certifying his status and indicating the number of packages constituting the consular bag. The consular courier must enjoy the same protection in the receiving State as the diplomatic courier. He enjoys inviolability of person and is not liable to any form of arrest or detention.

(5) The consular bag referred to in paragraph 1 of the article may be defined as a bag (sack, box, wallet, envelope or any sort of package) containing the official correspondence, documents or articles intended for official purposes or all these together. The consular bag must not be opened or detained. This rule, set forth in paragraph 3, is the logical corollary of the rule providing for the inviolability of the consulate's official correspondence, archives and documents which is the subject of article 32 and of paragraph 2 of article 35 of the draft. As is specified in paragraph 4, consular bags must bear visible external marks of their character—i.e., they must bear an inscription or other external mark so that they can be identified as consular bags.

(6) Freedom of communication also covers messages in cipher—i.e., messages in secret language—and, of course, also messages in code—i.e., messages in a conventional language which is not secret and is employed for reasons of practical utility and, more particularly, in order to save time and money.

(7) Following the example of article 27, paragraph 1, of the 1961 Vienna Convention on Diplomatic Relations, the Commission has added a rule concerning the installation and use of a wireless transmitter by a consulate and stated in the text of the article the opinion which it had expressed at its previous session in paragraph 7 of the commentary to article 36. According to paragraph 1 of the present article, the consulate may not install or use a wireless transmitter except with the consent of the receiving State.

(8) The Commission, being of the opinion that the consular bag may be entrusted by a consulate to the captain of a commercial aircraft, has inserted a rule to that effect by adapting the text of article 27, paragraph 7, of the 1961 Vienna Convention on Diplomatic Relations.

(9) Correspondence and other communications in transit, including messages in cipher, enjoy protection in third States also, in conformity with the provisions of article 54, paragraph 3, of the present draft. The same protection is enjoyed by consular couriers in third States.

(10) Independently of the fact that the expression “consular archives” includes the official correspondence (article 1, paragraph 1 (k)), the Commission considered it

communicate with and, if the exercise of his consular functions so requires, to visit nationals of the sending State.

(4) In addition, this article establishes the consular rights that are applicable in those cases where a national of the sending State is in custody pending trial, or imprisoned in the execution of a judicial decision. In any such case, the receiving State would assume three obligations under the article proposed:

(a) Firstly, the receiving State must, without undue delay, inform the consul of the sending State in whose district the event occurs that a national of that State is committed to custody pending trial or to prison. The consular official competent to receive the communication regarding the detention or imprisonment of a national of the sending State may, therefore, in some cases, be different from the one who would normally be competent to exercise the function of providing consular protection for the national in question on the basis of his normal residence;

(b) Secondly, the receiving State must forward to the consular official without undue delay any communication addressed to him by the person in custody, prison or detention;

(c) Lastly, the receiving State must permit the consular official to visit a national of the sending State who is in custody, prison or detention in his consular district, to converse with him, and to arrange for his legal representation. This provision is designed to cover cases where a national of the sending State has been placed in custody pending trial, and criminal proceedings have been instituted against him; cases where the national has been sentenced, but the judgement is still open to appeal or cassation; and also cases where the judgement convicting the national has become final. This provision applies also to other forms of detention (quarantine, detention in a mental institution).

(5) All the above-mentioned rights are exercised in conformity with the laws and regulations of the receiving State. Thus, visits to persons in custody or imprisoned are permissible in conformity with the provisions of the code of criminal procedure and prison regulations. As a general rule, for the purpose of visits to a person in custody against whom a criminal investigation or a criminal trial is in process, codes of criminal procedure require the permission of the examining magistrate, who will decide in the light of the requirements of the investigation. In such a case, the consular official must apply to the examining magistrate for permission. In the case of a person imprisoned in pursuance of a judgement, the prison regulations governing visits to inmates apply also to any visits which the consular official may wish to make to a prisoner who is a national of the sending State.

(6) The expression "without undue delay" used in paragraph 1 (b) allows for cases where it is necessary to hold a person incommunicado for a certain period for the purposes of the criminal investigation.

(7) Although the rights provided for in this article must be exercised in conformity with the laws and regulations of the receiving State, this does not mean that these laws and regulations can nullify the rights in question.

Obligations of the receiving State

ARTICLE 37

The receiving State shall have the duty:

(a) In the case of the death of a national of the sending State, to inform the consulate in whose district the death occurred;

(b) To inform the competent consulate without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State;

(c) If a vessel used for maritime or inland navigation, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consulate nearest to the scene of the occurrence.

Commentary

(1) This article is designed to ensure co-operation between the authorities of the receiving State and consulates in three types of cases coming within the scope of the consular functions. The duty to report to the consulate the events referred to in this article is often included in consular conventions. If this duty could be made general by means of a multilateral convention, the work of all consulates would be greatly facilitated.

(2) In case of the death of a national of the sending State, the obligation to inform the consulate of the sending State exists, of course, only in those cases in which the authorities of the receiving State are aware that the deceased was a national of the sending State. If this fact is not established until later (e.g., during the administration of the estate) the obligation to inform the consulate of the sending State arises only as from that moment.

(3) The obligation laid down in paragraph (c) has been extended to include not only the case where a sea-going vessel or a boat is wrecked or runs aground on the coast in the territorial sea, but also the case where a vessel is wrecked or runs aground in the internal waters of the receiving State.

Communication with the authorities of the receiving State

ARTICLE 38

1. In the exercise of the functions specified in article 5, consular officials may address the authorities which are competent under the law of the receiving State.

2. The procedure to be observed by consular officials in communicating with the authorities of the receiving State shall be determined by the

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impair the principle of the right of access and communication.

30. Mr. EDMONDS said that the Drafting Committee could not work effectively without some directive from the Commission on the points of substance on which opinion was divided. The Commission should take a vote on those points and so give the Drafting Committee the necessary guidance.

31. It was clear that a large majority of the members wished to include in the draft an article along the lines of that proposed by Sir Gerald Fitzmaurice. They disagreed, however, on the contents of the article.

32. With regard to paragraph (a) the only point of substance raised was that with which Mr. Erim's amendment was concerned. A vote could be taken on that amendment, unless Sir Gerald Fitzmaurice was prepared to introduce a proviso regarding restricted or prohibited areas.

33. As to paragraph (b), the fundamental issue was: should the local authorities be under a duty to advise the consul of the arrest of one of his nationals or should they only be required to notify him if the national concerned so requested? In order to clarify its position, the Commission should vote on the phrase "if the person in custody or imprisoned so requests". In his opinion a foreigner would have little protection unless the local authorities were in every case, and quite independently of the prisoner's request, under a duty to advise the consul.

34. With regard to visits by a consul to his national in custody, the relevant rules of criminal procedure would apply. But if those rules had the effect of delaying the consul's visit until the trial of his national had already begun, the whole purpose of the proposal would be frustrated.

35. Paragraph (c) of the proposal submitted by Sir Gerald Fitzmaurice was extremely important. It was essential to safeguard the consul's right to visit his national after the latter had been sentenced. Such a visit might be very necessary for the purpose of an appeal (if an appeal could still be prosecuted). In the case of a prisoner serving a sentence under a final judgement, the consul's visit might be equally necessary to ascertain the conditions under which he was imprisoned.

36. Lastly, he suggested that the word "privately" should be added after the word "conversing" in the last sentence of paragraph (c); only a private conversation could fulfil the purpose intended by the draft.

37. Mr. BARTOŠ thought that the Commission was on the verge of agreement. The provisions of article 17 of the Convention on the Territorial Sea and the Contiguous Zone which the Special Rapporteur had cited were very apposite, for they stipulated not merely that the exercise of the right of innocent passage was governed by the laws and regulations enacted by the coastal State, but also — and that was a point which he would emphasize — that those laws and regulations

should be in conformity with the rules of international law. He considered that the Commission could now refer article 30 A to the Drafting Committee with the direction that it should take into account the clause cited from the 1958 Convention on the Territorial Sea.

38. Sir Gerald FITZMAURICE, replying to the discussion, said that he did not favour the inclusion of a reference to article 46, but for rather different reasons from those given by other speakers. A reference to article 46 would be misleading, since article 46 covered all consular activities. If a special reference to article 46 were made in one place it would logically have to be inserted in almost every article, and that would be inappropriate and unnecessary.

39. Moreover, the only real objection that had been made to paragraph (a) of his draft concerned communication with nationals in areas to which access was prohibited on grounds of national security. There was really no other ground on which the right of a consul to visit his nationals could be in question. He agreed that the matter of prohibited zones should be considered, but he thought Mr. Erim's amendment was too broad. There had to be weighty reasons (such as considerations of national security) for declaring a particular area closed to the consul. It would be better to follow the provisions of article 24 of the draft on diplomatic intercourse. With those reservations, he was prepared to accept in his draft of paragraph (a) a reference to limitations that might be imposed by national security.

40. With regard to the question whether the local authorities of the receiving State should be under an obligation independently of the prisoner's request, to inform the consul of the detention of one of his nationals, he did not think that his proposal would be too onerous for those authorities. Mr. Amado had spoken of cases where a large number of the sending State's citizens lived in the receiving State. Was it likely, however, that hundreds of those persons would be detained simultaneously?

41. He would be prepared to amend the words "without delay" in paragraph (b) to read "without undue delay". But the point was an important one. Under the law of some countries a person arrested could be held *incomunicado* in the early stages of criminal proceedings. Usually the duration of such isolation was limited by statute law or by the constitution, and where such safeguards were enforced the prisoner's rights were probably not in jeopardy. However, the fact that certain consular conventions expressly stipulated that the consul's access to a detained fellow national must not suffer delay showed that the contracting parties wished to obtain specific assurances that those constitutional or statutory guarantees would really be respected.

42. Secondly, he said he was prepared to accept a provision on the lines of that suggested by Mr. Verdross concerning observance of the procedure prescribed by municipal law. On the other

hand he did not think he could accept the last sentence of the Special Rapporteur's draft because, put in that way, it might nullify the principle the Commission was trying to establish — if for instance a regulation of the receiving State restricted visits to, say, one in three months. He felt sure that agreement could be reached if some form of words could be found which established the right of consuls to visit their nationals but added that the procedures of the receiving State should be followed. He would be willing to accept the wording of the last sentence of paragraph (b) of the Special Rapporteur's draft if it included some provision on the lines of his own paragraph (c) — namely, "that such regulations shall permit reasonable access to and opportunity of conversing with such national".

43. Finally, he had no objection to the Special Rapporteur's proposal that paragraphs (b) and (c) of his (Sir Gerald Fitzmaurice's) draft should be combined, provided that it was clear that its provisions covered persons detained before trial, after sentence and before appeal, and while serving their sentence. As Mr. Edmonds had pointed out, consular visits were equally important at all three stages. He could accept the Special Rapporteur's wording if all three cases were covered, but as it stood, it was somewhat ambiguous and could be interpreted as covering only detention before trial or, alternatively, only the period of imprisonment after sentence.

44. Mr. HSU said that Sir Gerald Fitzmaurice had indicated his willingness to accept some modification of paragraph (a) of his draft to cover the case of the arrest of a national in a zone to which entry was barred on the grounds of national security, but he had not proposed a formula, and he (Mr. Hsu) believed it would be very difficult to devise one. The local authorities could surely transfer the person detained to some place outside the prohibited zone. It had been said that consuls must act in accordance with both international law and national legislation, but he felt it was unnecessary to state such a generally accepted principle in the draft. It would be better to say that consuls should recognize national law provided that it did not conflict with international law. In his view, the more general statement would be mischievous.

45. Mr. YOKOTA said that, while he agreed with the substance of Mr. Erim's remarks on the limitations affecting access to persons detained in particular areas, he thought it would be better not to refer to such cases in the article under discussion. The Commission had decided to include in the draft convention on consular intercourse a provision concerning freedom of movement similar to that in article 24 of the draft on diplomatic intercourse which referred to zones entry into which was prohibited or regulated for reasons of national security. That being the case, there was no need to make a further reference to those restrictions in the article now under discussion.

46. The CHAIRMAN, summing up the discussion for the guidance of the Drafting Committee, observed that all members of the Commission were agreed that the consul's right of communication with and access to his nationals, as well as the right of nationals to have freedom of communication with the consul, constituted a recognized principle of international law. With regard to the ways and means of making those rights effective, it seemed to be agreed that it was essential that the consul should be informed immediately or without delay of the detention or arrest of one of his nationals. On the other hand there was some division of opinion as to whether the local authorities of the receiving State should have an automatic responsibility of informing the consul when one of his nationals was detained or whether they should only have to inform the consul at the request of the person detained. He wished to know which alternative was favoured by a majority of the Commission. Secondly, he would like to know by which adjective — e.g., "reasonable" or "undue" — the Commission wished to qualify the word "delay".

47. Mr. TUNKIN felt it might be best to delete the words "without delay". There were cases in which it was impossible to inform the consul immediately of the arrest or detention of a national. Sometimes — for instance in espionage cases, where there might be accomplices at large — it might be desirable that the local authorities should not be obliged to inform the consul.

48. The CHAIRMAN remarked that a statement of a general principle of law could not possibly cover all conceivable cases. If the Commission went into the question of whether cases of espionage should be made an exception the whole principle of consular protection and communication with nationals would have to be re-opened.

49. Sir Gerald FITZMAURICE and Mr. TUNKIN said that they would accept the expression "without undue delay".

50. Mr. MATINE-DAFTARY said that he could not agree with the proposition that the local authorities should in all circumstances be obliged to inform the consul of the arrest of one of his nationals. The request should be made by the national himself, for there were cases in which he might not wish the consul to be notified. He would agree, however, to the inclusion of the words "without undue delay".

51. The CHAIRMAN put to the vote the proposal that the receiving State should have an automatic responsibility for notifying a consul of the arrest or detention of one of his nationals.

The proposal was adopted by 14 votes to 1 with 2 abstentions.

52. Mr. TUNKIN drew attention to the fact that if there was delay in communicating with the consul to inform him of the arrest of one of his nationals there might also be delay in forwarding communications from the person who had been

detained. If the words "without undue delay" were to be inserted in the passage dealing with the notification of the local authorities to the consul, the same words should be used in the provision concerning communications from the detained person to the consul.

53. The CHAIRMAN said he had assumed that the Drafting Committee would use the phrase "without undue delay" in both passages.

54. Turning to paragraph (c), he recalled that, in commenting on the suggestions of Mr. Erim and Mr. Edmonds, Sir Gerald Fitzmaurice had said it might be best to follow the provisions of article 24 of the draft on diplomatic intercourse. Mr. Yokota had taken the view that it was unnecessary to repeat those provisions in the present context. He wished to point out that any prohibited zones were usually specified by the receiving State at the time when the exequatur defining the consular district was granted. The question was whether the limitation on the consul's communication with his nationals imposed by the existence of areas into which access was prohibited should be specifically referred to in the draft article, or whether that point would be sufficiently covered by the article concerning freedom of movement which the Commission had already referred to the Drafting Committee.

55. Mr. SCALLE said he would not object to the inclusion of a special reference to prohibited zones so long as the definition of the consular district as contained in the exequatur remained unaffected. Unfortunately, prohibited zones changed from day to day and were often used as a pretext for limiting movement. Further it was possible for a receiving State to arrest a foreigner anywhere and then imprison him in a prohibited zone. It would be easy in that way for consular protection to be nullified.

56. Mr. BARTOŠ said he would oppose any provision that tended to hamper the consul in the exercise of his protective function. Persons could be arrested outside security zones or within them, especially in cases of espionage, and tried in military courts or in what were declared to be prohibited zones, to which they might be transported. In such cases the consul would really be powerless.

57. Mr. SCALLE shared Mr. Bartoš' fears, and reiterated his view that nothing in the Commission's draft should make it possible for the receiving State, by means of *ad hoc* changes in the number or extent of prohibited areas, to modify the delimitation of the consular district as specified in the exequatur. The exequatur had an international validity and could not arbitrarily be altered by the unilateral decision of one of the parties. Only those areas defined as prohibited zones at the time when the exequatur was granted fell outside a consul's district.

58. Mr. ERIM said that, if it was agreed that the Commission's object was to establish the best means of communication between the consul and

his nationals, he could see no reason why any national should not meet the consul at some place outside a prohibited zone. If, for instance, a new factory was being built with the help of foreign specialists, and the receiving State wished to prevent access to that factory for reasons of national security, the new prohibited zone could not of course have been mentioned at the time of the exequatur, although all consuls would subsequently have been notified of its existence.

59. Mr. SCALLE said that if a government had the right at any time to designate as a security zone an area to which there had previously been freedom of access, and could arrest anyone in the newly prohibited zone, it would drastically limit the consul's freedom of communication with his nationals and prevent him from carrying out his recognized functions.

60. The CHAIRMAN pointed out that in paragraph (a) of his draft, Sir Gerald Fitzmaurice was not proposing that the consul's visit should be made at any particular place. If the local authorities did not wish the consul to enter the district where the prisoner was detained, they could transfer the prisoner to an institution situated elsewhere.

61. Mr. ERIM wished to explain that his amendment ("unless visits to the place in question are prohibited") was not concerned with communication with one of the consul's nationals who was in custody but only with communication with such a national who was living or working at liberty in an area to which access was prohibited.

The meeting rose at 1.20 p.m.

537th MEETING

Wednesday, 11 May 1960, at 10 a.m.

Chairman: Mr. Luis PADILLA NERVO

Consular intercourse and immunities (A/CN.4/131, A/CN.4/L.86) [continued]

[Agenda item 2]

PROVISIONAL DRAFT ARTICLES (A/CN.4/L.86) (continued)

ADDITIONAL ARTICLE 30 A (continued)

1. The CHAIRMAN said it was his understanding that it had been decided at the previous meeting to refer to the Drafting Committee paragraphs (a) and (b) of the new article, with the word "undue" before "delay", and he therefore proposed that the Commission should consider paragraph (c) of Sir Gerald Fitzmaurice's draft (534th meeting, paragraph 1).

2. Mr. ERIM believed that a misunderstanding had occurred at the previous meeting with regard to his amendments to Sir Gerald Fitzmaurice's draft. His first amendment ("unless visits to the

YEARBOOK
OF THE
INTERNATIONAL
LAW COMMISSION
1961

Volume I

*Summary records
of the thirteenth session*

1 May — 7 July 1961

UNITED NATIONS



60. Mr. ŽOUREK, Special Rapporteur, agreed to Mr. Tsuruoka's amendment.

The amendment was approved.

The commentary to article 28 was adopted as amended.

Commentary to article 29 (Inviolability of the consular premises)

61. Mr. AGO doubted whether it was necessary to retain paragraph (5) of the 1960 commentary, for measures of execution against a private owner of premises leased to the consulate did not concern the consulate.

62. Mr. ŽOUREK, Special Rapporteur, pointed out that if the premises had been leased to a consulate furnished, measures of execution might necessitate entry, and such entry would constitute a breach of the inviolability of the consular premises. He suggested that the paragraph in question might be redrafted so as to indicate that such entry would not be permissible.

It was so agreed.

63. Mr. JIMÉNEZ de ARÉCHAGA proposed the deletion of the words "in particular those concluded by Great Britain" in paragraph (6): there was no reason for making special mention of those conventions.

It was so agreed.

The commentary to article 29 was adopted as amended, subject to drafting changes.

Commentary to article 30 (Exemption from taxation of consular premises)

The commentary to article 30 was adopted.

Commentary to article 31 (Inviolability of the consular archives and documents)

The commentary to article 31 was adopted.

Commentary to article 32 (Facilities for the work of the consulate)

The commentary to article 32 was adopted.

Commentary to article 33 (Freedom of movement)

64. Mr. JIMÉNEZ de ARÉCHAGA said that in view of the decisions reached at the current session the first two sentences in the 1960 commentary were no longer appropriate and should be deleted.

65. The CHAIRMAN, speaking as a member of the Commission, proposed that the commentary should consist simply of a reference to the corresponding article in the Vienna Convention.

66. Mr. ŽOUREK, Special Rapporteur, endorsed the Chairman's proposal.

The proposal was approved.

The commentary to article 33 was adopted as amended.

Commentary to article 34 (Freedom of communication)

67. Mr. AGO proposed the insertion in the commentary of a separate paragraph concerning the inviolability of official correspondence.

It was so agreed.

68. Sir Humphrey WALDOCK proposed the deletion

of the last two sentences in paragraph (6) of the 1960 commentary, which was unnecessarily detailed.

69. Mr. ŽOUREK, Special Rapporteur, said he did not object to the proposal.

The proposal was approved.

The commentary to article 34 was adopted as amended.

Commentary to article 35 (Communication and contact with nationals of the sending State)

70. Mr. AGO said that there was no need for a special comment on the expression "without undue delay" since, under paragraph 1(b) of the article, even if a person was held *incomunicado* the authorities of the receiving State were still bound to notify the consulate of his detention.

71. Mr. ŽOUREK, Special Rapporteur, pointed out that paragraph 1(b) of the article was also concerned with cases where the authorities of the receiving State might be unwilling, so as not to put accomplices on guard, to disclose immediately the arrest of a person involved in a serious criminal case implicating a whole group of persons (e.g. a drug trafficking case). The words "without undue delay" were applicable to such cases and were fully justified.

72. Mr. BARTOŠ argued that an arrest must always be notified, even if the person was held *incomunicado*, so that the consulate could immediately take steps to arrange for his defence. If human rights meant anything, they meant that a person must be presumed innocent until he had been tried and convicted.

73. The CHAIRMAN, speaking as a member of the Commission, said that in the circumstances mentioned by the Special Rapporteur the authorities of the receiving State would certainly not wish to notify the consulate at once, for otherwise the task of the police would be made far more difficult.

The commentary to article 35 was adopted.

Commentary to article 36 (Obligations of the receiving State in certain special cases)

74. Mr. JIMÉNEZ de ARÉCHAGA proposed the deletion of the words "for example in a river or lake" in paragraph (3) as proposed by the Special Rapporteur.

It was so agreed.

The commentary to article 36 was adopted as amended.

Commentary to article 37 (Communication with the authorities of the receiving State)

75. Mr. LIANG, Secretary to the Commission, referring to paragraph (4), suggested that the word "domestic" might be omitted.

76. Mr. ŽOUREK, Special Rapporteur, explained that it was important to indicate that the sentence referred to the usage of the receiving State and not to international usage. He suggested that the language of the article itself should be used, viz. "the municipal law and usage".

It was so agreed.

YEARBOOK
OF THE
INTERNATIONAL
LAW COMMISSION
1961

Volume II

*Documents of the thirteenth session
including the report of the Commission
to the General Assembly*

UNITED NATIONS



(*dd*) To record and transcribe documents relating to births, marriages and deaths, without prejudice to the obligation of the declarants to make whatever declarations are necessary in pursuance of the laws of the receiving State;

(*ee*) To receive for safe custody money and securities belonging to nationals of the sending State;

(*ff*) To issue passports and travel documents to nationals of the sending State, and to issue visas or other appropriate documents to persons wishing to travel to the sending State;

(*gg*) To certify documents indicating the origin or source of goods, commercial invoices and like documents;

(*hh*) To serve judicial documents or take evidence on behalf of courts of the sending State,* in the manner specified by the conventions in force or in any other manner compatible with the laws of the receiving State;

(*d*) To extend necessary assistance to vessels and boats flying the flag of the sending State and to aircraft registered in that State, and to their crews, and in particular,

(*aa*) To examine and stamp ships' papers;

(*bb*) To take statements with regard to a ship's voyage and destination, and to incidents during the voyage (masters' reports);

(*cc*) To question masters, crews and nationals on board;

(*dd*) To settle, in so far as authorized to do so by the laws of the sending State, disputes of any kind between masters, officers and seamen;

(*ee*) To assist members of the crews of ships, boats and aircraft in any business they may have to transact with the local authorities;

(*e*) To further trade and promote the development of commercial and cultural relations between the sending State and the receiving State;

(*f*) To acquaint himself with the economic, commercial and cultural life of his district, to report to the Government of the sending State, and to give information to any interested persons.

2. A consul may perform additional functions as specified by the sending State, provided that their performance is not prohibited by the laws of the receiving State.

3. Subject to the exceptions specially provided for in the present articles or in the relevant agreements in force, a consul in the exercise of his functions may deal with the authorities which are competent under the legislation of the receiving State.

Article 5. — Obligations of the receiving State in certain special cases

1. *Yugoslavia*: The scope of sub-paragraph (*c*) should be extended to include aircraft of the sending State.

2. *Soviet Union*: Comment to the same effect.

3. *Philippines*: In its comments the Philippine Government raises the question whether the provision of sub-paragraph (*b*) is permissive or mandatory. Specifically, it asks whether proceedings in such cases, without the consul's being notified, are valid, voidable or impugnable in the absence of such notice.

* Passage based partly on a Netherlands Government's proposal (see annex I to the Commission's report on its 13th session, *infra*). However, whereas the Netherlands text [original: English] speaks of "taking of evidence" the Special Rapporteur's clause [original: French] speaks of *commissions rogatoires*. A better English rendering of the Special Rapporteur's text would be: "(*hh*) to serve judicial documents or execute letters rogatory on behalf of..." [Editor's note.]

OBSERVATIONS AND PROPOSALS BY THE SPECIAL RAPPORTEUR

1. What is the legal effect of the failure to give the notice stipulated in sub-paragraph (*b*) on proceedings instituted in a court or before some other authority of the receiving State for the appointment of a guardian or trustee for a national of the sending State? To answer this question correctly one must remember that, if the draft articles are accepted by States in the form of a multilateral convention, the failure to give this notice would constitute a non-observance of an international obligation on the part of the State whose organ was responsible for such failure. In the event of its rights being prejudiced in this way, the sending State would no doubt have a good case for applying for the voidance of the proceedings instituted without its being notified, for the failure to give the notice had the effect of depriving that State of the opportunity of asserting its rights during the proceedings and of taking steps on behalf of its national. For the purpose of the voidance of the order or decision in question, the procedure laid down by the law of the receiving State would, of course, have to be followed.

2. Sub-paragraph (*c*) should be drafted to read:

(*c*) If a vessel flying the flag of the sending State is wrecked or runs aground on the coast or in the territorial sea of the receiving State, or if an aircraft registered in the sending State is involved in an accident in the territory or in the territorial sea of the receiving State, to inform the consulate nearest to the scene of the occurrence, without delay.

Article 6. — Communication and contact with nationals of the sending State

1. *Norway*: Principal objections to the text raised by the Government of Norway:

(*a*) The freedoms provided for in paragraph 1 are too extensive;

(*b*) These freedoms are made illusory by the important and ill-defined reservations in paragraph 2;

(*c*) It might be advisable to extend the application of the rule in order to make it applicable in all cases of forced detention (quarantine, mental institutions, etc.); this would seem particularly appropriate in regard to the members of the crews of vessels flying the flag of the sending State, whatever their nationality.

The Norwegian Government proposes that the article be re-drafted with a view to establishing clear and binding norms.

2. *Denmark*: The Danish Government interprets paragraph 2 as authorizing the receiving State to restrict the consul's freedom to converse with the prisoner, if considerations of national security or relations with foreign Powers or special considerations render this necessary.

Article 8. — Classes of heads of consular posts

1. *Norway*: Norwegian law does not differentiate between "consular agents" and other groups of consular

YEARBOOK
OF THE
INTERNATIONAL
LAW COMMISSION
1961

Volume II

*Documents of the thirteenth session
including the report of the Commission
to the General Assembly*

UNITED NATIONS



5. The Czechoslovak Government proposes to include in article 13 of the draft the provision contained in the Commission's commentary that the grant of the *exequatur* to a consul appointed as head of a consular post covers *ipso jure* the members of the consular staff working under his orders and responsibility.

6. As regards the provisions of paragraphs 1 and 2 of article 40, the Czechoslovak Government considers the criterion based on the amount of punishment for criminal offences and on the length of the sentence as unsuitable, because it differs in penal legislations of individual States and, in addition to it, it is subject to changes. Therefore, the Czechoslovak Government is in favour of the adoption of the second alternative of paragraph 1 of article 40 and for amending accordingly paragraph 2 of the same article.

7. The Czechoslovak Government proposes to include in the draft a provision under which a member of the diplomatic mission when assigned to a consulate of such State shall retain his diplomatic privileges and immunities.

8. The Czechoslovak Government considers as acceptable the second text of article 65 concerning the relation of the proposed articles to bilateral conventions, according to which the provisions of the draft shall not affect bilateral conventions concerning consular intercourse and immunities concluded previously between the contracting parties and shall not prevent the conclusion of such conventions in the future.

9. As regards chapter III of the draft (articles 54-63), the Czechoslovak Government does not wish to comment on it as it considers the institution of honorary consuls as unsatisfactory from the point of view of the present level of contacts between States, and consequently does not send or receive honorary consuls.

5. DENMARK

Transmitted by a letter dated 17 March 1961 from the Deputy Permanent Representative of Denmark to the United Nations

[Original: English]

Article 4

The Danish Government is of the opinion that it will be difficult to visualize the consequences of so far reaching a regulation as in article 4, paragraph 1 "such functions vested in him by the sending State as can be exercised without breach of the law of the receiving State" and the corresponding rule in the variant prepared by the Special Rapporteur.

Article 4: Variant drafted by the Special Rapporteur — I, 2: Assistance to ships

The Danish Government assumes that the rule is only applicable to civil cases (point (e) in the commentary). It furthermore assumes that the authorities of the receiving State are only under obligation to give the master of a ship an opportunity to inform the consul and to do this early enough to enable the consul to be present on board the ship, unless this is impossible due to the urgent nature of the legal action (point (h) in the commentary). Finally it is assumed that the convention is not to result in curtailment of the powers which the legislation of the receiving State endows upon its authorities as regards the direction of salvage operations within its territory (point (j) of the commentary).

II, 6: Guardianship, etc.

It is presumed that the rules do not imply that special obligations towards the consuls of foreign countries are to be imposed upon guardians who are under the supervision of the authorities of the receiving State.

II, 7

The Danish Government would regard it as preferable that the right of consuls to represent an heir or legatee during the settlement of an estate in the receiving State, without producing a power of attorney, be expressly limited to cases in which the said heir or legatee is not a resident of the receiving State, nor staying there at the time of the settlement of the estate.

III, 9

Denmark only recognizes the validity of marriages solemnized before foreign consuls in Denmark if an agreement has been concluded thereon with the consul's home country.

III, 10

The Danish Government is of the opinion that a general rule on the functions of consuls as regards the serving of judicial documents and taking of evidence should not be included in a universal convention on consular functions, since the question is closely related with other matters concerning international legal assistance in court cases, and should therefore not be settled in a uniform manner in respect to all countries. Particular consideration should be given to whether the judicial authorities of the receiving State are empowered to grant legal assistance, or excluded therefrom, to the authorities of other countries. In all circumstances the functions of a consul in this respect ought hardly to include criminal cases.

IV, 11 and 12

The Danish Government presumes that the functions do not imply that the authorities of the receiving State are under obligation to recognize the validity of documents drawn up or attested by the consul, beyond what is due according to the usual rules.

The Special Rapporteur's additional article

The Danish Government would not be prepared to approve such a rule which would authorize a consul to appear in special cases before the courts and other authorities on behalf of absent nationals without producing a power of attorney.

Article 6

The Danish Government understands the proviso in paragraph 2 to mean that it can authorize the receiving State to restrict the consul's freedom to converse with the prisoner when considerations of national security or relations with foreign powers or special consideration for same might otherwise require it.

Article 32

The Danish Government feels compelled to make a reservation as regards exemption from taxation if the consular premises are not owned by, but only leased by, the sending State. Similarly, the sending State is exempted from dues chargeable on the purchase of real property but not when it is only a question of a lease contract.

Article 36, paragraph 1

The Danish Government would prefer that the freedom of communication for consulates be restricted so that, besides maintaining contact with the Government of the sending State and that State's diplomatic missions accredited to the receiving State, they shall only be free to communicate with consulates of the sending State situated in the same receiving State.

Article 36, paragraph 3

The Danish Government would consider it desirable if a rule could be added to paragraph 3 along the following lines:



**United Nations
Conference on
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Vienna, 4 March - 22 April 1963

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and Second Committees

case the authorities of the receiving State must notify the competent consulate.

5. He regretted that Canada had withdrawn an excellent earlier proposal to the effect that the authorities of the receiving State should be obliged to notify the consuls if one of his country's nationals were arrested. In the circumstances, he would vote for the United States amendment, though he wished to point out two shortcomings. First, the International Law Commission's draft and all the amendments, including that of the United States, referred to detention or committal to prison or to custody pending trial, but none of them mentioned arrest. He might at a later stage propose the addition of the word "arrested" to the United States amendment. Secondly, many of his own country's bilateral agreements, especially those with African countries, contained a clause on the lines of the United States amendment, but with an additional provision giving the consul the right to receive periodically a list of nationals of the sending State in prison or custody or under detention. He might at a later stage propose as a sub-amendment to the United States amendment an additional sentence on the following lines:

"The competent authorities shall further be required, on request by the competent consulate of the sending State, to communicate to it periodically a list of the nationals of that State who are detained, except for those who object to such information concerning them being communicated to the consulate."²

6. To sum up, he fully supported the United States amendment, but reserved the right to propose two sub-amendments.

7. Mr. MARESCA (Italy) said that freedom was an essential part of human dignity. If consuls were not informed of restrictions on the personal freedom of nationals abroad they would be unable to carry out their task of protecting the interests of those nationals and looking after their welfare. It was therefore the responsibility of the receiving State's local authorities to inform the consul of the imprisonment, detention or holding in custody of any national of the sending State. He was therefore strongly opposed to the deletion of paragraph 1 (b). He could accept the idea of notification being dependent on the wish of the person concerned, provided that it would always take place if that person did not object. He supported the Greek amendment (L.125), which was constructive and improved the International Law Commission's text; but he could not support the amendment by the Federal Republic of Germany (L.74), because it would invite delay in notification.

8. The CHAIRMAN invited Mr. Žourek to explain why the International Law Commission had included the words "without undue delay" in its draft, as they had given rise to considerable comment at the previous meeting.

9. Mr. ŽOUREK (Expert) said that the words had not

² See document A/CONF.25/C.2/L.131, in which, however, France proposed that the words in question should form a new sub-paragraph between paragraphs 1 (b) and 1 (c). This proposal was discussed at the eighteenth meeting (paras. 17-45).

appeared in the original draft but had been added after long discussions both in plenary meetings and in the drafting committee.³ They were intended to allow for cases in which the receiving State's police might wish to hold a criminal in custody for a time. For example, if a smuggler was suspected of controlling a network, the police might wish to keep his arrest secret until they had been able to find his contacts. Similar measures might be adopted in case of espionage. The International Law Commission had felt that if the provision was to be capable of application and to be applied, such cases would have to be taken into account because they arose in practice.

10. Mr. LEVI (Yugoslavia) said that he could not support the representative of Thailand's proposal (L.101) to delete paragraph 1 (b), because that paragraph recognized an obligation that was already fulfilled in many countries. After hearing the explanation given by Mr. Žourek, he was not greatly in favour of the United Kingdom amendment (L.107). He could not accept the United States amendment (L.3), because it weakened the receiving State's obligation. The examples of detention overnight for drunkenness suggested by the representatives of Canada and the United States were not really valid, for the clause under discussion was applicable to much more important cases. He saw no objection in principle to the amendment by the Federal Republic of Germany (L.74), but thought it would be unsatisfactory in practice. A provision that the consul of the sending State should be informed at the latest within one month would not be practicable in Yugoslavia. The Greek proposal (L.125) was a wise one, but would be difficult to implement. In practice, it was not always easy to state the reasons for detention immediately. The amendment would be acceptable only if the reasons could be given in general terms: for example, by citing the article of the criminal code under which a person had been detained. He opposed the Japanese amendment (L.56) for the same reasons as he opposed the United States amendment.

11. Mr. CHIN (Republic of Korea) said that the receiving State's obligation under paragraph 1 (b) was extremely important, because it related to one of the fundamental and indispensable rights of the individual. Korea was a country in which there were many aliens, and his government recognized the need for that obligation to be faithfully fulfilled in order to protect their interests. He therefore opposed the amendment submitted by Thailand. He was against any limitation of the obligation, but agreed with the United States, Canadian and other representatives that the burden of the receiving State could be reduced. He supported the United States amendment, but would prefer to see the words "without undue delay" replaced by the stipulation of a specific period, as proposed in the amendment by the Federal Republic of Germany, which conformed with practice in his country. His views on the other amendments were implicit in the comments he had just made.

³ See *Yearbook of the International Law Commission, 1960*, vol. I (United Nations publication, Sales No. 60.V.I, vol. I), summary records of the 534th to 537th meetings).

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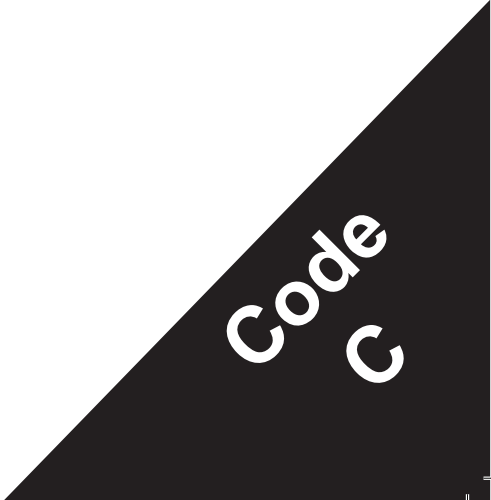
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CODE C

REVISED

CODE OF PRACTICE FOR THE DETENTION, TREATMENT AND QUESTIONING
OF PERSONS BY POLICE OFFICERS

Commencement - Transitional Arrangements

This Code applies to people in police detention after 00.00 on 23 February 2017,
notwithstanding that their period of detention may have commenced before that time.



Contents

1	General	6
	<i>Notes for Guidance</i>	9
2	Custody records	10
	<i>Note for Guidance</i>	12
3	Initial action	12
	(a) Detained persons - normal procedure	12
	(b) Detained persons - special groups	15
	(c) Persons attending a police station or elsewhere voluntarily	17
	(d) Documentation	18
	(e) Persons answering street bail	18
	(f) Requirements for suspects to be informed of certain rights	18
	<i>Notes for Guidance</i>	18
4	Detainee's property	19
	(a) Action	19
	(b) Documentation	20
	<i>Notes for Guidance</i>	20
5	Right not to be held incommunicado	20
	(a) Action	20
	(b) Documentation	21
	<i>Notes for Guidance</i>	21
6	Right to legal advice	22
	(a) Action	22
	(b) Documentation	25
	<i>Notes for Guidance</i>	25
7	Citizens of independent Commonwealth countries or foreign nationals	28
	(a) Action	28
	(b) Documentation	28
	<i>Note for Guidance</i>	28
8	Conditions of detention	29
	(a) Action	29
	(b) Documentation	29
	<i>Notes for Guidance</i>	29
9	Care and treatment of detained persons	30
	(a) General	30
	(b) Clinical treatment and attention	30
	(c) Documentation	32
	<i>Notes for Guidance</i>	32



10	Cautions	33
	(a) When a caution must be given	33
	(b) Terms of the cautions	34
	(c) Special warnings under the Criminal Justice and Public Order Act 1994, sections 36 and 37	34
	(d) Juveniles and persons who are mentally disordered or otherwise mentally vulnerable	35
	(e) Documentation	35
	Notes for Guidance	35
11	Interviews - general	36
	(a) Action	36
	(b) Interview records	37
	(c) Juveniles and mentally disordered or otherwise mentally vulnerable people	38
	(d) Vulnerable suspects - urgent interviews at police stations	38
	Notes for Guidance	39
12	Interviews in police stations	41
	(a) Action	41
	(b) Documentation	42
	Notes for Guidance	42
13	Interpreters	43
	(a) General	43
	(b) Interviewing suspects - foreign languages	44
	(c) Interviewing suspects who have a hearing or speech impediment	44
	(d) Additional rules for detained persons	44
	(e) Translations of essential documents	45
	(f) Decisions not to provide interpretation and translation	45
	(g) Documentation	45
	(h) Live-link interpretation	46
	(a) Audio and visual communication	46
	(b) Audio and visual or audio without visual communication	46
	Notes for Guidance	47
14	Questioning - special restrictions	47
	Note for Guidance	47
15	Reviews and extensions of detention	48
	(a) Persons detained under PACE	48
	(b) Review of detention by telephone and video conferencing facilities	50
	(c) Documentation	50
	Notes for Guidance	51
16	Charging detained persons	52
	(a) Action	52
	(b) Documentation	54
	Notes for Guidance	54

C

17 Testing persons for the presence of specified Class A drugs.....	55
(a) Action.....	55
(b) Documentation.....	57
(c) General.....	57
(d) Assessment of misuse of drugs.....	57
Notes for Guidance.....	58
ANNEX A INTIMATE AND STRIP SEARCHES	61
A Intimate search	61
(a) Action	61
(b) Documentation	62
B Strip search.....	62
(a) Action	62
(b) Documentation	63
Notes for Guidance.....	63
ANNEX B DELAY IN NOTIFYING ARREST OR ALLOWING ACCESS TO LEGAL ADVICE	65
A Persons detained under PACE.....	65
B Not used	65
C Documentation.....	65
D Cautions and special warnings.....	66
Notes for Guidance.....	66
ANNEX C RESTRICTION ON DRAWING ADVERSE INFERENCES FROM SILENCE AND TERMS OF THE CAUTION WHEN THE RESTRICTION APPLIES	67
(a) The restriction on drawing adverse inferences from silence	67
(b) Terms of the caution when the restriction applies.....	67
Notes for Guidance.....	67
ANNEX D WRITTEN STATEMENTS UNDER CAUTION	69
(a) Written by a person under caution.....	69
(b) Written by a police officer or other police staff	69
ANNEX E SUMMARY OF PROVISIONS RELATING TO MENTALLY DISORDERED AND OTHERWISE MENTALLY VULNERABLE PEOPLE	71
Notes for Guidance.....	72
ANNEX F Not used	74
ANNEX G FITNESS TO BE INTERVIEWED	74
ANNEX H DETAINED PERSON: OBSERVATION LIST.....	75
ANNEX I Not used	75
ANNEX J Not used	75
ANNEX K X-RAYS AND ULTRASOUND SCANS	76
(a) Action.....	76
(b) Documentation.....	76
Notes for Guidance.....	76



ANNEX L ESTABLISHING GENDER OF PERSONS FOR THE PURPOSE OF SEARCHING	78
(a) Consideration.....	78
(b) Documentation.....	79
(c) Disclosure of information.....	79
Notes for Guidance	79
ANNEX M DOCUMENTS AND RECORDS TO BE TRANSLATED	80
Table of essential documents:.....	80
Documentation.....	81
Notes for Guidance	81
ANNEX N LIVE-LINK INTERPRETATION (PARA. 13.12)	82
Part 1: When the physical presence of the interpreter is not required.....	82
Part 2: Modifications for live-link interpretation	84
(a) Code C paragraph 13.3:	84
(b) Code C paragraph 13.4:	84
(c) Code C paragraph 13.7:	84
(d) Codes C, E and F - interviews	84
(e) Codes E and F, paragraph 4.18 (signing master recording label)	84
Notes for Guidance	84

C

7 Citizens of independent Commonwealth countries or foreign nationals

(a) Action

- 7.1 A detainee who is a citizen of an independent Commonwealth country or a national of a foreign country, including the Republic of Ireland, has the right, upon request, to communicate at any time with the appropriate High Commission, Embassy or Consulate. That detainee must be informed as soon as practicable of this right and asked if they want to have their High Commission, Embassy or Consulate told of their whereabouts and the grounds for their detention. Such a request should be acted upon as soon as practicable. See *Note 7A*.
- 7.2 A detainee who is a citizen of a country with which a bilateral consular convention or agreement is in force requiring notification of arrest must also be informed that subject to *paragraph 7.4*, notification of their arrest will be sent to the appropriate High Commission, Embassy or Consulate as soon as practicable, whether or not they request it. A list of the countries to which this requirement currently applies and contact details for the relevant High Commissions, Embassies and Consulates can be obtained from the Consular Directorate of the Foreign and Commonwealth Office (FCO) as follows:
- from the FCO web pages:
 - ~ <https://gov.uk/government/publications/table-of-consular-conventions-and-mandatory-notification-obligations>, and
 - ~ <https://www.gov.uk/government/publications/foreign-embassies-in-the-uk>
 - by telephone to 020 7008 3100,
 - by email to fcocorrespondence@fco.gov.uk.
 - by letter to the Foreign and Commonwealth Office, King Charles Street, London, SW1A 2AH.
- 7.3 Consular officers may, if the detainee agrees, visit one of their nationals in police detention to talk to them and, if required, to arrange for legal advice. Such visits shall take place out of the hearing of a police officer.
- 7.4 Notwithstanding the provisions of consular conventions, if the detainee claims that they are a refugee or have applied or intend to apply for asylum, the custody officer must ensure that UK Visas and Immigration (UKVI) (formerly the UK Border Agency) is informed as soon as practicable of the claim. UKVI will then determine whether compliance with relevant international obligations requires notification of the arrest to be sent and will inform the custody officer as to what action police need to take.

(b) Documentation

- 7.5 A record shall be made:
- when a detainee is informed of their rights under this section and of any requirement in *paragraph 7.2*;
 - of any communications with a High Commission, Embassy or Consulate, and
 - of any communications with UKVI about a detainee's claim to be a refugee or to be seeking asylum and the resulting action taken by police.

Note for Guidance

- 7A *The exercise of the rights in this section may not be interfered with even though Annex B applies.*

ANNEX B DELAY IN NOTIFYING ARREST OR ALLOWING ACCESS TO LEGAL ADVICE

A Persons detained under PACE

1. The exercise of the rights in *Section 5* or *Section 6*, or both, may be delayed if the person is in police detention, as in PACE, section 118(2), in connection with an indictable offence, has not yet been charged with an offence and an officer of superintendent rank or above, or inspector rank or above only for the rights in *Section 5*, has reasonable grounds for believing their exercise will:
 - (i) lead to:
 - interference with, or harm to, evidence connected with an indictable offence; or
 - interference with, or physical harm to, other people; or
 - (ii) lead to alerting other people suspected of having committed an indictable offence but not yet arrested for it; or
 - (iii) hinder the recovery of property obtained in consequence of the commission of such an offence.
2. These rights may also be delayed if the officer has reasonable grounds to believe that:
 - (i) the person detained for an indictable offence has benefited from their criminal conduct (decided in accordance with Part 2 of the Proceeds of Crime Act 2002); and
 - (ii) the recovery of the value of the property constituting that benefit will be hindered by the exercise of either right.
3. Authority to delay a detainee's right to consult privately with a solicitor may be given only if the authorising officer has reasonable grounds to believe the solicitor the detainee wants to consult will, inadvertently or otherwise, pass on a message from the detainee or act in some other way which will have any of the consequences specified under *paragraphs 1 or 2*. In these circumstances, the detainee must be allowed to choose another solicitor. See *Note B3*.
4. If the detainee wishes to see a solicitor, access to that solicitor may not be delayed on the grounds they might advise the detainee not to answer questions or the solicitor was initially asked to attend the police station by someone else. In the latter case, the detainee must be told the solicitor has come to the police station at another person's request, and must be asked to sign the custody record to signify whether they want to see the solicitor.
5. The fact the grounds for delaying notification of arrest may be satisfied does not automatically mean the grounds for delaying access to legal advice will also be satisfied.
6. These rights may be delayed only for as long as grounds exist and in no case beyond 36 hours after the relevant time as in PACE, section 41. If the grounds cease to apply within this time, the detainee must, as soon as practicable, be asked if they want to exercise either right, the custody record must be noted accordingly, and action taken in accordance with the relevant section of the Code.
7. A detained person must be permitted to consult a solicitor for a reasonable time before any court hearing.

B Not used

C Documentation

13. The grounds for action under this Annex shall be recorded and the detainee informed of them as soon as practicable.
14. Any reply given by a detainee under *paragraphs 6 or 11* must be recorded and the detainee asked to endorse the record in relation to whether they want to receive legal advice at this point.

C

D Cautions and special warnings

15. When a suspect detained at a police station is interviewed during any period for which access to legal advice has been delayed under this Annex, the court or jury may not draw adverse inferences from their silence.

Notes for Guidance

- B1 Even if Annex B applies in the case of a juvenile, or a person who is mentally disordered or otherwise mentally vulnerable, action to inform the appropriate adult and the person responsible for a juvenile's welfare, if that is a different person, must nevertheless be taken as in paragraph 3.13 and 3.15.*
- B2 In the case of Commonwealth citizens and foreign nationals, see Note 7A.*
- B3 A decision to delay access to a specific solicitor is likely to be a rare occurrence and only when it can be shown the suspect is capable of misleading that particular solicitor and there is more than a substantial risk that the suspect will succeed in causing information to be conveyed which will lead to one or more of the specified consequences.*

Home > Statutory Instruments > 1987 >

S.I. No. 119/1987 - Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987.

S.I. No. 119/1987 - Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987.

CONTENTS.

Preliminary and General

1. Title and commencement.
2. Interpretation.
3. General.
4. Member in charge.
5. Duties of member in charge.
6. Custody record.

Arrested persons

7. Record of arrest and detention.
8. Information to be given to an arrested person.
9. Notification to solicitor or other persons.
10. Enquiries.
11. Visits and communications.
12. Interviews (general).
13. Interviews (persons under seventeen years).
14. Foreign nationals.
15. Charge sheets.

Persons other than arrested persons

16. Provisions relating to persons other than arrested persons.

Provisions applicable generally

17. Searches.

18. Fingerprints, etc.

19. Conditions of custody.

20. Persons in custody not to be ill-treated.

21. Medical treatment.

22. Mentally handicapped persons.

23. Other matters to be recorded.

24. Preservation of custody records.

S.I. No. 119 of 1987.

CRIMINAL JUSTICE ACT, 1984 (TREATMENT OF PERSONS IN CUSTODY IN GARDA
SÍOCHÁNA STATIONS) REGULATIONS. 1987.

Preliminary and General

I, GERARD COLLINS, Minister for Justice, in exercise of the powers conferred on me by section 7 of the Criminal Justice Act, 1984 (No. 22 of 1984), hereby make the following Regulations with respect to which, pursuant to that section, a draft has been laid before each House of the Oireachtas and a resolution approving of the draft has been passed by each such House:

1 Title and commencement. **1.** (1) These Regulations may be cited as the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987.

(2) These Regulations shall come into operation one month after the date on which they are made.

(a) the other parent or another guardian,

(b) if the other parent or another guardian is not readily available or his presence, having regard to the proviso to paragraph (1), is not appropriate, an adult relative, or

(c) if the other parent or another guardian or an adult relative is not readily available or the presence of the other parent or another guardian is, having regard to the said proviso, not appropriate, some other responsible adult other than a member.

(3) Where a request for the attendance of a solicitor is made during the questioning by the parent or guardian, spouse, adult relative or other adult present, Regulation 12(6) shall apply as if the request had been made by the arrested person.

(4) Where an authority is given to a member to question an arrested person in the absence of a parent or guardian, or to exclude a parent, guardian or other person from the questioning pursuant to paragraph (1) or (2), the fact that the authority was given, the name and rank of the member giving it, the reasons for doing so and the action taken in compliance with the said paragraph (2) shall be recorded.

(5) (a) This Regulation is without prejudice to the provisions of Regulation 12.

(b) This Regulation (other than paragraph (3)), in its application to a person under the age of seventeen years who is married to an adult, shall have effect with the substitution of references to the person's spouse for the references (other than those in subparagraphs (a), (b) and (c) of paragraph (2)) to a parent or guardian and as if "a parent or guardian" were substituted for "the other parent or another guardian" in each place where it occurs in those subparagraphs.

14 Foreign
nationals.

14. (1) The member in charge shall without delay inform or cause to be informed any arrested person who is a foreign national that he may communicate with his consul and that, if he so wishes, the consul will be notified of his arrest. The member in charge shall, on request, cause the consul to be notified as soon as practicable. Any communication addressed to him shall be forwarded as soon as practicable.

(2) Consular officers shall be entitled to visit one of their nationals, or a national of another State for whom, by formal or informal arrangement, they offer consular assistance, who is an arrested person and to converse and correspond with him and to arrange for his legal representation.

(3) This Regulation is without prejudice to the application to a national of a foreign country of the provisions of a consular convention or arrangement between the State and that country.

(4) If the member in charge has reasonable grounds for believing that an arrested person who is a foreign national is a political refugee or is seeking political asylum, a consular officer shall not be notified of his arrest or given access to or information about him except at the express request of the foreign national.

(5) A record shall be made of the time when a foreign national was informed or notified in accordance with this Regulation, when any request was made, when the request was complied with and when any communication was forwarded to a consul.

(6) In this Regulation "consul" means, in relation to a foreign national, the diplomatic or consular representative of that person's own country either in the State or accredited to the State on a non-residential basis, or a diplomatic or consular representative of a third country which may formally or informally offer consular assistance to a national of a country which has no resident representative in the State.

15 Charge sheets.

15. (1) Where a person in custody is charged with an offence, a copy of the charge sheet containing particulars of the offence shall be given to him as soon as practicable. Where the person charged is under the age of seventeen years, a copy of the charge sheet shall also be given to the person's parent or guardian or (where the person is married to an adult) to the spouse if present when the person is charged or, if not present, shall be forwarded as soon as practicable.

(2) A record shall be made of the time when the person was charged with an offence. The charge sheet number (or numbers) shall also be recorded. Where a copy of a charge sheet is given to a person in the station, he shall be asked to sign the custody record in acknowledgement of its receipt. If he refuses to sign it, the refusal shall be recorded.

Persons other than arrested persons

16 Provisions relating to persons other than arrested persons.

16. (1) This Regulation applies to a person in custody other than an arrested person.

(2) Information as to the station where a person to whom this Regulation applies is in custody shall be given in response to an enquiry by—



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Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

Preamble

The undersigned Plenipotentiaries of the Governments represented at the Diplomatic Conference held at Geneva from April 21 to August 12, 1949, for the purpose of establishing a Convention for the Protection of Civilian Persons in Time of War, have agreed as follows:

Part I. General Provisions

Article 1. The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

Art. 2. In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Art. 3. In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Art. 4. Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a

neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, shall not be considered as protected persons within the meaning of the present Convention.

Art. 5 Where in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

Art. 6. The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

In the case of occupied territory, the application of the present Convention shall cease one year after the general close of military operations; however, the Occupying Power shall be bound, for the duration of the occupation, to the extent that such Power exercises the functions of government in such territory, by the provisions of the following Articles of the present Convention: 1 to 12, 27, 29 to 34, 47, 49, 51, 52, 53, 59, 61 to 77, 143.

Protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention.

Art. 7. In addition to the agreements expressly provided for in Articles 11, 14, 15, 17, 36, 108, 109, 132, 133 and 149, the High Contracting Parties may conclude other special agreements for all matters concerning which they may deem it suitable to make separate provision. No special agreement shall adversely affect the situation of protected persons, as defined by the present Convention, not restrict the rights which it confers upon them.

Protected persons shall continue to have the benefit of such agreements as long as the Convention is applicable to them, except where express provisions to the contrary are contained in the aforesaid or in subsequent agreements, or where more favourable measures have been taken with regard to them by one or other of the Parties to the conflict.

Art. 8. Protected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention, and by the special agreements referred to in the foregoing Article, if such there be.

Art. 9. The present Convention shall be applied with the cooperation and under the scrutiny of the Protecting Powers whose duty it is to safeguard the interests of the Parties to the conflict. For this purpose, the Protecting Powers may appoint, apart from their diplomatic or consular staff, delegates from amongst their own nationals or the nationals of other neutral Powers. The said delegates shall be subject to the approval of the Power with which they are to carry out their duties.

The Parties to the conflict shall facilitate to the greatest extent possible the task of the representatives or delegates of the Protecting Powers.

The representatives or delegates of the Protecting Powers shall not in any case exceed their mission under the present Convention.

They shall, in particular, take account of the imperative necessities of security of the State wherein they carry out their duties.

Art. 10. The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.

THE INTERNATIONAL
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1949–1998

VOLUME ONE: THE TREATIES
PART I

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regards the employees of the consulate and the members of their families, third States have a duty not to hinder their passage.

(5) The provisions of paragraph 3 of the article, which guarantee to correspondence and to other official communications in transit the same freedom and protection in third States as in the receiving State, are in keeping with the interest that all States have in the smooth and unimpeded development of consular relations.

(6) Paragraph 4 of this article reproduces *mutatis mutandis* the provisions of article 40, paragraph 4, of the 1961 Vienna Convention on Diplomatic Relations.

Respect for the laws and regulations of the receiving State

ARTICLE 55

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. The consular premises must not be used in any manner incompatible with the consular functions as laid down in the present articles or by other rules of international law.

3. The rule laid down in the preceding paragraph shall not exclude the possibility of offices or other institutions or agencies being installed in the consular building or premises, provided that the premises assigned to such offices are separate from those used by the consulate. In that event, the said offices shall not, for the purposes of these articles, be deemed to form part of the consular premises.

Commentary

(1) Paragraph 1 of this article lays down the fundamental rule that it is the duty of any person who enjoys consular privileges and immunities to respect the laws and regulations of their receiving State, save in so far as he is exempted from their application by an express provision of this draft or of some other relevant international agreement. Thus, for example, the laws imposing a personal contribution, and the social security laws, are not applicable to members of the consulate who are not nationals of the receiving State.

(2) The clause in the second sentence of paragraph 1 which prohibits interference in the internal affairs of the receiving State should not be interpreted as preventing members of the consulate from making representations, within the scope of their functions, for the purpose of protecting and defending the interests of their country or of its nationals, in conformity with international law.

(3) Paragraph 2 reproduces, *mutatis mutandis*, the rule contained in article 41, paragraph 3, of the 1961 Vienna Convention on Diplomatic Relations. This provision means that the consular premises must not be used for purposes incompatible with the consular functions. A breach of this obligation does not render inoperative the provisions of article 30 relative to the inviolability of consular premises. But equally, this inviolability does not permit the consular premises to be used for purposes incompatible with these articles or with other rules of international law. For example, consular premises may not be used as an asylum for persons prosecuted or convicted by the local authorities. Opinions were divided in the Commission on whether the article should state this particular consequence of the rule laid down in its paragraph 2. Some members favoured the insertion of words to this effect; others, however, thought it would be sufficient to mention the matter in the commentary on the article, and pointed out in support of their view that there is no corresponding provision in the 1961 Vienna Convention on Diplomatic Relations. Moreover, certain members would have preferred to replace the text adopted at the previous session by a more restrictive form of words. After an exchange of views, the Commission decided to retain the text adopted at its previous session, which repeats the rule laid down in article 40, paragraph 3, of the draft articles on diplomatic intercourse and immunities, now article 41, paragraph 3, of the Vienna Convention.

(4) Paragraph 3 refers to cases, which occur with some frequency in practice, where the offices of other institutions or agencies are installed in the building of the consulate or on the consular premises.

Special provisions applicable to career consular officials who carry on a private gainful occupation

ARTICLE 56

The provisions applicable to career consular officials who carry on a private gainful occupation in the receiving State shall, so far as facilities, privileges and immunities are concerned, be the same as those applicable to honorary consular officials.

Commentary

(1) A study of consular regulations has shown, and the comments of governments have confirmed, that some States permit their career consular officials to carry on a private gainful occupation. If the practice of States is examined, it will be seen that, in the matter of privileges and immunities, States are not prepared to accord to this category of consular official the same treatment as to other career consular officials who are employed full-time in the exercise of their functions. This is understandable, for these consular officials, although belonging to the regular consular service, are in fact in a position analogous to that of honorary consuls, who, at least in the great majority of cases, also carry on a private gainful occupation. In the



Chapter I

CHAPTER I: PURPOSES AND PRINCIPLES

Article 1

The Purposes of the United Nations are:

- 1 To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;
- 2 To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
- 3 To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
- 4 To be a centre for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

- 1 The Organization is based on the principle of the sovereign equality of all its Members.
- 2 All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.
- 3 All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
- 4 All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
- 5 All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
- 6 The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
- 7 Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHARTER OF THE UNITED NATIONS

[Introductory Note \(../introductory-note/index.html\)](#)

[Preamble \(../preamble/index.html\)](#)

[Chapter I \(Articles 1-2\) \(index.html\)](#)

[Chapter II \(Articles 3-6\) \(../chapter-ii/index.html\)](#)

[Chapter III \(Articles 7-8\) \(../chapter-iii/index.html\)](#)

[Chapter IV \(Articles 9-22\) \(../chapter-iv/index.html\)](#)

[Chapter V \(Articles 23-32\) \(../chapter-v/index.html\)](#)

[Chapter VI \(Articles 33-38\) \(../chapter-vi/index.html\)](#)

[Chapter VII \(Articles 39-51\) \(../chapter-vii/index.html\)](#)

[Chapter VIII \(Articles 52-54\) \(../chapter-viii/index.html\)](#)

[Chapter IX \(Articles 55-60\) \(../chapter-ix/index.html\)](#)

[Chapter X \(Articles 61-72\) \(../chapter-x/index.html\)](#)

[Chapter XI \(Articles 73-74\) \(../chapter-xi/index.html\)](#)

[Chapter XII \(Articles 75-85\) \(../chapter-xii/index.html\)](#)

[Chapter XIII \(Articles 86-91\) \(../chapter-xiii/index.html\)](#)

[Chapter XIV \(Articles 92-96\) \(../chapter-xiv/index.html\)](#)

[Chapter XV \(Articles 97-101\) \(../chapter-xv/index.html\)](#)

[Chapter XVI \(Articles 102-105\) \(../chapter-xvi/index.html\)](#)

No. 18232

MULTILATERAL

**Vienna Convention on the law of treaties (with annex).
Concluded at Vienna on 23 May 1969**

*Authentic texts: English, French, Chinese, Russian and Spanish.
Registered ex officio on 27 January 1980.*

MULTILATÉRAL

**Convention de Vienne sur le droit des traités (avec annexe).
Conclue à Vienne le 23 mai 1969**

*Textes authentiques : anglais, français, chinois, russe et espagnol.
Enregistrée d'office le 27 janvier 1980.*

2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

PART III. OBSERVANCE, APPLICATION AND INTERPRETATION OF TREATIES

SECTION 1. OBSERVANCE OF TREATIES

Article 26. "PACTA SUNT SERVANDA"

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

Article 27. INTERNAL LAW AND OBSERVANCE OF TREATIES

A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.

SECTION 2. APPLICATION OF TREATIES

Article 28. NON-RETROACTIVITY OF TREATIES

Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

Article 29. TERRITORIAL SCOPE OF TREATIES

Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.

Article 30. APPLICATION OF SUCCESSIVE TREATIES RELATING TO THE SAME SUBJECT-MATTER

1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States parties to successive treaties relating to the same subject-matter shall be determined in accordance with the following paragraphs.

2. When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.

3. When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.

4. When the parties to the later treaty do not include all the parties to the earlier one:

- (a) As between States parties to both treaties the same rule applies as in paragraph 3;
- (b) As between a State party to both treaties and a State party to only one of the treaties, the treaty to which both States are parties governs their mutual rights and obligations.

5. Paragraph 4 is without prejudice to article 41, or to any question of the termination or suspension of the operation of a treaty under article 60 or to any ques-

tion of responsibility which may arise for a State from the conclusion or application of a treaty the provisions of which are incompatible with its obligations towards another State under another treaty.

SECTION 3. INTERPRETATION OF TREATIES

Article 31. GENERAL RULE OF INTERPRETATION

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
- (b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

- (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) Any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32. SUPPLEMENTARY MEANS OF INTERPRETATION

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

- (a) Leaves the meaning ambiguous or obscure; or
- (b) Leads to a result which is manifestly absurd or unreasonable.

Article 33. INTERPRETATION OF TREATIES AUTHENTICATED IN TWO OR MORE LANGUAGES

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

SECTION 4. TREATIES AND THIRD STATES

Article 34. GENERAL RULE REGARDING THIRD STATES

A treaty does not create either obligations or rights for a third State without its consent.

Article 35. TREATIES PROVIDING FOR OBLIGATIONS FOR THIRD STATES

An obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.

Article 36. TREATIES PROVIDING FOR RIGHTS FOR THIRD STATES

1. A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides.

2. A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty.

Article 37. REVOCATION OR MODIFICATION OF OBLIGATIONS
OR RIGHTS OF THIRD STATES

1. When an obligation has arisen for a third State in conformity with article 35, the obligation may be revoked or modified only with the consent of the parties to the treaty and of the third State, unless it is established that they had otherwise agreed.

2. When a right has arisen for a third State in conformity with article 36, the right may not be revoked or modified by the parties if it is established that the right was intended not to be revocable or subject to modification without the consent of the third State.

Article 38. RULES IN A TREATY BECOMING BINDING ON THIRD STATES
THROUGH INTERNATIONAL CUSTOM

Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such.

PART IV. AMENDMENT AND MODIFICATION OF TREATIES

Article 39. GENERAL RULE REGARDING THE AMENDMENT OF TREATIES

A treaty may be amended by agreement between the parties. The rules laid down in Part II apply to such an agreement except in so far as the treaty may otherwise provide.

Article 40. AMENDMENT OF MULTILATERAL TREATIES

1. Unless the treaty otherwise provides, the amendment of multilateral treaties shall be governed by the following paragraphs.

2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:

- (a) The decision as to the action to be taken in regard to such proposal;
 - (b) The negotiation and conclusion of any agreement for the amendment of the treaty.
3. Every State entitled to become a party to the treaty shall also be entitled to become a party to the treaty as amended.
4. The amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement; article 30, paragraph 4(b), applies in relation to such State.
5. Any State which becomes a party to the treaty after the entry into force of the amending agreement shall, failing an expression of a different intention by that State:
- (a) be considered as a party to the treaty as amended; and
 - (b) be considered as a party to the unamended treaty in relation to any party to the treaty not bound by the amending agreement.

*Article 41. AGREEMENTS TO MODIFY MULTILATERAL TREATIES
BETWEEN CERTAIN OF THE PARTIES ONLY*

1. Two or more of the parties to a multilateral treaty may conclude an agreement to modify the treaty as between themselves alone if:
- (a) The possibility of such a modification is provided for by the treaty; or
 - (b) The modification in question is not prohibited by the treaty and:
 - (i) Does not affect the enjoyment by the other parties of their rights under the treaty or the performance of their obligations;
 - (ii) Does not relate to a provision, derogation from which is incompatible with the effective execution of the object and purpose of the treaty as a whole.
2. Unless in a case falling under paragraph 1(a) the treaty otherwise provides, the parties in question shall notify the other parties of their intention to conclude the agreement and of the modification to the treaty for which it provides.

PART V. INVALIDITY, TERMINATION AND SUSPENSION
OF THE OPERATION OF TREATIES

SECTION 1. GENERAL PROVISIONS

Article 42. VALIDITY AND CONTINUANCE IN FORCE OF TREATIES

1. The validity of a treaty or of the consent of a State to be bound by a treaty may be impeached only through the application of the present Convention.
2. The termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty.

*Article 43. OBLIGATIONS IMPOSED BY INTERNATIONAL LAW
INDEPENDENTLY OF A TREATY*

The invalidity, termination or denunciation of a treaty, the withdrawal of a party from it, or the suspension of its operation, as a result of the application of the present Convention or of the provisions of the treaty, shall not in any way impair the duty of any State to fulfil any obligation embodied in the treaty to which it would be subject under international law independently of the treaty.

[\(../index.html\)](#)

UNITED NATIONS

[Home \(../index.html\)](#)[About the UN \(../about-un/index.html\)](#)[What We Do \(../what-we-do/index.html\)](#)[Where We Work \(../where-we-work/index.html\)](#)[News and Media \(../news-and-media/index.html\)](#)[Documents \(../documents/index.html\)](#)[Observances \(../observances/united-nations-observances/index.html\)](#)[A-Z Site Index \(../about-website/site-index/index.html\)](#)

Chapter XVI

CHAPTER XVI: MISCELLANEOUS PROVISIONS

Article 102

- 1 Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
- 2 No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

Article 105

- 1 The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes.
- 2 Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connexion with the Organization.
- 3 The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHARTER OF THE UNITED NATIONS

[Introductory Note \(../introductory-note/index.html\)](#)[Preamble \(../preamble/index.html\)](#)[Chapter I \(Articles 1-2\) \(../chapter-i/index.html\)](#)[Chapter II \(Articles 3-6\) \(../chapter-ii/index.html\)](#)[Chapter III \(Articles 7-8\) \(../chapter-iii/index.html\)](#)[Chapter IV \(Articles 9-22\) \(../chapter-iv/index.html\)](#)[Chapter V \(Articles 23-32\) \(../chapter-v/index.html\)](#)[Chapter VI \(Articles 33-38\) \(../chapter-vi/index.html\)](#)[Chapter VII \(Articles 39-51\) \(../chapter-vii/index.html\)](#)[Chapter VIII \(Articles 52-54\) \(../chapter-viii/index.html\)](#)[Chapter IX \(Articles 55-60\) \(../chapter-ix/index.html\)](#)[Chapter X \(Articles 61-72\) \(../chapter-x/index.html\)](#)[Chapter XI \(Articles 73-74\) \(../chapter-xi/index.html\)](#)[Chapter XII \(Articles 75-85\) \(../chapter-xii/index.html\)](#)[Chapter XIII \(Articles 86-91\) \(../chapter-xiii/index.html\)](#)[Chapter XIV \(Articles 92-96\) \(../chapter-xiv/index.html\)](#)[Chapter XV \(Articles 97-101\) \(../chapter-xv/index.html\)](#)[Chapter XVI \(Articles 102-105\) \(index.html\)](#)[Chapter XVII \(Articles 106-107\) \(../chapter-xvii-0/index.html\)](#)[Chapter XVIII \(Articles 108-109\) \(../chapter-xviii/index.html\)](#)[Chapter XIX \(Articles 110-111\) \(../chapter-xix/index.html\)](#)[History of the UN Charter \(../history-united-nations-charter/1945-san-francisco-conference/index.html\)](#)[Buy UN Charter \(https://shop.un.org/site-search?query=charter\)](https://shop.un.org/site-search?query=charter)

The Pakistan Army Act, 1952

¹ACT XXXIX OF 1952

[13th, 1952]

An Act to consolidate and amend the law relating to the Pakistan Army.

WHEREAS it is expedient to consolidate and amend the law relating to the Pakistan Army; It is hereby enacted as follows:---

CHAPTER I.—PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Pakistan Army Act, 1952.

(2) It shall come into force on such date² as the ³[Federal Government] may, by notification in the Official Gazette, appoint in this behalf.

¹ For Statement of Object and Reasons, see Gaz. of P., (1951 Pt. V, dated the 23rd November 1951, P. 71; and for Report of Select Committee, see *ibid.* 1952. Ext., pp. 347-400.

The Act has been extended to Khairpur State, by the Khairpur (Federal Laws) Extension) Order, 1953 (G.G.O. 5 of 1953).

It has been extended to the Baluchistan States Union by the Baluchistan States Union (Federal Laws) (Extension) Order, 1953 (G.G.O. 4 of 1953), as amended.

The Act has been and shall be deemed always to have been applied to Baluchistan and the Federated Areas of Baluchistan with effect from the 1st April, 1955, see Gaz. of P., 1955, see Gaz. of P., 1955. Pt. I p. 204.

The Act has been extended to the whole of Pakistan by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3, and 2nd Sch. (with effect from the 14th October, 1955).

The Act has been and shall be deemed to have been brought into force in Gwadur with effect from the 8th September, 1958, by the Gwadur (Application of Central Laws) Ordinance, 1960 (37 of 1960), s. 2.

The Act, rules, notifins, and orders made under it, have been applied to the Tribal Areas or to the part of those areas to which they have not been already applied, see the Tribal Areas (Application of Acts) Reason 1965. Gaz. of P. 1965., Ext., pp 1016-1018.

The Provisions of this Act and rules made thereunder have been applied in their application to non-commissioned officer and men of the Pakistan Mujahid Force. When embodied for or otherwise undergoing training with certain modification specified in Sch. II to rule 12 of the Pakistan Mujahid Force Rules, 1965, see Gaz. of P., 1965, Ext., pp. 1105-1107.

² The 1st day of April, 1955, see Gaz. of P., 1955, Ext. p. 389.

³ Subs. by the Pakistan Army (Amdt.) Act, 1973 (51 of 1973), s. 3, for "Central Government".

²[133B. Court of Appeals for other cases. —(1) Any person to whom a court-martial has awarded a sentence of death, imprisonment for life, imprisonment exceeding three months, or dismissal from the service after the commencement of the Pakistan Army (Amendment) Act, 1992, may, within forty days from the date of announcement of finding or sentence or promulgation thereof, whichever is earlier, prefer an appeal against the finding or sentence to a Court of Appeals consisting of the Chief of the Army Staff or one or more officers designated by him in this behalf, presided by an officer not below the rank of Brigadier in the case of General Court-Martial or Field General Court-Martial convened or confirmed or counter-signed by an officer of the rank of Brigadier or below as the case may be, and one or more officer, presided by an officer not below the rank of Major General in other cases, hereinafter referred to as the Court of Appeals.

¹ *Ins. by the Pakistan Army (Amdt.) Act, 1992 (28 of 1992), s. 3.*

² *Added ibid., s. 4.*

Provided that where the sentence is awarded by the court-martial under an Islamic law, the officer or officers so designated shall be Muslims:---

Provided further that every Court of Appeal's may be attended by a judge advocate who shall be an officer belonging to the Judge Advocate General's Department, Pakistan Army, or if no such officer is available, a person appointed by the Chief of the Army Staff.

(2) A Court of Appeals shall have power to,---

(a) accept or reject the appeal in whole or in part; or

(b) substitute a valid finding or sentence for an invalid finding or sentence; or

(c) call any witness, in its discretion for the purpose of recording additional evidence in the presence of the parties, who shall be afforded an opportunity to put any question to the witness; or

(d) annul the proceedings of the court-martial on the ground that they are illegal or unjust; or

(e) order retrial of the accused by a fresh court; or

(f) remit the whole or any part of the punishment or reduce or enhance the punishment or commute the punishment for any less punishment or punishments mentioned in this Act.

(3) The decision of a Court of Appeals shall be final and shall not be called in question before any court or other authority whatsoever.]

THE PAKISTAN ARMY ACT

(XXXIX OF 1952)¹

[13th May, 1952]

An Act to consolidate and amend the law relating to the
Pakistan Army.

Preamble : Whereas it is expedient to consolidate and amend the law relating to the Pakistan Army ; it is hereby enacted as follows :—

CHAPTER I

Preliminary

1. Short title and commencement : (1) This Act may be called the Pakistan Army Act, 1952.

(2) It shall come into force on such date² as the Federal Government may, by notification in the Official Gazette, appoint in this behalf.

2. Persons subject to the Act : (1) The following persons shall be subject to this Act, namely :—

(a) officers, junior commissioned officers and warrant officers of the Pakistan Army ;

³[(b) persons enrolled under the Army Act, 1911 (VIII of 1911), before the date notified in pursuance of sub-sec. (2) of Sec. 1, and serving with the Pakistan Army immediately before that date, and persons enrolled under this Act ;]

1. For Statement of Objects and Reasons, see Gaz. of Pakistan, 1951, Pt. V, dated the 23rd November, 1951, p. 71 ; and for Report of Select Committee, see *ibid.*, 1952, Ext., pp. 347—400.

The Act has been extended to the whole of Pakistan by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), Sec. 3 and 2nd Sch. (with effect from the 14th October, 1955).

The Act has been and shall be deemed to have been brought into force of Gwadar with effect from the 8th September, 1958, by the Gwadar (Application of Central Laws) Ordinance, 1960 (37 of 1960), Sec. 2.

The Act, rules, notifications and orders made under it, have been applied to the Tribal Areas or to the parts of those areas to which they have not been already applied, see the Tribal Areas (Application of Acts) Reg., 1965, Gaz. of Pakistan, 1965, Ext. pp. 1016—1018.

The provisions of this Act and rules made thereunder have been applied in their application to non-commissioned officers and men of the Pakistan Mujahid Force. When embodied for or otherwise undergoing training with certain modification specified in Sch. II to rule 12 of the Pakistan Mujahid Force Rules, 1965, see Gaz., of Pakistan, 1965, Ext., pp. 1105—1107.

2. The 1st day of April, 1955, see Gaz. of Pakistan, 1955, Ext., p. 389.

3. Subs. by the Pakistan Army (Amendment) Act, 11 of 1958, Sec. 2, for the original clause (b) (with effect from the 1st April, 1952).

CHAPTER XII

Pardons, Remissions and Suspension

143. Pardons and remissions : (1) When any person subject to this Act has been convicted by a court-martial of any offence, the Federal Government or the ¹[Chief of the Army Staff] or any officer not below the rank of Brigadier empowered in this behalf by the ¹[Chief of the Army Staff] may—

- (i) either without conditions or upon any conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded ; or
- (ii) mitigate the punishment awarded or commute such punishment for any less punishment or punishment, mentioned in this Act :

Provided that a sentence of ²[.....] rigorous imprisonment shall not be commuted for a sentence of detention for a term exceeding the term of rigorous imprisonment awarded by the Court.

(2) If any condition on which a person has been pardoned or a punishment has been remitted is, in the opinion of the authority which granted the pardon or remitted the punishment, not fulfilled, such authority may cancel the pardon or remission, and thereupon the sentence of the Court shall be carried into effect as if such pardon had not been granted or such punishment had not been remitted :

Provided that, in the case of a person sentenced to ³[imprisonment for life], rigorous imprisonment, or detention, such person shall undergo only the unexpired portion of his sentence.

(3) When under the provisions of sub-section (5) of Section 62 a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purposes of this section, be treated as a punishment awarded by sentence of a court-martial.

144. Suspension of sentence of ³[imprisonment for life], rigorous imprisonment or detention : (1) Where a person subject to this Act has been sentenced by a court-martial to ³[imprisonment for life], rigorous imprisonment or detention, the Federal Government, or the ¹[Chief of the Army Staff] or any officer empowered to convene a general or field general court-martial may suspend the sentence whether or not the offender has already been committed to prison or custody.

- 1. Subs. by Federal Adaptation of Laws Order, 4 of 1975.
- 2. The words "transportation" shall not be commuted for a sentence of rigorous imprisonment for a term exceeding the term of transportation awarded by the Court, and a sentence of" omitted by Act, LI of 1976.
- 3. Subs. for the word "transportation" by Act, LI of 1976



THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN

[As modified upto the 28th February, 2012]

NATIONAL ASSEMBLY OF PAKISTAN

Oath of President

42. Before entering upon office, the President shall make before the Chief Justice of Pakistan oath in the form set out in the Third Schedule.

Conditions of President's office

43. (1) The President shall not hold any office of profit in the service of Pakistan or occupy any other position carrying the right to remuneration for the rendering of services.

(2) The President shall not be a candidate for election as a member of ¹[Majlis-e-Shoora (Parliament)] or a Provincial Assembly; and, if a member of ¹[Majlis-e-Shoora (Parliament)] or a Provincial Assembly is elected as President, his seat in ¹[Majlis-e-Shoora (Parliament)] or, as the case may be, the Provincial Assembly shall become vacant on the day he enters upon his office.

Term of office of President

44. (1) Subject to the Constitution, the President shall hold office for a term of five years from the day he enters upon his office :

Provided that the President shall, notwithstanding the expiration of his terms, continue to hold office until his successor enters upon his office.

(2) Subject to the Constitution, a person holding office as President shall be eligible for re-election to that office, but no person shall hold that office for more than two consecutive terms.

(3) The President may, by writing under his hand addressed to the Speaker of the National Assembly, resign his office.

President's power to grant pardon, etc.

45. The President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

¹ See footnote 6 on page 3, *supra*.

THE STATUTE OF
THE INTERNATIONAL
COURT OF JUSTICE

A COMMENTARY
SECOND EDITION

EDITED BY

ANDREAS ZIMMERMANN

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ASSISTANT EDITORS

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OXFORD

recognized in general international law and stipulated also in Art. 2, para. 2 UN Charter as a general duty of the member States. The principle of good faith has a series of 'concretizations' in the field of procedural law.¹³⁹

First, it requires the parties not to undertake any action which could frustrate or substantially adversely affect the proper functioning of the procedure chosen, the point being to protect the object and purpose of the proceedings. As has already been said, the proceedings are also characterized by their adversarial nature and the opposing claims of the parties. Thus, it is perfectly open to a party to further its own interests even at the expense of the other party. But this selfishness has some limits. It cannot disregard requirements of a proper functioning of the procedure as such.¹⁴⁰ Thus, a party may not deliberately present false or forged pieces of evidence. It may not impede the production of evidence by the other party by having recourse to pressure or any other equivalent device. Second, the principle forms the basis of the more specific rule on the prohibition of abuse of procedure.¹⁴¹ Third, it is the basis for the application of procedural estoppel, or of the maxim *nemo commodum capere potest de sua propria turpitudine*. The last two propositions can be applied to evidentiary issues. To that extent, they can be said to govern the proceedings of international tribunals. It is proposed to focus here on the three aspects of abuse of procedure, estoppel and *nemo commodum*.

1. The Prohibition of Abuse of Procedure

49 Abuse of procedure is a special application of the prohibition of abuse of rights, which is a general principle applicable in international law as well as in municipal law.¹⁴² It consists of the use of procedural instruments or rights by one or more parties for purposes that are alien to those for which the procedural rights were established, especially for a fraudulent, procrastinatory or frivolous purpose, for the purpose of causing harm or obtaining an illegitimate advantage, for the purpose of reducing or removing the effectiveness of some other available process or for purposes of pure propaganda. To these situations, action with a malevolent intent or with bad faith can be added. The existence of such an abuse is not easily to be assumed; it must be rigorously proven. The concept cannot be caught completely in the abstract, since it can relate to a variety of different situations.

50 The case law of the ICJ is replete with instances where the principle of abuse of procedure has been invoked. The Court, however, has never found the conditions for an application of the principle to be fulfilled. But it did not reject the concept as such; it merely affirmed that its application was not warranted in the cases under consideration. In each case, its analysis seems to have been correct.

The contentious cases in which the principle has so far been invoked are the following:¹⁴³

- *Ambatielos* (claim of abuse of procedure by excessive delay in presentation of a claim);¹⁴⁴

¹³⁹ Cf. the detailed analysis in Kolb (2000), pp. 579 *et seq.*

¹⁴⁰ Cf. *ibid.*, pp. 587 *et seq.* (in the context of negotiation).

¹⁴¹ Cf. *infra*, MN 49 *et seq.*

¹⁴² Kolb (2000), pp. 429 *et seq.* There is no room here to venture into a description of the various contents of the principle.

¹⁴³ Cf. *ibid.*, pp. 640 *et seq.*

¹⁴⁴ *Ambatielos* (Greece/United Kingdom), ICJ Reports (1953), pp. 10, 23.



GOOD FAITH IN INTERNATIONAL LAW

ROBERT KOLB

B L O O M S B U R Y

rejected sometimes on the facts of the case, notably since the delay did not appear excessive or unjustified.⁷⁶

Overall, the doctrine of extinctive prescription has not found an intense application in international law. There are many old cases of diplomatic protection, but there is not much recent case law. It is not frequent that passivity will be interpreted as the loss of a claim of reparation or the like in international law. The haphazard and political nature of international relations has as a consequence that the notion of time is diluted. It is here more frequent that claims are processed in the long rather than the short run. The application of acquiescence or estoppel is much more frequent in the context of the assertion of a right to which no protest is opposed; the mere loss of a claim for inaction is more exceptionally admitted. However, when the strict conditions of the law are met—under good faith and legitimate expectations, or undue delay—there is no doubt that the legal operator will at least be influenced by the doctrine of extinctive prescription. Whether it will be applied depends as much on the circumstances of the case as on the sources of particular international law applicable between the parties.

III. Good Faith and the Prohibition of Abuse of Rights

The concept of abuse of rights has many facets. It connotes sometimes the exercise of a right in the mere intention to injure another subject, or the exercise of a competence for a finality for which it was not granted, or else the exercise of a right notwithstanding a considerable and disproportionate harm for another subject, or finally the arbitrary or fraudulent exercise of rights.⁷⁷ The core point is that a subjective right or a competence is *exercised* in some way that the legal

to evaluate the loss and damage resulting from the deaths and wounding of civilians (§ 92). Nor was it in a position to form a correct evaluation of the loss and damage caused to the Angolan economy, the more so since the South African aggression was continuing. The Commission did however reproduce the figure of US\$10,000 million put forward in that regard by Angola (§§ 93–96). Finally, the Commission warned that it was capable of estimating only a fraction of the loss and damage caused by South Africa's acts of aggression, and that the real loss and damage was substantially higher than the estimates it was putting forward (§ 100). The Security Council, in the unanimous Resolution 577 of 6 December 1985, § 1, endorsed the Commission of Enquiry's report and expressed its approval of the Commission's work. At § 7 of the same Resolution, the Council again demanded that South Africa pay 'full and adequate' compensation for the acts of aggression perpetrated.

⁷⁶ *Armed Activities (Democratic Republic of Congo v Uganda)* (2005) ICJ Reports 267, § 295.

⁷⁷ On the concept of abuse of rights in international law the literature is vast. See notably: N Politis, 'Le problème des limitations de la souveraineté et la théorie de l'abus des droits dans les rapports internationaux' (1925-I) 6 *RCADI* 1 ff; G Leibholz, 'Das Verbot der Willkür und des Ermessensmissbrauches im völkerrechtlichen Verkehr der Staaten' (1929) 1 *ZaöRV* 77ff; M Scerni, *L'abuso di diritto nei rapporti internazionali* (Rome, 1930); HC Gutteridge, 'Abuse of Rights' (1933) 5 *Cambridge Law Journal* 22ff; HJ Schlochauer, 'Die Theorie des abus de droit im Völkerrecht' (1933) 17 *Zeitschrift für Völkerrecht* 373ff; S Trifu, 'L'abus de droit dans le droit international' (PhD thesis, Paris, 1940); A Voss, 'Rechtsmissbrauch im Völkerrecht. Die Theorie der Gegenstandsbedingtheit der Rechtsnorm und das Verhältnis des Rechtsmissbrauches zur Clausula rebus sic stantibus' (PhD thesis, Münster, 1940); A Schindler, 'Das

order disapproves. The existence of the right is not contested; but the exercise has effects on others or on society which cannot be countenanced. The notion has thus inherently to do with the protection of other subjects and of society at large against excessive and toxic exercises of legal positions. As with good faith-legitimate expectations, the issue is the protection of the 'other'. The gist of the

Verbot des Rechtsmissbrauchs als allgemeiner Rechtsgrundsatz des Völkerrechts' (PhD thesis, Freiburg, 1942); ERC Van Bogaert, *Het rechtsmisbruik in het volkenrecht* (Antwerp, 1948); J Spiropoulos, 'L'abus du droit de vote par un membre du Conseil de Sécurité' (1949) 1 *Revue hellénique de droit international* 1ff; G Van Der Molen, *Misbruik van recht in het volkenrecht* (Amsterdam, 1949); AC Kiss, *L'abus de droit en droit international* (Paris, 1953); R Laun, 'Bemerkungen zum freien Ermessen und zum détournement de pouvoir im staatlichen Recht und im Völkerrecht', *Essays in Honor of H Kraus* (Göttingen, 1953) 128ff; G Schwarzenberger, 'Uses and Abuses of the "Abuse of Rights" in International Law' (1956) 42 *Transactions of the Grotius Society* 147ff; JES Fawcett, 'Détournement de pouvoir by International Organisations' (1957) 33 *BYIL* 311ff; JD Roulet, *Le caractère artificiel de la théorie de l'abus de droit en droit international public* (Neuchâtel, 1958); B Jankovic, 'L'interdiction de l'abus de droit en droit international public' (1959) 29 *Annuaire de l'Association des anciens auditeurs de l'Académie de La Haye* 5ff; R Laun, 'Le détournement de pouvoir im Völkerrecht', *Essays in Honor of G Gidel* (Paris, 1961) 437ff; A Schüle, 'Rechtsmissbrauch' in K Strupp and HJ Schlochauer (eds), *Wörterbuch des Völkerrechts*, vol III (Berlin, 1962) 69ff; FR Bondil, 'Le détournement de pouvoir en droit international public' (PhD thesis, Aix-en-Provence, 1966); D Casanovas y La Rosa, 'Abuso de derecho, desviación de poder y responsabilidad internacional. 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DIPLOMATIC PROTECTION

[Agenda item 2]

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Sixth report on diplomatic protection, by Mr. John Dugard, Special Rapporteur

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CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Works cited in the present report		1
INTRODUCTION	1–4	2
<i>Chapter</i>		
I. NON-APPLICABILITY OF THE CLEAN HANDS DOCTRINE TO DISPUTES INVOLVING INTER-STATE RELATIONS PROPERLY SO CALLED	5–7	2
II. APPLICABILITY OF THE CLEAN HANDS DOCTRINE TO DIPLOMATIC PROTECTION	8–9	4
III. CASES OF APPLICATION OF THE CLEAN HANDS DOCTRINE IN THE CONTEXT OF DIPLOMATIC PROTECTION	10–15	4
IV. A PLEA TO ADMISSIBILITY?	16	5
V. CONCLUDING REMARKS	17–18	5

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Introduction

1. It has been suggested that the clean hands doctrine should be reflected in an article in the draft articles on diplomatic protection approved by the Commission in 2004.¹ The present report considers that suggestion.

2. According to the clean hands doctrine no action arises from wilful wrongdoing: *ex dolo malo non oritur actio*. It is also reflected in the maxim *nullus commodum capere potest de injuria sua propria*. According to Fitzmaurice:

“He who comes to equity for relief must come with clean hands.” Thus a State which is guilty of illegal conduct may be deprived of the necessary *locus standi in judicio* for complaining of corresponding illegalities on the part of other States, especially if these were consequential on or were embarked upon in order to counter its own illegality—in short were provoked by it.²

In the context of diplomatic protection the doctrine is invoked to preclude a State from exercising diplomatic protection if the national it seeks to protect has suffered an injury in consequence of his or her own wrongful conduct.

3. The following arguments have been raised in support of the suggestion that the clean hands doctrine should be included in the draft articles on diplomatic protection:

(a) The doctrine does not apply to disputes relating to inter-State relations where a State does not seek to protect a national;³

(b) The doctrine does apply to cases of diplomatic protection in which a State seeks to protect an injured national. On 5 May 2004, Mr. Alain Pellet, who supported the inclusion of a provision on clean hands, declared:

The vague concept of “clean hands” was not very different from the general principle of good faith in the context of relations between States, and had no autonomous consequences and little practical effect on the general rules of international responsibility. However, in the context of diplomatic protection, which involved relations between States and individuals, the concept took on new significance: it became functional, for in the absence of “clean hands” the exercise of diplomatic protection was paralysed. If a private individual who enjoyed diplomatic protection violated either the internal law of the protecting State—and it should be noted that internal law played no role at all in cases involving relations between States—or international law, then in the general context of the claim, the State called upon to exercise protection could no longer do so.⁴

The doctrine produces an effect only in the context of diplomatic protection;⁵

(c) “Numerous cases”⁶ have applied the clean hands doctrine in the context of diplomatic protection. The *Ben Tillet* arbitration case is a good example;⁷

(d) Invocation of the clean hands doctrine renders a request for diplomatic protection inadmissible.⁸

4. The present report will address the above four arguments.

⁴ *Ibid.*, 2793rd meeting, para. 5.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ See Fenwick, *Cases on International Law*, pp. 181–184. See also *RGDIP*, vol. 6, No. 46 (1899).

⁸ See *Yearbook ... 2004*, vol. I, 2793rd meeting, p. 12, para. 5.

CHAPTER I

Non-applicability of the clean hands doctrine to disputes involving inter-State relations properly so called

5. It may be correct that the clean hands doctrine does not apply to disputes involving inter-State relations. However, in practice the doctrine has most frequently been raised in the context of inter-State relations where States or dissenting judges have sought to have a claim declared inadmissible or dismissed for the reason that the applicant State’s hands are unclean. The following cases illustrate that practice:

(a) Most recently the argument has been raised by Israel in the advisory proceedings on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. In that case, Israel contended that:

Palestine, given its responsibility for acts of violence against Israel and its population which the wall is aimed at addressing, cannot seek from the Court a remedy for a situation resulting from its own wrongdoing. In this context, Israel has invoked the maxim *nullus commodum capere potest de sua injuria propria*, which it considers to be as relevant in advisory proceedings as it is in contentious cases. Therefore, Israel concludes, good faith and the principle of “clean hands” provide

a compelling reason that should lead the Court to refuse the General Assembly’s request.⁹

ICJ did not consider this argument to be “pertinent”¹⁰ on the ground that the opinion was to be given to the General Assembly, and not to a specific State or entity. Significantly the Court did not reject the relevance of the argument to inter-State disputes in contentious proceedings;

(b) In the *Oil Platforms* case, the United States of America raised an argument of a “preliminary character”¹¹ in which it asked ICJ to dismiss the claims of the Islamic Republic of Iran because of the latter’s own unlawful

⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion. I.C.J. Reports 2004*, p. 163, para. 63. See also A/ES-10/273 and Corr.1.

¹⁰ *Ibid.*, p. 164, para. 64.

¹¹ *Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003*, p. 176, para. 27.

conduct. The Islamic Republic of Iran categorized the argument as a “clean hands” argument, which was, so it claimed, irrelevant in direct State-to-State claims, as opposed to claims for diplomatic protection, as a ground for inadmissibility of a claim. The Islamic Republic of Iran did acknowledge that the principle might have significance at the merits stage. The Court rejected the argument that the claim of the United States was one of inadmissibility and found that it was unnecessary to deal with the request of the United States to dismiss the claim of the Islamic Republic of Iran on the basis of conduct attributed to the latter. The Court made no comment on the argument of the Islamic Republic of Iran that the clean hands doctrine might only be raised as a ground for inadmissibility of a claim in the context of diplomatic protection.¹²

(c) In *LaGrand*, the United States raised an argument against Germany’s claim that appeared to fall into the category of clean hands. The United States contended that Germany’s submissions were inadmissible on the ground that Germany sought to have a standard applied to the United States that was different from its own practice. According to the United States, Germany had not shown that its system of criminal justice required the annulment of criminal convictions where there had been a breach of the duty of consular notification; and that the practice of Germany in similar cases had been to do no more than offer an apology. The United States maintained that it would be contrary to basic principles of administration of justice and equality of the parties to apply against the United States alleged rules that Germany appeared not to accept for itself. Germany denied that it was asking the United States to adhere to standards that Germany itself did not comply with. The Court found that it need not decide whether the argument of the United States, if true, would result in the inadmissibility of Germany’s submissions as the evidence adduced by the United States did not justify the conclusion that Germany’s own practice failed to conform to the standards it demanded from the United States;¹³

(d) An argument similar to that described above in *LaGrand* was raised in *Avena*.¹⁴ The United States did not, however, describe it as a “clean hands” argument. Instead the objection was presented in terms of the interpretation of article 36 of the Vienna Convention on Consular Relations¹⁵ in the sense that, according to the United States, a treaty may not be interpreted so as to impose a significantly greater burden on any one party than the other. ICJ dismissed the argument, citing *LaGrand*. It added that:

Even if it were shown, therefore, that Mexico’s practice as regards the application of Article 36 was not beyond reproach, this would not constitute a ground of objection to the admissibility of Mexico’s claim.¹⁶

(e) In the case concerning the *Gabčikovo-Nagymaros Project* ICJ declined to apply the clean hands doctrine. It stated:

¹² *Ibid.*, pp. 177–178, paras. 28–30.

¹³ See *LaGrand (Germany v. United States of America)*, Judgment, I.C.J. Reports 2001, pp. 488–489, paras. 61–63.

¹⁴ *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004, p. 12.

¹⁵ Vienna Convention on Consular Relations (Vienna, 24 April 1963), United Nations, Treaty Series, vol. 596, No. 8638, p. 261.

¹⁶ I.C.J. Reports 2004 (see footnote 14 above), p. 38, para. 47.

The Court, however, cannot disregard the fact that the Treaty has not been fully implemented by either party for years, and indeed that their acts of commission and omission have contributed to creating the factual situation that now exists. Nor can it overlook that factual situation—or the practical possibilities and impossibilities to which it gives rise—when deciding on the legal requirements for the future conduct of the Parties.

This does not mean that facts—in this case facts which flow from wrongful conduct—determine the law;¹⁷

(f) In the *Arrest Warrant* case the Belgian judge *ad hoc*, Judge van den Wyngaert, in her dissenting opinion, held that:

The Congo did not come to the Court with clean hands. In blaming Belgium for investigating and prosecuting allegations of international crimes that it was obliged to investigate and prosecute itself, the Congo acts in bad faith;¹⁸

(g) In the *Military and Paramilitary Activities in and against Nicaragua* case, Judge Schwebel, in his dissenting opinion, held that the clean hands doctrine should be applied against Nicaragua:

Nicaragua has not come to Court with clean hands. On the contrary, as the aggressor, indirectly responsible—but ultimately responsible—for large numbers of deaths and widespread destruction in El Salvador apparently much exceeding that which Nicaragua has sustained, Nicaragua’s hands are odiously unclean. Nicaragua has compounded its sins by misrepresenting them to the Court. Thus both on the grounds of its unlawful armed intervention in El Salvador, and its deliberately seeking to mislead the Court about the facts of that intervention through false testimony of its Ministers, Nicaragua’s claims against the United States should fail.¹⁹

In support of that reasoning he cited a number of PCIJ and ICJ decisions. All of the cases cited can be labelled as direct inter-State cases;

(h) In the oral argument at the phase of both provisional measures and jurisdiction in the cases brought by Yugoslavia against members of NATO concerning the *Legality of the Use of Force*, several respondents argued that the injunctions sought by Yugoslavia should not be granted because Yugoslavia did not come to Court with clean hands.²⁰

6. The above-mentioned cases make it difficult to sustain the argument that the clean hands doctrine does not apply to disputes involving direct inter-State relations. States have frequently raised the clean hands doctrine in direct inter-State claims and in no case has ICJ stated that the doctrine is irrelevant to inter-State claims.

7. While it is possible to draw a distinction between direct and indirect claims for some litigational purposes

¹⁷ *Gabčikovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 76, para. 133.

¹⁸ *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 160, para. 35.

¹⁹ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 392, para. 268.

²⁰ *Legality of the Use of Force (Yugoslavia v. Belgium; Yugoslavia v. Canada; Yugoslavia v. France; Yugoslavia v. Germany; Yugoslavia v. Italy; Yugoslavia v. Netherlands; Yugoslavia v. Portugal; Yugoslavia v. Spain; Yugoslavia v. United Kingdom, and Yugoslavia v. United States of America)*, Provisional Measures, Order of 2 June 1999, I.C.J. Reports 1999, pp. 124, 259, 363, 422, 481, 542, 656, 761, 826 and 916, respectively.

(notably in respect of the exhaustion of local remedies), it is a distinction that should be drawn with great caution as a result of the fiction that an injury to a national is an injury to the State itself. This fiction introduced by Vattel, proclaimed in the *Mavrommatis* case²¹ and adopted by the Commission in the draft articles on diplomatic protection, is fundamental to an understanding of diplomatic

²¹ *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2.*

protection. One of the cornerstones of diplomatic protection is that “[o]nce a State has taken up a case on behalf of one of its subjects before an international tribunal, in the eyes of the latter the State is sole claimant”.²² Surely it is not suggested that this fiction should be abandoned and instead the State in a claim for diplomatic protection should be seen as simply the agent acting on behalf of its national?

²² *Ibid.*, p. 12.

CHAPTER II

Applicability of the clean hands doctrine to diplomatic protection

8. If an alien is guilty of some wrongdoing in a foreign State and is as a consequence deprived of his liberty or property in accordance with due process of law by that State, it is unlikely that his national State will intervene to protect him. Indeed it would be wrong for the State of nationality to intervene in such a case because no internationally unlawful act will have been committed in most circumstances. In this sense, the clean hands doctrine serves to preclude diplomatic protection. The position assumes a different character, however, where an internationally wrongful act is committed by the respondent State in response to the alien’s wrongful act—where, for instance, an alien suspected of committing a criminal offence is subjected to torture or to an unfair trial. In such a case, the State of nationality may exercise diplomatic protection on behalf of the individual because of the internationally wrongful act. The clean hands doctrine cannot be applied in the latter case to the injured individual for a violation of international law, first, because the claim has now assumed the character of an international, State v. State claim and secondly, because the individual has no international legal personality and thus cannot (outside the field of international criminal law) be held responsible for the violation of international law. In short, as a consequence of the fiction that an injury to a national is an injury to the State itself, the claim on behalf of a national subjected to an internationally wrongful act becomes an international claim and the clean hands doctrine can be raised against the protecting State only for its conduct and

not against the injured individual for misconduct that may have preceded the internationally wrongful act.

9. As a consequence of the above reasoning, it follows that the clean hands doctrine has no special place in claims involving diplomatic protection. If the individual commits an unlawful act in the host State and is tried and punished in accordance with due process of law, no internationally wrongful act occurs and the unclean hands doctrine is irrelevant. If, on the other hand, the national’s misconduct under domestic law gives rise to a wrong under international law as a result of the respondent State’s treatment of the national’s misconduct, the claim becomes international if the injured national’s State exercises diplomatic protection on his behalf. Then the clean hands doctrine may only be raised against the plaintiff State for its own conduct. This is illustrated by the *LaGrand* and *Avena* cases. In both cases, foreign nationals committed serious crimes, which warranted their trial and punishment, but in both cases the United States violated international law in respect of their prosecution by failing to grant them consular access. At no stage did the United States argue that the serious nature of their crimes rendered the hands of the foreign nationals unclean, thereby precluding Germany and Mexico respectively from protecting them under the Vienna Convention on Consular Relations. On the contrary, in both cases (as has been shown above) the United States contended that the plaintiff States themselves had unclean hands by virtue of their failure to apply the Vienna Convention in the manner required of the United States.

CHAPTER III

Cases of application of the clean hands doctrine in the context of diplomatic protection

10. Unlike cases involving direct inter-State claims in which the clean hands doctrine has been frequently raised, the cases involving diplomatic protection in which the doctrine has been raised are few.

11. The cases relied upon by some authors are the *Ben Tillett* arbitration²³ and the *Virginus*.²⁴ Carreau cites there two incidents as examples to support his statement that “[l]’individu pour qui l’État exerce ou prétend exercer sa protection diplomatique ne doit pas lui-même avoir

eu une ‘conduite blâmable’”.²⁵ A close consideration of *Ben Tillett* and *Virginus* reveals that neither of them has anything to do with the clean hands doctrine, nor do they employ the language of the doctrine.

12. First, the *Ben Tillett* case.²⁶ On 21 August 1896, Ben Tillett, a British national and a labour union activist, arrived in Belgium to participate in a meeting of dock workers. The day he arrived in Belgium, he was arrested, detained for several hours and deported back

²³ See footnote 7 above.

²⁴ See Moore, *A Digest of International Law*, p. 895.

²⁵ Carreau, *Droit international*, pp. 467–468.

²⁶ See footnote 7 above.

to the United Kingdom. The latter, claiming on behalf of Ben Tillett, argued that Belgium had violated its own law and demanded monetary compensation of 75,000 francs. After negotiations failed, the case was decided by an arbitrator. It is clear from the text of the arbitration agreement between Belgium and the United Kingdom, as well as from the arbitral award, that the issue of inadmissibility of diplomatic protection was not even considered. The United Kingdom undoubtedly exercised diplomatic protection on behalf of Ben Tillett. It lost the case on substantive grounds, the main reason being that the act committed by Belgium was not an internationally wrongful act (contrary to Carreau's interpretation, who states that "l'arbitre débouta la Grande-Bretagne en raison de la violation par Ben Tillett du droit belge. En bref, il n'avait pas les 'mains propres'").²⁷

13. Secondly, the case of the *Virginus*.²⁸ On 31 October 1873, the steamer *Virginus* was captured by a Spanish man-of-war on the high seas. *Virginus*, which flew an American flag (as later determined, without a right to fly it), carried arms, ammunition and potential rebels destined for Cuba. *Virginus* was taken to Santiago de Cuba, where 53 persons out of 155 crew members and passengers were summarily condemned for piracy by court-martial and executed. Among the executed persons were nationals of the United Kingdom and the United States. It is clear from the documents produced during negotiations between Spain and the United States that there was no disagreement between the parties involved about the right of the United States to exercise diplomatic protection in this particular situation. Also, both countries agreed that Spain was responsible for a violation of international

law regardless of whether "*Virginus*" rightfully flew the United States flag and was engaged in transporting military supplies and potential rebels to Cuba. The case was not referred to arbitration, as Spain paid compensation to both the United Kingdom and the United States for the families of the executed British and American nationals.

14. Several writers express support for the clean hands doctrine in the context of diplomatic protection, but they offer no authority to support their views.²⁹ Cheng does, however, cite the *Clark* claim of 1862, in which the American Commissioner disallowed the claim on behalf of an American national in asking: "Can he be allowed, so far as the United States are concerned, to profit by his own wrong? ... A party who asks for redress must present himself with clean hands."³⁰

15. Many writers are sceptical about the clean hands doctrine and the weight of authority to support it (see, in particular, the views of Salmon,³¹ Rousseau³² and Garcia-Arias³³). Rousseau's views are of special importance. He states: "[I]l n'est pas possible de considérer la théorie des mains propres comme une institution du droit coutumier général, à la différence des autres causes d'irrecevabilité à l'étude desquelles on arrive maintenant."³⁴

²⁹ Ruzié, *Droit international public*, p. 95; Combacau and Sur, *Droit international public*, pp. 596–597; and Malanczuk, *Akehurst's Modern Introduction to International Law*, pp. 263–269.

³⁰ Cheng, *General Principles of Law as Applied by International Courts and Tribunals*, p. 156.

³¹ "Des 'mains propres' comme condition de recevabilité des réclamations internationales", and *Dictionnaire de droit international public*, pp. 677–678.

³² *Droit international public*, p. 172.

³³ "La doctrine des 'clean hands' en droit international public".

³⁴ *Op. cit.*, p. 177.

²⁷ Carreau, *op. cit.*, p. 468.

²⁸ See footnote 24 above.

CHAPTER IV

A plea to admissibility?

16. On occasion, an argument premised on the clean hands doctrine has been raised as a preliminary point in direct inter-State cases before ICJ. It is not clear, however, whether the intention has been to raise the matter as a plea to admissibility. If the doctrine is applicable to claims

relating to diplomatic protection, it would seem that the doctrine would more appropriately be raised at the merits stage, as it relates to attenuation or exoneration of responsibility rather than to admissibility.

CHAPTER V

Concluding remarks

17. In paragraph 332 of his second report on State responsibility,³⁵ Mr. James Crawford suggested that the defence of clean hands was raised "mostly, though not always, in the framework of diplomatic protection". In paragraph 334, he added:

Even within the context of diplomatic protection, the authority supporting the existence of a doctrine of "clean hands", whether as a ground of admissibility or otherwise, is, in Salmon's words, "fairly

long-standing and divided".³⁶ It deals largely with individuals involved in slave-trading and breach of neutrality, and in particular a series of decisions of the United States–Great Britain Mixed Commission set up under a Convention of 8 February 1853 for the settlement of shipowners' compensation claims. According to Salmon, in the cases where the claim was held inadmissible:

"In any event, it appears that these cases are all characterized by the fact that *the breach of international law by the victim was the sole cause of the damage claimed*, [and] that the *cause-and-effect relationship*

³⁵ *Yearbook ... 1999*, vol. II (Part One), document A/CN.4/498 and Add.1–4, p. 82.

³⁶ *Loc. cit.*, p. 249.

between the damage and the victim's conduct was pure, involving no wrongful act by the respondent State.

“When, on the contrary, the latter has in turn violated international law in taking repressive action against the applicant, the arbitrators have never declared the claim inadmissible.”³⁷

18. The present report has shown that the evidence in favour of the clean hands doctrine is inconclusive. Arguments premised on the doctrine are regularly raised in direct inter-State cases before ICJ, but they have yet to be upheld. Whether the doctrine is applicable at all to claims involving diplomatic protection is highly questionable. There is no clear authority to support the applicability

³⁷ *Ibid.*, p. 259.

of the doctrine to cases of diplomatic protection. Such authority as there is is uncertain and of ancient vintage, dating mainly from the mid-nineteenth century—as the above-cited passages from Salmon demonstrate. Although some authors support the existence of the doctrine in the context of diplomatic protection, they are unsupported by authority. Moreover, there are strong voices—Salmon and Rousseau—against such a doctrine. In these circumstances the Special Rapporteur sees no reason to include a provision in the draft articles dealing with the clean hands doctrine. Such a provision would clearly not be an exercise in codification and is unwarranted as an exercise in progressive development in the light of the uncertainty relating to the very existence of the doctrine and its applicability to diplomatic protection.



2004

Passports and Nationality in International Law

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PASSPORTS AND NATIONALITY IN INTERNATIONAL LAW

*Adam I. Muchmore**

I. INTRODUCTION	302
II. THE NEED TO PROVE NATIONALITY UNDER INTERNATIONAL LAW	307
A. <i>Diplomatic Protection</i>	308
B. <i>Eligibility to Make a Claim</i>	309
C. <i>Denationalization</i>	310
III. THE RELATIONSHIP BETWEEN NATIONAL AND INTERNATIONAL LAW	314
A. <i>National Law</i>	315
B. <i>International Law</i>	315
1. When One State Claims a Person	315
2. When Two or More States Claim a Person	316
3. When No State Claims a Person	316
IV. THE PASSPORT IN INTERNATIONAL LAW	317
A. <i>Historical Context</i>	318
1. Passports and their Legal Significance	318
a. <i>Passports as Proof of Nationality in U.S. Courts: The Older Practice</i>	319
b. <i>The Modern Practice</i>	321
2. Other Identity Documents	323
a. <i>The Special Case of Passports Issued to Non- Nationals</i>	323
b. <i>Birth Certificates and Certificates of Naturalization</i>	324
B. <i>The Passport as Proof of Nationality in International Law</i>	324
1. Significance of the Iran-United States Claims Tribunal	324
2. A Note on Iranian Nationality Law	326
3. The Passport as Proof of Nationality	327

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V.	THE LAW OF BINDING STATE ACTION	328
	A. <i>Legal Principles</i>	329
	1. Estoppel and Related Principles	331
	2. Unilateral Action.....	335
	B. <i>Passports and Binding State Action</i>	336
	C. <i>Policies Underlying the International Law of Nationality</i>	340
VI.	EXCEPTIONS.....	341
	A. <i>Fraud</i>	341
	B. <i>Loss of Nationality</i>	342
	C. <i>Dual Nationality</i>	342
	1. The Dominant and Effective Nationality Test ...	342
	2. Passports and Dual Nationality	347
VII.	INTERNATIONAL PROCEDURE.....	348
	A. <i>Standing</i>	348
	B. <i>Burden of Proof</i>	350
	C. <i>Remedy</i>	351
VIII.	CONCLUSION	352

I. INTRODUCTION

War, revolution, and ethnic hatred have long wreaked havoc on the nationality of individuals. Soviet Russia, Nazi Germany, Fascist Italy, and post-WWII Czechoslovakia, Poland, Yugoslavia, and Japan all passed legislation expressly denationalizing large segments of their populations.¹ More recently, the Dominican Republic, Ethiopia,² and Mauritania have implemented ethnically-based expulsion programs that in effect functioned as denationalization programs.³

¹ P. WEIS, NATIONALITY AND STATELESSNESS IN INTERNATIONAL LAW 119-20 (1979) [hereinafter WEIS] (discussing denationalization of opponents of the Bolshevik regime in Russia; Jews in Germany and Italy; ethnic Germans and Hungarians in Czechoslovakia; and ethnic Germans in Poland and Yugoslavia); JEAN-MARIE HENCKAERTS, MASS EXPULSION IN INTERNATIONAL LAW AND PRACTICE 89 (1995) (discussing mass denationalization of ethnic Koreans in Japan).

² Full disclosure: I have done work on behalf of the State of Eritrea in two cases currently pending before the Eritrea-Ethiopia Claims Commission. One of these cases involves the denationalization and expulsion of ethnic Eritreans from Ethiopia.

³ HUMAN RIGHTS WATCH, "ILLEGAL PEOPLE": HAITIANS AND DOMINICAN-HAITIANS IN THE DOMINICAN REPUBLIC (2002) [hereinafter ILLEGAL PEOPLE] (discussing denationalization/expulsion of ethnic Haitians from the Dominican Republic); HUMAN RIGHTS WATCH, THE HORN OF AFRICA WAR: MASS EXPULSIONS AND THE NATIONALITY ISSUE (JUNE 1998 TO APRIL 2002) 18-31 (2003) [hereinafter THE HORN OF AFRICA WAR] (discussing denationalization/expulsion of ethnic Eritreans from Ethiopia); HENCKAERTS, *supra* note 1, at 81-82 (discussing denationalization/expulsion of ethnic Senegalese from Mauritania). Perhaps less formally, it seems that a similar program expelling ethnic Nepalese has taken place in

Of course, numerous international instruments purport to limit the ability of states to deprive individuals of their nationality.⁴ However,

Bhutan. See AMNESTY INTERNATIONAL, NATIONALITY, EXPULSION, STATELESSNESS, AND THE RIGHT TO RETURN 4 (2000).

⁴ See, e.g., Convention on the Reduction of Statelessness, August 30, 1961, art. 8(1), U.N. Doc. A/Conf. 9/15 (except as provided in paragraphs 2 and 3 of this article, "A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless."); *id.* art. 8(4) ("A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body."); *id.* art. 9 ("A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds."); International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, art. 5(d)(iii), 660 U.N.T.S. 195 ("In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . [t]he right to nationality."); American Convention on Human Rights, Nov. 22, 1969, art. 20(3), 1144 U.N.T.S. 123 [hereinafter American Convention] ("No one shall be arbitrarily deprived of his nationality or of the right to change it."); Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, art. 9, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46 ("States Parties shall grant women equal rights with men to acquire, change or retain a nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband."); African [Banjul] Charter on Human and Peoples' Rights, June 27, 1981, art. 12(2), OAU Doc. CAB/LEG/67/3 rev. 5 ("Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality."); European Convention on Nationality, 1997, art. 4, 37 I.L.M. 44 (listing under "principles" that "no one shall be arbitrarily deprived of his or her nationality."); *id.* art. 7(1) ("A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except [listing seven cases where this is permissible, including voluntary acquisition of another nationality, acquisition of the nationality of the state party by fraud, foreign military service, conduct prejudicial to the vital interest of the state, lack of a genuine link to the state in the case of a national living abroad, and certain circumstances relating to minor children]); *id.* art. 8(1) ("Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless."); *id.* art. 8(2) ("However, a State Party may provide in its internal law that renunciation may be effected only by nationals who are habitually resident abroad."); See also Universal Declaration of Human Rights, art. 15(1), G.A. Res. 217A (III), U.N. GAOR, 3d Sess., at 71, U.N. Doc. A/810 (1948) ("Everyone has right to a nationality."); *id.* art. 15(2) ("No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."); American Declaration of the Rights and Duties of Man, Mar. 30-May 2, 1948, art. 19, O.A.S. Res. XXX ("Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him."); Protocol No. 4 to the European Convention on Human Rights and

with the exception of the European Convention on Nationality, these instruments either consist of "soft law"⁵ or are of limited factual applications.⁶ Noting this, scholars have attempted to prove the existence of general rules of international law prohibiting denationalization, either in all cases or in particular circumstances.⁷ Unfortunately for those who favor a norm against denationalization, these efforts have met with only limited success.⁸

Fundamental Freedoms, Sep. 16, 1963, art. 3(1), E.T.S. No. 46 ("No one shall be expelled, by means either of an individual or of a collective measure, from the territory of which he is a national."); *id.* art. 3(2) ("No one shall be deprived of the right to enter the territory of the State of which he is a national."); International Covenant on Civil and Political Rights, Dec. 19, 1966, art. 12(4), 999 U.N.T.S. 171 ("[N]o one shall be arbitrarily deprived of the right to enter his own country.").

⁵ The term "soft law" has now acquired a number of different meanings, and I include in this category three distinct types of legal provisions. First, I include provisions that by their own terms are not intended to contain enforceable obligations. *See, e.g.*, Universal Declaration of Human Rights, *supra* note 4. Second, I include provisions which seem at first to include a solid proposition of law, but in fact contain exceptions so extensive as to risk vitiating the right purportedly guaranteed. *See, e.g.*, African [Banjul] Charter on Human and Peoples' Rights, *supra* note 4, art. 12(2). Third, I include provisions with weak enforcement mechanisms. *See, e.g.*, Optional Protocol to the International Covenant on Civil and Political Rights, art. 4(2), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302. All three categories should be contrasted with "hard" international law, by which I simply mean those treaty provisions, custom, general principles of law, or series of authoritative and controlling decisions, which are generally accepted as binding by relevant international actors. *See infra* notes 90-94 and accompanying text. Although not an absolute rule, it is probably fair to suggest that law governing interstate relations (i.e., law pertaining to trade and extradition) is generally "harder" than law purporting to govern the way that states behave within their own territories (i.e., law pertaining to protection of the environment and human rights).

On the varying conceptions of soft law, *see* Prosper Weil, *Towards Relative Normativity in International Law*, 77 AM. J. INT'L L. 413 (1983); Gunther F. Handl et al., *A Hard Look at Soft Law*, 82 AM. SOC'Y INT'L L. PROC. 371 (1988); Francesco Francioni, *International 'soft law': a contemporary assessment*, in FIFTY YEARS OF THE INTERNATIONAL COURT OF JUSTICE: ESSAYS IN HONOR OF SIR ROBERT JENNINGS 167 (Vaughan Lowe and Malgosia Fitzmaurice ed., 1996) [hereinafter FIFTY YEARS OF THE ICJ]; Alan Boyle, *Some Reflections on the Relationship of Treaties and Soft Law*, in MULTILATERAL TREATY-MAKING: THE CURRENT STATUS OF CHALLENGES TO AND REFORMS NEEDED IN THE INTERNATIONAL LEGISLATIVE PROCESS (Vera Gowlland-Debbas ed., 2000).

⁶ For example, certain provisions apply only in the case of denationalizations creating statelessness, or denationalizations for overtly discriminatory reasons.

⁷ WEIS, *supra* note 1, at 123-24 (discussing efforts of other authors).

⁸ *Id.* at 125 ("With [the possible exception of a prohibition on discriminatory denationalization], the views of those who regard denationalization or, at least, denationalization for penal or political reasons as inconsistent with the law of nations, find no justification in the present state of international law.").

This Article proposes an alternate means by which to limit the ability of states to denationalize their own citizens.⁹ At least in the case of passport holders, a well-established body of “hard” international law¹⁰—what I term the law of binding state action—limits state authority more effectively than human rights norms of controversial status. The act of issuing a passport is the key event triggering the application of this body of law.

Below, Part II offers a framework for analyzing the proof of nationality problem. I outline three contexts—or types of international claims—in which it can be necessary to prove an individual’s nationality under international law: diplomatic protection, substantive eligibility, and denationalization. The first two contexts arose frequently in traditional international disputes, and the law regarding proof of nationality in those areas is correspondingly well developed. By contrast, in the third context, the requirements for proof of nationality have rarely been addressed. It is this denationalization context, where an individual has a claim against a state expressly because it was once the state of his or her nationality, that the remainder of this Article addresses.

In international adjudication, proof of nationality is complicated by the differences between international and domestic nationality law. Part III examines the relationship between these bodies of law, with particular emphasis on the variations that arise when one state, multiple states, or no state claims a person as its national. It is the third variation—where no state claims a person as its national—that is most relevant to proof of nationality in the denationalization context.

Part IV turns to the passport, a document with special relevance to the proof of nationality problem. The passport has developed from a somewhat ad-hoc letter addressed to foreign powers into a sophisticated, formalized document attesting to both the identity and nationality of its

⁹ Although I approach this problem primarily from the perspective of the *ex-post* litigation, the principles discussed in this Article can also be applied in both settlement negotiations and *ex-ante* efforts to prevent denationalization. Few parties will be willing to settle an international dispute—particularly states accused of distasteful acts such as denationalization—unless they believe that they have an accurate understanding of their rights and liabilities in the litigation context. Similarly, an understanding of the proper application of the law of binding state action to passport holders may help to deter states from denationalizing individuals.

Of course, this last assertion is open to the criticism that the approach presented in this Article would not in fact prevent states from denationalizing their passport-holding citizens, but would simply encourage them to undertake the necessary public notification efforts before doing so. However, I suggest that the negative publicity and international pressure that would result from a requirement that denationalization of passport holders be done more “openly” might in itself serve as a substantial deterrence to such efforts.

¹⁰ On the distinction between hard and soft law, *see supra* note 5.

bearer. Although early passports were not always accepted as proof of nationality, even under the law of the issuing state, the modern passport is now widely accepted as proof of nationality under domestic law. Moreover, at least one major international tribunal has accepted the passport as near-conclusive evidence of domestic law nationality.

Part V presents the main normative claim of this Article: that a passport-issuing state should be prevented from denying that the holder of a valid passport is in fact a national of that state. Support for this proposition can be found in the law of binding state action, a set of related legal principles by which a state's past actions have been held to be enforceable against that state in the future. Although existing applications of this body of law have primarily involved boundary disputes and high diplomacy, it may be even more appropriate to apply these principles to the relatively mundane issue of passports and nationality.

Part VI sets out three exceptions to Part V's normative claim. The issuing state should not be prevented by the law of binding state action from denying the passport holder's nationality in situations where the individual in question has obtained a passport through fraud, in situations where the individual in question has lost the nationality of the issuing state, and in certain cases involving dual nationality.

Part VII addresses international procedure. Although standing requirements have historically operated to prevent denationalized individuals from asserting claims, some factual permutations and some newer fora may now make such claims possible. Once a claim is asserted, the burden to prove the applicability of the exceptions discussed in Part VI should be on the issuing state rather than the passport holder. Once the claim is established, remedies should involve monetary compensation rather than orders to treat a particular passport holder as a national.

Part VIII concludes, addressing two main types of denationalization and attempting to set the issues addressed here in a broader context. In the case of denationalization by operation of law, shifts in state control over territory can have unintended effects on the nationality of individuals. In the case of discriminatory denationalization, fully intentional efforts are made to denationalize politically unpopular groups. In both cases, a proper application of the law of binding state action can provide substantial protection to passport-holding individuals.¹¹

¹¹ Before moving to Part II, three definitions are in order. Throughout this Article, I use the term "nationality" in a strictly formal sense, as denoting an individual's "quality of being a subject of a certain state." OPPENHEIM'S INTERNATIONAL LAW § 378 (Sir Robert Jennings and Sir Arthur Watts eds., 9th ed.

II. THE NEED TO PROVE NATIONALITY UNDER INTERNATIONAL LAW

The ability to enforce international limitations on state power to denationalize is closely tied to the evidentiary question of how to prove nationality before a court or international tribunal. This is because it is necessary to establish that an individual is, or was, a national of a particular state in order to apply such a substantive norm. This Article will thus focus on two main topics: the proof of nationality problem, which will be addressed in Parts II through IV; and the effect of the law of binding state action on denationalization of passport holders, which will be addressed in Part V.

In this Part, I set out three specific contexts in which it may be important to prove the nationality of an individual under international law.¹² First, a state may need to prove that an individual has its

1992) [hereinafter OPPENHEIM]. Such a formal definition is useful from a legal perspective, because it permits a focus on the rights and privileges associated with such formal nationality. Similarly, I use the term “denationalization” to refer to the process by which a state formally strips an individual of his or her legal nationality, even though that individual may still share a culture and sense of shared identity with other members of the national group.

A third definition—that of the term “state”—is more problematic. For present purposes, I adopt the definition set forth in the 1933 Montevideo Convention. See Montevideo Convention on the Rights and Duties of States, Dec. 26, 1933, art. 1, 49 Stat. 3097 (“The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.”). Although this definition has been criticized, see Thomas D. Grant, *Defining Statehood: The Montevideo Convention of 1933 and its Discontents*, 37 COLUM. J. TRANSNAT’L L. 403, 434-439 (1999) (summarizing criticisms), it is perhaps the most commonly cited definition and is sufficient for purposes of this Article. See *id.* at 414-415.

Finally, it is worth recognizing that at least two of these terms—nationality and state—are significant not only in law but also in other academic disciplines. In particular, they have come to play an important role in political science and related fields. Without engaging in terminological debate or making any effort to be comprehensive, a list of important works addressing these concepts might include the following: Robert Cooper, *The post-modern state and the world order* 15-20, 31-33 (2000), http://www.demos.co.uk/catalogue/thepostmodernstate_page83.aspx (setting out three stages of state development); ERNEST GELLNER, *NATIONS AND NATIONALISM* 3-6, 53-62 (1983) (discussing the ideas of state, nation, and nationality); ANTHONY D.S. SMITH, *NATIONALISM IN THE TWENTIETH CENTURY* 1-13 (1979) (discussing the development of the “national ideal”); HEDLEY BULL, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN WORLD POLITICS* 8-9 (1977) (defining “state”); MAX WEBER, *ECONOMY AND SOCIETY* 54-56 (Guenther Roth & Claus Wittich eds., University of California Press 1968) (1922) (same).

¹² The nationality of an individual under international law may be different from his or her nationality under domestic law. For example, an individual may qualify as a national of two or more different states under those states domestic law, but under international law only one of those nationalities can be “dominant and effective” at a particular time. See *Nottebohm Case* (Liech. v. Guat.), 1955 I.C.J. 4 (Apr. 6) (Second

nationality in order to exercise diplomatic protection on behalf of that particular individual. Second, proof of an individual's nationality may be necessary in order to show that the tribunal may entertain a claim by or on behalf of that individual against some common fund. Third, the nationality of a particular individual may be relevant to the merits of a denationalization¹³ claim.

This third context will be the primary concern of this Article. As the discussion below will demonstrate, the structure of international adjudication has rarely given parties the opportunity to prove nationality in an adversary proceeding against the state of which the litigant claims to be a national. It is a project of this Article to set out one way that such proof can be established.

A. Diplomatic Protection

The diplomatic protection context involves the exercise of a substantive right one state has against another state with regard to some action taken by the defendant state against an individual.¹⁴ This is the problem of "diplomatic protection," that is, the standing of one state to represent a particular person before an international tribunal. In general, states may only exercise diplomatic protection on behalf of their nationals.¹⁵ For example, the claim of an individual can only be brought

Phase); *Case No. A/18*, Decision No. 32-A18-FT (6 Apr. 1984), 5 Iran-U.S. Cl. Trib. Rep. 251.

¹³ It is worth noting that a denationalization claim will frequently be tied to another claim for unlawful expulsion of nationals. However, for simplicity, I use the term "denationalization claim" to include both claims for denationalization alone (i.e., when the decision is made while the individual is outside of the state of (former) nationality) and claims where a successful denationalization claim is prerequisite to a successful expulsion claim (i.e., when an expulsion that has taken place will be unlawful only if it can be established that the individuals in question were unlawfully denationalized prior to or at the time of expulsion).

¹⁴ Because injury to individuals does not traditionally give rise to state responsibility, a sort of fiction is established whereby an injury to an individual is treated as an injury to the state of his or her nationality. See IAN BROWNIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 482 (5th ed. 1998) [hereinafter BROWNIE 1998] ("A normal and important function of nationality is to establish the legal interest of a state when nationals, and legal persons with a sufficient connection with the state, receive injury or loss at the hands of another state. The subject-matter of the claim is the individual and his property: the claim is that of the state. Thus, if the plaintiff state cannot establish the nationality of the claim, the claim is inadmissible because of the absence of any legal interest of the claimant.") (citations omitted).

¹⁵ See *Flegenheimer Claim* (U.S. v. Italy), 25 I.L.R. 91, 157 (Italy-U.S. Conciliation Comm'n 1958) (noting that a particular treaty provision "is a rule of an exceptional character, in that it extends the diplomatic protection of the United Nations to persons who are not their nationals; like every exception, it must be interpreted in a restrictive sense, because it deviates from the general rules of the Law of Nations on

before the International Court of Justice (ICJ) by a state of the individual's nationality.¹⁶ Thus, it can be necessary to prove nationality anytime State *A* attempts to exercise diplomatic protection over a person in State *B*, but State *B* does not want to recognize that the person in question is a national of State *A*.¹⁷

B. Eligibility to Make a Claim

This second context occurs when a treaty gives individuals of some particular nationality a substantive right—either against a state or to compensation from some common fund. For example, post-war claims tribunals often have their jurisdiction limited to claims by individuals of a particular nationality or set of nationalities. One well-known example is the Italian-United States Conciliation Commission. Article 78 of Treaty of Peace with Italy of 1947, which established the Commission, limited the jurisdiction of the tribunal—in essence, access to a pool of money—to those who were nationals of any U.N. member state during the relevant time period.¹⁸ These tribunals typically are established by a politically influential state or group of states during a post-conflict period. Jurisdiction is limited to nationals of the particular state or group

this point”); BROWNIE 1998, *supra* note 14, at 406; 1 MARJORIE M. WHITEMAN, DAMAGES IN INTERNATIONAL LAW 94 (1937). One important exception to this rule is that a treaty or other agreement between states may provide for the protection of non-nationals in a particular context. BROWNIE 1998, *supra*, at 482. *See also infra* Part VII.A.

¹⁶ *See* Statute of the International Court of Justice, June 26, 1945, art. 34(1), 59 Stat. 1055 [hereinafter ICJ Statute] (“Only states may be parties in cases before the court.”); *Nottebohm Case*, 1955 I.C.J. at 13, 26 (noting that states are entitled to exercise diplomatic protection—and thus submit claims to the I.C.J.—only on behalf of their nationals).

¹⁷ *See, e.g., Nottebohm Case*, 1955 I.C.J. at 12-13, 20.

¹⁸ The article reads as follows:

The Italian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations Nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.

.....

“United Nations Nationals” means individuals who are nationals of any of the United Nations, or corporations or associations organized under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status on September 3, 1943, the date of the Armistice with Italy.

The term “United Nations Nationals” also includes all individuals, corporations or associations which, under the laws in force in Italy during the war, have been treated as enemy.

Flegenheimer Claim, 25 I.L.R. at 97 (quoting Treaty of Peace with Italy of 1947).

of states, in order to put some limit on the number of claims a state will have to pay and to prevent the tribunal from hearing claims against a state by its own nationals.

C. Denationalization

The third context occurs in the special case of denationalization, where an individual has a substantive right against the state of his or her nationality.¹⁹ In order to prove denationalization, however, it is necessary first to prove that the individual once had the nationality of the issuing state. In the two contexts discussed above—diplomatic immunity and eligibility to make a claim—the law regarding proof of nationality is relatively well developed and noncontroversial. Unfortunately, the same cannot be said for proof of nationality in the denationalization context.

First, the language of many of these limitations is stronger than their practical effect. Broadly-phrased international declarations give way to more narrow language in actual legal instruments. For example, the non-binding Universal Declaration on Human Rights declares that “No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”²⁰ Binding legal documents, however, make more limited guarantees: the 1961 Convention on the Reduction of Statelessness prevents state-parties from denationalizing persons who would thereby become stateless, but allows for certain exceptions to this

¹⁹ It has long been recognized that states have a general right to determine issues of nationality under their own domestic law. *See, e.g.*, Convention Concerning Certain Questions Related to the Conflict of Nationality Laws, April 12, 1930, art. 1, 179 L.N.T.S. 89 [hereinafter 1930 Hague Convention] (“It is for each State to determine under its own law who are its nationals.”); Advisory Opinion Concerning the Tunis and Morocco Nationality Decrees, PCIJ, (ser. B) No. 4 (1923) (“The question whether a certain matter or not is wholly within the jurisdiction of a State is an essentially relative question: it depends upon the development of [international] relations. Thus, in the present state of international law, questions of nationality are, in the opinion of this Court, in principle within this reserved domain.”); IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 381-84 (4th ed. 1990) [hereinafter BROWNLIE 1990] (explaining that the standard construction of the *Tunis and Morocco Nationality Decrees* opinion is that “states are exclusively in control of nationality matters”). However, at least for purposes of international law, the scope of this right is not unlimited. Because the relation of nationality between an individual and a state can affect the rights of other states, as well as the rights of the individual involved, international law has long placed some limits on a state action in this area. *See, e.g.*, 1930 Hague Convention, *supra*, art. 1 (“It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States *in so far as it is consistent with* international conventions, international custom, and the principles of law generally recognized with regard to nationality.”) (emphasis added). On the inherent tension in article 1 of the 1930 Hague Convention, see BROWNLIE 1990, *supra* at 386.

²⁰ Universal Declaration of Human Rights, *supra* note 4, art 15(2).

general rule.²¹ In regard to persons who would not become stateless, the Convention simply provides that they may not be denationalized “on racial, ethnic, religious or political grounds.”²² The International Convention on the Elimination of Racial Discrimination is even narrower—it merely requires that the “right to nationality” not be denied for discriminatory reasons.²³ The Convention on the Elimination of All Forms of Discrimination Against Women mandates only that women be granted equal rights with men in regard to nationality and not be forced to change nationality by marriage or a change in a husband’s nationality.²⁴ The International Covenant on Civil and Political Rights does not directly discuss nationality, but provides that “[n]o one shall be arbitrarily deprived of the right to enter his own country.”²⁵

The jurisprudence of nationality in human rights law is also underdeveloped for a second reason. Most of these “soft law” provisions lack regular enforcement mechanisms. In fact, as will be discussed further below, the structure of international adjudication makes it very difficult to enforce international norms governing the relationship between an individual and the state of his or her nationality. Controversies over diplomatic protection and substantive eligibility are routinely adjudicated as procedural prerequisites to litigation over other, substantive claims. But, as we will see, there is no commonly available procedural vehicle for lodging complaints against one’s own state when one has been denationalized. The end result is that international treaties promise more than they deliver, and, in practice, international law has not served as an effective limit on state prerogative in this area.

Yet, this should not detract from the importance of limitations on state power to denationalize as a matter of substantive international law. The sheer number of treaties, declarations, and publications touching on nationality testify to the strong interest in this area by, at the very least, a small but influential minority. Moreover, in certain cases, a forum may

²¹ Convention on the Reduction of Statelessness, *supra* note 4, art. 8(1) (except as provided in paragraphs 2 and 3 of this article, “[a] Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless”). When exercising its right under one of these exceptions to denationalize individuals who would thus become stateless, a state-party must provide some basic degree of due process or non-arbitrariness. *Id.* art. 8(4) (“A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.”).

²² *Id.* art. 9.

²³ International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 4, art. 5(d)(iii).

²⁴ Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 4, art. 9.

²⁵ International Covenant on Civil and Political Rights, *supra* note 4, art. 12(4).

already exist in which individuals who claim to have been deprived of nationality may bring a claim against their own state.²⁶ Given the general

²⁶ There are three permanent international fora that may be able to hear a deprivation of nationality claim. Additionally, there is at least one ad hoc international tribunal that should have jurisdiction over such claims.

Perhaps most important of the permanent fora is the Inter-American Court of Human Rights. Although the Court does not receive petitions from individuals, the Inter-American Commission on Human Rights has the power to do so under Article 23 of its statute. If, after hearing the petition and issuing a report, the Commission discovers that the relevant state has not complied with its recommendations, the Commission is required to refer cases to the Court in the absence of an absolute majority vote not to do so. Rules of Procedure of the Inter-American Commission on Human Rights, art. 44(1), <http://www.cidh.oas.org/Basicos/basic16.htm> ("If the State in question has accepted the jurisdiction of the Inter-American Court in accordance with Article 62 of the American Convention, and the Commission considers that the State has not complied with the recommendations of the report approved in accordance with Article 50 of the American Convention, it shall refer the case to the Court, unless there is a reasoned decision by an absolute majority of the members of the Commission to the contrary."). Through this procedure, it should be possible for an individual to bring a claim against a state that has arbitrarily deprived him of its nationality. See American Convention on Human Rights, *supra* note 4, art. 20(3).

A second forum that deserves mention due to its general institutional success is the European Court of Human Rights. Despite its relative success in forcing states to respect human rights norms in other areas, this forum is probably less important here because substantive European human rights law is less favorable to deprivation of nationality claims than substantive Inter-American human rights law. Protocol 4 to the European Convention prohibits expulsion of nationals and deprivation of the right of a person to enter the country of his nationality. Protocol No. 4 to the European Convention on Human Rights and Fundamental Freedoms, Sep. 16, 1963, art. 3(1) ("No one shall be expelled, by means either of an individual or of a collective measure, from the territory of which he is a national."); *id.* art. 3(2) ("No one shall be deprived of the right to enter the territory of the State of which he is a national."). Unfortunately, as one former member of the European Commission has argued, "[t]here is no guarantee that a State may not also in [the] future follow the well-known pattern in the history of dictatorships of depriving undesirable nationals of their citizenship and then expelling them as foreigners." RUTH DONNER, *THE REGULATION OF NATIONALITY IN INTERNATIONAL LAW* 226 (1994) (quoting Castberg, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 185 (1974)). This argument is buttressed by the observation that:

[I]t appears evident from the Explanatory Reports that the Committee of Experts rejected a proposal to include in Article 3 of Protocol 4 a provision according to which "a State would be forbidden to deprive a national of his nationality for the purpose of expelling him," because the majority thought "it was inadmissible in Article 3 to touch on the delicate question of the legitimacy of measures depriving individuals of nationality."

DONNER, *supra* at 227. See also P. VAN DIJK & G.J.H. VAN HOOF, *THEORY AND PRACTICE OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 367-75 (1984). However, it is worth noting that even in the case that a state did follow this unsavory path, a deprivation of nationality claim could force it to take the action more openly. Such a test case, even if unsuccessful on the law, could have the salutary effect of

trend toward the establishment of courts and international tribunals with jurisdiction over human rights claims,²⁷ it does not seem unlikely that

bringing political pressure on a state that wished to quietly denationalize and then expel an individual or group.

Finally, the Optional Protocol to the International Covenant on Civil and Political Rights also has an individual complaint procedure. Optional Protocol to the International Covenant on Civil and Political Rights, *supra* note 5, art. 2 (“[I]ndividuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.”). This is the least useful of these three potential fora, because neither the relevant substantive law nor the remedy available is particularly strong. As noted above, the Covenant prohibits “arbitrary” deprivation of “the right to enter [one’s] own country,” but does not explicitly mention deprivation of nationality. International Covenant on Civil and Political Rights, *supra* note 4, art. 12(4). As a remedy, the Commission is instructed to bring complaints submitted to it to the attention of the responsible state. Optional Protocol to the International Covenant on Civil and Political Rights, *supra* note 5, art. 4(1) (“[T]he Committee shall bring any communications submitted to it under the present Protocol to the Attention of the State Party to the present Protocol alleged to be violating any provision of the Covenant.” There is then a very soft legal requirement that “[w]ithin six months, the receiving State shall submit to the Committee written explanations or statements *clarifying the matter* and the remedy, *if any*, that *may have been taken* by that State.” *Id.* art. 4(2) (emphasis added). The procedure is thus useful for documenting violations of the Covenant and bringing political pressure to bear on the responsible state, but it does not provide a means to remedy the harm that the individual has suffered.

In addition to these permanent fora, the Eritrea-Ethiopia Claims Commission is of particular interest. Article 5(9) of the December 12, 2000, Agreement between the Government of Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea [hereinafter December 12 Agreement] provides that:

In appropriate cases, each party may file claims on behalf of persons of Ethiopian or Eritrean origin who may not be its nationals. Such claims shall be considered by the Commission on the same basis as claims submitted on behalf of that party’s nationals.

December 12 Agreement, art. 5(9). The Commission has subject matter jurisdiction over claims related to the 1998-2000 conflict between the two state-parties that “result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law.” *Id.* art. 5(1). Combined, these two provisions allow the commission to hear both (1) deprivation of nationality claims brought against Eritrea by persons of Ethiopian origin; and (2) deprivation of nationality claims brought against Ethiopia by persons of Eritrean origin. Moreover, given the driving role of ethnicity in recent refugee-producing conflicts, it does not seem improbable that similar provisions could be included in future peace agreements.

²⁷ The second half of the Twentieth Century saw the establishment of the European Court of Human Rights, the Inter-American Court of Human Rights, the UN Human Rights Commission, and African Commission on Human Rights. Perhaps more importantly, the European and Inter-American courts have increased substantially in power and authority in the decades after their establishment.

Additional support for the trend toward internationalization of individual rights—from a different perspective—can be found in the various international criminal

additional fora for the litigation of deprivation of nationality claims will develop in the foreseeable future. Before such fora are established, however, it is worth considering the substantive law that may already be applicable to such claims.

III. THE RELATIONSHIP BETWEEN NATIONAL AND INTERNATIONAL LAW

Having discussed the situations in which it can be necessary to prove international law nationality, it is necessary to step back and make an important distinction: domestic law nationality and international law nationality are neither identical nor mutually preclusive. A state's judgment whether an individual is its national under domestic law is final and binding within that state.²⁸ However, this judgment is not conclusive in international law. International tribunals are not infrequently faced with claims that can only be resolved by deciding which of two or more valid domestic-law nationalities is effective on the international level.²⁹ As will be discussed further in Part VI, below, international tribunals have been fairly consistent in applying the nationality judged "dominant and effective" at the time of the events at issue.³⁰

For now, it is sufficient to note two things. First, under the dominant and effective nationality test, a finding by State *A* that an individual is its national does not prohibit an international tribunal from determining that, for purposes of international law, that individual in fact has the nationality of State *B*.³¹ Second, and more importantly, a finding by State *A* that an individual is not its national for purposes of domestic law would not prohibit an international tribunal from finding that the individual in question does in fact have the nationality of State *A* for purposes of international law.³²

tribunals established over the past decade: the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the new International Criminal Court. Although these tribunals punish individuals responsible for criminal acts rather than enforce rights against a state, the fundamental idea is still to provide some sort of remedy for victims of human rights violations.

²⁸ This would not be the case, of course, if the state agreed to submit the decision to an international tribunal, and to respect the decision of that tribunal.

²⁹ See, e.g., *Nottebohm Case* (Liech. v. Guat.), 1955 I.C.J. 4, 20-21 (Apr. 6) (Second Phase).

³⁰ See *infra* Part VI.C.

³¹ See *Nottebohm Case*, 1955 I.C.J. 4. For an explanation of the dominant and effective nationality test, see *infra* Part VI.C.1.

³² On possible remedies after such a finding, see *supra* Part VII.C.

A. National Law

Naturally, proof of nationality under domestic law is governed solely by the law of the state at issue. This generally involves proof to the satisfaction of the competent domestic court or administrative tribunal that a particular individual satisfies the requirements for possession of that country's nationality. There are usually several alternative "tracks" by which a person can possess nationality, including: birth within the territory of the state; descent from one or more persons who at that time possessed the nationality of the state; naturalization; and operation of law (in cases of state succession). The way in which an individual acquires the nationality of a state often governs the available means of proof, which generally consists of some type of documentary evidence accepted as probative of acquisition of nationality in a particular way.³³ Of course, such documents are typically conclusive only in the absence of contrary evidence demonstrating loss of nationality or fraud in the acquisition of the document.

B. International Law

There are several variations on the problem of proof of nationality under international law.³⁴ The first variation arises when a person claims to be a national of a particular state, and that state supports the claim. The second variation occurs when two or more states claim a particular individual to be their national, and the individual claims to be a national of one of the states claiming him or her. The third arises when an individual, otherwise stateless, attempts to prove that he or she is a national of a state that denies this claim. This third variation—which has, until now, been almost exclusively the domain of "soft law"—will be explored in more detail below.

1. When One State Claims a Person

The simplest version of the proof of nationality problem occurs when a single state claims a person. For instance, an individual claims to be a national of State *A*, and State *A* supports (or does not deny) that claim. The international tribunal hearing the case is then left to

³³ For example, birth certificates are used to prove nationality by birth, and naturalization certificates are used to prove nationality by naturalization.

³⁴ Other situations combining these categories can of course arise. For example, an individual who is claimed as a national by State *B*, but not claimed as a national by State *A*, may claim to be a national of State *A* but not State *B*. The problem would be similar, though more complicated, if States *C*, *D*, etc., also each claimed that the individual was its national only, or if the individual claimed to qualify as a national of more than one state. Such combined situations can be analyzed by extension of the principles discussed below.

determine whether the assertion of nationality is valid. The other party may deny that the individual is a national of State *A*, but does not submit any evidence as to other possible nationalities of the individual. In this type of case, a tribunal will examine the documents that purport to establish that the individual is a national of State *A*. Unless the tribunal finds that the documents are fraudulent, were procured by fraud, or were procured by an illegitimate favor, the tribunal will typically find that the individual is in fact a national of State *A*.³⁵

2. When Two or More States Claim a Person

This second, more complex, variation has given rise to extensive case law.³⁶ As will be discussed below, the Iran-U.S. Claims Tribunal has contributed substantially to this jurisprudence. Variations in domestic nationality law allow for the possibility that a particular person can be a national of State *A* under State *A*'s domestic law, and at the same time also be a national of State *B* under State *B*'s domestic law. This can be the case even if the laws of both State *A* and State *B* prohibit their nationals from also being the national of another state.

Prior to the Second World War, international tribunals sometimes applied a principle of *non-responsibility*, preventing states from exercising diplomatic protection over an individual against a state of which that individual was also a national.³⁷ By the mid-1950s, however, international tribunals began to assert that, while an individual could validly have more than one nationality, only one of those nationalities could be *dominant and effective* for purposes of international law at any given time.³⁸ This test is the one most commonly used today. It will be discussed at greater length in Part VI.C, below.

3. When No State Claims a Person

The third variation of the proof of nationality problem has rarely arisen in international adjudication. Nonetheless, this variation becomes important when an individual is denationalized through some means impermissible under international law. Interestingly, the lack of case law is due not to its lack of importance but to a basic feature in the structure of international tribunals. This particular feature is that, with some

³⁵ See *Flegenheimer Claim* (U.S. v. Italy), 25 I.L.R. 91 (Italy-U.S. Conciliation Comm'n 1958); see also OPPENHEIM, *supra* note 11, § 378.

³⁶ See *infra* Part VI.C.1.

³⁷ See *generally Case No. A/18*, Decision No. 32-A18-FT (6 Apr. 1984), 5 Iran-U.S. Cl. Trib. Rep. 251 (discussing this phenomenon); see also 1930 Hague Convention, *supra* note 19, art. 4 ("A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.").

³⁸ See *Nottebohm Case* (Liech. v. Guat.), 1955 I.C.J. 4 (Apr. 6) (Second Phase); *Mergé Case*, 14 R.I.A.A. 236 (June 10, 1955) (Italian-U.S. Conciliation Commission).

exceptions, individuals have not had access to international tribunals.³⁹ The claims of individuals have generally come before international tribunals only when a state has filed a claim on behalf of someone whom it claims as its national. Because a state will, quite naturally, not espouse a claim against itself by a person whom it does not recognize as its national, these claims have not traditionally been heard in international tribunals.⁴⁰

Thus, despite the claims of some international instruments to regulate the deprivation of nationality,⁴¹ this structural aspect of international adjudication has often had the effect of making deprivation of nationality—for practical purposes—wholly a matter of domestic law. However, as discussed above, it appears that this situation is changing. Given the substantive importance of the issues involved, it seems worthwhile to examine this variation of the proof of nationality problem before it becomes a procedurally more frequent occurrence. It is fitting to begin such a discussion with an examination of the basic legal document involved in modern international travel: the passport.

IV. THE PASSPORT IN INTERNATIONAL LAW

In the law of nationality, passports play a special role. Indeed, as will be seen below, passports are uniquely probative of nationality under international law. Were this the limit of their relevance, passports would still be documents of substantial international legal significance.⁴²

However, in addition to their evidentiary value, I argue that passports are also important as a matter of substantive international law. A central claim of this Article is that acquisition of a valid passport fundamentally changes the international legal status of an individual in

³⁹ There are, however, several important exceptions to this general rule. See *supra* note 26. See also Part VII.A. *infra*.

⁴⁰ Cf. *Kunkel et al. v. Polish State*, Case No. 318, 1925-26 Ann. Dig. 418 (Germano-Polish Mixed Arb. Trib. 1925) (“[T]he Tribunal had no jurisdiction to decide a claim against Poland by Polish nationals.”).

⁴¹ See sources cited *supra* note 4.

⁴² Of course, this is by no means the limit of their relevance. In fact, passport issuance has been important in a related area of law that is nonetheless outside the scope of this Article. During the Cold War, substantial litigation resulted from U.S. State Department passport policies that were said to inhibit the “right to travel.” See generally GUY S. GOODWIN-GILL, *INTERNATIONAL LAW AND THE MOVEMENT OF PERSONS BETWEEN STATES* 29-34 (1978). Landmark decisions in this area included *Kent v. Dulles*, 357 U.S. 116, 117-120, 129-130 (1958) (overturning the State Department policy of refusing to issue passports to individuals suspected of being members of the Communist party) and *Hag v. Agee*, 453 U.S. 278, 309-10 (1981) (upholding policy of revoking passports, without purporting to thereby revoke citizenship, from individuals when there was “a substantial likelihood of serious damage to national security or foreign policy as a result of the passport holder’s activities in foreign countries”).

relation to the passport-issuing state. In other words, by issuing a passport, a state takes an action that substantially alters the legal relationship between itself and the passport holder. My argument is that once the passport is issued, the nationality of the passport holder becomes a proper concern of public international law.⁴³ Without a passport, however, an individual is limited to the relatively soft guarantees of international human rights law.

Below, I examine the passport's proof of nationality role in more detail. Later, in Part V, I will return to the passport's significance in substantive international law.

A. *Historical Context*

1. Passports and their Legal Significance

Passports, as *prima facie* evidence of nationality,⁴⁴ are "normally accepted for the usual immigration and police purposes."⁴⁵ In other words, states take daily legal action on the basis of passports issued by other states, without taking time to investigate whether the passport holder is "really" a national of the issuing state. If an individual travels to France on a U.S. passport, the French border agent's decision to admit the individual without a visa is based on the faith that the French government places in the U.S. government's representation that the passport holder is in fact a U.S. national. A passport in this case is different from a national identity card, addressed only to other actors within the issuing state.

Here, a historical note is in order. One problem that occurs in examining the legal significance of the passport is that the term has been used to indicate several different, but closely related, types of documentation.⁴⁶ For example, it has referred to

⁴³ Of course, it is not necessarily the case that, absent a passport, an individual's nationality is solely an issue of domestic nationality law. See *supra* note 4 and accompanying text. My position, however, is that even in a case where soft law on nationality is inapplicable or ineffective, the nationality of a passport holder is a subject addressed effectively by hard international law.

⁴⁴ See, e.g., OPPENHEIM, *supra* note 11, §§ 378 n.16, 381; WEIS, *supra* note 1, at 228; DANIEL C. TURACK, *THE PASSPORT IN INTERNATIONAL LAW* (1972). See also *Ruinart Père & Sons v. Franzmann*, Franco-German Mixed Arb. Trib. (May 27, 1927) (accepting an Argentinean passport as partial evidence, together with a certificate of release from German nationality, that the defendant was not a German national).

⁴⁵ OPPENHEIM, *supra* note 11, §§ 378 n.16.

⁴⁶ See generally WEIS, *supra* note 1, at 222-30; 8 MARJORIE M. WHITEMAN, *DIGEST OF INTERNATIONAL LAW* 194-204 (1967); TURACK, *supra* note 44, at 15-21; *THE INVENTION OF THE PASSPORT: SURVEILLANCE, CITIZENSHIP, AND THE STATE* (John Torpey ed., 2000). An early mention of letters used for a similar purpose can be found in the Old Testament. See *Nehemiah* 2:7 (King James) ("Moreover I said unto

an authorization to pass from a port or leave the country, or to enter or pass through a foreign country; a permit for soldiers to depart from their service; a sea letter; and, a document issued in time of war to protect persons from the general operation of hostilities.⁴⁷

By the eighteenth century, however, the term had developed into something more analogous to what we refer to as a "visa" today, that is, a document issued to aliens for travel or sojourn within the territory of the issuing state.⁴⁸ Although this meaning began to die out during the nineteenth century, this sense of the term is still used in some diplomatic and military contexts.⁴⁹ The use of the term passport to refer to a document issued by the country of nationality for use by the national in other countries developed sometime in the nineteenth century, but the practice did not become generalized until the time of the First World War.⁵⁰ Thus, early sources discussing "passports" must be interpreted in light of this historical context.

a. Passports as Proof of Nationality in U.S. Courts: The Older Practice

The oft-cited holding of the U.S. Supreme Court in *Urtetiqui v. D'Arcy*⁵¹ should be understood in context of these changes in the nature and meaning of the term "passport." The passport in this case is functionally similar to the modern passport, but the institutionalized protections against mistake and fraud that we now associate with the term passport had not yet developed. The resolution of this case depended in part on the nationality of Domingo D'Arbel, one of the plaintiffs. D'Arbel claimed to be a citizen of the United States, but the defendants in the case tried to establish that he was instead either a subject of the King of Spain or a native Frenchman. In order to prove his citizenship, D'Arbel attempted to introduce a passport, signed by then-Secretary of State John Quincy Adams, which asserted that D'Arbel was in fact a citizen of the United States. The Court held that, in general, a passport was not admissible in court as legal evidence of citizenship.⁵²

the king. If it please the king, let letters be given me to the governors beyond the river, that they may convey me over till I come into Judah.").

⁴⁷ TURACK, *supra* note 44, at 15.

⁴⁸ See WEIS, *supra* note 1, at 222-23.

⁴⁹ *Id.* at 223.

⁵⁰ *Id.*

⁵¹ 34 U.S. 692 (1835).

⁵² Most of the court's language seems to indicate that a passport is never admissible in court as evidence of citizenship. However, one statement raises the possibility that a passport may in some special cases be admissible in evidence: "But whether the circuit court erred in admitting the passport in evidence, under the circumstances stated in the exception, this court is divided in opinion, and the point is of course undecided." *Urtetiqui*, 34 U.S. at 699.

This case has not been explicitly overruled by the Court, and is still sometimes cited (for instance, by legal encyclopedias) for the proposition that U.S. passports are not admissible as proof of citizenship in U.S. court.⁵³ This position, however, is demonstrably false. Passports are explicitly made admissible as proof of U.S. citizenship by 22 U.S.C. § 2705(1).⁵⁴ It is not, however, only the existence of the statute which ensures the invalidity of this case. In order to demonstrate that the reasoning of this case is not applicable in the international context, it is worth quoting the Court at some length:

There is some diversity of opinion on the bench, with respect to the admissibility in evidence of this passport, arising, in some measure, from the circumstances under which the offer was made, and its connexion with other matters which had been given in evidence. Upon the general and abstract question, whether the passport, per se, was legal and competent evidence of the fact of citizenship, we are of opinion that it was not.

⁵³ For instance, the version of *American Jurisprudence* consulted during initial drafting of this Article cited *Urtetiqui* as if it were still good law on this point. See 59 AM. JUR. 2D § 4 (1987 and Supp. 2002) (“A passport is generally not considered legal evidence in the courts of this country that the person to whom it was issued was a citizen of the United States.”) (citing *Urtetiqui*, 34 U.S. 692). On March 25, 2004, the version of *American Jurisprudence* available on LEXIS still contained this language. However, the version available on Westlaw had been updated. It no longer cites *Urtetiqui*, but relies instead on more recent law—including 22 U.S.C. § 2705 and the Ninth Circuit’s *Magnuson* decision. See 59 AM. JUR. 2D § 4 (Westlaw 2004) (“A passport is an aid in establishing citizenship for purposes of reentry into the United States, and, if unexpired and issued for the maximum period of validity, it is regarded as proof of United States citizenship to the same extent as a certificate of naturalization or a certificate of citizenship.”) (citations omitted).

⁵⁴ The statute reads as follows:

The following documents shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney General or by a court having naturalization jurisdiction:

(1) A passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States.

(2) The report, designated as a “Report of Birth Abroad of a Citizen of the United States”, issued by a consular officer to document a citizen born abroad. For purposes of this paragraph, the term “consular officer” includes any United States citizen employee of the Department of State who is designated by the Secretary of State to adjudicate nationality abroad pursuant to such regulations as the Secretary may prescribe.

22 U.S.C. § 2705. It should be noted, however, that passports can also be issued to non-citizens who nonetheless owe allegiance to the United States. See 22 U.S.C. § 212.

There is no law of the United States, in any manner regulating the issuing of passports, or directing upon what evidence it may be done, or declaring their legal effect. It is understood, as matter of practice, that some evidence of citizenship is required, by the secretary of state, before issuing a passport. This, however, is entirely discretionary with him. No inquiry is instituted by him to ascertain the fact of citizenship, or any proceedings had, that will in any manner bear the character of a judicial inquiry. It is a document, which, from its nature and object, is addressed to foreign powers; purporting only to be a request, that the bearer of it may pass safely and freely; and is to be considered rather in the character of a political document, by which the bearer is recognized, in foreign countries, as an American citizen; and which, by usage and the law of nations, is received as evidence of the fact. But this is a very different light, from that in which it is to be viewed in a court of justice, where the inquiry is, as to the fact of citizenship. It is a mere *ex parte* certificate; and if founded upon any evidence produced to the secretary of state, establishing the fact of citizenship, that evidence, if of a character admissible in a court of justice, ought to be produced upon the trial, as higher and better evidence of the fact.⁵⁵

It is apparent from this quotation that the court's decision did not turn on whatever international character a passport may at that time have had. Instead, it turned on the internal procedures by which the passport had been granted. The thrust of the court's holding is that a passport should not be accepted as evidence of citizenship when there was no statutory requirement that the applicant establish citizenship before the passport could be issued. Although the Court did acknowledge that, "as a matter of practice, some evidence of citizenship is required,"⁵⁶ it did not consider this practice to be sufficiently reliable to bind a U.S. court.

b. The Modern Practice

In this light, it is easy to see how the *Urtetiqui* holding is largely inapplicable to the modern passport. Today, the issuance of U.S. passports is governed by specific provisions in the United States Code⁵⁷ and the Code of Federal Regulations.⁵⁸ U.S. passports may only be issued to citizens and noncitizen nationals,⁵⁹ and the application must be

⁵⁵ *Urtetiqui*, 34 U.S. at 699.

⁵⁶ *Id.*

⁵⁷ See generally 22 U.S.C. §§ 211(a)-218.

⁵⁸ See generally 22 C.F.R. § 51.

⁵⁹ 22 U.S.C. § 212; 22 C.F.R. § 51.2(a).

verified by oath or affirmation, in person, before a duly authorized individual.⁶⁰ Photographs must be provided.⁶¹ Similarly, as long as foreign passports are issued under some type of statutory authority, with some reasonable procedure designed to minimize opportunities for fraud, the reasoning of *Urtetiqui* should not militate against their serving as evidence of citizenship.

The Ninth Circuit's 1990 decision in *Magnuson v. Baker*⁶² is a better statement of current U.S. law.⁶³ Myers⁶⁴ applied for a U.S. passport on the basis of derivative citizenship, but his application was rejected. He requested reconsideration, and the highest ranking officer in the Seattle passport office conducted additional research, personally concluded that Myers was a U.S. citizen, and issued him a passport. Several months later, an INS official wrote to the Seattle office, expressing INS disapproval of the decision and noting that INS was attempting to deport Myers. However, under 22 U.S.C. § 2705, the INS could not deport Myers as long as he possessed a valid passport.⁶⁵ Several months after the INS letter to the Seattle passport office, a State Department official

⁶⁰ 22 C.F.R. § 51.21(a).

⁶¹ *Id.*

⁶² 911 F.2d 330 (9th Cir. 1990).

⁶³ Although this case has not yet been followed by other courts, it has also not been contradicted. The two published decisions citing the case neither question its general reasoning nor cast any doubt on its holding that the State Department is unable to revoke a passport based simply on a finding that its own prior determination of the passport applicant's citizenship was erroneous. See *Scales v. I.N.S.*, 232 F.3d 1159, 1165 n.10 (9th Cir. 2000) (distinguishing *Magnuson* as inapplicable to a citizenship claim by an individual born abroad to the wife of U.S. citizen, where the individual in question apparently did not have a U.S. passport); *Kelso v. U.S. Dept. of State*, 13 F.Supp. 1 (D.D.C. 1998) (distinguishing *Magnuson* as inapplicable to passport revocation when the citizenship of the passport holder was never challenged). Moreover, it seems to be fully consistent with a proper understanding the relevant statutes, regulations, and case law. See also discussion *supra* note 53.

⁶⁴ Although not important to the holding of the case, it is worth noting that Myers was not an appealing character. He was born in Canada, but fled to the United States after being convicted of tax evasion in Canada. He based his claim to U.S. citizenship on a contention that his father was a naturalized U.S. citizen. At the passport office, he was able to support this claim only with circumstantial evidence, because the Oklahoma records that could have established his father's citizenship were incomplete. The court noted that whether Myers should or should not have received a passport was not at issue in the appeal. *Id.* at 331 n.1.

⁶⁵ *Id.* at 333. The court stated:

Given these two effects of section 2705, Myers' passport had significant consequences. Because the passport provided conclusive evidence of citizenship which the INS could not collaterally attack, Myers' passport prevented the INS from deporting him.

Id. The court also cited *Matter of Villanueva*, Interim Decision No. 2968, in which "[t]he INS held that 22 U.S.C. § 2705 made a passport conclusive proof of citizenship." *Id.* at 333 n.7.

wrote to Myers, stating that the passport had been issued in error, and demanding that he return it immediately or face a fine and/or imprisonment. Myers requested a hearing, and when the request was denied, sued in federal district court. The district court granted summary judgment to Myers.

The Ninth Circuit panel upheld the decision of the district court, explaining that 22 U.S.C. § 2705 did not grant the Secretary of State any greater power to revoke a passport than that granted to the Attorney General⁶⁶ or a district court⁶⁷ to revoke certificates of citizenship. Because of this, the panel held that the Secretary of State could only revoke a passport on “exceptional grounds such as fraud or misrepresentation.”⁶⁸ “Second thoughts” about the decision to issue a passport are not permissible grounds for revocation.⁶⁹ Even when revoking a passport on permissible grounds, the Secretary of State must give notice and an opportunity to be heard before revoking the passport, at least where the passport is being revoked on the ground of fraud relating to the establishment of citizenship.⁷⁰

2. Other Identity Documents

a. *The Special Case of Passports Issued to Non-Nationals*

In some cases, passports have been issued specifically for use by non-nationals. Because these passports do not assert that the bearer is a national of the issuing state, the international law relating to proof of nationality does not apply to bearers of this type of passport. In particular, the argument below—that the law of binding state action prohibits denationalization of passport holders—does not apply when the passport itself states that the bearer is a non-national.

⁶⁶ The U.S. Attorney General has the authority to revoke a certificate of citizenship or naturalization only when he is satisfied that the document was “illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner.” 8 U.S.C. § 1453. However, in order to do so he must give the certificate holder at least 60 days to show why the certificate should not be canceled. *Id.* It is worth noting that “[t]he cancellation under this section of any document purporting to show the citizenship status of the person to whom it was issued shall affect only the document and not the citizenship status of the person in whose name the document was issued.” *Id.*

⁶⁷ A U.S. district court has power to set aside an order admitting a person to citizenship and to cancel the certificate of citizenship “on the ground that such order and certificate of naturalization were illegally procured or were procured by concealment of a material fact or by willful misrepresentation.” *Id.* § 1451(a). The person whose naturalization is to be revoked must be given 60 days to answer the charge that the certificate was fraudulently procured. *Id.* § 1453(b).

⁶⁸ *Magnuson*, 911 F.2d at 336.

⁶⁹ *See id.* at 335.

⁷⁰ *See id.* at 336.

b. Birth Certificates and Certificates of Naturalization

As will be shown below,⁷¹ many international tribunals have accepted birth certificates and certificates of naturalization as proof of nationality.⁷² However, some have refused to do so,⁷³ and in the past at least one writer has asserted that it is “well established” that an international tribunal may question the validity of a naturalization certificate.⁷⁴

For present purposes, it is sufficient to note two things. First, the jurisprudence of the Iran-U.S. Claims Tribunal strongly suggests that birth certificates and certificates of naturalization can in some cases serve as conclusive proof of nationality. Second, because these documents—unlike passports—do not make any representation to foreign states, the law of binding state action would not apply to them.

B. The Passport as Proof of Nationality in International Law

1. Significance of the Iran-United States Claims Tribunal

Decisions of the Iran-U.S. Claims Tribunal are particularly probative as evidence of the international law of nationality.⁷⁵ The Tribunal has enjoyed great prestige as a general matter, but there are two reasons that its decisions on the nationality issue are especially influential.

First, and most importantly, these decisions are persuasive because of the high degree of political tension associated with nationality issues before the tribunal. In particular, the issue of jurisdiction over “dual

⁷¹ See *infra* Part IV.B.3.

⁷² Driver's licenses and military identification are beyond the scope of this analysis. However, one would assume that military identification would serve as strong evidence of nationality. This would not be for any presumption of accuracy as to nationality (if nationality were in fact listed) but for the strong value that military service itself can have as evidence of nationality (and as a cause for losing a former nationality). It is worth noting, however, that the law of binding state action might in fact apply to military identification, since one of the functions of this form of identification is presumably to identify captured military personnel to a foreign power.

By contrast, one would also assume that a driver's license would be of little or no use as proof of nationality, unless the laws of the issuing country actually restricted the driving privilege to nationals. Even then, it would seem necessary to establish that nationality was actually checked with serious care in order to use the license as proof of nationality. It goes without saying that, since a driver's license is not directed at another state, the law of binding state action would not apply.

⁷³ See, e.g., *Flegenheimer Claim* (U.S. v. Italy), 25 I.L.R. 91, 98 (Italy-U.S. Conciliation Comm'n 1958).

⁷⁴ DURWARD V. SANDIFER, EVIDENCE BEFORE INTERNATIONAL TRIBUNALS 220 n.77 (Rev. ed. 1975).

⁷⁵ For a general discussion of the significance of the jurisprudence of the Iran-U.S. Claims Tribunal as a source of international law, see CHARLES N. BROWER & JASON D. BRUESCHKE, THE IRAN-UNITED STATES CLAIMS TRIBUNAL 631-656 (1998).

nationals"—persons who were both nationals of Iran under Iranian law and nationals of the United States under U.S. law—was extraordinarily contentious.⁷⁶ This political fact focused the attention of both the parties and the tribunal on this issue, ensuring that the position of each party was thoroughly argued and that the tribunal understood the significance of the decisions that it made.⁷⁷

Second, these decisions are convincing because of their relative youth in the realm of international law. The Iran-U.S. Claims Tribunal was established in 1981 and continues its work today.⁷⁸ The cases cited below were decided between 1983 and 1989. Although fifteen to twenty years may be a long time in some areas of U.S. domestic jurisprudence, it is relatively short in the world of public international law.⁷⁹ The recency

⁷⁶ See, e.g., GEORGE H. ALDRICH, *THE JURISPRUDENCE OF THE IRAN-U.S. CLAIMS TRIBUNAL* 44 (1996) ("On one issue, jurisdiction over claims by dual Iranian-United States nationals, levels of intense political sensitivity were reached that were higher than those encountered on the merits in other cases."); Lucy F. Reed, *The Long Twilight: An Agent's View of the Closing Stages*, in *THE IRAN-UNITED STATES CLAIMS TRIBUNAL AND THE PROCESS OF INTERNATIONAL CLAIMS RESOLUTION: A STUDY BY THE PANEL ON STATE RESPONSIBILITY OF THE AMERICAN SOCIETY OF INTERNATIONAL LAW* 339-41 (David D. Caron & John R. Crook ed., 2000) (noting that dual national claims were "highly politicized" even after the decision in *Case No. A/18*, and suggesting that the Chamber Chairmen should have moved these cases along by refusing to let Iran re-litigate the dual nationality issue each time one of these claims arose); see also *Case No. A/18*, Decision No. 32-A18-FT (6 Apr. 1984), 5 Iran-U.S. Cl. Trib. Rep. 251 (dissent of Iranian arbitrators).

⁷⁷ Of course, this proposition is open to an obvious rebuttal. Shifting viewpoints slightly, it could be argued that the contentious nature of the tribunal's dual nationality decisions in fact reduces their probative value as evidence of current international law. As international decisions are not per se binding on other courts, the argument goes, they are only valid as evidence of international law to the extent that they serve to demonstrate international law as accepted by states. It then follows that Iran's extreme protest against these decisions suggests that they were not in conformity with the content of international law, at least as understood by Iran, but instead were some attempt by an international tribunal to "progressively develop" the law.

This argument, however tempting, proves far too much. If protest by a losing state were sufficient to strip a decision of whatever value it had as an indicator of international law, it is hard to imagine international tribunals relying heavily on such decisions (since, in general, at least one state will be the loser in each case). However, even a brief survey of the opinions issued by international tribunals reveals extensive reliance on the decisions of other tribunals.

⁷⁸ See Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (Claims Settlement Declaration), 19 January 1981, art. 2.

⁷⁹ See, e.g., BROWER & BRUESCHKE, *supra* note 75, at 631 ("As the International Court of Justice recognized in *Barcelona Traction*, many areas of international law are addressed by comparatively few decisions of international tribunals.") (noting also that the subject of protection of foreign investment—a subject frequently addressed

of these decisions is particularly relevant in relation to proof of nationality. As demonstrated above, the nature, relevance, and probative value of identity documents has changed with the passage of time. As governmental ability to guarantee the accuracy of certain types of identity documents has increased, the willingness of both domestic courts and international tribunals to accept identity documents as proof of the statements they contain has also increased.⁸⁰

The Iran-U.S. Claims Tribunal is the only significant international tribunal that has addressed the probative value of identity documents as proof of nationality within the past forty years. Considering the changes that have taken place within that time in the ability of governments to process information, its decisions in relation to this issue should be particularly relevant as evidence of current international law.

2. A Note on Iranian Nationality Law

The attention paid by the Iran-U.S. Claims Tribunal to passports as proof of nationality in these cases results in part from the strict provisions of Iranian nationality law. During the relevant time period, Iranian law required approval of the Iranian Council of Ministers for renunciation of nationality. Once that renunciation was granted, the expatriate was allowed to enter Iran only once, for the specific purpose of selling or transferring all his property. After that, the expatriate was forever barred from entering Iran.⁸¹ The practical result of this policy was that most Iranians who acquired U.S. citizenship continued to use an Iranian passport to enter and exit Iran, often for years or decades after acquiring U.S. citizenship. Some also used the number of their Iranian identity card to carry out certain activities (especially financial or property-related activities) that were open only to Iranian citizens. The U.S. government largely tolerated this practice. The result was that in dual nationality cases, the claimants often held and used both a valid U.S. passport and a valid Iranian passport.⁸²

by the Iran-U.S. Claims Tribunal—was “virtually untouched” in the “53 contentious cases on the merits and the 48 judgments [the ICJ] had rendered in the 40 years of its existence up to 1 July 1986”).

⁸⁰ It appears that national security concerns may soon push passport reliability to a new level. A recent report indicates that the United States will soon require all visitors to have either a machine readable passport or a visa containing biometric identification data (such as fingerprints and a digital image of the passport holder's face). See *Land of the Free, Home of the Bar Code*, in *THE WORLD IN 2004* (The Economist Newspaper Ltd. ed., 2003).

⁸¹ See *Esphahanian v. Bank Tejarat*, Award No. 31-157-2 (29 March 1983), 2 Iran-U.S. Cl. Trib. Rep. 157, 167-68.

⁸² It is worth noting that the Tribunal was more willing to overlook the use of the Iranian passport to enter and exit Iran, than the use of an Iranian identity card number to enter into some type of transaction in Iran. See, e.g., *Golpira v. Iran*,

3. The Passport as Proof of Nationality

In the absence of evidence demonstrating loss of nationality, the Iran-U.S. Claims Tribunal accepted birth certificates and U.S. passports listing birth in the United States as conclusive proof that the holder was a national of the United States under U.S. law.⁸³ These documents were sufficient to prove the bearer had U.S. nationality, even prior to the date of the document. The Tribunal also accepted naturalization documents and U.S. passports not listing birth in the United States as conclusive proof of U.S. nationality under U.S. law, although only for periods of time subsequent to the date of the document.⁸⁴

Award No. 32-211-2 (29 Mar. 1983), 2 Iran-U.S. Cl. Trib. Rep. 171. For a more detailed discussion of the tribunal's jurisprudence in regard to "abuse of nationality," see Nancy Amoury Combs, *Toward a New Understanding of Abuse of Nationality in Claims Before the Iran-United States Claims Tribunal*, 10 AM. REV. INT'L ARB. 27 (1999).

⁸³ See, e.g., R.N. Pomeroy v. Iran, Award No. 50-40-3 (8 June 1983) (accepting passports and "birth registration documents" as sufficient to show shareholders' U.S. nationality by birth); Cal-Maine Foods, Inc. v. Iran, Award No. 133-340-3 (11 June 1984), 6 Iran-U.S. Cl. Trib. Rep. 52 (accepting birth certificate and U.S. passport as sufficient proof of majority shareholder's U.S. nationality); Michelle Danielpour v. Iran, Award No. 424-183-3 (16 June 1989), 22 Iran-U.S. Cl. Trib. Rep. 118 (accepting birth certificate and U.S. passport as sufficient evidence of U.S. nationality); Stephen Joseph Danielpour v. Iran, Award No. 69-169-3 (16 June 1989), 22 Iran-U.S. Cl. Trib. Rep. 123 (accepting birth certificate and U.S. passport as sufficient evidence of U.S. nationality); Ebrahimi v. Iran, Award No. 71-44/45/46/47-3 (16 June 1989), 22 Iran-U.S. Cl. Trib. Rep. 138 (birth certificate and U.S. passport sufficient to prove U.S. nationality of claimant mother; birth certificates sufficient to prove U.S. nationality of two claimant children; U.S. passport and certificate of registration of birth abroad to an American mother sufficient to prove nationality of third claimant child); Haber v. Iran, Award No. 437-10159-3 (4 Sept. 1989), 23 Iran-U.S. Cl. Trib. Rep. 133 (accepting U.S. passport issued after claim was filed as proof of sole shareholder's U.S. nationality by birth); Wilhams v. Iran, Award No. 342-187-3 (18 Dec. 1987), 17 Iran-U.S. Cl. Trib. Rep. 269 (accepting birth certificate as sufficient proof of U.S. nationality), *enforcement denied*; Federal Reserve Bank of New York v. Wilhams, 708 F.Supp. 48 (S.D.N.Y. 1989) (finding that claimant was not person referred to in birth certificate, and that the person named in the birth certificate was dead); Benedix v. Iran, Award No. 412-256-2 (22 February 1989), 21 Iran-U.S. Cl. Trib. Rep. (accepting birth certificate as sufficient proof of claimant husband's U.S. nationality; assuming for purposes of award that passports are sufficient evidence to prove claimant wife's U.S. nationality).

⁸⁴ See, e.g., Esphahanian v. Bank Tejarat, Award No. 31-157-2 (29 March 1983), 2 Iran-U.S. Cl. Trib. Rep. 157 (accepting U.S. naturalization certificate and U.S. passport as sufficient proof of U.S. nationality); Golpira v. Iran, Award No. 32-211-2 (29 Mar. 1983), 2 Iran-U.S. Cl. Trib. Rep. 171 (apparently accepting U.S. naturalization certificate as sufficient proof of U.S. nationality); Reza Said Malek v. Iran, Award No. 68-193-3, 19 Iran-U.S. Cl. Trib. Rep. 48 (23 June 1988) (accepting "Application for Verification of Information from Immigration and Naturalization Service Records" as sufficient proof of U.S. nationality); Nahid (Danielpour) Hemmat v. Iran, Award No. 70-170-3 (16 June 1989), 22 Iran-U.S. Cl. Trib. Rep. 129

However, when the Tribunal was faced with competing evidence that an individual was also a citizen of Iran under Iranian law, these documents were not necessarily sufficient to establish U.S. nationality under international law. This problem of dual nationality will be explored further below.⁸⁵ Absent an issue of dual nationality or loss of nationality, however, a passport was treated as dispositive of the nationality question.

V. THE LAW OF BINDING STATE ACTION

The soft norms of human rights law address the relationship between the individual and his or her own state, but at least in the case of a passport holder this is not the only relationship relevant to an instance of nationality deprivation. I argue that by issuing a passport, a state makes a formal representation to other states that the passport holder is its national. This act triggers the application of the body of international law regulating state representations and other formal actions—the law of binding state action. This body of law, properly understood, gives other states, as well as the passport holder,⁸⁶ a potential legal claim against the denationalizing state.

Up to this point, however, the law of binding state action has been applied only in limited contexts. When a state has in fact been found to be bound, it has generally involved personal representations made by heads of state and high level functionaries relating to major diplomatic issues such as international boundaries and nuclear weaponry. With this in mind, it might be reasonable to hesitate to apply this body of law to passports issued to everyday people. However, such hesitation would be mistaken. As will be explained below, intellectually consistent application of the law of binding state action requires its extension to the passport context. Significantly, this argument is neither radical nor new, but has at various times been suggested—albeit in less developed form—by respected authors⁸⁷ and at least one national delegation.⁸⁸

(naturalization certificate sufficient to demonstrate U.S. nationality as of the date of the certificate); *Mohajer-Shojaee v. Iran*, Award No. 490-273-1, 25 Iran-U.S. Cl. Trib. Rep. 196 (U.S. passport not listing birth in the United States dated prior to relevant period for Tribunal jurisdiction sufficient to prove U.S. nationality of claimant wife; U.S. passport not listing birth in the United States dated subsequent to relevant period for Tribunal jurisdiction not admissible to prove U.S. nationality of claimant husband).

⁸⁵ See *infra* Part VI.C.

⁸⁶ See *infra* Part VII.C.

⁸⁷ See, e.g., WEIS, *supra* note 1, at 55-56 (“The faith of a State which has admitted an alien on the assumption that the State of his nationality is under an obligation to receive him back would be deceived if by subsequent denationalization this duty were to be extinguished.”); BROWNLIE 1998, *supra* note 14, at 407-409 (devoting an entire subsection to the concept of “Nationality by Estoppel”).

A. Legal Principles

I use the term “law of binding state action” to describe a set of related principles by which states have been held to have undertaken enforceable legal obligations without entering into formal international agreements. These have variously been referred to as estoppel, preclusion, acquiescence, and unilateral action. Estoppel, preclusion, and acquiescence come from an old and venerable tradition, and they are more or less generally accepted in international law. By contrast, unilateral action is still relatively young and radical: neither the contours of its applicability nor its advisability as a matter of policy has yet been settled.⁸⁸ Importantly, both the older principles and their newer counterpart share a common theme: formal actions taken by a state may, in some circumstances, serve to bind that state in the future.

These principles are not, to my knowledge, codified in any major international agreement. Instead, they are based on international custom⁸⁹ and general principles⁹⁰ derived from the major domestic legal

⁸⁸ Over 70 years ago, the British delegate to the Hague Codification Conference of 1930 asserted that:

[A] kind of contract or obligation results from the granting of a passport to an individual by a state so that when that individual enters a foreign state with that passport, the State whose territory he enters is entitled to assume that that the other State whose nationality he possesses will receive him back in certain circumstances.

WEIS 1956, *supra* note 1, at 56 (quoting Acts of the Hague Conference for the Codification of International Law, Vol.II—Minutes of the First Committee: Nationality, League of Nations Doc. No. 351 (a), M. 145 (a), 1930, V., Series of League of Nations Publications V, Legal 1930, V, 15).

⁸⁹ See W. Michael Reisman, *Unratified Treaties and Other Unperfected Acts in International Law: Constitutional Functions*, 35 VAND. J. TRANS. L. 729, 737, 743-45 (2002).

⁹⁰ In the traditional view, custom shares pride of place with treaties atop the hierarchy of international norms. See OPPENHEIM, *supra* note 11, §§ 9-11. The *Oppenheim* editors define custom as “a clear and continuous habit of doing certain actions which has grown up under the aegis of the conviction that these actions are, according to international law, obligatory or right.” *Id.* § 10. Custom is distinguishable from a simple usage, which is “a habit of doing certain actions which has grown up without there being the conviction that these actions are, according to international law, obligatory or right.” *Id.* The requirement that such a habit take place out of a sense of legal obligations is often termed *opinio juris*. *Id.* See also *Asylum Case*, 1950 I.C.J. 266, 276-277 (Nov. 20) (defining custom under the ICJ Statute); *North Sea Continental Shelf Case*, 1969 I.C.J. 3, 44 (defining *opinio juris*). On custom more generally, see ANTHONY D’AMATO, *THE CONCEPT OF CUSTOM IN INTERNATIONAL LAW* (1971).

⁹¹ A number of influential texts in fact provide for direct reliance on such general principles. See, e.g., ICJ Statute, *supra* note 16, art. 38(c) (permitting the court to apply, in the absence of applicable treaty provision or custom, “the general principles of law recognized by civilized nations”); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102 [hereinafter RESTATEMENT (THIRD)]

systems in the world.⁹² Although not, in a formal sense, “judicially created,” their applicability in international law is demonstrated by a long series of authoritative and controlling decisions.⁹³ While the published opinions of courts and international tribunals are an important component of this body of decisions, the decisions of other international actors also bear substantial weight.⁹⁴

(asserting that a “supplementary” rule of international law can be discovered “by derivation from general principles common to the major legal systems of the world . . . even if not incorporated or reflected in customary law or international agreement”).

⁹² For those who subscribe to a formalistic definition of the sources of international law, such as that set out in Article 38 of the ICJ statute, there is some disagreement as to whether international law estoppel is properly analyzed as custom under Article 38(1)(b) or general principle under Article 38(1)(c). Compare H. LAUTERPACHT, *PRIVATE LAW SOURCES AND ANALOGIES OF INTERNATIONAL LAW (WITH SPECIAL REFERENCE TO INTERNATIONAL ARBITRATION)* vii-ix, 203-205 (1927) (suggesting that estoppel should be applied as a general principle of law) with ANTOINE MARTIN, *L'ESTOPPEL EN DROIT INTERNATIONAL PUBLIC: PRÉCÈDE D'UN APERÇU DE LA THÉORIE DE L'ESTOPPEL EN DROIT ANGLAIS* 240-46 (1979) (arguing that estoppel should not be considered a general principle of law, but instead a rule of customary international law). See also RESTATEMENT (THIRD), *supra* note 91, § 102, comment *l*. (“General principles may also provide rules of reason of a general character, such as acquiescence and estoppel . . . international practice may also convert such a principle into a rule of customary law.”); I.C. MacGibbon, *Estoppel in International Law*, 7 *INT'L & COMP. L.Q.* 468, 468 (1958) (“The question of whether the judicial basis of the doctrine of estoppel is to be found in customary international law rather than in the ‘general principles of law’ is not free from difficulty . . .”). However, it is not necessary for our purposes to resolve this disagreement. It is sufficient merely to note that both sides do consider the principle of estoppel to be applicable in international law.

⁹³ See generally W. Michael Reisman, *The View from the New Haven School of International Law*, 86 *AM. SOC'Y INT'L L. PROC.* 118, 121 (1992) (arguing that law should be understood not as a body of formal rules but as a series of authoritative and controlling decisions).

⁹⁴ In particular, official positions taken by the foreign offices of influential states may shed important light on the beliefs of major international actors about what constitutes binding law. In this regard, the numerous instances in which states have taken litigating positions relying on estoppel and related principles provides additional support for their existence as legal rules. For a small sampling of these cases, see *infra* note 97.

1. Estoppel and Related Principles

Estoppel and related principles⁹⁵ have long been accepted as playing some role in public international law.⁹⁶ They have repeatedly been raised by opinions litigating before the ICJ, and have been discussed in majority opinions published by that body.⁹⁷ They have also been discussed by

⁹⁵ Several authors have attempted to distinguish estoppel from its related principles. For example, Bowett argues that an admission is created in many situations where a necessary condition for full estoppel is absent. Such an admission is less harmful than estoppel to the rights of the party against whom it operates. D.W. Bowett, *Estoppel Before International Tribunals and its Relation to Acquiescence*, 176 BRIT. Y.B. INT'L L. 176, 195-97 (1957) ("An estoppel will exclude altogether evidence of a disputed fact, whereas an admission will either render evidence superfluous where there is no other evidence to contradict the admission or, where there is such contradictory evidence, will weaken or perhaps nullify the contradictory evidence."). Acquiescence, a term describing a state's failure to protest a given action, can sometimes be sufficient to give rise to an estoppel. *Id.* at 198-99. However, it should not be confused with acquisition of territory rights by prescription, which depends on the acquiescence of all states, or at least all those adversely affected by the acquisition. *See id.* at 200.

Similarly, Sinclair, while stressing "the common ancestry of [the concepts of acquiescence and estoppel] in the principles of good faith and equity," has noted that the ICJ has been substantially more willing to find acquiescence than "an estoppel in the strict sense." Sinclair, *Estoppel and acquiescence, in FIFTY YEARS OF THE ICJ*, *supra* note 5, at 106, 120. In the end, the case law of the ICJ demonstrates "that there is a close link between the two concepts, and that they must be considered as part of the wider pattern of state conduct which an international tribunal may find to be relevant to the determination of an international dispute." *Id.* at 120.

⁹⁶ *See* LAUTERPACHT, *supra* note 92, at 203-211 (1927) (discussing these principles and their derivation from private law). *See also* MARTIN, *supra* note 92, at 240-46; Bowett, *supra* note 95, at 176; Hugh Thirlway, *The Law and Procedure of the International Court of Justice 1960-1989: Part One*, 60 BRIT. Y.B. INT'L L. 1, 10 (1989); MacGibbon, *supra* note 92, at 468-71.

⁹⁷ *See, e.g.*, Case Concerning the Land, Island and Maritime Frontier Dispute (El. Sal. v. Hond.), 1990 I.C.J. 92, 118-19 (Sept. 13) (Application by Nicaragua for Permission to Intervene); Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.), 1984 I.C.J. 246, 280, 304-311 (Oct. 12, 1984); North Sea Continental Shelf (F.R.G. v. Den. / F.R.G. v. Neth.), 1969 I.C.J. 3, 26 (Feb. 20, 1969); Case Concerning the Temple of Preah Vihear (Cambodia v. Thail.), 1962 I.C.J. 6, 32 (June 15) (Merits) (holding that Thailand was precluded by its later diplomatic conduct from asserting that it did not accept the boundary marked in a 1908 map). *See also* Case Concerning the Temple of Preah Vihear (Cambodia v. Thail.), 1962 I.C.J. 6, 39-51 (June 15) (Merits) (separate opinion of Vice-President Alfaro) (arguing that estoppel, preclusion, forclusion, and acquiescence are all slightly incorrect terms for the principle "that a State party to an international litigation is bound by its previous acts or attitude when they are in contradiction with its claims in the litigation," and discussing cases in which this principle has played a role); Case Concerning the Temple of Preah Vihear (Cambodia v. Thail.), 1962 I.C.J. 6, 52-66 (June 15) (Merits) (separate opinion of Sir Gerald Fitzmaurice); Case Concerning the Arbitral Award Made by the King of Spain on 23 December 1906 (Hond. v. Nicar.), 1960 I.C.J. 189, 222, 236-38 (Nov. 18) (dissenting opinion of Judge *ad hoc* Urrutia

other international tribunals.⁹⁸ A former Legal Advisor to the British Foreign and Commonwealth Office has noted the importance of these principles to government lawyers, especially those involved in litigating territorial disputes.⁹⁹ A review of some of the more well-known cases involving estoppel and related principles will highlight the general issues involved.¹⁰⁰

In the *Case Concerning the Temple of Preah Vihear*, the ICJ found that Thailand's actions, over a period of more than fifty years, had demonstrated its acceptance of a 1908 map placing an archeologically important temple in Cambodia.¹⁰¹ This demonstrated acceptance "precluded" Thailand from asserting at the time of the case that it was not bound by the map, despite the fact that Thailand was correct that the map did not follow the watershed line that a 1904 treaty provided it

Holguin) (accepting the existence of a principle of estoppel in international law but rejecting its applicability on the facts of the case before the court).

⁹⁸ See, e.g., *Flegenheimer Claim* (U.S. v. Italy), 25 I.L.R. 91, 151-53 (Italy-U.S. Conciliation Comm'n 1958) (noting existence of principle of estoppel but rejecting principle of "apparent nationality"); *id.* at 155 (refusing to apply principle of estoppel to bind Italian government to an Italian-language version of the treaty, when the Italian version was prepared by all governments working together and was not a legally operative text).

⁹⁹ See Sinclair, *supra* note 95, at 106, 106-120 (noting the importance of these principles and discussing major ICJ cases in which they have been raised).

¹⁰⁰ Here, a cautionary note is in order. The ICJ is not by any means a "supreme court" for issues of international law, and (absent some specific treaty provision) its decisions are not formally binding on other international tribunals. In fact, prior ICJ decisions are—again speaking formally—not even binding on the ICJ itself. See ICJ Statute, *supra* note 16, Article 38(1)(d) (noting that "judicial decisions" are only a "subsidiary means for the determination of international law."). Looking at actual practice, however, Article 38(1)(d) is somewhat misleading. The ICJ regularly relies on its prior decisions, and its substantial moral authority has frequently led other international tribunals to rely on its decisions as well. See OPPENHEIM, *supra* note 11, § 13 ("The International Court of Justice, while prevented from treating its previous decisions as binding, has, in the interests of judicial consistency, referred to them with increasing frequency."); *Case No. A/18*, Decision No. 32-A18-FT (6 Apr. 1984), 5 Iran-U.S. Cl. Trib. Rep. 251, (relying heavily on the ICJ's *Nottebohm* decision).

Despite this potential moral authority, I do not rely on these decisions as a source for any rule of law. As noted above, *see supra* text accompanying notes 90-94, estoppel and related principles can be accepted as either international custom, general principles of law, or legal rules demonstrated through a series of authoritative and controlling decisions by relevant international actors. Their existence—in some form—as a rule of decision for international tribunals is not seriously contested.

However, these judicial decisions are important for another reason. They serve as an example of how one important international tribunal has applied this body of law. As we consider the application of these rules in a new factual context—that of passports and nationality—these past applications can provide important guidance as to how these principles should properly be applied.

¹⁰¹ *Case Concerning the Temple of Preah Vihear* (Cambodia v. Thailand), 1962 I.C.J. 6, 32 (June 15) (Merits).

would follow.¹⁰² Although the majority opinion in *Preah Vihear* did not discuss the principle of estoppel on a theoretical level,¹⁰³ two separate opinions discussed estoppel and related principles at length.¹⁰⁴

A majority of the court discussed the principle of estoppel in the *North Sea Continental Shelf* case, but did not apply it on the facts before the court.¹⁰⁵ The relevant issue was whether West Germany was bound by Article 6 of the 1958 Convention on the Continental Shelf, which it had signed but not ratified.¹⁰⁶ Denmark and the Netherlands, the other

¹⁰² *Id.*

¹⁰³ In fact, the majority opinion mentioned the word “estoppel” only in a summary of Thailand’s conclusion that “[t]here is no room in the circumstances of the present case for the application in favour of Cambodia of any of the doctrines prayed in aid by Counsel for Cambodia, whether acquiescence, estoppel or prescription.” *Id.* at 12.

¹⁰⁴ In the first separate opinion, Vice-President Alfaro discussed the principle which he believed to be behind the majority’s decision. He argued that it was at least misleading, and perhaps inaccurate, to refer to this principle under the domestic law labels often used—“estoppel, preclusion, forclusion, [and] acquiescence.” The essence of the principle, he explained, was simply that “a State party to an international litigation is bound by its previous acts or attitude when they are in contradiction with its claims in the litigation.” *Id.* at 39 (separate opinion of Vice-President Alfaro). The remainder of the opinion reviewed the different cases in which this principle had been applied. *Id.* at 41-42 (separate opinion of Vice-President Alfaro).

In a second separate opinion, Sir Gerald Fitzmaurice also discussed the theoretical basis for estoppel. *Id.* at 62-65 (separate opinion of Sir Gerald Fitzmaurice). In doing so, he took pains to distinguish an assertion of estoppel from an assertion that a state is simply bound by an obligation it has undertaken. In the case of a standard obligation, it must simply be shown that a state had in fact undertaken the obligation in order to demonstrate that the state was bound by the obligation. A successful assertion of estoppel, by contrast, blocks a state from denying something that it might in fact otherwise have every right to deny. In other words, estoppel prevents the state from asserting what might in fact be a true claim, on the ground that the state’s prior inconsistent action had given other parties reason to believe that it would not make such an assertion. *See id.* at 63 (separate opinion of Sir Gerald Fitzmaurice) (“In other words, if the denial can be shown to be false, there is no room or need for any plea of preclusion or estoppel. Such a plea is essentially a means of excluding a denial that might be correct[—]irrespective of its correctness. It prevents the assertion of what might in fact be true.”).

¹⁰⁵ *North Sea Continental Shelf* (F.R.G. v. Den. / F.R.G. v. Neth.), 1969 I.C.J. 3, 26 (Feb. 20, 1969).

¹⁰⁶ Article 6 of this convention provided for delimitation according to the equidistance principle. In most circumstances, this principle operated to grant each country a portion of continental shelf roughly proportionate to the length of its coastline. However, when applied to a severely concave coastline, bordered on each side by two other states—like that of West Germany on the North Sea—the equidistance principle would operate to give the state with the concave coastline a smaller share of the continental shelf than the length of its coastline would otherwise seem to warrant. Apparently realizing the consequences of the equidistance method after it signed the convention, West Germany made the understandable decision not to proceed with ratification. *North Sea*, 1969 I.C.J. 3.

parties to the case, stood to gain a considerable amount of territorial sea if West Germany were bound by the convention. They put forward several different theories of how West Germany could have bound itself to the convention regime,¹⁰⁷ but the court rejected each of them.¹⁰⁸ The majority concluded that Article 6 could only bind West Germany if West Germany were in fact estopped from denying the article's applicability. Such an estoppel could be created by past conduct by West Germany which both (1) demonstrated clear and consistent acceptance of the convention regime; and (2) caused Denmark or the Netherlands to suffer some detriment as a result of reliance on that past conduct. The majority did not find an estoppel on the facts presented.¹⁰⁹

Moving from territorial disputes to the subject of this Article, it seems that the principle of estoppel should prevent a state from denying that a passport holder is in fact its national. Passports listing nationality are clear assertions by a state that it wishes other states to treat an individual as its national. They are relied upon by other states in the enforcement of their own domestic laws—most frequently at border crossings, but also in the enforcement of other internal laws and international treaty obligations.

¹⁰⁷ They asserted that despite West Germany's failure to ratify the convention, it had conducted itself in such a way that the convention regime—and especially Article 6—should be considered to bind the state. In this regard, Denmark and the Netherlands asserted that West Germany had either (1) unilaterally assumed the obligations of the convention through its public statements and proclamations; (2) manifested an acceptance of the general regime of the convention; or (3) recognized the convention as being generally applicable to continental shelf delimitation. *Id.* at 25.

¹⁰⁸ The majority noted first that only a very clear and consistent course of conduct could suffice to bind a state in West Germany's situation, and expressed doubts as to whether it could be assumed that this existed when West Germany had not in fact ratified the convention—which would, after all, have been the most effective way to express its consent. *North Sea*, 1969 I.C.J. at 25-26. Second, it noted that if West Germany had ratified the convention, it would have had the option to enter a reservation to Article 6, since reservations were permitted under Article 12 of the convention. *Id.* at 25-26.

¹⁰⁹ The exact words of the majority were:

Having regard to these considerations of principle, it appears to the Court that only the existence of a situation of estoppel could suffice to lend substance to this contention,—that is to say if the Federal Republic were now precluded from denying the applicability of the conventional regime, by reason of past conduct, declarations, etc., which not only clearly and consistently evinced acceptance of that regime, but also had caused Denmark or the Netherlands, in reliance on such conduct, detrimentally to change position or suffer some prejudice. Of this there is no evidence whatever in the present case.

Id. at 26.

The applicability of the principle of estoppel is most clear when the passport has been used—prior to the denationalization in question—to enter the territory of the state asserting the claim on behalf of the passport holder. In such a situation, a claiming state's reliance on the passport in its decision to admit the individual should satisfy the requirement that, to support an actual estoppel, a state must be able to demonstrate that it had suffered some disadvantage from its reliance on the passport.¹¹⁰

This is not to say, however, that detrimental reliance could not be demonstrated in other contexts as well. In particular, there are at least two ways that an individual passport holder could demonstrate detrimental reliance. First, a passport holder denationalized while abroad has almost certainly relied on the passport in his or her decision to travel, in the mistaken belief that he or she could safely return to the territory of the passport-issuing state. Second, a passport holder denationalized while within the state may also have detrimentally relied on his or her possession of a passport. Such reliance might include decisions to acquire real property or make other investments that a rational person would be unlikely to make without confidence in the security of his or her nationality. Conversely, for a person with substantial holdings in such investments, detrimental reliance might include a decision not to liquidate them and flee the country.

2. Unilateral Action

A second, less well-established part of the law of binding state action may also be applicable in the passport context: the principle of unilateral action.¹¹¹ The *Nuclear Tests* case is perhaps the most famous statement of this principle.¹¹² Here, Australia challenged the French practice of conducting atmospheric nuclear tests in the South Pacific. Between the time the case was filed and the time the court reached its decision,

¹¹⁰ This disadvantage would be most acute if the passport holder is otherwise stateless, because the claiming state would then have no guaranteed location to which it could deport the passport holder.

¹¹¹ See generally *Nuclear Tests*, 1974 I.C.J. 253 (Dec. 20); Victor Rogríguez Cedeño, Special Rapporteur, International Law Commission, *Fifth Report on Unilateral Acts of States*, April 4, 2002, U.N. Doc. A/CN.4/525, <http://www.un.org/law/ilc/sessions/54/54docs.htm>; OPPENHEIM, *supra* note 11, § 576; BROWNLIE 1998, *supra* note 14, at 642-45; PIERRE-MARIE DUPUY, *DROIT INTERNATIONAL PUBLIC* (4th ed. 1998); J.H.W. VERZIJL, *I INTERNATIONAL LAW IN HISTORICAL PERSPECTIVE* 105-111 (1973); ERIC SUY, *LES ACTES JURIDIQUES UNILATÉRAUX EN DROIT INTERNATIONAL PUBLIC* (1962); Philippe Cahier, *Le comportement des états comme source de droits et d'obligations*, in *RECUIL D'ÉTUDES DE DROIT INTERNATIONAL : EN HOMMAGE À PAUL GUGGENHEIM* 237 (1968); Krzysztof Skubiszewski, *Unilateral Acts of States*, in *INTERNATIONAL LAW : ACHIEVEMENTS AND PROSPECTS* 221 (Mohammed Bedjaoui ed. 1991).

¹¹² *Nuclear Tests* (Austl. v. Fr.), 1974 I.C.J. 253 (Dec. 20).

however, a series of high-level French officials—including the President of the Republic—made public statements that the then-ongoing series of nuclear tests being conducted in the South Pacific would be the last series of atmospheric tests necessary to the French nuclear program. In a decision that has been taken by some as a “broad statement of principle,”¹¹³ the court asserted that:

It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating legal obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding. In these circumstances, nothing in the nature of a *quid pro quo* nor any subsequent acceptance of the declaration, nor even any reply or reaction from other States, is required for the declaration to take effect, since such a requirement would be inconsistent with the strictly unilateral nature of the juridical act by which the pronouncement by the State was made.

The Court held that the various statements by French government officials were the type of action that would qualify as such a binding unilateral commitment.¹¹⁴

B. *Passports and Binding State Action*

The situations in which the law of binding state action has so far been applied have an important characteristic in common: they are major state actions taking place at the highest levels of international diplomacy. The decision to commit a state to one of these actions is typically made by politically responsible actors or high-level functionaries. With this in mind, passport issuance does not at first seem to fit in with the other actions. Although nationality laws are

¹¹³ Thirlway, *supra* note 96, at 8.

¹¹⁴ The court then held that such a commitment satisfied Australia's request to the court, and thus no further dispute existed between the parties. It therefore had no occasion to make any further determination. *Nuclear Tests*, 1974 I.C.J. at 271 (“The Applicant has repeatedly sought from the Respondent an assurance that the tests would cease, and the Respondent has, on its own initiative, made a series of statements to the effect that they will cease. Thus the Court concludes that, the dispute having disappeared, the claim advanced by Australia no longer has any object. It follows that any further finding would have no *raison d'être*.”).

promulgated by politically responsible actors, the decision to grant a passport to a particular individual is generally taken at a much lower level of government. Moreover, if the individual in question has fulfilled a certain set of requirements, the decision often involves little or no discretion on the part of the responsible official.

Nonetheless, I argue that passport issuance is a suitable triggering event for the law of binding state action. The common core of these doctrines is that certain representations made by a state can in the future have a binding effect on that state. It is clear that, at a minimum, representations made by heads of state¹¹⁵ and senior government officials with a responsibility for foreign affairs¹¹⁶ can have this effect. It is also clear, however, that representations made by lower level government officials operating outside their sphere of competence will not have this effect.¹¹⁷ Thus, the operative question becomes whether issuance of a passport is more like a representation by a senior government officer operating in his or her area of competence or more like a representation by a lower level official acting outside of his or her authority.

Although it may initially appear to be a routine administrative action, passport issuance should in fact be considered a binding representation by the issuing state. First, a fundamental purpose of passport issuance is to represent to foreign governments that the passport holder is a national of the issuing state.¹¹⁸ Second, lower-level officials making decisions on passport issuance are generally operating within their specialized sphere of competence and under the direction of senior, politically responsible authorities.¹¹⁹ Third, the statement of nationality contained in a typical passport is far more clear and

¹¹⁵ See *id.* at 267, 272 (Dec. 20) (finding that statements by the French president were sufficient to bind France).

¹¹⁶ See Case Concerning the Legal Status of Eastern Greenland, [1933] P.C.I.J. (ser. A/B) No. 53. (finding that a statement by the Norwegian Minister for Foreign Affairs to the Danish Minister that "the Norwegian Government would not make any difficulties in the settlement of this question" was sufficient to bind the Norwegian government).

¹¹⁷ See Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.), 1984 I.C.J. 246, 307-08 (Oct. 12) (letter from Assistant Director for Lands and Minerals in the U.S. Bureau of Land Management (part of the U.S. Department of the Interior) not sufficient to bind the U.S. government in regard to its international maritime boundary).

¹¹⁸ Of course, this does not apply in the special case of passports issued to non-nationals. See *supra* Part IV.A.2.a. A passport issued to a non-national would not implicate many of the argument's presented here, since the issuing state would not necessarily have any special knowledge as to the passport holder's nationality (or lack thereof, in the case of a stateless individual).

¹¹⁹ Even if this is not true in a particular case, strong policy arguments exist for establishing a presumption that passports are issued under the careful direction of responsible authorities. See *infra* Part V.B.

unequivocal¹²⁰ than the type of representation that has been found to be sufficient in the contexts of both unilateral action¹²¹ and estoppel.¹²² Fourth, many passports are phrased in the language of diplomatic communication,¹²³ or considered to be government property.¹²⁴ Fifth, the

¹²⁰ Such a statement is more clear and formal, in fact, than an assertion by a head of state in a press conference that his country would not conduct atmospheric tests in the future, where the meaning of the message turned in part on the failure to qualify the assertion with the word *normalement*, as had been done in the past. See *Nuclear Tests*, 1974 I.C.J. at 266.

¹²¹ See *id.* at 267-72.

¹²² See Case Concerning the Temple of Preah Vihear (Cambodia v. Thailand), 1962 I.C.J. 6, 32-33 (June 15) (Merits).

¹²³ See, e.g., Canadian Passport issued January 8, 2003 ("The Secretary of State for External Affairs of Canada requests in the name of Her Majesty the Queen, all those whom it may concern to allow the bearer to pass freely without let or hindrance and to afford the bearer such assistance and protection as may be necessary."); Mexican Passport issued December 24, 2003 ("The Ministry for Foreign Affairs of the United Mexican States requests the competent authorities to grant the bearer of this passport, a Mexican citizen, free transit without any delay or hindrance, and to offer him all possible assistance and protection."); Nicaraguan Passport issued July 12, 1993 ("The bearer of the present passport is a Nicaraguan citizen. Therefore, the Government of the Republic of Nicaragua applies to the National and Foreign Authorities to give the bearer of the present document all the facilities available for his normal movement and to give him, if necessary, any help and cooperation that may be useful to him."); Nigerian Passport issued February 22, 1990 ("These are to request and require in the name of the President and Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria all those whom it may concern to allow the bearer to pass freely without let or hindrance and to afford him or her every assistance and protection of which he or she may stand in need."); United Kingdom Passport issued November 15, 1995 ("Her Britannic Majesty's Secretary of State Requests and requires in the Name of Her Majesty all those whom it may concern to allow the bearer to pass freely without let or hindrance and to afford the bearer such assistance and protection as may be necessary"); United States Passport issued May 11, 1998 ("The Secretary of State of the United States of America hereby requests all whom it may concern to permit the citizen/national of the United States named herein to pass without delay or hindrance and in case of need to give all lawful aid and protection."); *But see* German passport issued April 28, 2000 (making no specific request on the part of German authorities).

¹²⁴ See, e.g., Canadian Passport issued January 8, 2003 ("This passport is the property of the government of Canada."); German Passport issued April 28, 2000 ("This passport is the property of the Federal Republic of Germany."); Nigerian Passport issued February 22, 1990 ("This passport remains the property of the Government of the Federal Republic of Nigeria and may be withdrawn at any time."); United Kingdom Passport issued November 15, 1995 ("This passport remains the property of Her Majesty's Government in the United Kingdom and may be withdrawn at any time."); United States Passport issued May 11, 1998 ("This passport is the property of the United States government. It must be surrendered upon demand if made by an authorized representative of the United States government."). Some states explicitly warn of criminal penalties associated with unauthorized passport alteration. See United States Passport issued May 11, 1998 ("This passport must not be altered or mutilated in any way. Alteration may make it invalid, and, if

consequences of holding a state bound in regard to a particular individual's nationality are much less severe than those at issue in the classic cases of unilateral action¹²⁵ and estoppel.¹²⁶ Sixth, absent

willful, may subject you to prosecution. Only authorized officials of the United States or of foreign countries, in connection with official matters, may place stamps or make statements, notations, or additions in this passport."). Others make no specific mention of criminal penalties, but strongly suggest that passport alteration is prohibited. See Canadian Passport issued January 8, 2003 ("This passport . . . must not be altered. You must take every precaution to safeguard it."); United Kingdom Passport issued November 15, 1995 ("This passport . . . should not be tampered with or passed to an unauthorized person. Any case of loss or destruction should be immediately reported to the local police and to the nearest British passport issuing authority (eg Passport Office, London; British Consulate; British High Commission or Colonial authority); only after exhaustive enquiries can a replacement be issued in such circumstances. The passport of a deceased person should be submitted for cancellation to the nearest such passport authority, it will be returned on request."). The close association of passports and citizenship is further marked by the inclusion in some passports of information of loss of citizenship, military obligations, and dual nationality. See, e.g., Canadian Passport issued January 8, 2003 ("Canadians may have dual nationality through birth, descent, marriage or naturalization. They are advised that while in the country of their other nationality they may be subject to all its laws and obligations, including military service."); United Kingdom Passport issued November 15, 1995 ("British citizens have the right of abode in the United Kingdom. No right of abode in the United Kingdom derives from the status, as British nationals, of British Dependent Territories citizens, British Nationals (Overseas), British Overseas citizens, British protected persons and British subjects."); *id.* ("British nationals who are also nationals of another country cannot be protected by Her Majesty's Representatives against the authorities of that country. If, under the law of that country, they are liable for any obligation (such as military service), the fact that they are British nationals does not exempt them from it. A person having some connection with a Commonwealth or foreign country (eg by birth, by descent through either parent, by marriage or by residence) may be a national of the country, in addition to being a British national. Acquisition of British nationality or citizenship by a foreigner does not necessarily cause the loss of nationality of origin."); United States Passport issued May 11, 1998 ("Under certain circumstances, you may lose your U.S. citizenship by performing any of the following acts: (1) being naturalized in a foreign state; (2) taking an oath or making a declaration to a foreign state; (3) serving in the armed forces of a foreign state; (4) accepting employment with a foreign government; (5) formally renouncing U.S. citizenship before a U.S. consular office overseas."); *id.* ("A person who has the citizenship of more than one country at the same time is considered a dual citizen. Citizenship may be based on facts of birth, marriage, parentage, or naturalization. A dual citizen may be subject to all of the laws of the other country that considers that person its citizen while in its jurisdiction. This includes conscription for military service."). See also *id.* ("Your passport is a valuable citizenship and identity document, so it should be carefully safeguarded.") (emphasis added).

¹²⁵ See, e.g., *Nuclear Tests*, 1974 I.C.J. at 269-70 (enforceable obligation to halt atmospheric testing).

¹²⁶ See, e.g., *Preah Vihear*, 1962 I.C.J. at 32-33, 36-37 (international boundary); Case Concerning the Legal Status of Eastern Greenland, [1933] P.C.I.J. (ser. A/B) No. 53. (obligation not to contest Danish sovereignty over Eastern Greenland).

application of these principles in the passport context, a state would be able to attribute its nationality to anyone it wished, perhaps in exchange for an agreement to pay a certain amount of taxes, without fear of ever being required to admit the individual back within its borders later on.

C. Policies Underlying the International Law of Nationality

Strong policy arguments also exist for imposing liability on the issuing state for errant statements of nationality in its passports.¹²⁷ First, the issuing state can determine nationality under its domestic law more easily than any other state. Second, imposition of liability on the issuing state creates incentives conducive to orderly administration of the international movement of persons.

The passport-issuing state is by definition the only state having full access to records relating to whether the individual to whom the passport is issued is a national of that state under its domestic law. Suppose that State *A* issues a passport to a particular individual. Although a court of State *B* might examine the nationality laws of State *A* to determine whether that individual is a State *A* national, absent the cooperation of State *A* it would not even have access to a full factual record. Even if State *A* were to cooperate, the process would be long and difficult, and the State *B* court—having no coercive authority over State *A* agencies—would have no way of knowing whether State *A* was providing all relevant information.

Moreover, even if the State *B* court were to gather an adequate factual record, it would not be competent to make a final determination as to whether the individual was a State *A* national under State *A* law. In the case that the judge were sufficiently familiar with State *A* law to apply it in a technically proper manner, this would still not overcome the problem of its lack of competence to exercise any element of discretion allowed under the law. Thus, determination of foreign nationality is difficult even in the forum most suited to such a determination—an administrative or judicial court.

Yet the venue in which states are most often forced to make determinations of foreign nationality is not the court but the border crossing. In this situation, State *B* is simply not able to examine in detail the elements that may or may not qualify an individual as a national of State *A*. Instead, State *B* is forced to rely on State *A*'s passport—its decision whether to count the individual as a State *A* national must rest

¹²⁷ It is worth noting that the policy analysis developed here, while not based formally on economic theory, is similar to the type of analysis that might be developed through formal economic analysis of the law.

solely on a determination of whether the passport is genuine.¹²⁸ Given the nature of modern international travel, it is hard to imagine a functional system that does not assume that states are entitled to rely on passports issued by other states in making routine decisions to admit or exclude.

A decision to make states responsible for assertions of nationality in their passports creates incentives conducive to the establishment of basic order in the world system. Excessive difficulties associated with investigations of nationality at the border militate in favor of the establishment of a system holding the passport-issuing state responsible for statements of nationality in its passports, even if made by erroneous application of the issuing state's law.¹²⁹

VI. EXCEPTIONS

There are three major exceptions to the applicability of the law of binding state action to passport-issuing states: loss of nationality, fraud, and certain instances of dual nationality.¹³⁰ These exceptions are not part of this body of law, but situations in which an essential precondition for its applicability is not present.

A. *Fraud*

The first situation in which this body of law should not apply occurs when the state can demonstrate that the passport was acquired by fraudulent means. A state could make this showing in two ways. The first possibility is for the state to show that the passport holder knowingly made a false representation as to a fact material to the determination of her nationality, either in the application for the passport itself or during an earlier naturalization proceeding. The second possibility is for the state to show that the passport would not have been issued but for bribery or some other illegal procedure.¹³¹

¹²⁸ This of course excludes the situation where State *B* asserts that the individual is in fact (or also) a national of State *B*—in this case State *B* should have some independent basis on which to make the determination.

¹²⁹ One well-known British case has held that an individual owes allegiance to Britain as long as he holds an unexpired British passport, even if the passport's statement that the bearer is a British subject is later shown to be erroneous. See *Joyce v. Director of Public Prosecutions*, [1946] A.C. 347 (holding that, so long as he held a British passport, an individual who was in fact an American citizen at the time he was issued the British passport could nonetheless be found guilty of treason for actions taken while abroad).

¹³⁰ Similarly, in the proof of nationality context, the circumstances described in these exceptions would serve to rebut the presumption of nationality established by a valid passport. See *supra* Part IV.

¹³¹ Importantly, this exception should not allow a state to deny the nationality of a passport holder who had merely paid an "expected bribe" connected in many states

B. *Loss of Nationality*

The second situation where the law of binding state action should not apply occurs when the passport holder has, since the date the passport was issued, lost the nationality of the issuing state through some means not in violation of international law. The reasoning behind this exception is simple. A passport¹³² is an assertion that, as of the date on which the passport is issued, the passport holder has the nationality of the issuing state. If the passport holder voluntarily gives up that nationality, that individual should not be able to hold the issuing state responsible for a prior assertion of nationality. If the passport holder is deprived of nationality, the state can avoid responsibility by (1) attempting to recall the passport *and* (2) notifying all countries with which it has diplomatic relations that the passport in question is no longer valid. Until it has completed both of these actions, the law of binding state action will hold it responsible for the issuance of the passport, even if the passport holder is no longer a national of the country under its own domestic law.

C. *Dual Nationality*

The third exception applies in cases of dual nationality. A person may be a national of two or more states under each state's domestic law, even though the law of one state prohibits dual nationality. A related problem can arise when a state limits voluntary renunciation of nationality.

1. The Dominant and Effective Nationality Test

In the period before World War II, the general rule was that nationality laws were governed entirely by each state's domestic law.¹³³ Situations often arose, however, where this rule did not seem appropriate: sometimes the operation of domestic laws led to an individual having more than one nationality, and sometimes to an individual having no nationality at all.¹³⁴

The most notable effort to address these problems was the 1930 Hague Convention on Certain Questions Relating to the Conflict of

with the processing of normal administrative actions. A finding of bribery should require that the state show not only that the passport would not have been issued but for the bribe, but that for some relevant factual or legal reason the passport should not have been issued to the individual in question.

¹³² This assumes, of course, that the passport does make an assertion as to nationality. See *supra* Part IV.A.2.a.

¹³³ See, e.g., 1930 Hague Convention, *supra* note 19; DONNER, *supra* note 26, at 29.

¹³⁴ DONNER, *supra* note 26, at 29.

Nationality Laws.¹³⁵ The basic approach of the convention was to prohibit states from asserting protection over a dual national against a state whose nationality that person also possessed.¹³⁶ State-parties to the convention would recognize only one nationality of a dual national, and would apparently specify in advance whether this would be the nationality of the place where he was “habitually and principally resident” or the nationality of the place to which “in the circumstances he appears to be in fact most closely connected.”¹³⁷

During this time, however, a practice also began to develop in international arbitral tribunals to look, when faced with an actual conflict of nationality laws, for the nationality which was more “real and effective.”¹³⁸ Faced with a situation not of dual nationality but diplomatic protection, the International Court of Justice adopted this test in the *Nottebohm* case.¹³⁹ Months afterward, the Italian-U.S. Conciliation

¹³⁵ Cf. Harvard Draft Code on Nationality. The code is discussed in DONNER, *supra* note 26, at 50-53 (“The Harvard Draft Code on Nationality, prepared in anticipation of the first conference on the codification of international law at the Hague in 1930, is considerably more innovative than the Hague Convention itself.”).

¹³⁶ 1930 Hague Convention, *supra* note 19, art. 4 (“A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.”).

¹³⁷ *Id.* art. 5.

¹³⁸ DONNER, *supra* note 26, at 61.

¹³⁹ *Nottebohm Case* (Liech. v. Guat.), 1955 I.C.J. 4 (Apr. 6) (Second Phase). In this case, Liechtenstein claimed the right to exercise diplomatic protection over Freidrich Nottebohm. Mr. Nottebohm was born in Germany, lived most of his adult life in Guatemala (where he owned substantial assets), and was naturalized as a Liechtenstein citizen shortly after the outbreak of World War II. He then returned to Guatemala on a Liechtenstein passport in early 1940, but was arrested as a German national and deported to the United States in 1943. He was interned there in until 1946, and upon his release returned to Liechtenstein and established himself there. Guatemala began expropriating Nottebohm’s property in 1949.

Although several aspects of Nottebohm’s Liechtenstein naturalization were questionable (including what appeared to be a waiver of the normal pre-naturalization residency in return for an agreement to pay substantial taxes), the court refused to examine the validity of the Nottebohm’s nationality under the law of Liechtenstein. It instead framed the case as presenting the question of whether Guatemala was required to recognize Liechtenstein’s action granting Nottebohm Liechtenstein nationality, so as to be required to allow Liechtenstein to exercise diplomatic protection on Nottebohm’s behalf. In effect, the court recognized as valid Liechtenstein’s claim that, under its own law, Nottebohm was a Liechtenstein national, and moved to examine whether the grant of nationality was sufficiently proper under international law to require Guatemala to recognize Liechtenstein’s claim.

In order to do this, the court followed what it explained to be the established practice of international arbitrators and national courts to look for the “real and effective nationality” in any case where a person might be a national of more than one state. It noted that Nottebohm would qualify as a national of Liechtenstein under international law if his connections with Liechtenstein during the period of time

Commission followed the same approach in a situation of dual nationality in the *Mergé* case.¹⁴⁰ Since this time—with only minor exceptions¹⁴¹—the *Nottebohm/Mergé* “dominant and effective nationality test” has become the settled law for dealing with dual nationality problems.

Most notably, the Iran-U.S. Claims Tribunal applied the dominant and effective nationality test to its dual nationality claims. As discussed above,¹⁴² the admissibility of claims of “dual” Iran-U.S. nationals was

immediately before, during, and after his naturalization were stronger than his connection with any other state during that period. The court also emphasized the serious character of an act of naturalization, and cautioned against considering it only in relation to its effect on Nottebohm's property.

Applying this test, the court found that Nottebohm had strong factual connections to both Germany and Guatemala during the relevant time period, but very little connection to Liechtenstein. It held that his naturalization, not being based on any real connection to Liechtenstein, did not require Guatemala to allow Liechtenstein to exercise diplomatic protection on his behalf.

For an in depth discussion of *Nottebohm* and its relation to the international law of nationality more generally, see Ian Brownlie, *Relations of Nationality in Public International Law*, 39 BRIT. Y.B. INT'L L. 284 (1963).

¹⁴⁰ *Mergé Case*, 14 R.I.A.A. 236 (June 10, 1955) (Italian-U.S. Conciliation Commission). This was a claim under Article 78 of the Treaty of Peace with Italy, seeking compensation for the loss of personal property located in Italy and lost during the war. The claimant was born in the United States in 1909, and thus acquired American nationality by birth. She was issued a U.S. passport in 1931, and it was renewed in 1933, for validity until March 16, 1935. In 1933, she married Savatore Mergé, an Italian national, and thus acquired Italian nationality by operation of law. Her husband, an Italian government employee, was sent to the Italian Embassy in Tokyo to work as a translator and interpreter in 1937. Mrs. Mergé traveled with her husband to Tokyo on what was apparently an Italian diplomatic passport, issued in 1937. On February 21, 1940, Ms. Mergé registered herself as a U.S. national at the American consulate in Tokyo.

After the end of World War II in Japan, Ms. Mergé apparently refused to allow American military authorities to return her to the United States and insisted on remaining with her husband instead. She later returned to the United States on a one-way passport in 1946, and remained there for nine months. She then had her passport validated for travel to Italy and was admitted to Italy on a three-month visitors visa in 1947. Soon after arriving in Italy, she executed an affidavit with the American consulate in Rome in order to explain her long absence from the United States. In 1950, she applied for and received a new U.S. passport, claiming a legal residence in New York City and an intention to return to the United States at some time in the future. She remained in Italy at least until the time the case was decided in 1955. After canvassing a large body of potentially applicable law, the commission applied the *Nottebohm* test and concluded that Ms. Mergé's dominant and effective nationality was that of Italy.

¹⁴¹ See BROWNLIE 1990, *supra* note 19, at 411 (“There was very little on the international plane which expressly *denied* the effective link doctrine, and the incidental rejection of it in the *Salem* case was regarded by contemporaries as a novelty.”) (footnotes omitted).

¹⁴² See *supra* Part IV.B.1

perhaps the most politically sensitive issue before the tribunal. Over a vehement dissent by the Iranian arbitrator, Chamber Two of the Tribunal followed the *Nottebohm/Mergé* line of cases in *Esfahanian v. Bank Tejarat*¹⁴³ and *Golpira v. Iran*.¹⁴⁴ After Chamber Two issued its decisions,

¹⁴³ Award No. 31-157-2 (29 March 1983), 2 Iran-U.S. Cl. Trib. Rep. 157. In *Esfahanian v. Bank Tejarat*, the claimant was a national of Iran under Iranian law and of the United States under U.S. law. He held both an Iranian identity card and a U.S. Naturalization Certificate (reading in part “former nationality—Iran”). His naturalization date was August 1, 1958. He worked in Iran for a U.S. company 9 out of 12 months each year between 1970 and 1978, and in 1972 used his Iranian identity card number to open a Rial-denominated checking account at Iranians’ Bank. He left Iran for the United States in 1978.

The claimant asserted that he should be able to qualify as either a U.S. national or an Iranian national under the agreement. The bank, by contrast, asserted that because Iranian law did not recognize dual nationality, Iran should not be presumed to have accepted the possibility of claims by dual nationals when it signed the Claims Settlement Declaration.

Chamber Two of the Tribunal rejected both of these arguments, holding instead that it must rely on the principle of dominant and effective nationality. It reached this conclusion—after examining other possible rules of international law—by relying heavily on the reasoning of the *Nottebohm* and *Mergé* cases. Applying the principle, Chamber Two found the claimant to have the dominant and effective nationality of the United States. In doing this, the chamber took special care to explain why the claimant’s regular use of an Iranian passport was not dispositive:

It should be noted that Iranian law permits renunciation of Iranian nationality only with the approval of the Council of Ministers. Any person who receives such approval is thereafter allowed to travel to Iran only once, in order to sell or transfer his properties. With respect to Esfahanian’s use of an Iranian passport to enter and leave Iran, the Tribunal notes that the laws of Iran in effect forced such use. Once Esfahanian had emigrated to the United States and had become an American citizen, the only way he could return lawfully to Iran was as an Iranian national, using an Iranian passport. If he insisted on using his U.S. passport to enter Iran, he would be turned away or, at least, his U.S. passport would be confiscated and he would be admitted only as an Iranian. In effect, Iran told its citizens that, if they took foreign nationality, they must also retain their Iranian nationality—which in Iran would be considered their sole nationality—or they would be forever barred from returning to Iran. Esfahanian asserts that he used his Iranian passport solely to enter and leave Iran, and a review of copies of his various passports largely supports those assertions. With the exception of one Lebanese and one Saudi Arabian visa, the visas and immigration stamps of countries other than Iran are all in his American passports.

On the basis of these facts, the Tribunal concludes that Esfahanian’s dominant and effective nationality at all relevant times has been that of the United States, and the funds at issue in the present claim are related primarily to his American nationality, not his Iranian nationality. With the exceptions of his use of an Iranian passport to enter and leave Iran and his nominal ownership of stock on behalf of his employer, all of his

the Iranian government asked the Full Tribunal to consider whether the claims of individuals who were nationals of Iran under Iranian law should be ever admissible against Iran.¹⁴⁵ In *Case No. A/18*,¹⁴⁶ the Full

actions relevant to this claim could have been done by a non-Iranian. The Tribunal holds that the Claimant, Nasser Esphahanian, is a national of the United States within the meaning of the Claims Settlement Declaration and that the Tribunal has jurisdiction to decide his claim against Bank Tejarat.

Id. at 167-68.

¹⁴⁴ Award No. 32-211-2 (29 Mar. 1983), 2 Iran-U.S. Cl. Trib. Rep. 171. *Golpira v. Iran* was essentially a companion case to *Esphahanian*. The claimant was born in Iran to an Iranian father, and was thus a national of Iran under Iranian law. He was issued a numbered Iranian identity card. He received his primary, secondary, and college education in Iran, and earned his medical degree there. At age 26, he left Iran for the United States, where he completed his medical training. He began practicing medicine in Baltimore, Maryland in 1958, and was still practicing in Baltimore at the time the claim was filed. He became a permanent resident of the United States in 1957, and was naturalized as a U.S. citizen in 1964. He received naturalization certificate No. 8527559. Although it is not completely clear, the Tribunal seems to have accepted this naturalization certificate—or evidence of its existence—as proof that the claimant possessed U.S. nationality under U.S. law.

The claimant returned to Iran three times after 1964, each time for approximately two weeks. In 1970, with the help of his father, the claimant purchased a number of shares in an Iranian medical group. The stock certificates listed the claimant's Iranian identity card number, but Iran admitted at the hearing that this stock could be owned by foreign nationals.

Relying on the *Nottebohm* Case, the chamber looked for the claimant's dominant and effective nationality. The chamber relied on the claimant's long residence in the United States and the concentration of his professional life there to hold that he was a dominant and effective national of the United States.

¹⁴⁵ The actual awards in *Esphahanian* and *Golpira* could not be affected by the outcome of this decision, even if the Full Tribunal held that their reasoning was incorrect. See Claims Settlement Declaration, *supra* note 78, art. IV, para. 1; Iran-U.S. Claims Tribunal Rules, art. 32, para. 2.

¹⁴⁶ Decision No. 32-A18-FT (6 Apr. 1984), 5 Iran-U.S. Cl. Trib. Rep. 251. *Case No. A/18* is the most important case in the Tribunal's dual nationality jurisprudence. After Chamber Two issued awards finding jurisdiction over dual nationals in the *Esphahanian* and *Golpira* cases, the Iranian government asked the Full Tribunal to consider whether the claims of individuals who were nationals of Iran under Iranian law should ever be admissible against Iran. Iran argued that the Tribunal did not have jurisdiction over claims against Iran by those who were Iranian nationals under Iranian law, and that the fact that an individual was a U.S. national under U.S. law should not create an exception to this rule. The United States, in contrast, argued that the Tribunal had jurisdiction over claims against Iran by anyone who was a U.S. citizen under U.S. law, irrespective of whether that person was also an Iranian citizen under Iranian law.

The Full Tribunal rejected both of these contentions. It then examined the 1930 Hague Convention, *see supra* note 19, a number of arbitral and judicial decisions dealing with the conflict of nationality laws, and legal literature relating to conflict of nationality laws. The Tribunal came to the conclusion that Article 4 of the Hague Convention, which asserts that "A state may not afford diplomatic protection to one

Tribunal held that they were, explaining that “the relevant rule of international law . . . is the rule that flows from the *dictum* of *Nottebohm*, the rule of real and effective nationality, and the search for ‘stronger factual ties between the person concerned and one of the States whose nationality is involved.’”¹⁴⁷

2. Passports and Dual Nationality

Because current international law applies the dominant and effective nationality test in situations of dual nationality, it is necessary to take account of the test in applying the law of binding state action to the nationality of passport holders. Under this test, an individual who is a national of State *A* under State *A* domestic law and also a national of State *B* under State *B* domestic law will be a national of one state but not the other for purposes of international law. In this case, it would be inconsistent with international nationality law to apply the law of binding state action to the country of non-dominant nationality, if the internal laws of that country do not recognize dual nationality.

of its nationals against a State whose nationality such person also possesses.” had been supplanted by the rule of dominant and effective nationality. It noted:

Thus, the relevant rule of international law which the Tribunal may take into account for purposes of interpretation, as directed by Article 31, paragraph 3(c), of the Vienna Convention, is the rule that flows from the *dictum* of *Nottebohm*, the rule of real and effective nationality, and the search for “stronger factual ties between the person concerned and one of the States whose nationality is involved.” In view of the pervasive effect of this rule since the *Nottebohm* decision, the Tribunal concludes that the references to “national” and “nationals” in the Algiers Declarations must be understood as consistent with that rule unless an exception is clearly stated. As stated above, the Tribunal does not find that the text of the Algiers Declarations provides such a clear exception.

For the reasons stated above, the Tribunal holds that it has jurisdiction over claims against Iran by dual Iran-United States nationals when the dominant and effective nationality of the claimant during the relevant period from the date the claim arose until 19 January 1981 was that of the United States. In determining the dominant and effective nationality, the Tribunal will consider all relevant factors, including habitual residence, center of interests, family ties, participation in public life and other evidence of attachment.

To this conclusion the Tribunal adds an important caveat. In cases where the Tribunal finds jurisdiction based upon a dominant and effective nationality of the claimant, the other nationality may remain relevant to the merits of the claim.

Id. at 265.

¹⁴⁷ 5 Iran-U.S. Cl. Trib. Rep. 251, 265 (internal citations omitted).

For instance, assume an individual holds passports of both States *A* and *B*, but is a dominant and effective national of State *B*. If the individual were traveling in a third state, State *C*, State *A* would not be able to assert diplomatic protection over State *C*'s objection.¹⁴⁸

- *If State A recognizes dual nationality*, it is appropriate to apply the law of binding state action. The passport holder's possession of an additional nationality does not have any effect on his or her continued possession of the nationality of State *A*.
- *If State A does not recognize dual nationality*, its issuance of a passport to the individual is an assertion not only that it believes the individual to be a State *A* national, but that it does not believe the individual to be a State *B* national (or a national of any other state). In this case, an individual holding a passport from another state no longer fulfils one of the basic conditions of State *A* nationality—that he not possess the nationality of any other state. Therefore, if State *A* does not recognize dual or multiple nationality, the law of binding state action should not be applied to hold State *A* responsible for a person who is a dominant and effective national of State *B*.
- *It does not matter whether State B recognizes dual nationality*, because State *B* is the state of dominant and effective nationality. It will always be prevented by the law of binding state action from denying the nationality of one of its dominant and effective nationals.

VII. INTERNATIONAL PROCEDURE

The substantive-law focus of the preceding sections would not be complete without an examination of international procedure. In this Part, I elaborate on three important procedural issues: standing, burden of proof, and remedies.

A. *Standing*

Standing to bring a claim is perhaps the greatest obstacle to denationalized individuals seeking redress. As discussed in Part II, international tribunals have traditionally been open only to claims brought by sovereign states. An individual wishing to recover for a wrong committed by a state would need to arrange for the state of his or her nationality to exercise diplomatic protection and present the claim on the individual's behalf. Although this worked relatively well in claims against foreign states, it presents obvious problems for the individual

¹⁴⁸ See *Nottebohm Case*, 1955 I.C.J. 4.

wishing to recover against the state of his or her own nationality. The logical solution would be for the individual to find another state to bring the claim. Unfortunately, this is generally not possible, as most tribunals permit states to exercise diplomatic protection only on behalf of their nationals.¹⁴⁹ However, there are important exceptions to this principle.¹⁵⁰

Of course, states may contract around the default requirement of nationality when establishing an international tribunal.¹⁵¹ To date, two examples of contracting around this requirement are particularly important. The first is the Eritrea-Ethiopia Claims Commission, which permits parties to bring claims on the basis of ethnicity, in addition to nationality.¹⁵² The second is the United Nations Compensation Commission, which has allowed certain international organizations to file claims on behalf of "individuals who were not in a position to have their claims filed by a Government."¹⁵³

Moreover, in the past half-century, opportunities for individuals to assert international claims without the sponsorship of a protecting state have become increasingly frequent. The European Court of Human Rights,¹⁵⁴ the Inter-American Commission on Human Rights,¹⁵⁵ and the

¹⁴⁹ See BROWNIE 1990, *supra* note 19, at 480 ("The other generally accepted exceptions [to the principle that states may only exercise diplomatic protection on behalf of their nationals] are alien seamen on ships flying the flag of the protecting state and members of the armed forces of a state.").

¹⁵⁰ *Id.*

¹⁵¹ *Id.* ("A right to protection of non-nationals may arise from treaty or *ad hoc* arrangement establishing an agency.") (footnote omitted).

¹⁵² See *supra* note 26.

¹⁵³ United Nations Compensation Commission, *The Claims*, <http://www.unog.ch/unccl/theclaims.htm> ("The Commission has accepted for filing claims of individuals, corporations and Governments, submitted by Governments, as well as those submitted by international organizations for individuals who were not in a position to have their claims filed by a Government."). See also John R. Crook, *The United Nations Compensation Commission—A New Structure to Enforce State Responsibility*, 87 AM. J. INT'L L. 144, 149-150 (1993) ("Eligibility to bring a claim before the Commission is not governed by the traditional principles of diplomatic protection and espousal. States may present the claims of residents who are not nationals; even stateless persons may have their claims brought before the Commission.").

¹⁵⁴ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 34 ("The Court may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.").

¹⁵⁵ Statute of the Inter-American Commission on Human Rights, Oct. 1979, art. 23(1) ("In accordance with the provisions of Articles 44 to 51 of the American Convention on Human Rights, the Regulations of the Commission shall determine the procedure to be followed in cases of petitions or communications alleging violation of any of the rights guaranteed by the Convention, and imputing such violation to any State Party to the Convention.").

Iran-U.S. Claims Tribunal¹⁵⁶ each have explicit provisions authorizing the receipt of individual claims in at least some circumstances.

Still, there is a relative scarcity of international tribunals with both (1) substantive jurisdiction over denationalization claims; and (2) procedural mechanisms for the receipt of a claim, by or on behalf of an individual, against the state of his or her nationality. Yet, given current trends toward recognition of individual claims, additional fora with both of these attributes may develop in the foreseeable future.

B. *Burden of Proof*

The basic principles underlying the international law of nationality thus create exceptions to the law of binding state action where fraud, loss of nationality, or the dual nationality problem occurs. For two important reasons, it is the burden of the issuing state to prove that any of these exceptions may apply. First, it is generally accepted in international law that passports constitute at least prima facie evidence of nationality.¹⁵⁷ Second, it makes sense in terms of sound international policy to place this burden on the issuing state.

In the context of the first two exceptions (fraud and loss of nationality), the issuing state has custody of all documentary evidence necessary to either prove or disprove the applicability of these exceptions.¹⁵⁸ In the context of the third exception (dual nationality), the issuing state may not have access to all documents necessary to prove that the passport holder is in fact a dominant and effective national of another state. However, it will be the only party with access to all documents necessary to prove that the passport holder is its own dominant and effective national. Thus, it would be unfair to place the burden of proof on the passport holder, when access to documents necessary to prove his or her case would depend completely on the whim of the issuing state.

Without coercive authority over the issuing state, an international tribunal is unable to force an uncooperative state to produce such

¹⁵⁶ See Claims Settlement Declaration, *supra* note 78, art. III(3) ("Claims of nationals of the United States and Iran that are within the scope of this Agreement shall be presented to the Tribunal either by claimants themselves or, in the case of claims of less than \$250,000, by the government of such national.").

¹⁵⁷ See *supra* Part IV.A.1.

¹⁵⁸ See SANDIFER, *supra* note 74 (quoting G. SCHWARZENBERGER, INTERNATIONAL LAW 47-48 (3d. ed. 1957)) ("Until evidence to the contrary is produced, nationality must be presumed to be a continuous state of affairs. Thus, it is not for the claimant to prove that, at any particular moment, the claimant has not lost its nationality. This would mean to ask it to discharge an impossible burden of proof and amount to *probatio diabolica*."); see also *Case No. A/18*, Decision No. 32-A18-FT (6 Apr. 1984), 5 Iran-U.S. Cl. Trib. Rep. 251 (dissent of Iranian arbitrators).

documents. Moreover, even if the state does choose to produce documents, the absence of coercive authority also prevents a tribunal from punishing states that fail to comply fully (i.e., states that claim to have produced necessary documents but somehow fail to include those essential to establishing the passport holder's claim). Because of this fundamental asymmetry in access to evidence, a decision to place the burden of proof on the passport holder would effectively deny most of these claims.

C. Remedy

It is true that this lack of coercive authority might make a tribunal less willing to issue an order that a state treat a particular individual as its national.¹⁵⁹ The issuance of such an order would simply give the state an opportunity to "prove" by violating the order that the tribunal had no real authority over such a "domestic" issue. Since international tribunals may remain without extensive equitable authority for the foreseeable future, a passport holder's right not to have his nationality "denied" by the issuing state should instead be protected by what Calabresi and Melamed have termed a "liability rule."¹⁶⁰ A state may of course decide that it will not treat a person as its national. However, if the state cannot demonstrate one of the exceptions discussed above, it should be held liable for compensation to that individual.¹⁶¹

¹⁵⁹ Although many international tribunals are constituted by agreement on the part of both states to obey the tribunal's orders, it does not seem unreasonable to assume that nationality is such a sensitive issue that many states would not be willing to allow an international tribunal to order it to treat someone as its national.

¹⁶⁰ Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089, 1092 (1972). Although this proposal may be jarring to those who believe that nationality fits more appropriately into the "inalienability" category, the proposal to protect nationality by a liability rule comes out of a recognition of the limited authority of international tribunals—in the case of claimants whose nationality has been "denied," it is most likely compensation or nothing. See *id.* at 1092-93. Of course, a state would always have the option to credit an international tribunal's determination of wrongful denationalization and re-admit the individual to its nationality. This would mitigate, if not eliminate, financial liability on the part of the passport-issuing state (although substantial liability could still remain for other illicit acts, such as expropriation of property while the individual was being treated as an alien).

¹⁶¹ At least one scholar has argued that monetary remedies are not appropriate for many human rights violations. See DINAH SHELTON, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* 305 (1999) ("Monetary compensation that tolerates the wrong and allows the perpetrator to buy injustice is not appropriate where inalienable rights are concerned."). However, this argument seems to overlook the likelihood that in the international context, an unrealistic insistence on equitable remedies may in fact be more likely to lead to non-enforcement of the rights in question.

As this Article focuses on the liability phase of a denationalization claim, the appropriate amount of any monetary compensation is outside the scope of this

Although some states might also refuse a tribunal's order to pay compensation to an illegally denationalized individual, there are several reasons for believing that this would not always be the case. First, in at least one circumstance, the establishment of an international tribunal has been accompanied by an agreement that a certain amount of money be set aside in escrow to pay any judgments that might later become due.¹⁶² Second, it is much easier politically for a country to obey an order to pay financial compensation than an order to re-admit an undesired individual to all of the rights and privileges of its nationality. Third, money judgments against a state can potentially be enforced against assets of that state located in other countries. Fourth, money judgments against a state can become part of its general debt, to be paid later on—after political interest in a case has subsided, or after a new administration, eager to atone for past wrongs, comes into power.

VIII. CONCLUSION

The last fifteen years have seen substantial shifts in state control over territory. Significant examples include the breakup of the Soviet Union, the independence of the countries of the former Soviet Bloc, the division of Czechoslovakia, the secession of Eritrea from Ethiopia, the disintegration of Yugoslavia, the reversion of Hong Kong to China, the secession of East Timor from Indonesia, and the U.S.-led occupation of Iraq. Unlike many aspects of world politics, however, these changes can directly affect the legal status of individuals. Although this effect is sometimes a "simple" change in nationality, at other times it leaves individuals with a choice of multiple nationalities or even with no nationality at all.

For our purposes, it is worth recognizing that changes in territorial sovereignty can lead to large-scale denationalization in two major ways. The first, denationalization by operation of law, occurs when nationality laws adopted by predecessor or successor states operate in such a way as to leave a particular group of individuals stateless, even though those very individuals were previously citizens of a predecessor state. This phenomenon is widely recognized as a problem, and was most recently

analysis. On valuation of international claims in the related area of wrongful expulsion of aliens, see *WHITEMAN*, *supra* note 15, at 419-427. It is worth emphasizing, however, that while wrongful expulsion claims might be useful precedent in determining appropriate compensation for property lost through expulsion-related aspects of a denationalization claim, they would be less relevant to determining appropriate compensation for the wrongful deprivation of the rights and privileges of nationality.

¹⁶² See Claims Settlement Declaration, *supra* note 78.

addressed in the International Law Commission's Draft Articles on Nationality in Relation to the Succession of States.¹⁶³

The second, discriminatory denationalization, can occur when changes in territorial sovereignty result in groups of individuals finding that they have suddenly become part of a politically unpopular minority. Political and economic pressure or military conflict can then lead the government in power to denationalize that minority, justifying this action on the idea that those individuals should never have been made nationals in the first place.¹⁶⁴ The risk of discriminatory denationalization may be particularly high when persons from a former colonial power become a minority in a newly-independent successor state,¹⁶⁵ or when the new minority group is overrepresented in government or important sectors of the economy.¹⁶⁶

¹⁶³ See Chapter IV: Nationality in Relation to the Succession of States, in Report of the International Law Commission on the Work of its Fifty-first Session, U.N. Doc. A/54/10 (1999).

¹⁶⁴ Such denationalizations can occur in either a predecessor or a successor state.

¹⁶⁵ For example, many ethnic Russians chose to remain in the Baltic states after the collapse of the Soviet Union. Although Lithuania granted citizenship to all who had been living within its borders in 1989, Estonia and Latvia instituted strict citizenship requirements for those who could not trace their heritage back to someone living in the country prior to 1940 (the time of the Soviet occupation). *Baltics: Them and us*, ECONOMIST, Aug. 17, 1993, at 67. One paper published by the Estonian government in 1993 is particularly revealing. It noted:

Some non-citizens, especially Russians, may find it difficult to get used to the fact that their role has changed from that of representatives of the majority population of a colonial empire to that of a minority in a foreign country. It is understandable that complicated citizenship or human rights problems may develop from this.

Id. (quoting Estonian government paper). Given that, in 1991, ethnic Russians made up nearly a third of the Estonian population and a third of the Latvian population, it is not difficult to imagine either of these governments facing political pressure to expel ethnic Russians. In a worst-case scenario, this could conceivably include denationalization of even those ethnic Russians who had satisfied the strict citizenship requirements (and thus held passports). See also *Unique Culture of the city of Narva, Estonia* (National Public Radio broadcast, Aug. 6, 2003) (noting that many ethnic Russians in Estonia are still officially stateless); Andy Bowers & Linda Wertheimer, *Latvia's Russian Population* (National Public Radio broadcast, Apr. 20, 1998) (noting tensions between Latvians and ethnic Russians); *Estonia. Honored enemy*, ECONOMIST, May 4, 1996, at 46 (suggesting a danger of secession by ethnic Russians in parts of Estonia where they constitute a majority).

¹⁶⁶ See, e.g., THE HORN OF AFRICA WAR, *supra* note 3, at 14 (identifying "[p]ublic resentment over the role of people of Eritrean origin in business and government" as one possible cause of Ethiopia's decision to begin expelling ethnic Eritreans). On market-dominant minorities more generally, see Amy L. Chua, *Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development*, 108 YALE L.J. 1 (1998).

In the case of denationalization by operation of law, I have argued that the law of binding state action provides certain guarantees to passport holders and other states. Specifically, any individual who holds a passport from a predecessor state should have a right to retain the nationality of that state if the state in question continues to exist. If the passport-issuing state ceases to exist, the state that succeeds to its rights and obligations should be bound to accept the passport holder as its national.¹⁶⁷

In the case of discriminatory denationalization, the law of binding state action may help to prevent its occurrence. By holding a state responsible for assertions of nationality in its passports, this body of law makes it much more difficult for a passport-issuing state to expel passport holders on the pretext that they are not citizens. At the very least, this body of law requires a state to take formal action (1) to attempt to recall the individual passports in question; and (2) to formally notify other states that those particular passports are no longer valid.¹⁶⁸ The tendency of some states to conduct ethnically-based expulsions informally, with little process or procedural protection,¹⁶⁹ suggests that a requirement of formal notice to other states might serve as a disincentive to such denationalization.¹⁷⁰

Of course, the law of binding state action can eliminate neither statelessness nor discriminatory denationalization. However, a proper understanding of its applicability to passport holders provides a basis in "hard" public international law for what many people believe to be an important constraint on state behavior. Admittedly, passport holders are not the only individuals who need this type of protection, and an argument could be made that those wealthy enough to afford international travel (and thus possess passports) are in fact the least likely to need protection from denationalization and expulsion.

Nonetheless, up to this point human rights law has not been effective in protecting individuals from arbitrary or unfair denationalization. There is a substantial amount of soft law on point, but this soft law has not prevented states from denationalizing their citizens.

¹⁶⁷ It is worth emphasizing that this would probably not result in a requirement that the successor state grant nationality to all nationals of its predecessor, because only a portion of the state's population is likely to hold a passport.

¹⁶⁸ Because other states cannot be expected to make judgments as to ethnicity at the border, this would require that the passport-issuing state identify recalled passports by name and passport number. It would not be sufficient to send out a general notification that "all persons of ethnicity X are no longer citizens of State Y."

¹⁶⁹ See, e.g., *ILLEGAL PEOPLE*, *supra* note 3 ("Snatched off the street, dragged from their homes, or picked up from their workplaces, 'Haitian-looking' people are rarely given a reasonable opportunity to challenge their expulsion.").

¹⁷⁰ Again, it is worth noting that passport holders will likely be only a small percentage of those subjected to discriminatory denationalization measures.

With the addition of the hard law of binding state action, one small step can be made toward limiting state action in particular factual situations. Considering the general vulnerability of denationalized individuals to other abuses, even such a small step seems to be a significant movement in the right direction.

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9

PROTECTION OF NATIONALS

General

A consul's right to protect his nationals has been recognised by many publicists and affirmed by the practice of states. Commenting on consular protection functions, Pradier-Fodéré said:

It is a consul's duty to see that his nationals' rights are respected in a foreign land and to take all measures which he deems necessary and useful to accomplish this end; it is through its consuls that the state extends its protecting arm over the entire surface of the globe.¹

This right of protection, according to Commander Ribeiro dos Santos, is the most sacred and noble attribution of consuls.² Oppenheim called it "a very important task" of consuls.³

There are two schools of thought with respect to the question whether a national of the sending state may demand the necessary protection from his consul. The United States, Brazil, the Netherlands and the United Kingdom, for example, appear to belong to the school which maintains that a consul is duty-bound to accord his co-national such protection. Thus, while American consuls are instructed to refer doubtful cases to their government for decision or to afford temporary protection pending instruction, in cases where injustice and the United States citizenship are unquestionably established, their duty to protect their co-nationals exists (2 *FSM* 321.3, 322).

Brazilian laws confer upon Brazilian citizens abroad the right to claim protection from their consular authorities. The latter have both the right and duty to assist and protect Brazilians in need and to see that their rights under treaties, usage and principles of international law are not deprived of them.⁴

¹ Paul Louis Ernest Pradier-Fodéré, *Traité de Droit International Public* (8 vols., 1888), IV, p. 555; translation by Stuart, *Practice*, p. 372.

² See de Cussy, *Règlements Consulaires*, p. 20.

³ 1 Oppenheim, *International Law*, pp. 838-839.

⁴ Brazil, Consolidation of the Laws, Decrees Circulars and Decisions referring to the Exercise of the Brazilian Consular Functions (Decree No. 360, October 3, 1935), Ch. VII, § 1, Art. 479. See also Nicaragua, *Regulation*, Art. 2.

A Netherlander's right to consular protection is derived from both the Netherlands Constitution and the *Regulations for the Foreign Service*. Article 53 of the Constitution prescribes the following oath to be taken by the King or Queen: "I shall protect the general and particular liberty and the rights of all my subjects."⁵ Article 1 of the *Regulations* states that one of the tasks of the Foreign Service is "to serve and protect the interests of the Kingdom and of Netherlands subjects in other countries."⁶ Netherlands nationals may, therefore, claim consular protection against:

- (a) provisions incompatible with a treaty to which the Netherlands are a party;
- (b) treatment that is at variance with the provisions of such a treaty;
- (c) provisions incompatible with international law;
- (d) treatment that is at variance with international law;
- (e) treatment based on error;
- (f) improper administration of the law of the country in which the consul exercises his functions;
- (g) denial of justice;
- (h) discrimination intended to harm Netherlands interests.⁷

A Netherlands consul is required to ascertain that the local legal remedies have been exhausted before affording any such protection.⁸ He may then either confine himself to transmitting the reclamation or lend his official support thereto, in which event the Netherlands Government itself becomes involved.⁹

The United Kingdom *Instructions* (VIII-1) provide:

It is the duty of a Foreign Service Officer to watch over and take all proper steps to safeguard the interests of British subjects and British protected persons within his district.

The following are some of the protective functions expected of a British consul: to give advice and assistance to all British subjects and protected persons in their dealings with the local authorities (VIII-9); to keep himself informed on all legislation which may affect British subjects and protected persons or their businesses (VIII-11); to provide a list of lawyers for persons requiring legal aid (VIII-16 (iv)); to uphold the rights and interests of British subjects assured them by treaties or established international usage so that their

⁵ Netherlands, *Manual*, II, Ch. 42-a (1).

⁶ *Ibid.*

⁷ *Ibid.* (4).

⁸ *Ibid.* (7).

⁹ *Ibid.* (5).

treatment is not less favourable than that accorded to nationals of the receiving state or of the most-favoured third state (VIII-12); to refer to diplomatic representatives any failure in obtaining local redress (VIII-13); and to intervene in juridical proceedings if: (1) a prima facie miscarriage or denial of justice exists, (2) the local legal remedies have been exhausted, or (3) an appeal to higher authority would obviously be futile (VIII-16 (vi)).

The practices of France and Mexico may also be briefly mentioned. France requires its consuls to aid their co-nationals in the attainment of judicial equality and fairness¹⁰ and, in case of expulsion, an act of government not in general susceptible to any recourse, to demand explanation from the local authorities.¹¹ Mexican consuls are instructed to ascertain the Mexican nationality of persons seeking protection¹²; to acquaint Mexicans with local laws¹³; to arbitrate, mediate and offer good offices in disputes involving Mexicans¹⁴; to intercede for Mexicans for mitigation of punishment by local law¹⁵; and to communicate with the local authorities as well as the Mexican diplomatic mission whenever a Mexican suffers a denial of justice.¹⁶

Typifying the second school of thought are the Canadian *Instructions* (X-02 (a)), which state: "Consular protection cannot be demanded as a matter of right. It is a privilege which a citizen may request from the consular officer of his own country." Very few countries, however, adhere to this view.

The protective functions of consuls may be found in almost all recent consular treaties. Thus, provisions entitling consuls to protect, within their consular district, the rights and interests of the citizens and legal persons of the sending state may be found in the Soviet consular conventions with Hungary, 1957, Article 13; Roumania, 1957, Article 14; Czechoslovakia, 1957, Article 13; Bulgaria, 1957, Article 14; Austria, 1958, Article 15; the Federal Republic of Germany, 1958, Article 16; Democratic Republic of Viet-Nam, 1959, Article 14; and People's Republic of China, 1959,

¹⁰ France, *Manuel*, I, pp. 136-137.

¹¹ *Ibid.* at p. 148.

¹² *Law*, Art. 216.

¹³ *Ibid.* Art. 217.

¹⁴ *Ibid.* Arts. 213-220. See similar provisions in Honduras, Act No. 109 of March 14, 1906, Art. 29.

¹⁵ *Law*, Art. 221.

¹⁶ *Ibid.* Art. 232.

Article 14. Furthermore, consuls are authorised to approach the competent authorities for information of any description and to protest the infringement of any rights and interests of which their co-nationals may have cause to complain.

Under the Polish–German Democratic Republic Consular Convention of 1957 (Article 16), consuls may defend the privileges and interests of their co-nationals in accordance with international law and custom. For this purpose, consuls may address themselves directly to the courts and other authorities within their district.

Article 15 (1) of the United States–United Kingdom Consular Convention of 1951 reads:

A consular officer shall be entitled within his district to:

- (a) interview, communicate with and advise any national of the sending state;
- (b) inquire into any incidents which have occurred affecting the interests of any such national;
- (c) assist any such national in proceedings before or in relations with the authorities of the territory, and, where necessary, arrange for legal assistance for him.¹⁷

Where recourse to the local authorities has failed to produce results, or where a matter by its very nature concerns the central authority, the matter is usually handled by the diplomatic mission. Only in the absence of a resident diplomatic mission in the receiving state may a consul communicate directly with the central authority. This has been explicitly provided in some treaties¹⁸ and regulations.¹⁹

As to the question whether consular protection may be forced upon nationals who, for political or other reasons, refuse to have any dealings with their consuls, there is no unanimity of views. In general, such question has been settled by treaties or, in their absence, by the policies of the receiving state. Examples of treaties permitting consular exercise of protective power over recalcitrant nationals are those concerning extraterritoriality²⁰ and the return of deserting

¹⁷ See similar provisions in U.S.A.–Costa Rica, 1948, Art. 7; Philippines–Spain, 1948, Art. 10; U.S.A.–Ireland, 1950, Art. 15; U.K.–Norway, 1951, Art. 18; U.K.–France, 1951, Art. 24; U.K.–Sweden, 1952, Art. 18; U.K.–Greece, 1953, Art. 18; U.K.–Mexico, 1954, Art. 18; U.K.–Italy, 1954, Art. 18; France–Italy, 1955, Arts. 22, 23; France–Sweden, 1955, Arts. 24, 25; U.S.A.–Iran, 1955, Art. 19; U.K.–Federal Republic of Germany 1956, Art. 17 (1).

¹⁸ *Ibid.* (except the U.S.A.–Iranian Treaty of 1955).

¹⁹ See, for example, Canada, *Instructions*, X–04 (a); United Kingdom, *Instructions*, VIII–12, 13, 16 (vi); United States *Regulations*, XII–1. See also Oliver J. Lissitzyn, “The Meaning of the Term Denial of Justice in International Law,” 30 A.J.I.L. (1936), pp. 632–646; Stuart, *Practice*, p. 171.

²⁰ See p. 205 *et seq.*, *post.*

seamen.²¹ There are also treaties which may deny such consular power with respect to political refugees. The United Kingdom–Swedish Consular Convention of 1952 (Third Protocol of Signature), for example, provides:

The High Contracting Parties wish to place on record that, in their view, it is within the discretion of any state not to recognise the right of a consular officer of another state to act on behalf of, or otherwise concern himself with, any national of the latter state who has become a political refugee.²²

In the absence of treaties, however, states are generally loth to see aliens subjected to involuntary protection by consuls, for the obvious reason that such “protection” is often incompatible with the territorial principle of sovereignty. Thus, where consuls or other officials of the sending state have concerned themselves with reluctant nationals, as in the cases of Dr. Sun Yat-sen,²³ Mrs. Oksana Kasenkina²⁴ and Erich Teayn,²⁵ their assertion of jurisdiction has frequently met with rebuffs from the receiving states.

Imprisoned nationals

Essential to the fulfilment of a consul’s protective functions are his rights to learn immediately of a detention of his co-nationals, to visit them in prison, and to assist them in legal and other matters. The United Kingdom–Swedish Consular Convention of 1952 (Article 19), accordingly provides:

(1) A consular officer shall be informed immediately by the appropriate authorities of the territory when any national of the sending state is confined in prison awaiting trial or is otherwise detained in custody within his district.

²¹ See Chap. 8, notes 79, 80, 88, *supra*.

²² For treaties concerning seamen who seek political asylum, see Chap. 8, note 80, *supra*.

²³ Dr. Sun Yat-sen, a political refugee from China, was induced to enter the house of the Chinese Legation in London in 1896 and was detained to be forcibly returned to China. His release a few days afterwards was secured through the intervention of the British Government. See 1 Oppenheim, *International Law*, p. 796n.

²⁴ See p. 242, *post*.

²⁵ Erich Teayn, an Estonian crewman aboard the *Ukraina*, one of three Soviet trawlers anchored in a bay at Walls in Shetland, north-west of Scotland, escaped from his trawler in a small boat one early morning and was hotly pursued by thirty Russians in two boats. The Russians reportedly combed the moor for about two hours but failed to locate Teayn, who sought refuge in the cottage of a crofter. A party of three Russians later unsuccessfully sought access to Teayn at Lerwick police station to which he had been taken. A Soviet request for his extradition was also refused. Subsequently, Teayn was given political asylum in Great Britain.

Replying to a question before the House of Commons as to whether the pursuing Russians had obtained permission from Her Majesty’s Government to land, Mr. R. A. Butler, the Home Secretary, replied: “No. They landed illegally, and they have now gone away.” A British Note was later sent to the Soviet Government protesting this incident. See *The Times*, June 27, 1958, p. 10a; June 30, 1958, p. 10e; July 15, 1958, p. 3c; and July 18, 1958, p. 7b. See also *New York Times*, June 27, 1958, p. 1, col. 3; July 18, 1958, p. 6, col. 8.

Imprisoned Nationals

121

(2) A consular officer shall be permitted to visit without delay, to converse privately with and to arrange legal representation for, any national of the sending state who is so confined or detained for the purpose of any proceedings or interrogations or who is entitled to appeal under the ordinary rules as to the time within which an appeal may be made. Any communication from such a national to the consular officer shall be forwarded without delay by the authorities of the territory.

(3) Without prejudice to the provisions of paragraph (2) of this Article, when a national of the sending state is detained in custody in pursuance of his sentence, the consular officer within whose district he is detained shall, upon notification to the appropriate authority, have the right to visit him. Any such visit shall be conducted in accordance with the regulations in force in the institution in which he is detained, it being understood, however, that such regulations shall permit reasonable access to and opportunity of conversing with such national.²⁶

The following national consular regulations may be briefly cited:

The United Kingdom *Instructions* (VIII-16 (vii)) consider it the duty of a Foreign Service Officer to see that British subjects are given adequate legal advice and facilities as well as satisfactory conditions on detention. He is to make certain that the local authorities bring the accused to trial within a reasonable period, conduct the trial according to the generally recognised standards of justice, and permit the arrested the opportunity of communicating with the outside world. He should protest to the appropriate local authorities any failure to observe the above conditions.

Haitian consuls are instructed to seek permission from the local authorities to visit prisons, penitentiaries or houses of correction in which Haitians are detained.²⁷ Likewise, Netherlands consuls are instructed to claim the right to interview in private any Netherlands subjects being deprived of liberty.²⁸

²⁶ See also U.S.A.-Canada, Arrangements relating to visits of consular officers to citizens of their own country serving sentences in penal institutions, Exchange of Notes in Ottawa, July 29 and September 19, 1935, entered into force September 19, 1935, U.S. *For. Rel.*, 1935, II, p. 57; U.S.A.-Mexico, 1942, Art. 6 (2); U.S.A.-China, 1943, Art. 16; U.S.A.-Philippines, 1947, Art. 7; U.S.A.-Costa Rica, 1948, Art. 7; Philippines-Spain, 1948, Art. 10; U.S.A.-Ireland, 1950, Art. 16; U.K.-Norway, 1951, Art. 19; U.S.A.-U.K., 1951, Art. 16; U.K.-France, 1951, Art. 25; U.S.A.-Japan, 1953, Art. 2; U.K.-Greece, 1953, Art. 19; U.K.-Mexico, 1954, Art. 19; U.K.-Italy, 1954, Art. 19; France-Italy, 1955, Art. 24; France-Sweden, 1955, Art. 26; U.K.-Federal Republic of Germany, 1956, Art. 18. See also ILC *Draft*, Art. 6.

But the recent Soviet consular treaties contain no similar provisions; while those between Poland and Yugoslavia of 1958 (Art. 21) and Hungary of 1959 (Art. 17) stipulate merely the substance of para (1).

²⁷ Haiti, *Law*, Art. 33 (4).

²⁸ Netherlands, *Manual*, II, Ch. 42-a (8).

Even a sentence of “solitary confinement” may not stand in the way of a consul’s visit to his co-nationals in prison, according to the regulations of certain countries.²⁹

In the absence of a treaty, a consul’s right to protect his nationals may be based upon customary international law or the assurance of “most-favoured-nation” treatment contained in instruments other than treaties. Thus, in one of the most mysterious and intriguing cases in espionage history, Adolph Arnold Rubens, also called Donald Louis Robinson and not known to be an American citizen,³⁰ obtained fraudulent United States passports for himself, his wife and two deceased children, and entered Russia with valid visas by way of France. Their disappearance and subsequent imprisonment incommunicado in Moscow pending trial on espionage charges³¹ prompted Secretary of State Hull to instruct Loy Henderson, the United States Chargé d’Affaires in Moscow, to call the Soviet attention to Maxim Litvinov’s letter of November 16, 1933, to the President of the United States.³² In this letter, the Soviet Union assured President Roosevelt that American nationals “would be granted rights with reference to legal protection which would not be less favourable than those enjoyed in the Soviet Union by nationals of the nation the most favoured in this respect.” Paragraph 2 of the final protocol to Article 11 of the Agreement between the Soviet Union and Germany concluded on October 12, 1925, reads:

In cases of detention of all kinds, requests made by consular representatives to visit nationals of their country under arrest, or to have them visited by their representatives, shall be granted without delay.³³

²⁹ For the full text of the rule governing the Federal penal institutions, see *U.S. For.Rel.*, 1935, II, p. 57. See also Circular Letter No. 17 from the Superintendent of Canadian Penitentiaries to the Wardens of All Penitentiaries in Canada, concerning visits to convicts by United States consuls, Ottawa, February 21, 1934, *ibid.* at p. 60.

³⁰ It may be of interest to note that Secretary of State Seward held the extreme view in 1862 that a United States consul should be allowed by local authorities to visit any prisoner *claiming* American citizenship, so that should his citizenship be verified, the consul could lend his good offices or bring the case before the United States Government. See Secretary of State Seward to Mr. Burton, Minister to Colombia, January 29, 1862, *MS.Inst. Colombia XVI 26*; 5 Moore, *Digest*, p. 101.

³¹ See Stowell, “The Robinson Case,” 32 *A.J.I.L.* (1938), pp. 320–324; Dept. of State *Press Releases*, December 18, 1937, p. 472; January 22, 1938, p. 133; January 29, 1938, p. 173; February 12, 1938, p. 260; *New York Times*, December 30, 31, 1937; January 23, 26, and February 11, 1938. See also *U.S. For.Rel.*, “The Soviet Union, 1933–1939,” pp. 497–502, 562–563, 708–718, 904–911.

³² See Department of State, *Eastern European Ser.*, No. 1, “Establishment of Diplomatic Relations with the U.S.S.R.” (1933), p. 11; 28 *A.J.I.L.* (1934), *Supp.*, p. 8.

³³ German–Soviet Treaty Comprising an Agreement concerning Conditions of Residence and Business and Legal Protection, 53 *L.N.T.S.* 7. See also 28 *A.J.I.L.* (1934), *Supp.*, p. 8; Dept. of State *Press Release*, January 29, 1938, p. 173; *U.S. For.Rel.*, “The Soviet Union, 1933–1939,” p. 715.

Subsequently, Henderson, accompanied by Angus I. Ward, then Second Secretary of the Embassy, was permitted to interview Mrs. Rubens.³⁴

In the case of Lawrence Simpson, who was arrested on board the United States steamship *Manhattan* upon arrival at Hamburg in June 1935, and charged with high crimes, the United States Consul General at Hamburg was given permission by the German authorities to visit him at a concentration camp. Furthermore, the Consul General was assured that Simpson could communicate in writing with him and might be visited by other representatives of the Consulate if necessary.³⁵

Upon the complaint of the Mexican Embassy in 1934 that officials in California had refused to permit a Mexican consul to visit a Mexican citizen in jail, the Department of State informed the Governor of California:

Even in the absence of applicable treaty provisions this Government has always insisted that its consuls be permitted to visit American citizens imprisoned throughout the world and it is believed that if attitude District Attorney is maintained in instant case there will be repercussions in Mexico and perhaps other countries unfavorable to American citizens.

It is earnestly requested that you take prompt action looking to reversal District Attorney's position.

The Mexican consul was allowed subsequently to visit the prisoner together with the latter's attorney.³⁶

In reply to a question raised by the Italian Chargé d'Affaires *ad interim* in Washington, D.C., in 1936, as to whether the fact of a foreigner being arrested or held in the United States must be notified to his consul, the Department of State said:

³⁴ For the report of the interview, see Dept. of State *Press Release*, February 12, 1938, p. 260. As a footnote to this long and tortuous case, Mrs. Rubens was released from Moscow prison on June 10, 1939. She visited the United States Embassy on June 19 and on three other occasions, but declined to accept a passport for return to the United States. She became a Soviet citizen on October 10, 1939. U.S. *For.Rel.*, "The Soviet Union, 1933-1939," pp. 910, 911n.

³⁵ Lawrence Simpson, an American seaman, was sentenced to three years in the penitentiary after admitting that he had imported Communist propaganda material into Germany. His sentence was later commuted due to the energetic efforts made on his behalf by Consul General Douglas Jenkins and Consul Raymond H. Geist. His imprisonment for fifteen months without trial probably set a record, following the imprisonment for nine months without trial of another American in Germany, Richard Rolderer. The official German excuse for the delay of Simpson's trial was always that the police were trying to unravel the threads of a complicated Communist organization in Hamburg. See *New York Times*, September 29, 1936, p. 1, col. 2; December 2, 1936, p. 19, col. 4. See also Arthur K. Kuhn, "Protection of Nationals Charged with Crime Abroad—Case of Lawrence Simpson," 31 *A.J.I.L.* (1937), pp. 94-97.

³⁶ 4 Hackworth, *Digest*, pp. 836-837.

The authorities of this Government to whom this question was referred state that while it is not the general practice to notify the consular representatives of a foreigner who is placed under arrest, such notification would promptly be made upon request therefor by the arrested person.³⁷

In the absence of a treaty, not all states are willing to permit foreign consuls to visit or intervene on behalf of their nationals in prison. Japan, for example, while conceding that a consul should be allowed to visit his co-nationals in prison by virtue of "international courtesy," questions that he can claim it as a right.³⁸ The United States Ambassador to the Soviet Union, Joseph E. Davies, described the Soviet practice in his report of June 6, 1938:

Thousands of foreign nationals have been arrested, imprisoned, and held incommunicado. I have been advised recently by the Ambassadors of England, France, Germany, Italy, Turkey, Persia, and Afghanistan that representatives of their Governments, respectively, have not been permitted to interview their nationals who were imprisoned here prior to their trial. Thousands of Greeks, Persians and Afghan nationals, hundreds of Germans and Poles, and substantial numbers of English and Italian nationals have been imprisoned and held under such conditions.³⁹

In his conversation with Ambassador Davies on March 3, 1938, Litvinov, People's Commissar for Foreign Affairs, nonchalantly confirmed the arrest of hundreds of German and other nationals who were denied access to their government officials.⁴⁰ The mass arrest also figured in a communication, dated February 7, 1938, from the German Ambassador in the Soviet Union, Count von der Friedrich Werner Schulenburg, to the German Foreign Ministry.⁴¹

As to the duration of time within which a prisoner may be held incommunicado, the Legal Adviser of the Department of State noted in a memorandum of April 23, 1932:

It is, of course, inconceivable that a prisoner should be held incommunicado indefinitely, but I doubt whether we can say that, as a matter of international practice, a prisoner cannot be held incommunicado for a reasonable time after arrest until questioned by the police or other investigating authorities.⁴²

³⁷ See also the Acting Secretary of State (Carr) to the Ambassador in Peru (Dearing), telegram 15, March 23, 1931, *ibid.* at p. 837.

It is the practice of the United States to allow foreign diplomatic and consular officers to visit their nationals who have been imprisoned. If any exception to this rule should be made by local authorities, the Department would take steps immediately to see that permission should be promptly granted.

³⁸ Letter from Mr. Eiji Seki, Assistant Information Officer, the Consulate General of Japan, New York, August 16, 1957, to author.

³⁹ U.S. *For.Rel.*, "The Soviet Union, 1933-1939," pp. 561-562. ⁴⁰ *Ibid.* at p. 530.

⁴¹ U.S. Dept. of State, *Documents on German Foreign Policy, 1918-45*, Ser. D, vol. I, pp. 910-912. ⁴² 4 Hackworth, *Digest*, p. 83.

Espionage cases

A frequent exception to the consular right to protect nationals and visit them in prison is the case of spies, whom Oppenheim defined as “secret agents of a State sent abroad for the purpose of obtaining clandestinely information in regard to military or political secrets.”⁴³ These agents have no recognised position whatever according to international law and, if caught by the receiving state, are generally punished severely.⁴⁴ Thus, Colonel Rudolf Ivanovich Abel, a Soviet agent convicted for espionage, was sentenced to thirty years in prison and fined \$3,000.⁴⁵ Two of the four American citizens still imprisoned on the mainland of China, John T. Downey and Richard G. Fectau, were accused of espionage activities and given sentences of life and twenty years respectively.⁴⁶

When Robert A. Vogeler,⁴⁷ Israel Jacobson⁴⁸ and Edgar Sanders⁴⁹ allegedly confessed to espionage activities charged by the Hungarian authorities, they were held in prison incommunicado. In the case of the Associated Press Correspondent, William N. Oatis, who was also charged with spying, the Czechoslovak authorities did not permit any United States officials to visit him until after he had spent twelve months in prison.⁵⁰

However, not all alleged spies are given the incommunicado treatment. The British Consul General, Basil Judd, for example, was permitted by the Egyptian authorities to visit James Swinburn, Charles Pittuck, James Zarb and John Thornton Stanley, the four Britons accused of conducting espionage activities in 1956.⁵¹

⁴³ 1 Oppenheim, *International Law*, p. 862.

⁴⁴ *Ibid.*

⁴⁵ See *New York Times*, August 8, 1957, p. 1, col. 7; October 26, 1957, p. 1, col. 4; November 16, 1957, p. 1, col. 3; and July 12, 1958, p. 2, col. 4.

⁴⁶ See *New York Times*, June 15, 1957, p. 3, col. 8.

⁴⁷ See United States Note of January 3, 1950, from the American Minister in Budapest, Nathaniel P. Davis, to the Hungarian Minister for Foreign Affairs, Dept. of State *Press Release*, No. 4, January 3, 1950.

⁴⁸ *Ibid.*

⁴⁹ See *New York Times*, August 19, 1953, p. 14, col. 3.

⁵⁰ During this period, American Vice-Consul was permitted to observe the trial of Mr. Oatis only at a distance of about 100ft. 23 Dept. of State *Bulletin* (1951), p. 283; *Press Release*, No. 785, Oct. 8, 1952. Following the U-2 and RB-47 incidents, the U.S. repeatedly sought permission to interview the pilots who allegedly confessed to aerial reconnaissance over the Soviet territory (*New York Times*, June 16, 1960, p. 6; July 13, 1960, p. 1). Permission was not granted, despite the 1933 Soviet assurance concerning the consular right to be notified of the arrest of a national within 3 days in large centres and 7 days in remote areas as well as the right to visit such national “without delay.” See U.S. *For. Rel.*, “The Soviet Union, 1933–1939,” pp. 33–34.

⁵¹ *The Times*, August 31, 1956, p. 8d; September 7, 1956, p. 10d; September 10, 1956, p. 8b. All four have since been released by amnesty, acquittal or presidential decree. See *The Times*, July 15, 1957, p. 8e; September 22, 1959, p. 10g and February 7, 1961, p. 10c.

Dual nationality

If consular protection is claimed by persons possessing the nationalities of both the receiving and the sending states, such protection may be given either unofficially⁵² or only under exceptional circumstances.⁵³ In general, consular protection in these cases has not been effective for the obvious reason that the receiving state is inclined to claim exclusive jurisdiction. In a dual-nationality case, Hjalmar Sixten Nordeen, originally a United States citizen, alleged that he was forced into applying for and accepting Soviet citizenship after his arrival in the Soviet Union in May 1933. After his unsuccessful attempts to renounce his Soviet citizenship, he was arrested in Moscow on November 21, 1937, on a charge of espionage on behalf of Finland. Secretary of State Hull on December 3, 1937, sent the following instruction to Henderson, the United States Chargé d'Affaires in Moscow:

In view of the circumstances under which Nordeen was granted Soviet citizenship, the Department . . . does not consider that he has expatriated himself. You are authorized in your *discretion* to approach the Soviet authorities in his behalf and, in case they are unwilling to permit his release and departure from the Soviet Union, to request information concerning the charges against him and permission for officers of the Embassy to interview him.⁵⁴

Subsequently, Angus Ward, Chief of the Consular Section of the United States Embassy in Moscow, reported:

The Embassy does not feel that any favorable results would be obtained by requesting information from the Soviet authorities concerning the charges upon which Mr. Nordeen is being detained or for permission for an officer of the Embassy to interview him as suggested in the Department's telegram No. 187 of December 3, 1937, since Mr. Nordeen is considered by the Soviet Government to have acquired Soviet citizenship in conformity with its citizenship laws.

However, the Embassy is endeavoring to assist Mr. Nordeen by including his name in lists periodically submitted to the People's Commissariat for Foreign Affairs of Soviet spouses of American citizens who desire to depart from the Soviet Union and proceed to the United States in the company of or following to join the American spouse.⁵⁵

⁵² The United Kingdom *Instructions* (VIII-4) state that any intervention or good offices made by a British Foreign Service Officer on behalf of a person possessing the nationalities of both the receiving and sending states must be on a strictly informal basis, with the understanding that the local authorities are entitled to the attitude that the person has no *locus standi*. See also Netherlands, *Manual*, II, Ch. 42-a (9).

⁵³ See, for example, United States *Regulations*, XXI-4, note 1.

⁵⁴ U.S. *For. Rel.*, "The Soviet Union, 1933-1939," p. 497. Emphasis supplied.

⁵⁵ Communication from the Chargé d'Affaires in the Soviet Union (Kirk) to the Secretary of State, August 17, 1938, *ibid.* pp. 722-723.

As a footnote to this case, the Chargé d'Affaires of the United States Embassy in Moscow reported to the Department of State on February 13, 1940, that the Embassy had been unable

. . . to obtain any definite information from the Soviet authorities regarding the detention of Mr. Nordeen until a representative of the People's Commissariat for Foreign Affairs of the Union of Soviet Socialist Republics informed a member of the Embassy staff orally on October 27, 1939 that Hjalmar Sixten Nordeen died on October 25, 1938, in one of the northern regions of the Soviet Union.⁵⁶

In another case involving a person of dual nationality, William Provenick was arrested by the Soviet authorities in Leningrad. Efforts by American officials in Moscow to obtain information concerning his arrest and whereabouts were unsuccessful, since, according to Angus Ward,

. . . the People's Commissariat for Internal Affairs evidently does not find it convenient to oblige the People's Commissariat for Foreign Affairs with information concerning such persons. A similar attitude was adopted by the Soviet authorities in the cases of Peter Krassnoff, Ivan Dubin, George Sviridoff, as well as other persons of dual nationality who were reported arrested in the Soviet Union and about whom this mission made inquiries at the People's Commissariat for Foreign Affairs.

It is doubtful whether the Embassy will be able to obtain any information from *official sources* regarding the whereabouts or welfare of William Provenick.⁵⁷

Précis of eighteen cases of American citizens of dual nationality believed or known to be under arrest in the Soviet Union were transmitted by Angus Ward. These précis revealed that the Soviet authorities either ignored the inquiries from the Embassy or gave only perfunctory replies to the effect that there was no information available or that information was withheld on the ground that the person was considered to be a Soviet citizen.⁵⁸

The case of Frank Hrinkevich may be specially mentioned as illustrative of what diplomacy can accomplish in an otherwise hopeless situation. Hrinkevich, born a Russian, became a naturalised United States citizen. He returned to the Soviet Union during the depression, married a Soviet woman, but shortly afterwards returned to the United States for a brief period and then returned to the Soviet Union apparently with the intention of making Russia his home.

⁵⁶ *Ibid.* p. 723, note 51.

⁵⁷ Angus Ward, Chief of Consular Section, for the Chargé d'Affaires in the Soviet Union (Kirk), to the Secretary of State, August 6, 1938, *ibid.* p. 725.

⁵⁸ *Ibid.* pp. 725-726.

Since his return, however, he got into trouble with the local authorities and was arrested and imprisoned. This case was personally taken up by Ambassador Davies in the summer of 1937 with Commissar for Foreign Affairs Litvinov, who promptly looked into the matter and permitted representatives of the United States Embassy to interview Hrinkevich. In the end, not only was Hrinkevich released, but his Soviet wife and son were also permitted to renounce their Soviet citizenship and return with him to the United States.⁵⁹ The success of this case must be attributed to the energetic effort and personal diplomacy of Ambassador Davies as well as the desire of the Soviet Union then to ingratiate itself with the United States.⁶⁰

With respect to consular protection claimed by a person of double nationality in a third state, such protection may not be denied him, according to some consular regulations.⁶¹

All the above cases and discussion appear to uphold the principles enunciated in the Convention on Certain Questions Relating to the Conflict of Nationality Laws of 1930.⁶² Relevant provisions read:

Article 1. It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.

Article 2. Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.

Article 3. Subject to the provisions of the present Convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses.

Article 4. A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses.

Article 5. Within a third State, a person having more than one nationality shall be treated as if he had only one . . .

A notable exception to the above principles may be found in one of the two assurances which Albania gave to the United States

⁵⁹ *Ibid.* pp. 725–726.

⁶⁰ See Ambassador Davies' observations in *ibid.* pp. 529–531, 549–550, 555, 566, 569–581.

⁶¹ See, for example, United Kingdom, *Instructions*, VIII–5; Netherlands *Manual*, II, Ch. 42–2 (9).

⁶² 179 L.N.T.S. 89. The Signatory Powers were Germany, Austria, Belgium, Great Britain and Northern Ireland, Canada, Australia, Union of South Africa, Irish Free State, India, Chile, China, Colombia, Cuba, Denmark, Free City of Danzig, Egypt, Spain, Estonia, France, Greece, Hungary, Iceland, Italy, Japan, Latvia, Luxembourg, Mexico, Netherlands, Peru, Poland, Portugal, Salvador, Sweden, Switzerland, Czechoslovakia, Uruguay and Yugoslavia. It was acceded to by Norway, Monaco and Brazil in 1931. The Convention came into force on July 1, 1937.

as a *sine qua non* for the latter's recognition of Albania. This assurance was contained in a note dated June 25, 1922, from the Prime Minister of Albania to Commissioner Blake:

In connection with the two points you bring forth in your letter as needing settlement, before you could take any steps in favour of the official recognition of the Government of Albania by that of the United States, allow me to communicate to you that:

(1) The Albanian Government will recognise the passports given by the authorities of the United States of America, to persons of Albanian origin, who are naturalised Americans in conformity with the American laws concerning nationalities. . . .⁶³

Welfare cases

A consul is often allowed by treaties, custom and national regulations to assist in every possible manner his co-nationals who may encounter any kind of misfortune within his consular district. Some may deplete their financial resources and become stranded in a strange country; others may suffer losses through misunderstanding of the local language, custom and laws; and still others may lose their health or die without friends or relatives. Thus Stuart relates how the United States Consulate General in Rome helped some thirty Americans who had taken a wrong train and were consequently detained in the station one Saturday afternoon. An American vice consul was dispatched to negotiate with the Italian station agent and succeeded in persuading the latter to send the stranded Americans on their journey free of charge.⁶⁴

In many cases consular services to distressed nationals are rendered contingent upon the fulfilment of the following conditions:

(1) National status:

It should be established beyond a reasonable doubt that the applicant is a national of the sending state, or, if he has a dual nationality, that he is not normally eligible for assistance from the sending state while residing in the country of his second nationality.⁶⁵

⁶³ U.S. *For. Rel.*, 1925, I, p. 512.

⁶⁴ Stuart, *Practice*, p. 331.

⁶⁵ United Kingdom, *Instructions*, XIV-4 (ii); Mexico, *Law*, Art. 239; Canada, *Instructions*, XI-21, 23; Sweden, *Instructions*, Art. 56 (2), (3).

(2) Proof of destitution:

Precaution must be taken against impostors or professional beggars.⁶⁶ In the case of Brazilians, not only must proof of destitution be required, but relief and repatriation will not be given to those who have travelled abroad out of their own free will and then find themselves in distress because of misbehaviour or imprudence.⁶⁷

(3) Exhaustion of the possibility of assistance from other sources:

Consuls of some countries are forbidden to render aid to any applicant unless the latter has exhausted all other possibilities for aid, including those from the local authorities, charity organisations and his employers, friends and relatives, wherever they may be.⁶⁸ French consuls may, according to French regulations, invoke the principle of "reciprocity" by requesting that French nationals be given as much assistance by the local authorities as the destitute and needy nationals of the receiving state are entitled to in France.⁶⁹ Such assistance may include the admission of the sick to the hospitals, admittance of abandoned children to special hospitals and internment of the insane who are not repatriated.

Dutch consuls may likewise draw the attention of the foreign authorities to the fact that the Netherlands "Poor Law" makes no distinction between Netherlanders and aliens with respect to the relief and social welfare benefits, including medical care.⁷⁰

A uniform policy with respect to the treatment of the sick and destitute aliens has been adopted by all Scandinavian countries. By a convention concluded between Sweden, Denmark, Finland and Norway on October 25, 1928, each Signatory Power pledges the same public assistance to nationals of the other states as would be rendered to its own nationals in accordance with its poor law legislation.⁷¹ By virtue of this convention a Swedish consul, for example, in Denmark, Finland or Norway would refer a distressed Swedish subject applying for aid to the proper poor law authority of the receiving state.⁷² Even in a non-Scandinavian country

⁶⁶ Brazil, *Consolidation of the Laws*, Ch. VII, § 1, Art. 472; United Kingdom *Instructions* XIV-4 (iii); Mexico, *Law*, Arts. 239, 241; Sweden, *Instructions*, Art. 56 (3).

⁶⁷ Brazil, *Consolidation of the Laws*, Ch. VII, § 1, Art. 472. See similar provisions in Uruguay, *Legislation*, p. 154.

⁶⁸ Netherlands, *Manual*, II, Ch. 29-a (1), (7); United Kingdom *Instructions*, XIV-4 (iv); Canada, *Instructions*, XI-01 (a), (b) and XI-04; Sweden, *Instructions*, Art. 56 (3); Mexico, *Law*, Arts. 241, 243.

⁶⁹ France, *Manuel*, I, p. 136.

⁷⁰ Netherlands, *Manual*, II, Ch. 39-2 (21).

⁷¹ Cited in Sweden, *Instructions*, Art. 56 (2).

⁷² *Ibid.* Art. 56 (3).

the consul, in accordance with Swedish interpretation of international custom, is instructed to follow the same procedure.⁷³

(4) The Aged, Infirm, Incurable, Minors and Insane:

Many consular regulations require consuls to give special assistance to the aged, infirm, incurable, minors and insane. French laws since 1905 have ordered consuls to assist the aged, infirm and incurable.⁷⁴ Portuguese consuls are instructed to look after the interests of the incapacitated, widows, orphans, crippled and such like.⁷⁵ Mexican consuls are required to take abandoned Mexican children under their care and to locate as quickly as possible the nearest relatives in Mexico to whom the children may be sent. If no relatives can be found, the children should be sent to local public orphanages.⁷⁶

The Italian-Latvian Consular Convention of 1932 (Article 21) authorised consuls to protect the infants, weak-minded and disabled nationals of the sending state by all steps deemed expedient. The Sino-Soviet Consular Agreement of 1959 (Article 21) provides that consuls may appoint guardians and curators for nationals of the sending state as well as supervise the activities of guardians and curators. The I.L.C. *Draft* (Article 5 (b)) even obligates the receiving state “to inform the competent consulate without delay of any cases where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity, and who is a national of the sending State.”

After having satisfactorily ascertained the above four points, actual relief may be given in the forms of repatriation and temporary relief pending repatriation. British consuls, for example, are authorised under the United Kingdom *Instructions* (XIV-6) to repatriate British subjects at the lowest possible cost without prior application to the Foreign Office. They are required to give, as far as possible, all temporary relief in kind. Only in exceptional instances may the aid be in cash, and under no circumstances may

⁷³ *Ibid.*

⁷⁴ France, Law of July 14, 1905 (J.O. of July 14, 1905, and B.L. 1905, No. 2645, p. 939), modified by the following laws: Law of December 30, 1908 (J.O. of December 31, 1908, and B.L. 1908, No. 3020, p. 355) Art. 17; Law of March 29, 1941 (J.O. of April 11, 1941), Arts. 1, 2-, 2 *bis* and 23; Ordinance of November 2, 1945 (J.O. of November 6, 1945, with amendment of J.O. of November 10), Art. 20 *bis*; Law of September 13, 1946 (J.O. of September 14, 1946), Arts. 20, 20 *bis*.

⁷⁵ Portugal, *Regulation*, Art. 83. See also 1 Armando Martins, *Regulamento Consular Português; Actualizado e Anotado* (3 vols., 1949), pp. 194-195.

⁷⁶ Mexico, *Law*, Art. 242.

the cash be used to repay the applicant's debts (XIV-7). The Preface (paragraph 1) of the United Kingdom *Instructions* contains a rule that reflects the fundamental guiding spirit of the British consular system. It reads:

A rule that is not mentioned anywhere in the instructions, but which nevertheless provides a background to them all, is that Foreign Service Officers must never forget that they are public servants and that they must not fail to show courtesy to members of the public on all occasions and, within the limits of the law and the instructions, to afford them all such assistance as they properly can. In cases where special circumstances seem to call for derogation from the instructions, Foreign Service Officers should not hesitate to seek authority to depart from them.

American consuls are instructed to extend to distressed American citizens all possible aid and assistance within their power short of direct cash, except in the cases of seamen or contrary authorisation by the Department of State (2 *FSM* 422.1). They are also discouraged from extending personal loans or credits to American citizens (1 *FSM* IV 626.4). In the case of Hrinkevich⁷⁷ and his family who were without funds to pay for their homeward transportation to New York, the United States Embassy in Moscow sought advice from the Department of State as to whether money might be furnished by the Department, the Red Cross or other organisations.⁷⁸ When no such funds were available, a loan was made to Hrinkevich by the American Embassy Committee for the Relief of Indigent American Citizens, which was established in Moscow in November 1935 by visiting Americans and American members of the Embassy staff.⁷⁹

Where relief must be given to a Swedish applicant,⁸⁰ a Swedish consul shall require a declaration from him stating, among other things, the cause of his destitution and a promise to repay the money received by him or expended on his behalf.⁸¹ In giving the relief, the consul may, according to the Swedish *Instructions* (Article 56 (4-6)): (1) provide absolutely necessary aid of a temporary nature, such as tickets for a plain eating-house or lodging place; (2) furnish cash in exceptional circumstances; (3) find work for the applicant; (4) obtain medical care if such care is not available from the local authorities; and (5) repatriate the applicant who is incapable of

⁷⁷ See notes 59, 60, *supra*.

⁷⁸ See the Chargé in the Soviet Union (Kirk) to the Secretary of State, July 6, 1938, U.S. *For. Rel.*, "The Soviet Union, 1933-1939," pp. 720-721. ⁷⁹ *Ibid.* p. 721n.

⁸⁰ See Sweden's welfare policy in Point No. 3 above: Exhaustion of the Possibility of Assistance from Other Sources. ⁸¹ Sweden, *Instructions*, Art. 56 (4).

work or is living in a country near Sweden, after consultation with the Swedish Ministry for Foreign Affairs. In general, repatriation is to be effected with the lowest possible cost unless the destitute person is ill or infirm with age. Where necessary, the repatriate may be provided with a permit of passage, known as "förpassning," which would entitle him to continued pecuniary assistance from Swedish consuls on his homeward journey.⁸²

Uruguayans who are poverty-stricken or in distress may apply to their consuls for aid in repatriation. The consuls are required, however, to refer such requests to the Ministry of External Relations for decisions.⁸³

Netherlanders abroad are "eligible" for government relief, including cash payment. However, this does not mean that they are "entitled" to it. Each application for relief must be dealt with separately by the diplomatic or consular officer.⁸⁴

Japanese consuls are required to assist in the relief and repatriation of Japanese nationals who are "extremely poverty-stricken" and who want to return home, whether under deportation proceedings or not.⁸⁵

Even the dead must be taken care of. American consuls, for example, are instructed to make certain that the remains of American nationals are properly encased, and that all necessary papers pertaining to death, burial, exhumation and shipment are duly executed (2 *FSM* 442.41).^{85a} The United Kingdom *Instructions* (XXXV—4) urge British consuls to interest themselves in the administration of British cemeteries, to serve upon cemetery committees whenever called upon to do so, and to use their good offices in dealing with the local municipal governments on cemetery affairs. While British consuls should not commit their Government to the maintenance of cemeteries, they may, under the most exceptional circumstances, consider the assumption of a limited financial burden (XXXV—1, 2).

Swedish consuls are instructed to report the death of any Swedish subject within their district to the Minister for Foreign Affairs⁸⁶

⁸² *Ibid.* Art. 56 (5), (6).

⁸³ Uruguay, *Legislation*, p. 154.

⁸⁴ Netherlands, *Manual*, II, Ch. 39—a (1).

⁸⁵ Letter from Mr. Eiji Seki, Assistant Information Officer, Japanese Consulate General in New York, August 16, 1957, to author.

^{85a} For U.S. consul's action *re* RB-47 victim in Russia, see *New York Times*, July 26, 1960, p. 5.

⁸⁶ Sweden, *Instructions*, Art. 38 (1).

and to advance funds for the burial if the decedent's estate is insufficient to cover the cost.⁸⁷

Along with humanitarian considerations, national "prestige" is also a strong motivation for affording consular aid to welfare cases. The United States *Regulations* (XX-3, Note 1) epitomise this concern for prestige by providing:

Officers shall report fully on all aspects of the situation and treatment of distressed American citizens in their districts which may favorably or unfavorably affect the local prestige of the United States Government.

While the Harvard Research *Draft* makes no mention about any consular welfare functions, the *Zourek Report* (Article 13, Second Variant, § 7 (d)) does authorise consuls "to make welfare payments to nationals who are in difficulties through illness, accident or other similar cause." In view of the growing practice of states to accord equal treatment in welfare or emergency cases to all residents, whether nationals or aliens, the need for consular services in this respect has been much reduced. Even if there is such a need, it is inconceivable that the receiving state should object to any consular efforts the effect of which would be the mitigation of its welfare burden. These reasons might explain the absence of relevant provisions concerning consular welfare functions in the Harvard Research *Draft* or the more recent consular treaties.⁸⁸

⁸⁷ *Ibid.* Art. 56 (7).

⁸⁸ Occasionally, equal treatment in social welfare is provided in bilateral treaties. The Polish-German Democratic Republic Treaty on co-operation in social policy, signed in Warsaw, July 13, 1957, for example, contains the following provisions (319 U.N.T.S. 229):

Article 8 (1) Nationals of one State resident in the territory of the other State shall be given such essential treatment and assistance as they may require by the State of residence, to the same extent and on the same conditions as nationals of that State.

(2) Such treatment and assistance shall comprise the provision of general social-welfare benefits or admission to homes for the aged or to welfare institutions. If necessary, several types of social-welfare benefits may be granted simultaneously.

Article 9 (1) The costs of treatment and assistance granted in accordance with Article 8 by one State shall not be reimbursable by the other State.

(2) Notwithstanding paragraph 1, reimbursement of such costs may be claimed from the person granted treatment or assistance or from members of his family liable for his maintenance.

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13

PASSPORT AND VISA

Passport

A passport³⁷ is an official document acknowledging and certifying the bearer as a citizen of the issuing state. It is regarded as a prima facie evidence of the national status of the holder and has become increasingly a necessity in foreign travels. In the late nineteenth century, for example, only a few countries, such as Persia, Roumania, Russia and Serbia, required passports from entering aliens, and almost none required passports from departing nationals. The two world wars and the ensuing cold war, however, led to the institution of travel control by many countries. Thus, according to a 1952 survey, of the thirty-seven countries supplying information, only ten allowed their nationals to depart without passports and five permitted the entry of aliens without passports.³⁸

In addition to enabling its holder to leave his country and enter a foreign country, a passport implicitly confers upon the traveller the right to return to his own country. This stems logically from the fact that a passport serves to identify the nationality of the bearer as well as the general principle that everyone has the right to return to his own country.³⁹ Certain countries even make the possession of passports a condition for admitting their own nationals returning from abroad.⁴⁰ Only very exceptionally would a country refuse admittance into its territory to its own nationals bearing valid

³⁷ For the purpose of this study, the term "passport" is used generically to include not only the various types of passport (regular, diplomatic, official, service, etc.), but also *laissez passer* (see its use by Israel, for example, in its Passport Law, 5712-1952), travel certificate or document, etc.

³⁸ See Louis L. Jaffe, "The Right to Travel: the Passport Problem," 35 *Foreign Affairs* (October 1956), p. 17.

A cursory examination of UNESCO, *Travel Abroad* (revised ed., 1952), will reveal the fact that a predominant majority of states nowadays require non-immigrant aliens to possess valid passports for entry, transit and exit purposes.

³⁹ See Art. 13 (2) of the Universal Declaration of Human Rights, text in *Yearbook of the United Nations*, 1948-49, p. 536. This Declaration was adopted in December 1948 by the General Assembly, 48 to 0 with 8 abstentions.

⁴⁰ Under the Immigration and Nationality Act of 1952, for example, an American citizen travelling abroad or entering the United States in time of national emergency as proclaimed by the President must possess a valid passport, unless otherwise provided by the President. See § 215 of Act of June 27, 1952, 66 Stat. 190, 8 U.S.C. § 1185

passports.⁴¹ Because of the importance attached to a passport, it is understandable why states invariably require their consuls to establish the identity, allegiance and national status of the applicant beyond all reasonable doubt before issuing a passport.⁴²

Types of passport

The types of passport vary from country to country although, in general, they may be divided at least into the regular, official and diplomatic passports. The United States *Manual* (2 FSM 251.1), for example, lists the following types of American passports as being in general use:

251.11 Diplomatic passports are passports issued by the Secretary of State to ambassadors, ministers, officers of the Foreign Service, and other persons

⁴¹ An example of this was the practice of the German Nazis during the thirties to identify Jews in their German passports and expel them from Germany, to which they were forbidden to return.

A recent incident was brought to the author's attention. A Chinese colleague of his, who shall remain anonymous, left the United States for a visit to Hongkong and Macao in the summer of 1958. When his plane landed on Taiwan, his request to leave the airport for a short tour was denied by the authorities despite the following facts: (1) he had with him a valid passport issued by the Nationalist Government; (2) the Nationalist Government has consistently claimed Taiwan as an integral part of China; (3) there was no charge of any kind preferred against him; and (4) permission to leave the airport was granted to his American travelling companions, even though they did not possess any entry visas.

⁴² See, for example, United Kingdom, *Instructions*, XIII-2; United States *Regulations*, XXI-1, 2. See also 32 Stat. 386, 22 U.S.C. § 212, which states: "No passport shall be granted or issued to or verified for any other persons than those owing allegiance, whether citizens or not, to the United States."

Under United States statutes the Secretary of State is authorised to deny passports on two broad grounds: that the applicant is not a citizen of or does not owe allegiance to the United States, or that he is engaged in conduct which would violate the laws of the United States. The refusal of the Department of State to issue passports to applicants suspected of Communist sympathy or affiliation was therefore overruled by the Supreme Court in June 1958. The court held that freedom to travel is an important aspect of citizens' "liberty," and that the Secretary of State was not authorised by Congress to bar passports on the grounds of applicants' beliefs and associations alone. The Department of State subsequently dropped its query about applicants' membership in the Communist Party. See *Kent et al. v. Dulles, Secretary of State*, 357 U.S. 116. See also texts of the Supreme Court's majority opinion in the passport case of Rockwell Kent, the artist, and Dr. Walter Briehl, a psychiatrist, *New York Times*, June 17, 1958, p. 20. See also *ibid.* June 25, 1958, p. 1, col. 8; July 2, 1958, p. 8, col. 6; and August 5, 1958, p. 51, col. 1.

With respect to the question whether the Department of State could legally restrict American citizens' travel to certain countries, the Court of Appeals for the District of Columbia Circuit, in the passport case of William Worthy, Jr. (No. 14,806—*Worthy, Jr. v. Herter*; reported in *New York Times*, June 10, 1959, p. 1, col. 4; October 3, 1958, p. 3, col. 3), who insisted on the right to travel to China, held that such area restrictions are a matter of foreign policy, and hence beyond the reach of the courts. Chief Judge E. Barrett Prettyman said: "In foreign affairs, especially in today's world of jets, radio and atomic power, an individual's yen to go and to inquire may be circumscribed." Worthy's appeal to the Supreme Court, along with those by Waldo Frank, philosopher and author, and Representative Charles O. Porter, Democrat of Oregon, who too were denied the right to visit China, was refused a review by that court. See *New York Times*, December 8, 1959, p. 29, col. 1.

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CHAPTER VIII.**NATIONALITY.**

- 92. Defined.
- 93. Citizenship.
- 94. Indelible Allegiance.
- 95. Expatriation.
- 96. Naturalization.
- 97. Effect of Incomplete Naturalization—As to New State.
- 98. As to Other States.
- 99. Status of Indians in the United States.

NATIONALITY DEFINED.

92. Nationality is that condition or state of a person or thing by virtue of which he or it forms an integral part of a particular nation. As applied to an individual it may be said to be the bond by which he is joined to the political community. It comprises the right which an individual possesses to the enjoyment of the civil and political privileges pertaining to the community, as well as the corresponding obligation to fulfill the duties imposed by the community.¹

The question of the nationality of a given person is primarily a subject for municipal law. Each independent state may determine who within its borders are subjects, and as previously determined can assume responsibility for the acts of persons which affect other states and their subjects. International law is therefore directly concerned with the nationality of persons, when the question of affording protection to subjects in foreign countries is considered. It then becomes necessary to determine what the nationality of the parties affected is, and certain rules must govern this decision. Not-

¹ Hall, Int. Law, 220-232; Calvo, Int. Law, § 539 et seq.; Walk. Int. Law, pp. 204-218; Bluntschli, §§ 364-374; 1 Halleck, Int. Law, c. 12; Whart. Dig. §§ 173-174a; Gallaudet, Int. Law, pp. 138-147; Snow, Cas. 213-219; Pitt-Cobbett, Cas. Int. Law, pp. 87-98.

withstanding the fact that a state cannot impose its nationality or citizenship upon an individual who is clearly the subject of another state, numerous cases arise in which the question of individual nationality is doubtful, and the rules of the different states for determining this nationality in disputed cases are not always in accord. In regard to all persons born in the territory of a state, of parents who are members of the state community, and foundlings, there can be no doubt, and no difference of opinion can exist as to their nationality, upon any of the theories for the determination thereof, but a large number of persons afford ample scope for difference of opinion in determining their status. Some such are the illegitimate children born of a foreign mother, foreign women who have married subjects of a state, children born of the subjects of one state within the territory of another state, persons who lose their nationality by emigration, citizens of one state who become naturalized in another, and the children of the two last-mentioned classes, especially before the loss of nationality or naturalization is complete. Nationality of birth or origin has been made by some states to depend upon the place of birth, by others to depend upon the nationality of the parents, and in some countries both of these elements exist, one or the other predominating. By the common law of England, every person born within the dominions of the Crown, no matter whether of English or of foreign parents, and, in the latter case, whether the parents were settled, or merely temporarily sojourning in the country, was an English subject, save only the children of foreign ambassadors (who were excepted because their fathers carried their own nationality with them), or a child born to a foreigner during hostile occupation of any part of the territories of England. No effect seems to have been given to descent as a source of nationality. The law of England as to the effect of the place of birth in the matter of nationality became the law of America as part of the law of the mother country, which the original settlers carried with them. Anterior to the Revolution a child born on French soil was a Frenchman, though born of foreign parents, as also was a child born of French parents out of French territory. This was changed by the Code Napoleon, which introduced the principle that a child should follow the nationality of the parents. This principle has been adopted by most civilized states, but some of them have modified it

by giving to the child the power of choice. The effects of the ancient rule have been obviated by other countries in various ways.

CITIZENSHIP.

93. Citizenship and nationality are practically synonymous, and certain rules are adopted in each country for determining the status of persons who are or claim to be citizens. The following rules may be given:

- (a) The citizenship of a person is determined by his nativity, or by naturalization in accordance with municipal law.
- (b) The citizenship of a female, in case of doubt, is that of her husband, or, if unmarried, is determined by municipal law.
- (c) Legitimate children in general acquire the nationality of their father, whether born in his country of nativity or not.
- (d) Illegitimate children, in the absence of recognition by the father, usually follow the citizenship of the mother.
- (e) Foundlings usually take their citizenship from the state upon which they are found, provided their parents remain unknown.

Citizenship is determined in the United States by the fourteenth amendment to the constitution, which provides that all persons born or naturalized in the United States, and subject to their jurisdiction, shall be deemed at once citizens of the United States and of the state in which they reside, and no state shall make or enforce any law abridging the privileges or immunities of such citizens.

Married Women.

The general rule in regard to married women is not followed in the United States. In case a woman marries a foreigner, she retains her nationality, but in case a foreign woman marries an American, she becomes a citizen of his country. In most countries the nationality of a married woman is that of her husband, and in France

it is held that where a woman marries a Frenchman, though the latter in so marrying commits bigamy, she nevertheless becomes French by the marriage.

Children.

In regard to children some countries, as previously stated, permit those born abroad to select a certain time after attaining their majority what country they will regard as their place of citizenship. In regard to illegitimate children the general rule seems to be departed from in England, where it is held that the illegitimate child of an Englishwoman born abroad takes the nationality of its place of birth. In the United States children born abroad, of citizens who continue to live abroad, are not citizens unless they elect to become such upon coming of age. It has been held that the child of Chinese parents born in the United States is a citizen,² but in the case of a child born of alien parents in the United States, but who had never lived in the country, it was held that he could not elect, upon attaining his majority, to be a citizen of the United States, although his parents had since become naturalized.³ In order for such a person to become a citizen he must become naturalized.

Persons Destitute of Nationality—Heimathlosen.

No one should be without nationality, and persons who are unable to furnish proof of foreign nationality should acquire it from the state in which they have their domicile, or where they have made a prolonged sojourn. Heimathlosen, or persons whose nationality cannot be determined, have been a cause of embarrassment in certain countries, especially in Germany and Switzerland. This has been settled by convention between the Swiss cantons and between the German states,—that all such should be considered to be subjects of the state within which they are living, provided they have remained there for five years after having attained their majority, or have stayed there six weeks after marriage, or, finally, have married there. This is the position in which subjects of such countries as

² *Ex parte Chin King*, 35 Fed. 354. The status of Chinese in the United States is difficult to determine. Compare treaty of immigration with China in 1882 (Treaties and Conventions of United States, etc., p. 182), with the acts of congress of 1884 and Geary act of 1892.

³ *Hausding's Case*, Snow, Cas. 222; *Mr. Frelinghuysen to Mr. Kasson*, For. Rel. U. S. 1885; also, Whart. Dig. § 183.

Austria find themselves in case they emigrate without permission of the state, it being the law that by so doing they lose their nationality.*

INDELIBLE ALLEGIANCE.

94. By indelible allegiance is meant the rule once adopted that no citizen of a state was able under any circumstances to change his nationality from that of his nativity, or of which he was a subject.

This doctrine of perpetual allegiance was one of the settled principles of the common law of England which was transmitted to and for some time formed the practice of the United States. It was stated as follows by England: "No British subject can, by such a form of renunciation as that which is prescribed in the American law of naturalization, divest himself of his allegiance to his sovereign. Such a declaration of renunciation made by any of the king's subjects would, instead of operating as a protection to them, be considered an act highly criminal on their part." In the case of Aeneas Macdonald, who was tried for high treason, for having borne arms in the Rebellion of 1745, it appeared that the prisoner had been born in England, brought up from his early infancy in France, had in his riper years been employed in France, and held a commission from the French king. The English court held that a person taking a commission from a foreign prince, and committing high treason, may be punished for such treason, notwithstanding his foreign commission; that it was not in the power of any private person to shake off his allegiance and transfer it to a foreign prince, nor was it in the power of a foreign prince, by naturalizing or employing a subject of Great Britain, to dissolve the bond of allegiance between the subject and the crown. Allegiance is no longer regarded as indelible, whether arising from birth or from subsequent acquisition. It has been shown that both the Romans and Greeks recognized the right of a citizen to shake off allegiance due to one country, and take up the same in another.⁵

* Hall, Int. Law, p. 224; Bluntschli, § 369.

⁵ Calvo, Int. Law, § 577; Field, Int. Code, pp. 136, 137; Cockb. Nat. pp. 6-14, and for McDonald's Case, Id. p. 64, note. Also, Snow, Cas. 214. Vide, also, Case of Williams, Whart. State Tr. 652; 2 Kent, Comm. p. 49.

EXPATRIATION.

95. Expatriation is the act of abandoning the nationality of one community with intention of acquiring the corresponding status in another.

The right of expatriation, as stated by the United States, is as follows: It is the right of every human being, who is neither convicted nor accused of crime, to renounce his home and native allegiance and seek a new home, and to transfer his allegiance to any other nation that he may choose; and that having made and perfected that choice in good faith, and still adhering to it in good faith, he shall be entitled from his new sovereign to the same protection under the law of nations that that sovereign lawfully extends to his native subjects or citizens. In 1868 congress passed an act: "Whereas, the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas, in the recognition of this principle this government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas, it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas, it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion, order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic." In the same year the United States executed treaties with the North German Confederation, Bavaria, Baden, Wurtemberg, Belgium, in the following year with Hesse, and in 1870 with Austria and England, recognizing the right of expatriation, and in 1870 England passed an act which declared that "any British subject who has, at any time before, or may at any time after, the passing of this act, when in any foreign state, and not under any disability, voluntarily become naturalized in such state, shall from and after the time of his having become so naturalized in such foreign state, be deemed to have ceased to be a British subject and be regarded as an alien." Provision is made in

the same act for persons who have become naturalized in Great Britain to divest themselves of their acquired nationality and assume that of their nativity, and for persons who at the time of their birth are subjects of a foreign state to elect allegiance to such foreign state when they have arrived at maturity. Notwithstanding the law declaring the inherent right of expatriation by congress, the question is still undetermined as to what acts or formalities are necessary to accomplish this fact.⁶ The question of the right of an individual to change his nationality is one purely of municipal law, as nationality is conferred by a state by virtue of its sovereignty within its jurisdiction. International law, in the absence of a declaration of this principle by the public law of all the states, or of a uniform custom of all the states, must accord to each state the privilege of determining the question of the nationality of persons according to its own views, which is best regulated by treaties. The practice of individual states has not been uniform, and there is no uniformity in that of the body of states.

NATURALIZATION.

96. Naturalization is the act or proceeding by which a foreigner becomes a citizen of a state, and becomes entitled to the same rights and privileges as if born in the state.

Every independent state has a right to confer its citizenship upon foreigners, but this right should not be so exercised as to do an injustice to the state of nativity, or to cause the naturalizing state to become a sort of accomplice of the person naturalized in the avoidance of obligations due to his native state. This can be done by making naturalization so easy of accomplishment as to induce persons who have no desire to change their nationality except to avoid some obligation to their mother country, to take advantage of the new nationality. It may be conceded that the above right of naturalization is inherent in an independent state, but does a person upon whom this right is exercised cease to be a subject of the state

⁶ Mr. Seward to Mr. Johnson, Whart. Dig. § 171. Vide, also, Treaties and Conventions of United States, etc., 1776-1887; Rev. St. U. S. 1878, § 1999. Also authorities cited in note 1.

from which he emigrated? If this is answered in the affirmative, then every individual of a state, by naturalization, can cast off all obligations pertaining to his status of citizenship in his state of nativity without the consent of the latter. This is not in accord with the practice of states, practically all of whom impose certain conditions upon the recognition of a change of nationality by naturalization. If it is competent for a state to impose conditions upon its recognition of the new nationality, then no subject can of his own volition, and without the consent of his state of citizenship, cast off his obligations as such subject. Citizenship acquired by naturalization is certainly valid as to all other states except that of which the emigrant was a subject, and any conditions imposed by this latter state can have no extraterritorial effect. An interesting case illustrating the rights of a naturalized citizen arose in 1883. Mr. Wagner was born in Russia in 1852, and according to Russian law became subject to military duty in 1874. In 1869, while still a minor, and five years before he became liable to this military duty, he emigrated to the United States and became a naturalized citizen. Upon his return he was accused of the technical offense, "evasion of military duty." In the diplomatic correspondence upon this subject the United States maintained that "no nation should assert an absolute claim over one of its subjects under circumstances like these, and it is thought improbable that Russia will persist in such a claim, even if made. * * * It is tantamount to asserting a right to punish any male Russian who, having quitted Russian territory and become a citizen of another state, may afterwards return to Russia."

EFFECT OF INCOMPLETE NATURALIZATION—AS TO NEW STATE.

97. The effect of a declaration to become a citizen of a country, certainly if accompanied with the exercise of privileges pertaining to citizenship, carries with it the obligations pertaining to the status.

This question arose in the United States during the Civil War. In 1863 an act was passed by congress, rendering persons who had made the formal declaration to become citizens subject to military

service, but this act extended the privilege of renouncing their new allegiance provided they left the country within sixty-five days after the passage of the act. There was certainly no ground for complaint in such case, since all persons who had made the formal declaration, and had participated in the privileges of citizenship, should expect to bear some of the burdens pertaining to their new status. No formal objection was made on the part of the foreign states affected by the act.

SAME—AS TO OTHER STATES.

98. The right of a person who has not completed his naturalization to claim the protection of his new allegiance when in foreign states has not been determined.

In so far as all states, except the state of origin, are concerned, it would seem that the state of declared citizenship has a better right to extend privileges and to impose the correlative duties than any of them. The case that best illustrates this question was that of Martin Koszta, a Hungarian subject, who, after taking part in the rebellion of 1848-49, fled to Turkey. Here he was imprisoned by the Turkish government at the instance of Austria, but was afterwards released upon the condition that he leave the country. He chose the United States as the place of his exile, and duly declared his intention of becoming naturalized. The conditions of naturalization in the United States are five years' residence, together with a formal declaration of intention, made at least two years previous to the completion of the required term of residence. Koszta made the preliminary declaration, but before the five years had expired he returned to Smyrna, having obtained from the United States consul a traveling pass, stating that he was entitled to United States protection. While at Smyrna he was seized by persons in the pay of Austria, taken by them to sea, thrown overboard, and picked up by an Austrian Man-of-war. The American consul demanded his release, and a Man-of-war was sent to enforce this demand. The matter was compromised through the mediation of the French consul, to whom Koszta was turned over, and he was finally sent back to the United States, although Austria reserved the right to proceed against him if he returned to Turkey. In reply to the formal remonstrance

of Austria, protesting against the claim of the United States to afford protection to Koszta, and calling for a disavowal of the conduct of the United States agents, and a grant of reparation for the insult offered to the Austrian flag, Mr. Marcy replied that every citizen or subject possessed the right, having faithfully performed the past and present duties resulting from his relation to the sovereign power, to release himself at any time from the obligation of allegiance, freely quit the land of his birth and adoption, seek through all countries a home, or select anywhere that which offers him the fairest prospect of happiness for himself and his posterity; (2) that Koszta was not an Austrian subject, as, by a decree of the Emperor of Austria, Austrian subjects leaving the dominions of the Emperor without permission of the magistrate, and a release of Austrian citizenship, and with an intention never to return, become 'unlawful emigrants,' and lose all their civil and political rights at home; (3) that, although Koszta had not been naturalized and become a citizen of the United States, yet, being domiciled in this country, he was entitled to be treated in all respects as a citizen of the United States. The question as to whether the incomplete naturalization of Koszta entitled him to the protection of the United States was left unsettled, although it can scarcely be denied that Austria had no right to seize him upon Turkish soil. It was not only the right, but the duty, of Turkey to demand reparation from Austria. The use of force by the United States under the circumstances cannot be conceded as a right, certainly not in Turkish waters. Mr. Woolsey thinks that on the high seas "Austria could not have complained, if the evils of a sudden wrong on her part were in that way sought to be prevented." In regard to the effect of the passport given to Koszta, and which it was claimed conferred upon him the right of protection by the United States, there is no valid ground for such a contention, as it appears that this was given in contravention of law, and possessed no validity for any purpose.⁷

⁷ Koszta: For discussion of this case, see Hall, *Int. Law*, pp. 237-240; Pitt-Cobbett, *Cas. Int. Law*, pp. 87-90; Snow, *Cas. pp.* 226-228; 2 Whart. Dig. § 175; 3 Wheat. *Int. Law*, L, 193; 1 Halleck, 91, 92, 357; Davis, *Int. Law*, 103-106.

Wools. *Int. Law*, pp. 502-504, says:

"1. Granting that the man was an Austrian subject, could he be legally

Another case was that of Simon Tousig, a native of Austria, who had acquired a domicile in the United States, but had not become naturalized when he returned to Austria provided with an American passport and was arrested on the charge of offenses committed before leaving Austria. In this case Mr. Marcy held that a foreigner who has declared his intention to become a citizen of the United States is not entitled to their protection if he returns to his native country. This case was distinguished from that of Koszta because, "having once been subject to the municipal laws of Austria, and while under her jurisdiction violated these laws, withdrawal from that jurisdiction and acquiring a different national character would not exempt him from their operation whenever he again chose to place himself under them. Every nation, whenever its laws are violated by any one owing obedience to them, whether he be a citizen

seized in Turkey? His crime had been a political one. The Turks had refused, with the approbation of the ambassadors of the most important Christian powers, to deliver up the Hungarian fugitives, on the ground of the political nature of their offense. It was said that the extraterritorial consular jurisdiction mentioned below (section 100) authorized his arrest. The reply of Mr. Marcy to this is that such jurisdiction was intended for a different set of cases, and such is probably the fact. The Austrian officials (if this be so), in seizing him, committed an offense against the sovereignty of Turkey, and so, an offense against the law of nations.

"2. But was he an Austrian subject? Austrian nationality ceases, according to what is said in section 70, on the authority of M. Foelix, when a subject emigrates with the consent of the government. He had more than the consent of his government to the abandonment of his country. He was forced into exile. He had, then, no domicile, unless the United States gave him one, and since exile cut off all relations to citizenship, the only power that could protect him was that in whose territory he resided. This it was bound to do. But to this it might be replied, that he had agreed in writing never to return to Turkey, and that the Austrian claim upon him would revive on his failing to fulfill this condition. It is indeed questioned by Mr. Marcy, whether he engaged never to return; and it might perhaps be said, that, if such an engagement existed, it related only to return for political purposes. But to this Austria might reply, that she could not know what his purposes were, and that the promise must be absolute, in order to prevent his doing political mischief in the neighborhood of Hungary. This, however, is a point upon which our diplomatist preserves silence.

"3. What were his relations to the United States? Not those of a citizen, but of a domiciled stranger. His oath, declaring his purpose to become

or stranger, has a right to inflict penalties incurred upon the transgressor, if found within its jurisdiction. The case is not altered by the character of the laws, unless they are in derogation of the well-established international code. No nation has a right to supervise the municipal code of another nation, or claim that its citizens or subjects shall be exempted from the operation of such code, if they have voluntarily placed themselves under it. The character of the municipal laws of one country does not furnish a just ground for other states to interfere with the execution of these laws, even upon their own citizens, when they have gone into that country and subjected themselves to its jurisdiction. If this country can rightfully claim no such exemption for its native-born or naturalized citizens, surely it cannot claim it for those who have at most but inchoate rights of citizens.”^{*}

a citizen, and his long stay here, put this out of the question, and his temporary absence could not shake this character off. Moreover, he had a passport, certifying to his American nationality. He would therefore be entitled, by the law of nations, to the protection of the Turkish authorities against his Austrian captors. Had he been even a fugitive prisoner of war, he could not lawfully have been seized on shore, unless treaty had so provided. He would equally be entitled to all that protection which officials of the United States were authorized to extend to him within Turkish territory.

“4. Would it have been in accordance with international law for the captain of the frigate to use force in protecting him within the port of Smyrna? Active and aggressive force certainly not. As things were, the demonstration of force saved the use of it. But to complain of such a force would have fallen to the duty of Turkey, as it would have taken place within her waters. As for force, absolutely considered, for instance, on the high seas, Austria could not have complained if the evils of a sudden wrong on her part were in that way sought to be prevented.

“At the bottom, this was a case of collision between original and transferred allegiance, the latter in its incipiency, in which the obligation to protect the person, within the limits of the law of nations, lay on the United States. How Austria could have dealt with him within her own territory is another question; and it must be admitted that his mere declaration to become a citizen of the United States did not affect his nationality.”

^{*} Case of Simon Tousig (1854) Wheat. Int. Law, L, 929, same case in Snow's Cas. 228, and Pitt-Cobbett, Cas. Int. Law, p. 90. Vide, also, Hackett's Case, 1 Halleck, Int. Law, p. 375; Case of Lucien Alibert, Pitt-Cobbett, Cas. Int. Law, p. 96.

STATUS OF INDIANS IN THE UNITED STATES.

99. The status of the Indian tribes in the United States is not that of foreign nations.

Previous to 1871 the status of the American Indian was rather peculiar, in so far that he was neither an alien nor a citizen, and yet the government negotiated treaties with the different tribes in an analogous manner to treaties with foreign nations. In *Cherokee Nation v. State of Georgia*, Chief Justice Marshall said: "Indian tribes within the United States do not constitute foreign nations. They are regarded as in a state of pupilage, and may more correctly be denominated domestic dependent nations." Again, they are held to be capable of maintaining the relations of peace and war, with theory of governing themselves, under their (United States) protection, and of making treaties. But not treated as foreign nations, in the ordinary sense.⁹ Again that the Cherokee Nation is not a foreign nation, but in its semicivilized state bears a close analogy to a provisional government of a territorial character. In 1871 a statute was passed providing "that no Indian nation or tribe, within the territory of the United States, shall be acknowledged or recognized as an independent nation, tribe, or power, with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, 1871, shall be here invalidated." An Indian who has voluntarily separated himself from a tribe, recognized as such by the government of the United States, and who has taken up his residence among the white citizens of a state, without being naturalized, taxed, or recognized as a citizen, either by the United States or a state, is not a citizen of the United States, under the fourteenth amendment to the constitution.¹⁰ In 1885 (March 3d) an act was passed by congress making Indians subject to the jurisdiction of the United States, and in a case of murder committed on an Indian reservation within the state of California by one Indian upon another, the supreme court held that the circuit court of the United States for the district of California had jurisdiction to try the case,

⁹ *Cherokee Nation v. Georgia*, 5 Pet. 1.

¹⁰ *Elk v. Wilkins*, 112 U. S. 94, 5 Sup. Ct. 41.

and that the act referred to was valid in both its branches.¹¹ It had previously been held that the only method by which an Indian could become a citizen of the United States was by naturalization, in the same manner as any foreigner. The opinion has been expressed that this act of 1855 converts or should convert Indians into citizens of the United States by birth. They are very properly subject to the jurisdiction of the United States, but it is not believed that they are or should be considered as citizens, and especially so long as they maintain their tribal relations.

¹¹ *Ex parte Crow Dog*, 109 U. S. 556, 3 Sup. Ct. 396; 2 Whart. Dig. § 208; *U. S. v. Kagama*, 118 U. S. 375, 6 Sup. Ct. 1109.

PART I.

Consular Duties in General.—Staff.—Office.

CHAPTER I.—GENERAL DUTIES.

EVERY Consular Officer is under obligation to perform the duties of his office in accordance with the existing laws and according to instructions transmitted to him, and must, by his behaviour whether on or off duty, show himself worthy of the respect which he should attach to his position.

§ 1.
Consular
duties in
general.

It is the sacred duty of every servant of the Russian State to guard and protect, to the best of his knowledge, power and ability, all rights and prerogatives appertaining to His Majesty the Emperor.¹

Every official is expected to make it his immediate duty to be well acquainted with all the laws and regulations of the State and to maintain their integrity to the very best of his ability, as the fundamental basis of the fair and equitable conduct of all business.² In particular, Consuls are required to watch, each one in his own Consular district, over the interests of Russian and Finnish trade and shipping.³

The Consul is responsible for the legality of his official actions. With regard to his behaviour outside of his official sphere, it is impossible to lay down any fixed rules. Tact and experience are, here, the best instructors. Careful preliminary investigation is especially necessary when joining clubs, associations, &c.

The Consul must treat as confidential all matters which come to his knowledge in his official capacity.

Russian Consuls must conform, in the exercise of their official functions, to the laws of the Russian Empire, to the Circulars of the Ministry of Foreign Affairs, to the instructions of the Legations, Embassies, or Consulates to which they are subordinate and to those of the Ministries of Finance, Trade and Commerce, and Marine.

On the other hand, Consular Officers must also be guided by the law and usage of the district in which they exercise their office. If the local government has not granted the Consul special rights and privileges by agreement between itself and the State whose agent the Consul is, he is subject, in all his official actions, to the laws of the country in which he resides, and may not, therefore, place himself in conflict with them. In his official intercourse with the Ministry or other authorities of the country in which he resides, the Consul must be careful to observe propriety and the established etiquette and not make pretensions which might lead to disputes. Even in the most delicate explanations, he must know how to uphold his dignity, not forgetting the respect due to the Government with which he has to deal. In short, while taking care that the prerogatives

¹ Reg. of Civil Service, Art. 706.

² Reg. of Civil Service, Art. 708.

³ Cons. Reg., Art. I.

attached to his post and recognised by treaties and usage be maintained intact, the Consul must not, through misplaced pretensions, be the occasion of complaints against himself or of misunderstanding between the Governments of the country in which he resides and of that which he represents.¹

If a case occur which is not provided for by Russian law, or if by reason of the peculiar situation of the Consul's place of residence, or for other reasons, he find himself in an exceptional position; or if, generally speaking, a more exhaustive explanation of any point of Consular law or usage be necessary, the Elective Consul must apply for special instructions to the State Consul, to whom he is subordinate, and the latter will, if necessary, report to the Imperial Legation or Embassy accredited to the country in which he resides and to the Ministry of Foreign Affairs.²

The Consul is the guide, protector and, in some cases, the trustee of Russian subjects. He is the representative of the power of the Government in the district entrusted to him, and it is his duty to collect and transmit to the various Government Offices and Institutions by whom he is instructed, information on certain matters: such as sanitary conditions and measures, statistics, ship-building, judicial matters, railway construction, shipping, finance, agriculture, taxation, forestry and all branches of industry and trade. He is empowered to perform certain notarial acts: to vizer passports in favour of people proceeding to Russia; to grant passports and certificates to Russian subjects returning to Russia, and to legalise ship's documents. He co-operates with the commanders and masters of war-ships and merchant vessels on their arrival and departure from the ports of his district, and in the event of accident or damage, complete wreck or other misfortune incidental to shipping, when all sea-protests, declarations of experts and settlements between commanders and crews, &c., &c., are made before him. It is his duty to protect the interests of Russian subjects applying to him for assistance; to correspond in reference to their affairs with the local authorities and the home Government, and to make a special point of endeavouring by all means in his power to promote the export of Russian produce to foreign countries. Finally, it is his duty to succour, assist and repatriate such Russian subjects as are without means of subsistence and are not able to remain abroad, *e.g.*, sailors who have been left behind by Russian vessels, either through sickness or any other cause, returning emigrants, vagabonds and pilgrims.

**Punishment
for
insulting
Consuls.**

Any person convicted of having insulted an official by the use of abusive or defamatory language directed towards him, even if not in an official place but during the performance of his official duties, or in consequence of such performance, shall be liable to imprisonment for a period of from two to four months.

If it be proved that such verbal insult was committed without the intention of showing disrespect to the place or person, but in a state of drunkenness or through ignorance or stupidity, or that the words used by the culprit, though indecent, were not abusive or

¹ Cons. Reg., Art. 99.

² Cons. Reg., Arts. 2 and 106.

defamatory, he shall be liable to a fine not exceeding one hundred roubles.¹

Russian Consular Officers must, as far as possible, perform their duties themselves and leave to their auxiliary employees only such work as is of a purely mechanical nature. Among Consular Officers there are some who are merely figureheads, and who have no idea whatever of their Consular business. They do not even wish to apply their energies to their duties, and leave all the work of the Consulate to be done by clerks. So, the public applying to the Consulate never have a chance of seeing the Consul, and are simply directed to apply to his clerks. This order of things is nearly always most injurious to the country the Consul represents. It need hardly be said that the clerk, who bears no responsibility himself, has far less interest in satisfying the people applying to the Consulate, than the Consular Officer himself. The Consul has been elected for the very purpose of taking care of the interests of the country he represents. It is assumed that he will make himself thoroughly conversant with his duties, apply all his energies, and so become an authority on the work which is entrusted to him. And, without personal experience, he cannot attain to this.

**Presence
at office.**

It is the duty of Russian Consular Officers to perform their duties so that they may satisfy the greatest number of Russian subjects with whom they have to deal.

The correspondence of Consular Officers with officials and private persons must be carried out with promptness and without delay, using note-paper with official heading. But the note-paper must not mention any business capacity or personal attainment of the Consular Officer.

**Corre-
spondence.**

Generally speaking, Consular Officers must hold apart their official capacity from their private occupation, as otherwise the dignity of the Office may suffer. It is specially desirable that the Consular office should not serve the purposes of advertising private character.

How far Russian Consular Officers are allowed to contribute to periodicals or to edit separate books, is a question which must be dealt with in accordance with Art. 727 of the Civil Service Regulations,² according to which Russian State employees (not Elective Consuls) are forbidden to issue books which contain anything that has a bearing on the Foreign or Home relations of the Russian Empire, without the permission of their chiefs. It appears, therefore, that Russian Consular Officers may not collaborate with the Press or issue separate books which refer directly or indirectly to questions of politics or of the Russian State service. If special permission has been requested and granted by those Officers who hold superior rank to the authors, then the work may be published, and it makes no difference whether these articles or books appear under the signature of the author, or anonymously, or under an assumed name. When such articles or books are to be published abroad, consent for doing so must be obtained from the chief of the local Diplomatic Mission, and for articles and books to appear in Russia, the consent of the Ministry of Foreign

**Publica-
tions.**

¹ Code of Criminal Laws, Art. 268.

² Svod Zakonov, Vol. III., Edition 1896.

Affairs is necessary. Articles or books which do not refer to questions of politics or State service do not require any previous authorization from the authorities mentioned above.¹

**Russian
Eagle.**

It has been observed that some persons, who have not received permission to use the Russian Imperial Eagle, yet still do so upon books, cigarettes, trunks, &c. Russian Consular Officers are expected to protest against such use, and to point out that the Russian Eagle is generally put upon official Government publications, and, therefore, books that bear this crest have the appearance of being official publications.

The Russian Eagle is also put upon advertisement signboards and products of those firms which have received special permission from the Russian Government to do so. This privilege is granted for their exhibits at Russian exhibitions, and for their services rendered to Russian trade and industry. Russian Consular Officers are obliged to prevent the unlawful use of the Russian Eagle as far as possible.

Except in special cases, the jurisdiction of Honorary Consular Officers is limited to the town of their residence. If they are requested to perform Consular duties outside their town of residence, they must apply to the State Consul, to whom they are subordinate, with the request to be delegated in each separate case in accordance with Art. 37 of the Consular Tariff.

The Consular Officer must be especially well informed about :—

1. The firms of his Consular district which are interested in the exportation of goods from Russia, and who might be interested in such exportation in the future.
2. The reasons which allow other countries to compete with Russian goods on the local market.
3. New branches of industry arising in his Consular district.
4. The means of communication, and the carriage of goods.
5. Improvements in the facilities of loading and discharging goods at seaports.
6. The development of telegraphs and telephones.
7. The condition of rural economics ; crops, and progress of industries standing in connection with agriculture.
8. Cattle-breeding and the importation and exportation of these animals.
9. The state of navigation.²

The Consul must also be thoroughly acquainted with current questions useful to him concerning his Consulate, and the way analogous cases have been dealt with in the past. State Consuls must know thoroughly well those laws regulating the duties of notaries public, penal and common law enactments regulating commerce and shipping, military service, passports, bills of exchange, stamp duty, customs, and if questioned, they must be able to give authoritative answers on these matters. They may not avoid legal duties and must give advice to Russian subjects who apply to them in this respect.

¹ Letter of the Director of the II. Department of the Russian Ministry of Foreign Affairs of 14th June 1912, No. 7849.

² Circular of the I. Department of the Russian Ministry of Foreign Affairs of 9th January 1912, No. 290.

The Consul is at the head of the Russian Colony, although he has not the right to dictate to it, and in the capacity he fulfils, he must look after and pay proper attention to all those belonging to the Russian Colony.¹

CHAPTER II.—STATE AND ELECTIVE CONSULAR OFFICERS.

A DIFFERENCE exists between State and Elective Consuls. The former, who are also called *Consules missi*, are sent by the State which appoints them to a foreign State, and must be subjects of the country they represent. They draw a fixed salary and the Consular fees collected by them form part of the revenue of the State. On the other hand, Elective Consuls are Consular Officers who are selected from local merchants or other suitable persons. They do not require to be subjects of the State by which they are appointed, and do not draw any fixed salary, but are entitled to retain all fees collected by them in accordance with the Consular Tariff.

§ 2.
The difference between State and Elective Consuls.

In places where there is not sufficient reason for appointing State Consular Officers, and where there is occasion to assist Russian subjects and Russian Industrial and Trading interests, Elective Consular Officers are appointed. Their rank is generally determined by the importance of their functions, and the position they occupy socially and officially.

Russian subjects and those who know the Russian language, if they are otherwise considered to be suitable, have preference over other candidates for Consular appointment.² A person who desires to be appointed a Russian Elective Consular Officer, must apply to the State Consul of the district, giving full particulars, and filling up the following form :—

Christian Name and Surname.	Consular Rank.	Date of Birth.	Nationality.	Religion.	Social Position and Occupation.	Educational Training.	Whether he knows the Russian Language.	Whether he knows Foreign Languages and, if so, which.	Since When		Whether in Possession of any Orders or Decorations, and if so, their Descriptions.
									In the Russian Consular Service.	In the Present Rank.	

Further, he must produce a written recommendation from some local authority, and must sign the following declaration :—

“ I, the undersigned, hereby certify, that upon undertaking the charge of the Imperial Russian Vice-Consulate at X, I will fulfil my duties according to the instructions which are, or will be, given to me by the Imperial Russian Consulate at X, the Imperial Russian Embassy at X, and the Ministry of Foreign Affairs at

§ 3.
Declaration of Elective Consular Officer.

¹ Collection of Regulations of the I. Department of the Russian Ministry of Foreign Affairs, Petrograd, 1912. Pages 17 and 18.

² Circular of the I. Department of the Russian Ministry of Foreign Affairs of 6th February 1913, No. 1500.

PART V.

Assistance to Russian Subjects.

CHAPTER I.—GENERAL.

THE duties of the Consul, besides those enumerated in separate paragraphs as under, comprise in general protection and assistance of any Russian subject, whether in his Consular district or not. The Consul must help any Russian subject in any legitimate aims as far as they appertain to his sphere of Consular activity. He must assist him in difficulties and defend him from attacks on those rights conferred upon him by special State-conventions or by local law. However, whilst assisting individual Russian subjects the Consul must not overlook his official position. In obtaining a favour for an individual he might be placed under an obligation which might prevent him on another occasion from displaying sufficient energy before the local authorities, and might also injuriously affect his position. The Consular Regulations and Circulars of the Ministry of Foreign Affairs make it the duty of Consular Officers to give all the assistance and co-operation in their power to Russian subjects appealing to them for advice, support, or assistance. However, only Consular experience is able to determine precisely of what nature such assistance should be. There are people who look upon the Consul as an agent, commissioner and gratuitous solicitor, for every private person, without recognising that he is an employee of the State, who must in all his actions uphold the dignity of his office and of his Government, and who cannot act as a private person. The Consul cannot be required to interfere personally in quarrels between Russians and local subjects, because the latter would not recognise his authority, and he would expose himself to treatment unworthy of his position. A Russian State Consul at Naples was earnestly requested by the widow of a Russian Privy Councillor to interfere energetically on her behalf with the proprietor of the house in which she had taken a flat, in order that the chimneys, which unfortunately had not sufficient draught and smoked, should be put in order. The same Consul was asked by a Russian student at Berlin to remonstrate with his landlady who claimed payment for a table-cloth in which the unhappy youth had burned a hole with his cigarettes. Another Russian subject at Berlin came in great haste to the same official complaining of a railway servant who had stopped him at the exit of the platform because he had lost his ticket and could not produce it. It was at Berlin too that the Russian Consul was sent for to express, on behalf of two Russian ladies who were staying at the sanatorium of a famous local physician, their dissatisfaction with the manners of the manageress of the institution. On all such and

§ 107.
Consular
Assistance
to Russian
Subjects.

similar occasions the Consul is entitled to make it delicately understood that the applicant should apply to a local solicitor or to the local courts of justice if there be no prospect of an amicable settlement of the dispute. In 90 out of every 100 cases in which Russians travelling abroad are concerned in petty quarrels, their personal and national dignity would not suffer if they desisted from applying to the Consul, but recognised the simple fact that they must comply with the order of things peculiar to the particular foreign country in which they are temporarily sojourning. This may be pointed out to them by the Consular Officer.

The assistance asked for from Russian Consular Officers must not require special knowledge which would come under the competency of specialists, nor must it exceed certain limits of time and work, nor must it be connected with a responsibility of a commercial nature. To make it clear what is meant, it is necessary to quote the following instances of the abuse of the service to be rendered to the public by Consular Officers.

A Russian tradesman applied to the Russian Consulate-General in London to obtain some information about the standing and trustworthiness of an English firm. His request was complied with, and confidential information was communicated to him from local sources—even from the Bank where the said English firm had their banking account. However, this did not satisfy the applicant, who put forward a request that the Russian Consulate-General should give him a certificate under the Consular seal, that the said firm deserved credit, and was in a good commercial position. As other instances of applications exceeding the ordinary limits of Consular assistance, it may be quoted that a Russian scientist applied to the Russian Consul in Bombay, with a request to make a collection of Indian minerals for him. On another occasion, the Russian Consul in London was requested to gather pamphlets and books written on astronomical matters; also, on the treatment of lunatics in the different asylums of the United Kingdom, and, at the same time, to give an essay on this question. State Consular Officers are supposed only to be specialists for legal matters concerning their own country, and for affairs concerning trade, commerce, finance and general State administration. It is therefore unfair to treat them as a "Jack-of-all-trades," demanding from them information which does not enter into their competency.

The protection afforded by the Consular Officer to Russian subjects may sometimes be in the nature of friendly services, and in this respect very much can be done, provided that the Consular Officer wishes to do his duty and is prepared to employ all available resources which circumstances or his personal relations may place at his disposal. In such cases the action to be taken by the Consul will necessarily vary according to the circumstances of the particular case. It is impossible to establish a general rule, but it will be useful to mention some cases in which it was advisable that Consular intervention of a friendly nature should be undertaken, and in which the result was successful. A Russian Pole, B., had the misfortune to be knocked down in the streets of Newcastle by the careless driver of an omnibus. He was severely injured and compelled to remain in hospital for several

weeks. On his recovery he decided to lodge a claim for damages against the proprietor of the omnibus, but being destitute of money he was unable to find a solicitor willing to represent him at the court of justice otherwise than on payment of his fees in advance.¹ When this came to the knowledge of the Consul he sent the man in question to a solicitor known to the Consulate, requesting the latter to give his opinion as to whether the case was likely to be won. The solicitor's reply was in the affirmative, and the Consul entrusted him with the conduct of the affair, giving his guarantee that the fees would be paid. At the same time the Consul took care to let the proprietor of the omnibus know that the claimant had his assistance and strong support. This had the happy result of bringing the case to a settlement without a lawsuit, the proprietor of the omnibus consenting to pay claimant £55 as damages, a sum which constituted a small fortune to the utterly destitute man. Another case of friendly assistance occurred at Glasgow, where the Commissioner-General of the Russian Section of the International Exhibition of 1901 at that town found himself, while liquidating the affairs of the section, in a very difficult situation, owing to the legal arrest of the Russian pavilions at the Exhibition in consequence of a lawsuit brought against him. The State Consul of the Consular district to which Glasgow belongs came to his assistance by a declaration to the local authorities to the effect that the pavilions could not be arrested on a claim brought against the Commissioner-General, as they were the property of the Russian Government, by whom they had been erected, and that he, as the local Representative of the Russian Government, intended to sell them by public auction. This step was recognised as legal by the local authorities, and the liquidation of the Russian section could be proceeded with without further delay. As a third example of Consular protection afforded to Russian subjects, the case may be quoted of an unfortunate Russian sailor who murdered his sweetheart at North Shields on Tyne. The crime was committed in an access of well-founded jealousy, the man having been deceived in his honest intention of marrying the girl, and strongly provoked by the theft of his money, which was to have enabled him to get married. He was condemned to death; the jury, under the influence of the strong speech delivered by the judge, not even recognising any extenuating circumstances in the case. After the trial the Consul had an interview with the judge, placed before him the reasons why in his opinion the condemned man was deserving of mercy, and was so fortunate as to persuade his lordship to recommend the condemned man to the Home Secretary for reprieve. In addition to this, on the initiative of the Consul, a petition for a reprieve was addressed to the Home Secretary, and signed by thousands of persons, the case of the unfortunate man having aroused a great feeling of sympathy in the community. The result of these steps was that the sentence of death was commuted to one of imprisonment "during His Majesty's pleasure." After some years had elapsed the man was pardoned by His Majesty and set free.

The Consul must of course take special care to render assistance

¹ The cases of sailors and emigrants returning to Russia are treated separately, under headings "Sailors" and "Emigrants" respectively.

to his colleagues, and in doing so it is sometimes necessary to take steps of a personal character. Thus the Consul at Newcastle-on-Tyne was informed by the Consul-General in London that a Russian Jew at Glasgow was in possession of an imitation of the official seal of the Russian Consulate-General in London. A detective was instructed to investigate the matter, but failed to discover anything. The Consul then saw the Jew himself, and on informing him that he was well aware of the existence of the spurious seal, he found out that the Jew had in fact received the imitation of the Consular seal and sent it abroad.

It is for the Consular Officer to decide, on each individual occasion, whether his intervention in favour of Russian subjects is advisable, and if so what form it should take. In case of doubt an Elective Consular Officer will find it necessary to apply for special instructions to the State Consul to whom he is subordinate.

Russian Consular Officers cannot be strongly enough recommended to be obliging towards all Russian subjects who may apply to them, and in the conduct of Consular affairs to exercise the utmost civility and geniality. This line of conduct will be found to be the safest as avoiding the possibility of misunderstandings and complaints to head-quarters, and will at the same time secure the best results to the Consular Officer's endeavours.

Russian Consular Officers are frequently applied to by persons who are only inadequately informed as to the assistance they are entitled to from the Consular representatives of their country. Cases of this description are a source of misunderstandings, disputes and complaints against the Russian Consular service, to avoid the recurrence of which it is desirable to definitely establish the cases which may receive Consular assistance, and in which assistance cannot be rendered.

The laws of Russia, and the instructions issued to Consular Officers by the Ministry of Foreign Affairs, indicate, quite clearly and in detail, what are the immediate duties of the Consular service in the cases mentioned in these laws and instructions. Doubts arise regarding the application for assistance in cases which are not thus provided for. Such cases are very frequent in Consular practice and their treatment is a matter of considerable difficulty, the more so as Russian subjects are much more exacting in their demands on their Consular Officers than the natives of any other country.

According to them it is the duty of the Consul to interest himself in their private affairs, and they believe him to be invested with such power and authority that all difficulties and obstacles that confront the applicant may be swept away! The slightest suggestion that the Consular Officer does not, unhappily, possess the power with which he is thus credited and is actually unable to accede to the demands of his applicants is either totally ignored or serves as the signal for a flood of complaints and reproaches.

Obviously, the main purpose of the Consular service is to safeguard, in the most effective manner possible, the interests of the mother country and those of individual compatriots in a foreign land. The Consular Officer enjoys a position in which he has opportunities of doing good service to his country and to his fellow countrymen. Avail-

ing himself of every opportunity for such service, he is nevertheless frequently hampered in his activity primarily by limitations proceeding from his official position, which prohibits his acting in what may practically be the capacity of a private agent or correspondent, and, furthermore, by the current duties of his office, which frequently do not allow him the leisure necessary for collateral activity.

The fundamental principle of the Consular service is, that Consular Officers extend their assistance to Russian subjects who apply to them in all matters in which the former are powerless to act effectively without their aid. Thus, for instance, the judicial knowledge of the Consul, his knowledge of economics and kindred subjects, his acquaintance with local conditions; his personal connections, and his experience, whether of business or of ordinary life, should always be available, in the form of advice as to how to proceed under given circumstances, without, however, any responsibility being attached to him on account of such advice.

On the other hand, all matters which the applicants can prosecute for themselves without the assistance of the Consul and without injury to their own interests, cannot demand the attention of the Consul. The latter is under no obligation to lend them his aid, as he is not permitted to engage in business of a private nature, nor is he expected to despatch private correspondence, nor is he obliged to act as translator, solicitor, banker, private secretary or attorney. Hence the assistance rendered by Consular Officers may be precisely defined and limited by the application of the principle stated above.

The following are instances which illustrate the demands made upon Consular Officers:—

1. A person requested the Consular attestation of a somewhat lengthy agreement. It was pointed out to him that a copy of every document legalised at the Consulate is required for preservation in the Consular Archives. The applicant suggested that the copy could be prepared by the Consulate and was told that it was not the duty of the Consular Officer to do so. To this the applicant replied that he was being unnecessarily inconvenienced, as he only required one copy of the document. Finally the applicant had to submit, but he went away entertaining a feeling of resentment towards the Consular Officer who, he was convinced, was legally obliged to make the required copy himself.

Another case in point may be quoted:

An applicant wished to have a document translated into Russian. The Consul offered him the addresses of those to whom he could apply to have the translation made. The applicant refused to believe that it was not the duty of the Consulate to undertake the translation. It was pointed out to him that the Consular function is limited to certifying the correctness of the completed translation, if desired. Upon this the applicant complained at having to pay for the Consular certificate and also for the services of the translator, and, finally, departed very dissatisfied, and quite convinced that the Consulate had intentionally occasioned him extra expense.

Especial caution is recommended in cases where the applicants do not ask for a certificate of correctness of a translation into a foreign language, but request an independent document in which the Consul

is invited to certify that "from a document or documents produced before him it appears," etc., etc.

A Consular Officer with the least experience will not be caught with this bait; the fact is, that a properly certified translation is of no use without the original document, whereas an independent certificate granted by a Consular Officer is valid without it. It thus becomes possible that after receiving the independent certificate referred to above a translation made of the document and certified can be used for purposes of fraud.

It often happens that translations or copies produced for certification are found on examination to have been done carelessly and to be full of errors. As the Consul assumes the responsibility for the correctness of the translation or copy, he has a right to demand that the translation or copy shall be correct, and, if such is not the case, to return it to the applicant for correction. The Consul is under no obligation to make the corrections himself, his part is confined to certifying the correctness of the document. Unfortunately, this simple arrangement does not always appear to be clear to the applicants. They demand from the Consul that he shall himself correct all translations or copies submitted to him, which would involve the loss of much time, especially when the documents in question are lengthy.

Sometimes the Consulate is approached by persons of both sexes desirous of obtaining employment in factories, business houses, educational establishments, private families, etc. The applicants are all convinced that the Consul is obliged to accede to their requests, the more so, as they have heard that one or other of the Consular Officers has at some time really been able to obtain employment for a compatriot. This is a complete misunderstanding. The truth is, that cases in which employment is obtained through a Consular Officer are very rare and are quite accidental in character. Sometimes, though very seldom, the inhabitants of the country apply to a Consular Officer requesting him to recommend them persons having certain exceptional qualifications, such, for instance, as a knowledge of the Russian language. If, at the same time, there happens to be some one who is capable of taking the position thus offered, it is of course possible to accommodate both the parties. But, as stated, such cases are rare and occur accidentally, as the Consul is not in a position to know of vacancies in the labour market, while, on the other hand, employers are not likely to take on persons merely because they possess a letter of recommendation from a Consul, as is usually supposed to be the case. An employer only gives work to those of whose services he can make use in the pursuit of his business. Hence the Consul's assistance in this respect should be confined to giving the applicant the addresses of agencies and registration offices engaged professionally in such business.

Friction also takes place on the question of letters of introduction. Persons quite unknown to the Consulate apply for letters of recommendation for all sorts of purposes, such as to obtain situations, to effect business transactions, etc. Consuls may give letters of recommendation so as to enable the applicant to obtain access to libraries, private museums and other places to which the general public is not admitted,

without such letters of recommendation. But these letters are more in the nature of certificates of identity and cannot convey a testimonial involving any serious responsibility on the part of the Consul. Especially in relation to business matters the Consul is not only not obliged to give such letters, but, on the contrary, he should, as a matter of principle, refrain from doing so, in order not to compromise his official position and lose his impartiality. There can be no question that the Consul, however desirous he is of aiding his fellow countrymen, must not jeopardise his official position in the interests of private individuals. If a Consul were to give a letter of recommendation to every compatriot who applies to him for one without knowing him personally, his recommendations would soon lose all value.

There are persons who seem to think that the Consul is obliged to hold lengthy conversations with every one who chooses to present himself at the Consulate. In this respect ladies are the worst offenders. If the Consular Officer answers the questions put to him in a terse and business-like manner it seems that he gives offence. There is a confusion here between the idea of social and of business relations. Moreover, it is forgotten that the Consular Officer cannot afford to spend unlimited time with each applicant, especially when his reception-room is full of people awaiting their turn. There is a type of wandering people who have strayed abroad through a misunderstanding. They cannot speak the language of the place, they are completely ignorant of local conditions of life, and voluntarily place themselves in such a position, that the only thing left for them to do is to ask the nearest policeman to show them to the Russian Consulate. They then present themselves before the Consular Officer, overwhelm him with endless empty questions and require from him assistance which can only be expected by a child from its nurse. Some time ago a Russian student, wearing the uniform of the University, came to the Consulate-General in London and stated that he had arrived the day before and put up at a boarding house. He had left his luggage there and had gone out into the street—and had since been unable to find the boarding house. He did not know the name of the street in which it was situated, nor the name of the house, he could not speak English and was, in fact, utterly helpless. He had to be sent back to Russia. There are other characters—wasters, neurasthenics and others, who travel abroad without sufficient means, and without the least knowledge of the country which they honour with their sojourn and who do not seem to be quite sure of what they want! This particular type appeals to Consulates with the most varied petitions, which have no connection whatever with Consular duties. In 1908, a young Russian boarded one of the steamers of the Volunteer Fleet at Odessa, accompanied by his lady cousin, intending to take a trip as far as Constantinople. On the way he decided to continue the voyage to Port Said and thence to Colombo. In Colombo he was rather surprised to find that no one could speak his native tongue, but he was not disconcerted, as he assumed that Consular Officers could and must lend him their assistance. He came through to Bombay and presented himself at the Russian Consulate in that city. Naturally, having no knowledge of foreign languages and with no acquaintance with the countries in which he was travelling, this eccentric person was obliged to seek the aid of his

Consulate, but can the Consular service be said to exist for the purpose of rendering assistance to this kind of person ?

The Consular assistance is also strained to excess in cases where applicants require money for loans or for the redemption of articles they have pawned. This service cannot be rendered for reasons of ordinary experience. To lend the applicant money or to redeem his belongings is to encourage further recklessness in money matters and to further demoralise the subject. Moreover, Consulates do not possess funds for this form of charity. Petitioners for monetary assistance should reflect that the Consulates do not exist for the purpose of advancing loans. Some Consulates, it is true, have sums at their disposal for distribution to the needy, but in granting assistance from these funds the Consul is required to conform to the instructions of the Ministry, that is to say, his donations depend upon his opinion as to the merits of the particular case and must be confined to small sums. To free the Consulates of useless applications for more extensive assistance, the above system of distributing charity ought to be extended. The best method of assisting Russian subjects who happen to be in difficulties is, in most cases, not to give them money, but to direct them to an agency where they may apply for employment or to repatriate them. It is a regrettable fact that the greater portion of indigent Russians who crowd the vestibules of the Russian Consulates, are no more and no less than professional mendicants and adventurers. Neither of these types wishes to earn money by honest labour but to make a life's business in exploiting the unorganised charity of inexperienced philanthropists. Therefore, it should be the task of all Russians living abroad to form local charitable organisations for the purpose of rendering aid to indigent Russians on as systematic a plan as possible, and so take this work out of the hands of the Consuls, who have not the leisure at their disposal to collect information as to the conditions of life of those persons applying to them for assistance and by so doing make certain that they are deserving of relief. For instance, in London and Paris there are special Russian benevolent societies.

Russian Consular Officers are specially concerned with seamen who are abroad in the pursuit of their calling. Sailors out of employment who apply to Russian Consuls for relief are placed in boarding houses or Sailors' Homes until they obtain employment. However, it happens only too frequently in Consular practice, that sailors living at the expense of the Consulate in such boarding houses, make no effort to obtain employment, and even refuse to accept it when offered them, and also refuse to be repatriated at the expense of the Consulate. Having no definite instructions as to the treatment of men who deliberately exploit the Consulates and refuse to work, our institutions are placed in the unpleasant position of feeding and supporting wastrels. In the first place it should be made the rule that sailors are denied all further assistance if they refuse to join a ship without good reason, and secondly, that a seaman who has been as long as one month at a boarding house and is unable to obtain a berth must be sent home to Russia or, on refusal, he must forfeit the right to any further assistance from the Consul.

A favourite trick of persons who have matters in dispute abroad,

is to seek to use the Consular authority for their own purposes. Consuls receive requests to "demand from" a given foreign firm certain sums of money, to "order" a certain person to act in a given manner, or to "send back to Russia" a husband who has deserted his wife, or to order the son of a doting mother to conduct himself properly and to write to her regularly, etc., etc. Unfortunately, a Consul has no compulsory police power, and, therefore such requests are impossible of fulfilment. Persons residing in a foreign country are only extradited through the ordinary diplomatic channels for particularly serious crimes, provided for in special extradition treaties, while in cases of disputes between Russian and foreign business houses, the Consular participation can only consist in recommending a suitable lawyer or attorney, who will conduct the case in the proper court. A Consul may take upon himself commissions entrusted to him by private persons in the form of simple enquiries, or in their name acquaint third parties of certain facts, but he must refrain from taking any actions which enter the competency of a solicitor. Some applicants even believe that their Consul is imbued with power which enables him to interfere with local laws. When an enterprising young Russian was punished with imprisonment at Johannesburg for illegally selling spirits to the negroes, his mother in Russia began to bombard the Consulate-General in London with letters in which she begged the Consulate to "rescue her son from prison" and "to issue the necessary orders with regard to her son who was incarcerated in prison," etc., etc. All civilised countries recognise the principle of mutual solidarity in the application of the International Rule that judicial power rests with the territorial authorities. The Consul, in his official capacity, must bow to the local judicial decrees if they are in accordance with the laws of the land. He is, therefore, not only practically but even theoretically powerless to interfere with the course of the law in favour of his fellow countrymen who are at cross purposes with the laws of the country owing to an infraction of the rules of local order.

Consulates are frequently resorted to by persons possessing no documents to prove their identity or nationality. When interrogated they reply that the Consul may make enquiries at the place to which they belong. But the Consul is not by any means obliged to trace the identity of applicants by correspondence with the authorities in Russia; on the contrary, the person applying for assistance is bound to prove his identity to the Russian Consul on the basis of documents.

Nor is it the duty of Consular Officers to approach the home authorities with requests for passports for private persons or for the extension of such terms of such passports, nor to conduct correspondence with regard to the military duties of individuals; in a word, he may not interfere with the relations between individual Russian subjects and the authorities in Russia, unless the former for some reasons, for instance, by being illiterate, require Consular assistance.

The assistance which Consular Officers are obliged to render Russian subjects abroad, is often interpreted by the client to include their countenance and support in evading the payment of passport dues, customs duties, taxes, etc., in fact in acting against the interests of the Government and in defiance of the laws of their own native land. No less strange is the not infrequent demand for assistance and

co-operation against their fellow-countrymen in Russia. All this is evidence of a complete misunderstanding of the duties of the Consular service.

Those commissioned by the Government on special errands abroad receive particular attention and assistance from Consular Officers; but here, again, it is necessary to determine what shape such assistance ought to take. In such cases the Consular Officer advises the parties where to apply in order to obtain the information they seek, or he furnishes them with letters of recommendation, which secure them introductions to persons or institutions connected with the objects of their visit. The Consul is sometimes required to draw up lengthy statements for them and to do their work for them. This is outside the province of a Consul.

Consuls are also expected to render assistance to foreigners, when possible, with advice or instruction. But if the enquiry relates to matters of a local character, relating to individual towns in our extensive fatherland, Consuls are unable to render such assistance. The required data is not always available, as the Consulates do not receive regular official information about the individual towns of the Empire. More detailed information of this kind can and should be obtained from the foreign Consuls in Russia.



CHAPTER II.—ASSISTANCE WITH REGARD TO TRADE.

§ 108.
Consular
Information
to Russian
Subjects.

CONSULAR Officers are required to give information to all Russian subjects applying to them, whether they reside in their Consular district or not, on all subjects relating to business and, in particular, on matters of trade and shipping, either from their own knowledge and experience, or by making inquiries of the local authorities, merchants, and others. They are also required to supply information as to commercial matters in their districts, and to give their views as to the expediency of establishing direct business relations between Russian firms and those of their Consular districts. If the opinion entertained by a Consular Officer is not favourable to local trade, or if he is unable to speak highly of the financial conditions of the local tradespeople, he is recommended to exercise every caution in giving his opinion, as he may risk prejudicing his official position without doing any service to the person interrogating him. In like manner, Consular Officers should be cautious when giving information about individuals, or regarding the solvency or credit of firms, as he is unable to insure himself against the indiscreet or compromising use of such information, while taking all the responsibility which the expression of such opinions carries. If the Consular Officer prefers to withhold the required information altogether, he can supply the enquirer with the name and address of a firm in his district qualified and willing to supply it. When giving information himself, he should do so conscientiously and to the best of his knowledge. He should, on every occasion, stipulate that he assumes no commercial responsibility for the opinion expressed. If requested to name a business firm

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The Vienna Conference on Consular Relations

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THE VIENNA CONFERENCE ON CONSULAR RELATIONS

By

G. E. DO NASCIMENTO E SILVA *

THE United Nations Conference on Consular Relations which met in Vienna from March 4 to April 22, 1963, represents one more important step towards the codification of international law and a decisive chapter in the evolution of the consular institution. Ninety-two States were represented at the Conference and many of them until recently had never had a voice in the formulation of the international law that was to govern their future conduct in world affairs.

The 1963 Vienna Conference was part of a series of Conferences convened by the General Assembly of the United Nations for encouraging the progressive development of international law and its codification. Previously, a series of other international conferences had been convened, of which the most important were the First United Nations Conference on the Law of the Sea,¹ held in Geneva from February 24 to April 27, 1958, and the United Nations Conference on Diplomatic Intercourse and Immunities, held in Vienna from March 2 to April 14, 1961.²

The fact that the United Nations should have chosen Vienna for a second conference is symptomatic, and one can reasonably foresee that future conferences for the codification of international law will be held in the Austrian capital which is anxious to become the "Congress Centre of Europe." When the 1961 Conference met in Vienna, there was a natural invocation of the famous Vienna Congress of 1815, when various rules of international law on diplomacy were put into treaty form for the first time.

It is impossible to dissociate the 1961 Conference on Diplomatic Relations from the 1963 Conference on Consular Relations. The analogy between many of the legal situations which had to be solved in 1961 brought to mind the rules adopted two years previously. There was, however, a big difference because in 1961 the

* Delegate of Brazil to the Conference on Consular Relations and member of the Drafting Committee.

¹ *Report on the First United Nations Conference on the Law of the Sea* (Cmd. 584).

² See Professor D. H. N. Johnson's note in (1961) 10 I.C.L.Q. 597.

Conference had before it a set of rules on which international custom was reasonably clear; in 1963 the problem was more complex and the Conference had before it not only certain customs but also a series of consular conventions, municipal laws and usages.

The importance of the Vienna Conference of 1963, like that of the previous Conferences, must be put in its proper perspective. The United Nations now convenes conferences to which more than one hundred States are invited, and many of these, until quite recently, had no say in international affairs. Many of these Afro-Asian States had a natural distrust of the colonial powers, and doubts about accepting rules which had come down through European and, in some cases, Latin-American tradition. Some of these countries, possessing an ancient civilisation, hesitated to accept rules in whose formulation they had not participated. In consequence these countries, especially the new African States, had an opportunity to voice their opinion on the problems which were raised, and if the role they played was not as decisive as that of certain European and American delegates who had a larger experience in this field, they left the Conference with the feeling that their influence had been in some cases, especially in the voting, decisive.

CODIFICATION OF CONSULAR LAW

The Vienna Convention on Consular Relations, signed on April 24, 1963,^{2a} at the Neue Hofburg, was the outcome of a series of efforts which date back to the beginning of the century. It was, however, only after the League of Nations convened the Committee of Experts for the Progressive Codification of International Law in 1924 that a really serious effort was made to codify international law as a whole and in particular the question of consular relations. In 1927 the Committee of Experts included amongst the various subjects that could be codified, that of the Legal Position and Functions of Consuls, and appointed a sub-committee composed of Gustavo Guerrero (rapporteur) and Adalbert Mastny.³

Unfortunately, Mr. Gustavo Guerrero's report cannot be included amongst the major contributions of the Committee of Experts. It is a short, superficial examination of the problems, and after a brief study of the historical evolution it merely picks out some problems relating to the legal position of consuls; it does not even consider the question of functions. To give an idea of the value of this report, it is enough to say that it contains a long discussion on the

^{2a} The text of the Convention, together with two Optional Protocols are printed as an Appendix to this article.

³ (1928) 22 *American Journal of International Law*, Supplement, *Codification of International Law*, p. 104.

question of whether a consul is a public minister, and no distinction between career and honorary consuls is made. The work of the Committee of Experts of the League of Nations ended its contribution to the problem of the legal positions of consuls with this report, and it is interesting to observe that the International Law Commission of the United Nations passed over Mr. Guerrero's report when it studied the question in detail.

In view of the League of Nations' initiative the Faculty of the Harvard Law School, in 1927, undertook to organise a research in international law with the intention of preparing drafts on all the subjects selected for codification. The draft on the Legal Position and Functions of Consuls, which had Professor Quincy Wright as Reporter, is excellent and there can be no doubt that its influence on the International Law Commission was decisive.⁴

We must also mention here the Convention on Consular Officers, signed in Havana in 1928, which was the result of a series of meetings of American jurists who based their work on Epiácio Pessoa's Code of International Law (1911). In 1927 the International Commission of American Jurists met in Rio de Janeiro and drew up a draft on consuls which in the following year was transformed into the Havana Convention. This Convention also had a strong influence in the preparation of the International Law Commission's draft; many of the latter's articles were inspired by the 1928 Convention.

However, the fact is that before 1939 Consular Law was not ripe for codification. As regards the Pan-American Convention, one can observe that it is of a regional character and is sufficiently vague to permit more than one interpretation. One must also remember that Great Britain and the United States, with legal systems based on the common law, did not adopt a very generous approach to the situations of consuls. In short, their normal attitude was that they enjoyed no privileges or immunities. The same may be said of Italy, where Cavaglieri wrote in 1929 that perhaps the only privilege admitted was the inviolability of consular archives.

As regards the pre-war Consular Conventions we find a rather vague terminology concerning the legal position of consuls with expressions such as "privileges recognised by international law," "usual privileges," "do not enjoy diplomatic status," "most-favoured-nation treaty," and sometimes a reference to the principle of reciprocity.

⁴ (1932) 26 *American Journal of International Law*, Supplement, *Research in International Law*, II Legal Position and Functions of Consuls, pp. 191-449.

The post-war period, however, marks a definite change in the situation. To begin with, most countries possessing a career diplomatic and consular corps unified them into one foreign service which means that a diplomatic official may now serve in a consular post and vice versa. In consequence, the different treatment granted to consuls and diplomats becomes more sharply felt. One must also remember the United States position after the Second World War, when it acquired greater responsibilities and was obliged to expand its consular service all over the world. The fact that the United States Government policy was contrary to the granting of privileges and immunities to foreign consuls meant that they could not insist on the granting of such privileges and immunities to their own consuls abroad. The result was that on more than one occasion American consular officers were subjected to imprisonment, expulsion and other iniquities.

The same can be said of the United Kingdom, which for many years had been able to refuse privileges and immunities to foreign consuls in the United Kingdom but had managed to see its representatives abroad treated on the same footing as other consuls by invoking the "most-favoured-nation" clause in Treaties of Commerce and Navigation. But many of these countries reappraised their position and based their attitude towards the United Kingdom consuls on reciprocity.

In 1948 the United States signed with Costa Rica a Consular Convention which it considered as a model consular convention to serve as a basis for all future conventions signed by that country.⁵ Quite a few consular conventions were signed by the United States, including one with the United Kingdom in 1949.⁶ This Convention, however, was replaced by another in 1951. From then on the United Kingdom signed conventions with Austria (June 24, 1960), Belgium (March 8, 1961), Denmark (June 27, 1962), France (December 31, 1951), Germany (July 30, 1956), Greece (April 17, 1953), Italy (June 1, 1954), Mexico (March 20, 1954), Norway (February 22, 1951), Spain (May 30, 1961), Sweden (March 14, 1952) and United States (June 6, 1951).

An examination of the United Kingdom Consular Conventions together with those signed by the United States shows that the approach made by the British Government was more fortunate because not only were a greater number of Conventions signed but almost all have been duly ratified. (One may also point out that in 1957 the U.S.S.R. signed a Convention with the German Democratic Republic and that similar Conventions were signed later

⁵ (1948) 42 *American Journal of International Law* 866.

⁶ February 16, 1949.

with Hungary, Roumania, Albania, Czechoslovakia, Bulgaria, North Vietnam and North Korea.)

Therefore, when the International Law Commission, acting on a recommendation of the General Assembly of the United Nations, began its work on Consular Relations, it had before it a reasonable international custom and a series of Consular Conventions signed by the principal Powers, that is, the United States, Great Britain and the U.S.S.R. The remaining gaps, however, had to be filled in and the International Law Commission had recourse to municipal law and the general practice of States. In 1955 Professor Jaroslav Zourek was appointed Special Rapporteur and in that capacity drew up three excellent reports⁷ which were duly examined by the International Law Commission which was able to finish in 1960 its first Draft Articles on Consular Relations. The following year, after the Vienna Conference on Diplomatic Relations, the International Law Commission met again, and, taking into account the recently signed Vienna Convention on Diplomatic Relations, reworded the original Draft Articles.

In 1963, when the International Conference for Consular Relations met in Vienna, it had before it excellent preparatory work on which to base its deliberations. This work had of course already been duly circulated to all member States.

ORGANISATION OF THE CONFERENCE

The governments of ninety-two States accepted the invitation to send Delegations to the United Nations Conference on Consular Relations, whilst three other governments were represented by observers. Many of the delegations came from Africa and Asia, and, therefore, one can say that the principal legal systems of the world were present. In a numerical sense, this was also the most important of the three big Conferences on the codification of international law. At the Conference on the Law of the Sea, held in 1958, eighty-six States were represented, and in the 1961 Conference on Diplomatic Relations only eighty-one States took part.

Professor Stephan Verosta, of Austria, was elected President, and in the final stages of the Conference he played a decisive role in the solution of many of the problems which arose. The work of the Conference was divided between two big committees; the First Committee (presided over by Mr. Nathan Barnes of Liberia) which occupied itself with the problems of Consular Relations in general; and the Second (presided over by Mr. Mário Gibson Alves Barbosa

⁷ Documents A/CN.4/108, of April 15, 1957; A/CN.4/131, of March 30, 1960; A/CN.4/137, of April 13, 1961.

of Brazil) which had to tackle the more complex and difficult problems relating to consular privileges and immunities and also the determination of the status of Honorary Consuls. One must also mention the Drafting Committee, of which Mr. Krishna Rao of India was Chairman, and the Credentials Committee presided over by Mr. Giles Sicotte of Canada.

With regard to the various delegations, special reference must be made to the large contingent of small States; especially to some States with large maritime interests. Small countries are rarely in a position to maintain a proper professional consular service abroad and are, therefore, often obliged to fall back on the use of Honorary Consuls. Some of the smaller European States, represented by highly qualified delegates, were concerned lest these honorary consuls should suffer a *capitis diminutio* in their status. The same can be said of Liberia, Guatemala and Panama, who have a very large amount of shipping on their registers.

The Holy See once again sent Monsignor Agostino Casaroli who, in 1961, had defended its position as regards the precedence of the heads of missions. It is symptomatic that on the day following the inauguration of the Conference the *Osservatore Romano* published an article entitled "La Santa Sede e il Diritto Consulare," wherein, after making a reference to the Pontifical Consular Law in the past, it showed that many modern consular functions, especially in the cultural and social field, could be exercised by Pontifical representatives, thus giving the impression that in the near future the Holy See may be represented by consular officers.⁸

The basis for the work of the Conference was the International Law Commission Draft, but during the Conference almost one thousand written and oral amendments were presented. Two tendencies stood out: frequently, delegates in defence of their points of view invoked the Vienna Convention on Diplomatic Relations, and by so doing they drew a similarity between the diplomatic agent and the consul. On the other hand, other delegates thought that such an analogy went against international practice and tried to maintain the International Law Commission Draft with as few changes as possible. In this sense, one might point out that the 1958 Convention on the Law of the Sea, and the 1961 Convention on Diplomatic Relations, follow very closely the International Law Commission Drafts and, in all fairness, one must confess that the changes which were proposed quite frequently did not improve on the original draft. That does not mean that the original drafts were

⁸ *L'Osservatore Romano*, March 4-5, 1963, No. 54 (31-226), p. 5.

perfect, and some of the changes made in 1958, 1961 and 1963 represented a definite improvement.

Finally, with regard to the organisation of the Conference, a special reference must be made to the work of the United Nations Secretariat. Without all their heavy work the Conference would never have reached a satisfactory solution, and in this sense Mr. C. A. Stavropoulos, Legal Counsellor of the United Nations, played an outstanding role. The presence of Professor Zourek, Special Rapporteur of the International Law Commission on the subject of Consular Relations and who acted as an Expert, was also a positive contribution to the Conference.

THE VIENNA CONVENTION ON CONSULAR RELATIONS

It would be impossible to examine in detail the various legal principles defined in the Vienna Convention on Consular Relations and, therefore, only the main problems taken up by the Conference will be examined in the present paper.

The Convention is composed of seventy-nine articles divided into five chapters. The articles are preceded by a Preamble in which probably the most important clauses are those which point out that the purpose of consular privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States, and the affirmation that the rules of international law continue to govern matters not expressly regulated by the provisions of the Convention.

The Drafting Committee in 1963 resolved to take into account a recommendation of the International Law Commission that the Convention should be divided into chapters and that each chapter and each article should have a title.⁹ In this sense, the Drafting Committee reversed the decision it had taken two years previously when it abolished the division into chapters and the titles to the chapters and articles. Experience showed that the 1961 decision had not been a good one, even though the adoption of titles proved to be a very tricky problem.

Article 1 contains definitions of the expressions employed in the Convention, and is more complete than Article 1 of the Convention on Diplomatic Relations.

Chapter 1 (Articles 2 to 24) is on Consular Relations in general, and in it we find sections on the establishment and conduct of consular relations and on the end of consular functions.

⁹ *Report of the International Law Commission 1961*, Doc. A 483, p. 4. (See also *Yearbook of the International Law Commission 1961*, Vol. II, p. 88).

Chapter 2 (Articles 25 to 57) is entitled "Facilities, Privileges and Immunities relating to Consular Posts, Career Consular Officers and other Members of a Consular Post." Once again, as in 1961, a clear distinction is made between the privileges and immunities of a consular post and those which affect consular officers and other members of the consular posts.

Chapter 3 (Articles 58 to 68) is on the régime relating to honorary consular officers and to the consular post headed by such officers, about which we will speak further on.

Chapter 4 (Articles 69 to 73) contains some general provisions, such as the problem of consular agents who are not heads of consular posts; the exercise of consular functions by diplomatic missions; and the situation of nationals or permanent residents of a receiving State. Also questions of non-discrimination and the relationship between the Convention and other international agreements are anticipated.

In Chapter 5 (Articles 74 to 79) we find that the final provisions follow the lines adopted in 1958 and 1961. Although ninety-two countries were represented, only thirty-two countries signed the Convention on April 24. The United Kingdom only subscribed to the Convention in March 1964, becoming the forty-eighth country to do so.

Consular functions

The most important task of the First Committee of the Conference was to define consular functions. Previously the International Law Commission had devoted no less than eleven sessions to the matter.

Two radically different approaches were mentioned. The first consists in the adoption of a short formula defining the consular functions on the lines of Article 10 of the Havana Convention on Consular Officers of 1928. According to this consuls are to perform the functions established by the law of the sending State, taking into account the legislation of the receiving State. The other system favours a detailed enumeration of such functions. The International Law Commission, after a thorough discussion, rejected the two radical approaches as not fully satisfactory and opted for a system comprising a general definition complemented by a non-exhaustive enumeration of the principal consular functions. The Vienna Conference finally adopted the same point of view (Article 5 of the Convention), also taking into account that it represented a progressive development of international law. A very detailed enumeration would not have been practical from a universal point of view, since many of the functions mentioned

could not be accepted by some States. But, as was justly pointed out, the highest common factors should be adopted.

In Vienna when the debate began, twenty amendments to the Draft had been tabled. Of these, two were for changing the whole system, while the other eighteen amendments represented more or less fifty different questions.

The first problem was the determination of the system that should be followed. The Delegations of Canada and the Netherlands submitted an amendment that read as follows:

“ 1. The principal functions ordinarily exercised by consuls are to protect, within the limits of their consular district, the rights and interests of the sending State and its nationals and to give assistance to the nationals of the sending State in accordance with international law. Consuls may exercise other functions specified in the relevant international agreements in force or entrusted to them by the sending State, the exercise of which is compatible with the laws of the receiving State.

“ 2. Nothing in this article shall affect the relationship between the sending State and its nationals.”¹⁰

After a prolonged debate, the Committee decided to vote on the question whether the basis for discussion should be the Canadian and Dutch amendment or the International Law Commission Draft. The Committee voted in favour of the second solution and, therefore, the Draft was discussed, taking into account the various amendments to it. Amongst these, must be mentioned an amendment by Yugoslavia,¹¹ which was accepted, to the effect that the consul may perform other functions not mentioned in the previous sub-paragraphs (sub-paragraph (m) of Article 5).

The Austrian Delegation also tabled a very interesting amendment¹² to change the system which had been adopted, on the basis that the functions enumerated in the Draft were not of the same character. The amendment included in a first paragraph the three *general* consular functions, that is: protection of nationals; promotion of trade and furthering of economic, cultural and scientific relations between States; and ascertaining local conditions and reporting thereon to the sending State (sub-paragraphs (a), (b) and (c) of the Draft). The second paragraph contained a non-exhaustive enumeration of specific functions. In short the amendment avoided a certain overlapping of functions and also presented a rather tempting logical and didactic approach to the matter, especially as

¹⁰ Doc. A/CONF.25/C.I./L.39.

¹¹ Doc. A/CONF.25/C.I./L.72.

¹² Doc. A/CONF.25/C.I./L.26.

the specific functions are only implementations of the general functions. The amendment was referred to the Drafting Committee which decided not to include it in the Convention since in the long run it would not present any advantages.

Status of honorary consuls

The determination of the legal situation of honorary consuls and of the consular posts occupied by them was another difficult problem that the Vienna Convention had to face. Even those countries which possess a normal organised consular service often utilise the services of honorary consuls in certain ports and cities where consular activities do not justify the sending of a career officer. However, these countries are usually against the granting of privileges to honorary consuls, in the knowledge that they are the chief reason for the arguments against consular privileges and immunities. On the other hand, countries like Norway, Denmark, Sweden and Holland, whose ships touch all the ports of the world, and who need in such ports responsible persons capable of giving the necessary protection to their ships and nationals, cannot have career consular officers posted in every port and city. Therefore they fall back on the services of honorary consuls, usually nationals of the sending State but resident in the receiving State.

The socialist countries do not utilise honorary consuls and adopted a detached attitude when the problems were discussed in Vienna. In their opinion, the only important norm was that of Article 68 which says "Each State is free to decide whether it will appoint or receive Honorary Consular Officers." The right of refusal to the entry of honorary consuls in their territory made the question irrelevant to them.

However, in spite of all the discussions regarding the status of honorary consuls, one must remember that Chapter 3 in the long run covers only a very few cases, due to the fact that two overall articles of the Convention limit the privileges and immunities of consuls who carry on for personal profit any profession or commercial activities in the receiving State (Article 57) or who are nationals of or permanently resident in the receiving State (Article 71). Considering that many honorary consuls are nationals of the receiving State, and that when they are not nationals of the receiving State they are usually permanent residents in it, the few privileges and immunities mentioned under Chapter 3 refer to a very small number of honorary consuls.

The Vienna Convention adopts two types of articles regarding honorary consuls and the consular posts headed by them. In Article 58 we have the assimilatory article which makes reference

to all the cases in which they will enjoy the same privileges and immunities granted to a career officer. Articles 59 and onwards, on the contrary, are discriminating articles and although privileges and immunities are mentioned, they are always inferior to those granted to career officers.

Consular privileges and immunities

The determination of the consular privileges and immunities was undoubtedly the most important task which faced the 1963 Convention. International custom and practice is not, and never has been, uniform in this matter. Although some States in the past have accorded a certain preferential treatment to consuls (and in the present chapter we only refer to career consuls), others, on the contrary, place foreign consuls almost on the same footing as other foreigners in their territory. The fundamental basis of such privileges and immunities, according to the Vienna Convention on Consular Relations, is the functional necessity, that is, that "such privileges and immunities are not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States."

Inviolability of consular posts

The International Law Commission's Draft (Article 30) reproduces *mutatis mutandis* the 1961 Convention on Diplomatic Relations. In other words, it places diplomatic missions and consular posts on the same footing, going a bit further than tradition recognises. In Vienna the United Kingdom Delegation submitted an amendment¹³ based on various Consular Conventions, to the effect that the consular premises would be inviolable subject to the provisions of the article. In its amendment the United Kingdom Delegation mentioned four cases in which the local authorities could enter into a consulate:

- (a) if the consent of the head of post was granted;
- (b) on the authority of the Minister of Foreign Affairs of the receiving State;
- (c) in case of fire or other disaster;
- (d) in case of any kind of violence to persons or property.

The amendment also included a paragraph to the effect that consular premises should not be used to afford asylum to fugitives from justice.

¹³ Doc. A/CONF.25/C.2/L.29.

The various delegates who had an opportunity to voice their points of view on the subject showed that a variety of opinions existed.¹⁴ Some were in favour of the maintenance of the International Law Commission Draft as worded, whilst others approved sub-paragraph *a*, *b*, *c* or *d* of the paragraphs mentioned in the United Kingdom amendment. After a very lengthy discussion in the Committee and in the Plenary, Article 31 was adopted, in a form which recognises the inviolability of consulates, but not in an absolute sense since it permits entry into the consular post with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt and protective action. This clause permitting the entry into a consular post in cases of *force majeure* was criticised by quite a few delegates who pointed out its uselessness, since no country would object to the legal authorities taking measures to prevent fire or other disasters when the building is not occupied by a responsible person who can call for aid. After Article 31 was accepted it was pointed out that although the Vienna Convention on Diplomatic Relations does not include such a formula as regards diplomatic missions it should also be understood that such measures can be taken. The question of asylum in consulates was not included, principally due to the fact that the International Law Commission is drafting a specific convention on asylum.

Inviolability of archives

Article 33 says that "The Consular archives and documents shall be inviolable at all times and wherever they may be." It reproduces Article 24 of the Convention on Diplomatic Relations and, therefore, puts the archives of a consulate on the same footing as the archives of the diplomatic mission. Both are absolutely inviolable. It is true that the United Kingdom Delegation was in favour of including a clause under which "the archives shall be kept separate from any document or object relative to the private affairs of a consular officer or consular employee."¹⁵ Most delegates agreed on the necessity of such a separation, but as the Brazilian Delegate pointed out, its inclusion in a legal convention was ambiguous, because if it implied that the existence of private documents in the archives would remove their inviolability it would go against the legal principle which was being codified. If, on the other

¹⁴ Summary Record of the Seventh and Eighth meetings of the Second Committee.
¹⁵ Doc. A/CONF.25/C.2/L.39.

hand, it did not have such a meaning, then it was useless. In his opinion the appropriate place for such a rule was the national consular instructions. This point of view prevailed after a short discussion.¹⁶

Personal inviolability of consular officers

The International Law Commission Draft adopted the theory that consular officers are not liable to arrest or detention pending trial except in the case of a grave crime and subject to a decision by the judicial authority. The number of amendments presented to the Draft are symptomatic, and show how strongly certain delegations felt about it.

Professor Zourek examined this problem thoroughly and was able to show that the rules included in consular conventions, in the work of the best authorities on international law and in decisions of tribunals have proved that this problem has received all sorts of different solutions.¹⁷ Some Conventions which recognise personal inviolability make an exception in the case of serious criminal offences, while others permit the arrest of consular officers when they are charged with penal offences defined as felonies by the criminal law of the sending State. Lastly, some Conventions use, as a criterion for determining the cases in which arrest is permitted, the length of the sentence which is imposed by the law of the receiving State for the offence committed. This last criterion, which offers a rather objective basis for punishment, was, however, rejected by the International Law Commission because it was found that the legal systems of the world vary as regards certain offences which are considered by some as serious while by others as unimportant. The final solution, Article 41, was on the lines of the International Law Commission Draft, even though the expression "grave crime" gave rise to serious dissent. From the French point of view, for example, there is no such thing as a grave crime: all crimes are grave. The Belgian Delegate proposed the expression "infraction" but in Spanish this would be a misdemeanour. In the long run one feels that this problem is still far from solved. So much so, that after the Vienna Convention had been approved in plenary as a whole the United Kingdom Delegate pointed out that his Government reserved its position with respect to certain articles, in particular Articles 31, 41 and 44.

¹⁶ Summary Record of the Eleventh meeting of the Second Committee, p. 13.

¹⁷ Summary Record of the Twenty-third meeting of the Second Committee, p. 9.

Immunity from jurisdiction

Consular officers as well as all the other members of the consular post are subject to the civil and criminal jurisdiction of the local State in respect of all their private acts, especially if they carry on any private gainful activity. The International Law Commission's draft contained such a rule which was only slightly modified by Article 43 of the Vienna Convention: "1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions." A second paragraph was added due to a United Kingdom amendment which, utilising the wording of its current consular conventions, said that the immunity shall not apply in respect of a civil action either, "arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft." One can reasonably say that this provision was only included *ex abundanti cautela*, since paragraph 1 excludes any immunity for private action such as are expressly mentioned in paragraph 2.

An amendment which inadvertently was approved by the Second Committee in the sense that consular employees could be amenable for acts performed in the exercise of consular functions was fortunately rejected in Plenary where quite a few delegations called attention to the error committed. It was also pointed out that: "If judicial or other authority in the receiving State were to take proceedings in respect of an act by a consular employee which constituted an act of State, it would be infringing the immunity of States."¹⁸

Exemption from taxation and custom duties

Articles of the International Law Commission's Draft pertaining to exemptions from taxation and custom duties were considered by some of the delegations as extremely liberal since they repeated, with some changes, the corresponding articles of the Convention on Diplomatic Relations, when international custom did not justify such an analogy. But, as the United States Delegate very aptly said, he was in favour of maintaining the Draft as far as possible, because, from the administrative point of view, it would be helpful to the tax authorities and the Treasury if the texts were similar, and

¹⁸ Doc. A/CONF.25/SR.15

to that extent his delegation would tend to equate diplomatic and consular immunities.

When the study of the amendments to the article on customs duties was initiated the Brazilian delegate insisted that if the customs authorities were to be faced with two conflicting sets of international legislation they would find their task more difficult; in fact, they usually treated consular officers in the same way as diplomatic officers, for in most countries consular officers travel on diplomatic passports.

It is interesting to note that the United Kingdom tabled an amendment to prevent goods made in the receiving State from being exported and reimported free of tax, thus frustrating Article 48 which, in his opinion, did not provide relief from excise or purchase tax or articles originating in the receiving State.¹⁹ As was pointed out, the United Kingdom's amendment, if approved, would have had an adverse effect. Since there was no similar clause in the Convention on Diplomatic Relations, its inclusion would mean that diplomatic officers could import such products while consular officers could not. Since the Foreign Office recently reversed its policy on the sale of British spirits to diplomatists, the passing of the amendment would have been of no special use.²⁰

Final remarks

Under Article 77, the Vienna Convention on Consular Relations shall enter into force following the deposit of the twenty-second instrument of ratification of accession. One is therefore permitted to wonder about the possibilities of such a number being reached in a foreseeable future. On March 31, 1962, which was the closing date for signature, the Vienna Convention on Diplomatic Relations of 1961 had been signed by sixty-three States, but on April 3, 1963, only eleven had ratified it. The Convention on Diplomatic Relations codifies a law based on ancient customs, and the same cannot be said of the Convention on Consular Relations, which was deemed unpalatable by some of the delegations in Vienna.

The reason for such a reaction was the fear that it embodied too liberal rules by granting privileges and immunities which present international custom does not accept. A comparison between the 1963 Convention and the law of nations prior to 1939 does show an enormous advance, but the rules approved in Vienna are much nearer present United Kingdom practice, such as is codified in its more recent Consular Conventions, than they are to the United

¹⁹ Doc. A/CONF.25/C.2/L.171.

²⁰ Note of February 28, 1964, to the Heads of Foreign Missions in London.

Kingdom pre-war practice. Still bearing in mind the specific case of the United Kingdom, one can also remember its strong stand in 1958 and 1960 on the extension of the territorial sea and its reversal of position in March 1964.²¹ We mention this example to show that international law is changing fast in a changing world and that the existence of an international convention on consular law, drawn up by delegates of almost a hundred nations, will be a decisive factor in the drafting of future national laws on the subject.

In 1961, Professor Bartoš, during the discussion in the International Law Commission on the draft on Consular Relations remembered that: "In positive international law, according to the principles adopted by the Nuremberg International Military Tribunal, certain clauses of multilateral treaties reflected the legal conscience of mankind and as such were mandatory not only *inter partes*, but also for third States, which had to observe them as rules of positive customary international law."²² That conclusion of the Nuremberg Tribunal had been endorsed by the General Assembly of the United Nations Resolution 95 (I). The point which can be raised is whether the provisions inserted in the Convention on Consular Relations can be held to answer to that description, being mandatory under positive customary international law even with regard to States that have not ratified it.

However, even if we cannot adopt such a radical interpretation, principally because the Conference acted quite frequently *de lege ferenda*, due to the lack of an authentic international consular custom on many of the points codified, the value of the Convention is undeniable *vis-à-vis* all States and the moral bonds become stronger in the case of articles either proposed by certain non-ratifying States or which received their affirmative vote.

The basic factor is that from now on no State can reasonably ignore the provisions of the Convention and the same stands for all writers on international law and national tribunals.

²¹ *Final Act of the European Fisheries Conference* (Cmnd. 2355).

²² In *Yearbook of the International Law Commission* 1961, Vol. I, p. 167.

APPENDIX

VIENNA CONVENTION ON CONSULAR RELATIONS
OPTIONAL PROTOCOL CONCERNING ACQUISITION OF NATIONALITY
OPTIONAL PROTOCOL CONCERNING THE COMPULSORY SETTLEMENT OF
DISPUTES

VIENNA CONVENTION ON CONSULAR RELATIONS *

Signed at Vienna, April 24, 1963

The States Parties to the present Convention,
Recalling that consular relations have been established between peoples since ancient times.
Having in mind the Purposes and Principles of the Charter of the United Nations concerning the sovereign equality of states, the maintenance of international peace and security, and the promotion of friendly relations among nations.

Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations which was opened for signature on 18 April 1961,†

Believing that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective states,

affirming that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention, have agreed as follows:

Article 1

Definitions

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) "consular post" means any consulate-general, consulate, vice-consulate or consular agency;
- (b) "consular district" means the area assigned to a consular post for the exercise of consular functions;
- (c) "head of consular post" means the person charged with the duty of acting in that capacity;
- (d) "consular officer" means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;
- (e) "consular employee" means any person employed in the administrative or technical service of a consular post;
- (f) "member of the service staff" means any person employed in the domestic service of a consular post;
- (g) "members of the consular post" means consular officers, consular employees and members of the service staff;
- (h) "members of the consular staff" means consular officers, other than the head of a consular post, consular employee and members of the service staff;

* U.N. Doc.A/CONF.25/12, April 23, 1963. Cmnd. 2113, Misc. No. 9 (1963).

† U.N. Doc.A/CONF.20/10, April 15, 1961; (1961) 55 A.J.I.L. 1064; (1961) 10 I.C.L.Q. 600.

- (i) "member of the private staff" means a person who is employed exclusively in the private service of a member of the consular post;
 - (j) "consular premises" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;
 - (k) "consular archives" includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card indexes and any article of furniture intended for their protection or safekeeping.
2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern consular posts headed by honorary consular officers.
3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving state is governed by Article 71 of the present Convention.

Chapter I. CONSULAR RELATIONS IN GENERAL

Section I. ESTABLISHMENT AND CONDUCT OF CONSULAR RELATIONS

Article 2

Establishment of consular relations

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.
3. The severance of diplomatic relations shall not ipso facto involve the severance of consular relations.

Article 3

Exercise of consular functions

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

Article 4

Establishment of a consular post

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.

Article 5

Consular functions

Consular functions consist in:

- (a) protecting in the receiving state the interests of the sending state and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;
- (b) Furthering the development of commercial, economic, cultural and scientific relations between the sending state and the receiving state and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;
- (c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving state, reporting thereon to the government of the sending state and giving information to persons interested;
- (d) issuing passports and travel documents to nationals of the sending state, and visas or appropriate documents to persons wishing to travel to the sending state;
- (e) helping and assisting nationals, both individuals and bodies corporate, of the sending state;
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving state;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending state in cases of succession mortis causa in the territory of the receiving state, in accordance with the laws and regulations of the receiving state;
- (h) safeguarding, within the limits imposed by the laws and regulations of the receiving state, the interests of minors and other persons lacking full capacity who are nationals of the sending state, particularly where any guardianship or trusteeship is required with respect to such persons.
- (i) subject to the practices and procedures obtaining in the receiving state, representing or arranging appropriate representation for nationals of the sending state before the tribunals and other authorities of the receiving state, for the purpose of obtaining, in accordance with the laws and regulations of the receiving state, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;
- (j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending state in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving state;
- (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending state in respect of vessels having the nationality of the sending state, and of aircraft registered in that state, and in respect of their crews;
- (l) extending assistance to vessels and aircraft mentioned in sub paragraph (k) of this article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving state, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending state;

- (m) performing any other functions entrusted to a consular post by the sending state which are not prohibited by the laws and regulations of the receiving state or to which no objection is taken by the receiving state or which are referred to in the international agreements in force between the sending state and the receiving state.

Article 6

Exercise of consular functions outside the consular district

A consular officer may, in special circumstances, with the consent of the receiving state, exercise his functions outside his consular district.

Article 7

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 8

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 9

Classes of heads of consular posts

1. Heads of consular posts are divided into four classes, namely:
 - (a) consuls-general;
 - (b) consuls;
 - (c) vice-consuls;
 - (d) consular-agents.
2. Paragraph 1 of this article in no way restricts the right of any of the Contracting Parties to fix the designation of consular officers other than the heads of consular posts.

Article 10

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.
2. Subject to the provisions of the present Convention, the formalities for the appointment and for the admission of the head of a consular post are determined by the laws, regulations and usages of the sending state and of the receiving state respectively.

Article 11

The consular commission or notification of appointment

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.

Article 12

The Exequatur

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 his authorization.

2. A state which refuses 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

Provisional admission of heads of consular posts

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.

Article 14

Notification to the authorities of the consular district

As soon as the head of a consular post is admitted even provisionally to the exercise of his functions, the receiving state shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of a consular post to carry out the duties of his office and to have the benefit of the provisions of the present Convention.

Article 15

Temporary exercise of the functions of the head of a consular post

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.

2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending state, or, if that state has no such mission in the receiving state, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending state, to the Ministry for Foreign Affairs of the receiving state or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving state may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending state in the receiving state conditional on its consent.

3. The competent authorities of the receiving state shall afford assistance and protection to the acting head of post. While he is in charge of the post the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving state shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4. When, in the circumstances referred to in paragraph 1 of this article, a member of the diplomatic staff of the diplomatic mission of the sending state

in the receiving state is designated by the sending state as an acting head of post, he shall, if the receiving state does not object thereto, continue to enjoy diplomatic privileges and immunities.

Article 16

Precedence as between heads of consular posts

1. Heads of consular posts shall rank in each class according to the date of the grant of the exequatur.
2. If, however, the head of a consular post before obtaining the exequatur is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the provisional admission; this precedence shall be maintained after the granting of the exequatur.
3. The order of precedence as between two or more heads of consular posts who obtained the exequatur or provisional admission on the same date shall be determined according to the dates on which their commissions or similar instruments or the notifications referred to in paragraph 3 of Article 11 were presented to the receiving state.
4. Acting heads of posts shall rank after all heads of consular posts and, as between themselves, they shall rank according to the dates on which they assumed their functions as acting heads of posts as indicated in the notifications given under paragraph 2 of Article 15.
5. Honorary consular officers who are heads of consular posts shall rank in each class after career heads of consular posts, in the order and according to the rules laid down in the foregoing paragraphs.
6. Heads of consular posts shall have precedence over consular officers not having that status.

Article 17

Performance of diplomatic acts by consular officers

1. In a state where the sending state has no diplomatic mission and is not represented by a diplomatic mission of a third state, a consular officer may with the consent of the receiving state, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer upon him any right to claim diplomatic privileges and immunities.
2. A consular officer may, after notification addressed to the receiving state, act as representative of the sending state to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

Article 18

Appointment of the same person by two or more states as a consular officer

Two or more states may, with the consent of the receiving state, appoint the same person as a consular officer in that state.

Article 19

Appointment of members of consular staff

1. Subject to the provisions of Articles 20, 22 and 23, the sending state may freely appoint the members of the consular staff.
2. The full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending state to the receiving

state in sufficient time for the receiving state, if it so wishes, to exercise its rights under paragraph 3 of Article 23.

3. The sending state may, if required by its laws and regulations, request the receiving state to grant an exequatur to a consular officer other than the head of a consular post.

4. The receiving state may, if required by its laws and regulations, grant an exequatur to a consular officer other than the head of a consular post.

Article 20

Size of the consular staff

In the absence of an express agreement as to the size of the consular staff, the receiving state may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the consular district and to the needs of the particular consular post.

Article 21

Precedence as between consular officers of a consular post

The order of precedence as between the consular officers of a consular post and any change thereof shall be notified by the diplomatic mission of the sending state or, if that state has no such mission in the receiving state, by the head of the consular post, to the Ministry for Foreign Affairs of the receiving state or to the authority designated by that Ministry.

Article 22

Nationality of consular officers

1. Consular officers should, in principle, have the nationality of the sending state.

2. Consular officers may not be appointed from among persons having the nationality of the receiving state except with the express consent of that state which may be withdrawn at any time.

3. The receiving state may reserve the same right with regard to nationals of a third state who are not also nationals of the sending state.

Article 23

Persons declared non grata

1. The receiving state may at any time notify the sending state that a consular officer is *persona non grata* or that any other member of the consular staff is not acceptable. In that event, the sending state shall, as the case may be, either recall the person concerned or terminate his functions with the consular post.

2. If the sending state refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this article, the receiving state may, as the case may be, either withdraw the exequatur from the person concerned or cease to consider him as a member of the consular staff.

3. A person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving state or, if already in the receiving state, before entering on his duties with the consular post. In any such case, the sending state shall withdraw his appointment.

4. In the cases mentioned in paragraphs 1 and 3 of this article, the receiving state is not obliged to give to the sending state reasons for its decision.

Article 24

Notification to the receiving state of appointments, arrivals and departures

1. The Ministry for Foreign Affairs of the receiving state or the authority designated by that Ministry shall be notified of:
 - (a) the appointment of members of a consular post, their arrival after appointment to the consular post, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;
 - (b) the arrival and final departure of a person belonging to the family of a member of a consular post forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;
 - (c) the arrival and final departure of members of the private staff and where appropriate, the termination of their services as such;
 - (d) the engagement and discharge of persons resident in the receiving state as members of a consular post or as members of the private staff entitled to privileges and immunities.
2. When possible, prior notification of arrival and final departure shall also be given.

Section II. END OF CONSULAR FUNCTIONS

Article 25

Termination of the functions of a member of a consular post

The functions of a member of a consular post shall come to an end *inter alia* :

- (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*;
- (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.

Article 26

Departure from the territory of the receiving state

The receiving state shall, even in case of armed conflict, grant to members of the consular post and members of the private staff, other than nationals of the receiving state, and to members of their families forming part of their households irrespective of nationality, the necessary time and facilities to enable them to prepare their departure and to leave at the earliest possible moment after the termination of the functions of the members concerned. In particular, it shall, in case of need, place at their disposal the necessary means of transport for themselves and their property other than property acquired in the receiving state the export of which is prohibited at the time of departure.

Article 27

Protection of consular premises and archives and of the interests of the sending state in exceptional circumstances

1. In the event of the severance of consular relations between two states:
 - (a) the receiving state shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;
 - (b) the sending state may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third state acceptable to the receiving state;

- (c) the sending state may entrust the protection of its interests and those of its nationals to a third state acceptable to the receiving state.
- 2. In the event of the temporary or permanent closure of a consular post, the provisions of sub-paragraph (a) of paragraph 1 of this article shall apply. In addition,
 - (a) if the sending state, although not represented in the receiving state by a diplomatic mission, has another consular post in the territory of that state, that consular post may be entrusted with the custody of the premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving state, with the exercise of consular functions in the district of that consular post; or
 - (b) if the sending state has no diplomatic mission and no other consular post in the receiving state, the provisions of sub-paragraphs (b) and (c) of paragraph 1 of this article shall apply.

Chapter II. FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CONSULAR POSTS, CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

Section I. FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO A CONSULAR POST

Article 28

Facilities for the work of the consular post

The receiving state shall accord full facilities for the performance of the functions of the consular post.

Article 29

Use of national flag and coat-of-arms

1. The sending state shall have the right to the use of its national flag and coat-of-arms in the receiving state in accordance with the provisions of this article.
2. The national flag of the sending state may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.
3. In the exercise of the right accorded by this article regard shall be had to the laws, regulations and usages of the receiving state.

Article 30

Accommodation

1. The receiving state shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending state of premises necessary for its consular post or assist the latter in obtaining accommodation in some other way.
2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

Article 31

Inviolability of the consular premises

1. Consular premises shall be inviolable to the extent provided in this article.
2. The authorities of the receiving state shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of

his designee or of the head of the diplomatic mission of the sending state. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

3. Subject to the provisions of paragraph 2 of this article, the receiving state is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending state.

Article 32

Exemption from taxation of consular premises

1. Consular premises and the residence of the career head of consular post of which the sending state or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this article shall not apply to such dues and taxes if, under the law of the receiving state, they are payable by the person who contracted with the sending state or with the person acting on its behalf.

Article 33

Inviolability of the consular archives and documents

The consular archives and documents shall be inviolable at all times and wherever they may be.

Article 34

Freedom of movement

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving state shall ensure freedom of movement and travel in its territory to all members of the consular post.

Article 35

Freedom of communication

1. The receiving state shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the government, the diplomatic missions and other consular posts, wherever situated, of the sending state, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving state.

2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving state have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this article, they may request that the bag be opened in their presence by an authorized representative of the

sending state. If this request is refused by the authorities of the sending state, the bag shall be returned to its place of origin.

4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag. Except with the consent of the receiving state he shall be neither a national of the receiving state, nor, unless he is a national of the sending state, a permanent resident of the receiving state. In the performance of his functions he shall be protected by the receiving state. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending state, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 36

Communication and contact with nationals of the sending state

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending state:

- (a) consular officers shall be free to communicate with nationals of the sending state and to have access to them. Nationals of the sending state shall have the same freedom with respect to communication with and access to consular officers of the sending state;
- (b) if he so requests, the competent authorities of the receiving state shall, without delay, inform the consular post of the sending state if, within its consular district, a national of that state is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
- (c) consular officers shall have the right to visit a national of the sending state who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending state who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this article shall be exercised in conformity with the laws and regulations of the receiving state, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this article are intended.

Article 37

Information in cases of deaths, guardianship or trusteeship, wrecks and air accidents.

If the relevant information is available to the competent authorities of the receiving state, such authorities shall have the duty:

- (a) in the case of the death of a national of the sending state, to inform without delay the consular post in whose district the death occurred;
- (b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending state. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving state concerning such appointments;
- (c) if a vessel, having the nationality of the sending state, is wrecked or runs aground in the territorial sea or internal waters of the receiving state, or if an aircraft registered in the sending state suffers an accident on the territory of the receiving state, to inform without delay the consular post nearest to the scene of the occurrence.

Article 38

Communication with the authorities of the receiving state

In the exercise of their functions, consular officers may address:

- (a) the competent local authorities of their consular district;
- (b) the competent central authorities of the receiving state if and to the extent that this is allowed by the laws, regulations and usages of the receiving state or by the relevant international agreements.

Article 39

Consular fees and charges

1. The consular post may levy in the territory of the receiving state the fees and charges provided by the laws and regulations of the sending state for consular acts.
2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving state.

Section II. FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

Article 40

Protection of consular officers

The receiving state shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

Article 41

Personal inviolability of consular officers

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.
2. Except in the case specified in paragraph 1 of this article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.
3. If criminal proceedings are instituted against a consular officer, he must

appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 42

Notification of arrest, detention or prosecution

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving state shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving state shall notify the sending state through the diplomatic channel.

Article 43

Immunity from jurisdiction

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving state in respect of acts performed in the exercise of consular functions.
2. The provisions of paragraph 1 of this article shall not, however, apply in respect of a civil action either:
 - (a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending state;
 - or
 - (b) by a third party for damage arising from an accident in the receiving state caused by a vehicle, vessel or aircraft.

Article 44

Liability to give evidence

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.
2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.
3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending state.

Article 45

Waiver of privileges and immunities

1. The sending state may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.
2. The waiver shall in all cases be express, except as provided in paragraph 3 of this article, and shall be communicated to the receiving state in writing.
3. The initiation of proceedings by a consular officer or a consular employee

in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

Article 46

Exemption from registration of aliens and residence permits

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving state in regard to the registration of aliens and residence permits.

2. The provisions of paragraph 1 of this article shall not, however, apply to any consular employee who is not a permanent employee of the sending state or who carries on any private gainful occupation in the receiving state or to any member of the family of any such employee.

Article 47

Exemption from work permits

1. Members of the consular post shall, with respect to services rendered for the sending state, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving state concerning the employment of foreign labour.

2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving state, be exempt from the obligations referred to in paragraph 1 of this article.

Article 48

Social security exemption

1. Subject to the provisions of paragraph 3 of this article, members of the consular post with respect to services rendered by them for the sending state, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving state.

2. The exemption provided for in paragraph 1 of this article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:

- (a) that they are not nationals of or permanently resident in the receiving state, and
- (b) that they are covered by the social security provisions which are in force in the sending state or a third state.

3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this article does not apply shall observe the obligations which the social security provisions of the receiving state impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this article shall not preclude voluntary participation in the social security system of the receiving state, provided that such participation is permitted by that state.

Article 49

Exemption from taxation

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:
 - (a) indirect taxes of a kind which are normally incorporated in the price of goods or services;
 - (b) dues or taxes on private immovable property situated in the territory of the receiving state, subject to the provisions of Article 32;
 - (c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving state, subject to the provisions of paragraph (b) of Article 51;
 - (d) dues and taxes on private income, including capital gains, having its source in the receiving state and capital taxes relating to investments made in commercial or financial undertakings in the receiving state;
 - (e) charges levied for specific services rendered;
 - (f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.
2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.
3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving state shall observe the obligations which the laws and regulations of that state impose upon employers concerning the levying of income tax.

Article 50

Exemption from customs duties and inspection

1. The receiving state shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:
 - (a) articles for the official use of the consular post;
 - (b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.
2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this article in respect of articles imported at the time of first installation.
3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in sub-paragraph (b) of paragraph 1 of this article, or articles the import or export of which is prohibited by the laws and regulations of the receiving state or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

Article 51

Estate of a member of the consular post or of a member of his family

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving state:

- (a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving state the export of which was prohibited at the time of his death;
- (b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving state was due solely to the presence in that state of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

Article 52

Exemption from personal services and contributions

The receiving state shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 53

Beginning and end of consular privileges and immunities

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving state on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.
2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this article or from the date of their entry into the territory of the receiving state or from the date of their becoming a member of such family or private staff, whichever is the latest.
3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving state or on the expiry of a reasonable period in which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving state within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.
4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.
5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving state or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

Article 54

Obligations of third states

1. If a consular officer passes through or is in the territory of a third state, which has granted him a visa if a visa was necessary, while proceeding to

take up or return to his post or when returning to the sending state, the third state shall accord to him all immunities provided for by the other articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending state.

2. In circumstances similar to those specified in paragraph 1 of this article, third states shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3. Third states shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving state is bound to accord under the present Convention. They shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving state is bound to accord under the present Convention.

4. The obligations of third states under paragraphs 1, 2 and 3 of this article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third state is due to force majeure.

Article 55

Respect for the laws and regulations of the receiving state

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state. They also have a duty not to interfere in the internal affairs of that state.

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. The provisions of paragraph 2 of this article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

Article 56

Insurance against third party risks

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving state in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

Article 57

Special provisions concerning private gainful occupation

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving state.

2. Privileges and immunities provided in this chapter shall not be accorded:

- (a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving state;
- (b) to members of the family of a person referred to in sub-paragraph (a) of this paragraph or to members of his private staff;
- (c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving state.

Chapter III. REGIME RELATING TO HONORARY CONSULAR OFFICERS
AND CONSULAR POSTS HEADED BY SUCH OFFICERS

Article 58

General provisions relating to facilities, privileges and immunities

1. Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 59, 60, 61 and 62.
2. Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.
3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.
4. The exchange of consular bags between two consular posts headed by honorary consular officers in different states shall not be allowed without the consent of the two receiving states concerned.

Article 59

Protection of the consular premises

The receiving state shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

Article 60

Exemption from taxation of consular premises

1. Consular premises of a consular post headed by an honorary consular officer of which the sending state is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in paragraph 1 of this article shall not apply to such dues and taxes if, under the laws and regulations of the receiving state, they are payable by the person who contracted with the sending state.

Article 61

Inviolability of consular archives and documents

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

Article 62

Exemption from customs duties

The receiving state shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and

similar services on, the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending state to the consular post.

Article 63

Criminal proceedings

If criminal proceedings are instituted against an honorary consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 64

Protection of honorary consular officers

The receiving state is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

Article 65

Exemption from registration of aliens and residence permits

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving state, shall be exempt from all obligations under the laws and regulations of the receiving state in regard to the registration of aliens and residence permits.

Article 66

Exemption from taxation

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending state in respect of the exercise of consular functions.

Article 67

Exemption from personal services and contributions

The receiving state shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 68

Optional character of the institution of honorary consular officers

Each state is free to decide whether it will appoint or receive honorary consular officers.

Chapter IV. GENERAL PROVISIONS

Article 69

Consular agents who are not heads of consular posts

1. Each state is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular post by the sending state.

2. The conditions under which the consular agencies referred to in paragraph 1 of this article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending state and the receiving state.

Article 70

Exercise of consular functions by diplomatic missions

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.
2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving state or to the authority designated by that Ministry.
3. In the exercise of consular functions a diplomatic mission may address :
 - (a) the local authorities of the consular district;
 - (b) the central authorities of the receiving state if this is allowed by the laws, regulations and usages of the receiving state or by relevant international agreements.
4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this article shall continue to be governed by the rules of international law concerning diplomatic relations.

Article 71

Nationals or permanent residents of the receiving state

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving state, consular officers who are nationals of or permanently resident in the receiving state shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving state shall likewise be bound by the obligations laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.
2. Other members of the consular post who are nationals of or permanently resident in the receiving state and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving state. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving state shall likewise enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving state. The receiving state shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

Article 72

Non-discrimination

1. In the application of the provisions of the present Convention the receiving state shall not discriminate as between states.
2. However, discrimination shall not be regarded as taking place :
 - (a) where the receiving state applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its consular posts in the sending state;

- (b) where by custom or agreement states extend to each other more favourable treatment than is required by the provisions of the present Convention.

Article 73

Relationship between the present Convention and other international agreements

1. The provisions of the present Convention shall not affect other international agreements in force as between states parties to them.
2. Nothing in the present Convention shall preclude states from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.

Chapter V. FINAL PROVISIONS

Article 74

Signature

The present Convention shall be open for signature by all states Members of the United Nations or of any of the specialized agencies or parties to the Statute of the International Court of Justice, and by any other state invited by the General Assembly of the United Nations to become a party to the Convention, as follows until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article 75

Ratification

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 76

Accession

The present Convention shall remain open for accession by any state belonging to any of the four categories mentioned in Article 74. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 77

Entry into force

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each state ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such state of its instrument of ratification or accession.

Article 78

Notifications by the Secretary-General

The Secretary-General of the United Nations shall inform all states belonging to any of the four categories mentioned in Article 74:

- (a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 74, 75 and 76;

(b) of the date on which the present Convention will enter into force, in accordance with Article 77.

Article 79

Authentic texts

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all states belonging to any of the four categories mentioned in Article 74.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Convention.

DONE AT VIENNA, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

(Signed on behalf of Argentina, Austria, Brazil, Central African Republic, Chile, China, Colombia, Congo (Brazzaville), Congo (Leopoldville), Cuba, Dahomey, Denmark, Dominican Republic, France, Gabon, Ghana, Holy See, Iran, Ireland, Ivory Coast, Lebanon, Liberia, Liechtenstein, Niger, Norway, Peru, Philippines, United States, Upper Volta, Uruguay, Venezuela and Yugoslavia.)

OPTIONAL PROTOCOL CONCERNING ACQUISITION OF NATIONALITY *

Signed at Vienna, April 24, 1963

The States Parties to the present Protocol and to the Vienna Convention on Consular Relations, hereinafter referred to as "the Convention," adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

Expressing their wish to establish rules between them concerning acquisition of nationality by members of the consular post and by members of their families forming part of their households,

Have agreed as follows:

Article I

For the purposes of the present Protocol, the expression "members of the consular post" shall have the meaning assigned to it in sub-paragraph (g) of paragraph 1 of Article 1 of the Convention, namely, "consular officers, consular employees and members of the service staff."

Article II

Members of the consular post not being nationals of the receiving state, and members of their families forming part of their households, shall not, solely by the operation of the law of the receiving state, acquire the nationality of that state.

Article III

The present Protocol shall be open for signature by all states which may become parties to the Convention, as follows: until 31 October 1963 at the Federal Ministry of Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article IV

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

* U.N. Doc.A/CON.25/14, April 23, 1963.

Article V

The present Protocol shall remain open for accession by all states which may become parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VI

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.
2. For each state ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such state of its instrument of ratification or accession.

Article VII

The Secretary-General of the United Nations shall inform all states which may become parties to the Convention:

- (a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with Articles III, IV and V;
- (b) of the date on which the present Protocol will enter into force, in accordance with Article VI.

Article VIII

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all states referred to in Article III.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed the present Protocol.

DONE AT VIENNA, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

(Signed on behalf of Brazil, China, Colombia, Congo (Brazzaville), Congo (Leopoldville), Denmark, Dominican Republic, Ghana, Liberia, Norway, Yugoslavia.)

OPTIONAL PROTOCOL CONCERNING THE COMPULSORY
SETTLEMENT OF DISPUTES *

Signed at Vienna, April 24, 1963

The States Parties to the present Protocol and to the Vienna Convention on Consular Relations, hereinafter referred to as "the Convention," adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period,

Have agreed as follows:

* U.N. Doc.A/CONF.25/15, April 23, 1963.

Article I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a party to the present Protocol.

Article II

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

Article III

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice.
2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

Article IV

States parties to the Convention, to the Optional Protocol concerning Acquisition of Nationality, and to the present Protocol may at any time declare that they will extend the provisions of the present Protocol to disputes arising out of the interpretation or application of the Optional Protocol concerning Acquisition of Nationality. Such declarations shall be notified to the Secretary-General of the United Nations.

Article V

The present Protocol shall be open for signature by all states which may become parties to the Convention as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article VI

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article VII

The present Protocol shall remain open for accession by all states which may become parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VIII

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.
2. For each state ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this article, the Protocol shall enter into force on the thirtieth day after deposit by such state of its instrument of ratification or accession.

Article IX

The Secretary-General of the United Nations shall inform all states which may become parties to the Convention :

- (a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with Articles V, VI and VII;
- (b) of declarations made in accordance with Article IV of the present Protocol;
- (c) of the date on which the present Protocol will enter into force, in accordance with Article VIII.

Article X

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all states referred to in Article V.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorised thereto by their respective governments, have signed the present Protocol.

DONE AT VIENNA, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

(Signed on behalf of Argentina, Austria, Central African Republic, Chile, China, Colombia, Congo (Brazzaville), Congo (Leopoldville), Dahomey, Denmark, Dominican Republic, France, Gabon, Ghana, Ireland, Ivory Coast, Lebanon, Liberia, Liechtenstein, Niger, Norway, Peru, Philippines, United States, Upper Volta, Uruguay, and Yugoslavia.)

ANNEX 116.1

The Law of Consular Access

A documentary guide

**John Quigley, William J. Aceves and
S. Adele Shank**

 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

dependent on awareness on the part of receiving-state authorities of the individual's foreign nationality, or even on the presence of facts that would constitute "grounds" to suspect foreign nationality.

A situation may arise that an individual arrested is a national of more than one state. The VCCR does not address this circumstance but leaves it to the general international law on nationality as it affects the capacity of a state to claim a right of protection. If the individual is a national of more than one state, but not including the receiving state, little difficulty arises. It is accepted that any of the states of nationality may represent the person. The United States has issued an instruction to consuls to this effect (Document 4a). If a bilateral treaty calling for automatic notification exists with any of the states of nationality (see Chapter 7), the receiving state must notify consuls of those states. South Africa takes the position that if the individual is a dual national of South Africa and of some other state (not including the receiving state), it will provide protection only if the individual traveled to the receiving state on a passport of South Africa, rather than on another state of nationality (Document 5).

More complex is the situation in which one of the individual's states of nationality is the receiving state, that is, the individual is a national both of the sending state and the receiving state. Many sending states do not seek to provide consular protection in these circumstances. South Africa is an example (Document 5). Some sending states do seek to provide protection. The United States does so if the individual resides in the United States and traveled to the receiving state on a U.S. passport (Document 4b). Canada has concluded agreements with several other states providing for access to such individuals (Document 6).

The traditional view in international law is that a receiving state need not permit consular protection if the individual is a national of both the receiving and sending states. The matter is in some flux, however. In 2006, the ILC adopted the Draft Articles on Diplomatic Protection, which focus on the strength of each of the nationalities: "A State of nationality may not exercise diplomatic protection in respect of a person against a State of which that person is also a national unless the nationality of the former State is predominant, both at the date of injury and at the date of the official presentation of the claim."¹ That draft treaty, not yet in force, relates to claims for injuries on behalf of a national, for example where an individual's property is nationalized, rather than to consular access in the arrest situation. The concept underlying the Draft Articles may, however, have relevance for consular access.

Yet another situation that leads to uncertainty is that of an individual who does not hold the nationality of the sending state but who has some connection to the sending state, perhaps being a relative of sending-state nationals who ask the sending state to assist (Document 4c). Sending states sometimes seek to provide protection in such circumstances. The situation is more compelling, but still uncertain, if the individual, while not a national of the sending state, is

1 UN Document A/61/10, Supplement No. 10, art. 7 (2006).

a permanent (Document 6), to provide prot

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ANNEX 116.2

The Law of Consular Access

A documentary guide

**John Quigley, William J. Aceves and
S. Adele Shank**

 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

ANNEX 116.2

Individuals who must be advised 45

- (3) An LPR whose immediate family members (spouse, parents, children) are American citizens
- (4) An LPR who is a national of the arresting country, but has been raised in the United States, does not speak the host country language, and has no remaining significant ties to the country of nationality
- (5) An LPR whose arrest has been reported to you by host government officials, with the express or implied expectation that you will take some interest in the case
- (6) An LPR in whose case the Department has a specific interest.

d. Department of State, *Foreign Affairs Manual*, vol. 7 (<http://www.state.gov/m/a/dir/regs/fam/c22164.htm>)

§416.1 Responsibilities. As consular officer your clientele in Arrest cases includes: . . .

- (6) A “third country” national (TCN) for whom the United States has formally accepted responsibilities as protecting power.

4.5 South Africa

Department of Foreign Affairs, *Advice to South African Citizens in the Event a South African is Arrested or Jailed Abroad* (<http://www.dfa.gov.za/consular/arrest.htm>)

Dual nationals arrested/detained in the country of their other nationality will not receive assistance from South African Consular Representatives. If a dual national is arrested/detained in another country, of which he/she is not a national, and he/she did not travel on a South African passport but on the passport of his/her second nationality, the dual national must contact the consular representative of the country on which passport he/she travelled.

4.6 Canada

Department of Foreign Affairs and International Trade, Consular Affairs Bureau, *Manual of Consular Instructions*, Chapter 2, Protection and Assistance. §2.4.4(6)

[Annex C, mentioned in this document, lists Bulgaria, China, Hungary, Mexico, Romania, and Russia.]

Access to arrested or detained Canadian with dual nationality. The VCCR is silent on consular access when a dual national is detained or arrested in the country of other citizenship. A number of countries (See Annex C) have entered into bilateral undertakings with Canada which grant some limited protection for Canadian dual nationals while visiting their country of other citizenship. In countries with which we do not have such undertakings, if the arrested or detained Canadian is also a citizen of the country concerned, the local authorities may not recognize a formal right to intervene; consular officers may be limited to making informal representations, which may require consultations with Headquarters. Scope for effective action may be even more limited when a permanent resident (landed immigrant) who has not yet become a Canadian citizen is arrested in the country of

nationality. Formal representations should normally not be undertaken without instructions from Headquarters . . .

4.7 European Union

Consolidated Version of the Treaty Establishing the European Community, Article 20, *Official Journal* C325, 24 December 2002, as implemented by Decision of EU Council, 19 December 1995, Decision 95/553/EC, *Official Journal* L314, 28 December 1995

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State.

4.8 Estonia

Consular Act, 3 December 2003, as amended 25 February 2004 (RT I 2004, 14, 92) (<http://www.legaltext.ee/text/en/X80005.htm>)

§47. Provision of consular assistance pursuant to international agreement: In a foreign state where Estonia does not have a representation, the representation of a third state may provide consular assistance to Estonian nationals on the basis of an international agreement and with the consent of the receiving state. A representation of Estonia may provide consular assistance to nationals of a third state on the basis of an international agreement and with the consent of the receiving state.

...

§58. Provision of consular assistance to European Union national

- (1) A representation of the Republic of Estonia shall protect the interests of a European Union national with the consent of the receiving state if the Member State of the European Union of which the person is a citizen does not have a representation in the receiving state.
- (2) At the request of a Member State of the European Union, consular assistance shall be provided if a national of the Member State is in distress, detained or serving a sentence, if he or she dies or if any other unforeseeable or extraordinary circumstances arise.

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¹ 2 *Official Records*
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A DIPLOMAT'S
HANDBOOK OF INTERNATIONAL
LAW AND PRACTICE

by

B. SEN

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Hon. Legal Adviser to the Ministry of External Affairs, Government of India;
Secretary, Asian-African Legal Consultative Committee*

WITH A FOREWORD BY

SIR GERALD FITZMAURICE G.C.M.G; Q.C.,

Judge of the International Court of Justice



MARTINUS NIJHOFF / THE HAGUE / 1965

states are willing to permit foreign consuls to visit or intervene on behalf of their nationals in prison. Japan, for example, while conceding that a consul should be allowed to visit his co-nationals in prison by virtue of international courtesy, questions that he can claim it as of right. A frequent exception to the consular rights to protect nationals and visit them in prison is the case of persons who are held on charge of espionage as evidenced by the practice of states. The Vienna Convention on Consular Relations has, however, categorically provided that with a view to facilitating the exercise of consular functions, the nationals of the sending state resident within a consular district shall be free to communicate with and to have access to their consul, and that similarly a consular official shall have the right to communicate with the nationals of the sending state resident within his district and to visit them if the exercise of his consular functions so requires. The Convention further provides that where a foreign national is arrested or committed to prison or to custody pending trial, or is detained in any other manner, the competent authorities of the receiving state shall without delay inform the consul of the district if he so requests, and any communication addressed to the consulate by the person in custody shall also be forwarded by the authorities without undue delay. In such a case the consular officials shall have the right to visit their co-national in prison for the purpose of conversing with him and arranging for his legal representation, defence or appeal against judicial sentence.¹ These rights have, however, to be exercised in conformity with the laws and regulations of the receiving state. Thus permission must be obtained, wherever required, from the competent authorities before the consul can visit an imprisoned national in prison.

The Vienna Convention on the subject has provided that the right of consular protection will be within the limits permitted by international law.² It is, therefore, necessary to ascertain the true position with regard to protection of nationals as permissible under customary international law and in the practice of the states and particularly the conditions under which the right of protection may be exercised. These questions will be discussed in the chapter "Diplomatic Protection of Citizens Abroad."

¹ See Article 36 of the Vienna Convention on Consular Relations 1963.

² The relevant provision of the Vienna Convention on the subject is as follows:

"Consular functions consist in

(a) Protecting in the receiving state the interests of the sending state and of its nationals, both individuals and bodies corporate, within the limits permitted by international law."

**LIBER AMICORUM
JUDGE SHIGERU ODA**

EDITED BY

NISUKE ANDO
EDWARD MCWHINNEY
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Volume 1

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solution to the problem identified in this paper. However, the latter part of Article 30(2) presents us with an interesting case for study. What the article says is that “[w]hen a treaty specifies that it is not to be considered as incompatible an earlier or a later treaty, the provisions of the other treaty prevail”. The records of the codification process on this article in the ILC do not reveal much of what was discussed. The commentary on then Article 26 (now Article 30) adopted by the ILC¹¹ cites an example from paragraph 2 of Article 73 of the Vienna Convention of 1963 on Consular Relations.

“Article 73(2)

Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof”.

The commentary explains that this provision, which recognizes the right to supplement its provisions by bilateral agreements, merely confirms the legitimacy of bilateral agreements which do not derogate from the obligations of the general Convention. However, the text of Article 30(2) goes far beyond the mere confirmation of the legitimacy of such bilateral agreements. If applied to this case, Article 30(2) stipulates that such bilateral consular agreements prevail over the Vienna Consular Convention. Article 30(2) might be interpreted as an embryonic concept of the observation by Sinclair quoted above. It might also be in line with the following observation by Fitzmaurice: “The *generalia* principle can have a number of applications. It does not merely involve that general provisions do not *derogate* from specific ones, but also, or perhaps as an alternative method of statement, that a matter governed by a specific provision, dealing with it as such, is thereby taken out of the scope of a general provision dealing with the *category* of subject to which that matter belongs, and which therefore might otherwise govern it as part of that category”.¹²

It might then be possible to develop the idea that Article 30(2) could be applied, *mutatis mutandis*, to cases in which one has a general or framework treaty and an implementing or supplementing treaty. When such an implementing or supplementing treaty is so comprehensive and exhaustive as to cover a general or framework treaty, it could be assumed that the former treaty has lost “legal significance”¹³ because of the effect of the latter treaty.

¹¹ ILCYB 1966, Vol. II, 214-215.

¹² G. Fitzmaurice, *The Laws and Procedure of the International Court of Justice*, Vol. I, 1986, 370.

¹³ Separate Opinion of Judge Higgins, the *Oil Platform* case, Reports of Judgments, Advisory Opinions and Orders, ICJ Reports 1996(II), 847.

THE INTERNATIONAL COURT OF JUSTICE

ROBERT KOLB



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Registering the special agreement under Article 102 of the UN Charter as a condition of validity? Article 102 of the UN Charter reads as follows:

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.
2. No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.¹⁵⁷⁹

Every written and legally binding international agreement (but not political agreements which are not legally binding) to which a Member of the United Nations is a party must be registered with the responsible service of the UN. Registration is not a condition of the agreement's validity in international law, but the agreement cannot be invoked before a UN organ unless and until it has been registered. The ICJ is, of course, the principal legal organ of the UN (Article 92 of the Charter). Does this mean that a special agreement that has not been registered cannot be invoked before the Court and consequently cannot be used to found its jurisdiction?

In the days of the PCIJ, when Article 18 of the League of Nations Covenant imposed an even stricter condition as to registration, special agreements were rarely registered.¹⁵⁸⁰ The parties thought their ambit too restricted, limited to conferring jurisdiction on the Court in a single case, for it to be sensible to add them to the League's collection of treaties. It is true that, in those days, the PCIJ was not the principal legal organ of the League. However, the PCIJ was under an obligation to apply the law. Therefore, it would not have been free to ignore such an agreement's absence of binding force for members of the League, under the terms of Article 18 of the Covenant.

In our own day, special agreements are registered by the United Nations Treaty Service. The problem continues to arise as to informal treaties of the kind considered in the previous subsection. By their very nature, such informal treaties are less suited to registration; often it does not even occur to the parties to register them. Certainly, registration is possible at any time, even if it is late, so that a failure to register can be cured in the course of proceedings before the ICJ, that is, even after the Court has been seised. The Court has not been very formalistic in this respect. In the *Corfu Channel* case (1949), it accepted jurisdiction on the basis of a special agreement that had not been registered.¹⁵⁸¹ In the 1978 *Aegean Sea* case (cited above), the Court accepted the possibility that a joint press communiqué could constitute an agreement giving it jurisdiction, without mentioning the matter of registration.¹⁵⁸²

¹⁵⁷⁹ This provision, originating in Art 18 of the League of Nations Covenant and President Wilson's Fourteen Points, was directed against secret diplomacy. People were convinced, at the end of World War I, that secret diplomacy and treaties with secret clauses had poisoned international relations, sapped mutual confidence, and, as a result of secret alliances, led to wars. The remedy was supposed to lie in giving publicity to treaties. cf O Hoijer, *Le Pacte de la Société des Nations* (Paris, 1926) 325 *et seq.*; U Knapp and E Martens, 'Article 102' in B Simma (ed), *The Charter of the United Nations – A Commentary*, 2nd edn, vol II (Oxford, 2002) 1278; JP Jacqué, 'Article 102' in JP Cot, A Pellet and M Forteau (eds), *La Charte des Nations Unies, Commentaire Article par Article*, 3rd edn, vol II (Paris, 2005) 2117.

¹⁵⁸⁰ cf Hudson, above n 1518, 435. Only three out of 11 special agreements seem to have been registered.

¹⁵⁸¹ *ICJ Reports 1947/1948*, 15.

¹⁵⁸² Judge Dillard had, however, put a question in this regard to Counsel for Greece, who replied that his government had taken the view that, given the informal nature of the agreement, it had thought itself under no obligation to register it, but that in the meantime the agreement had been sent to the Secretariat of the United Nations. cf ICJ, *Pleadings, oral arguments and documents* (1976) 309, 479–82.

In *Qatar and Bahrain* (1994), cited above, Bahrain argued that non-registration for several months showed that Qatar did not consider the Minutes to be a legally binding agreement, since otherwise it would have moved immediately to have them registered. Faced with that argument, the Court could not duck the issue. It reaffirmed that such agreements must indeed be registered, but also that late registration did not have consequences for their validity:

The Court would observe that an agreement or treaty that has not been registered with the Secretariat of the United Nations may not, according to the provisions of Article 102 of the Charter, be invoked before any organ of the United Nations. Non-registration or late registration, on the other hand, does not have any consequences for the actual validity of the agreement, which remains no less binding on the parties. The Court therefore cannot infer from the fact that Qatar did not apply for registration of the 1990 Minutes until six months after they were signed, that Qatar considered, in December 1990, that those Minutes did not constitute an international agreement.¹⁵⁸³

The Court's reasoning must be taken in its context, that of an argument raised by one party. The Court reaffirmed the obligation to register (arising from a practice which is now generally followed as regards special agreements), declined to see in late registration evidence that a State did not consider the instrument to be a legally binding one, and emphasised that registration can be effected even though it is out of time. If the registration needed to be effected *pendente lite*, the Court would doubtless apply the '*Mavrommatis* rule'¹⁵⁸⁴ on defects of form: there would be little point in ruling that the proceedings were invalid and forcing a party to start a new case after registering the agreement. In short, the requirement of registration is not a very onerous condition.

Interpretation of a special agreement. Special agreements are international ones, and therefore in principle, are to be interpreted in accordance with the rules on treaty interpretation, particularly in Articles 31 to 33 of the 1969 Vienna Convention on the Law of Treaties. The Court confirmed, in the case on the *Land, island and maritime boundary dispute* (El Salvador v Honduras, 1992) that it must be guided by those rules when interpreting the special agreement in that case. First, it must ascertain the ordinary meaning of the terms.¹⁵⁸⁵ In other cases, doubtless because the special agreements were bilateral instruments in relation to which the parties' wishes could be interpreted more easily than in relation to a multilateral treaty, and were therefore a useful aid to interpretation, the Court has emphasised the importance of their intentions. So, for example, in the *Continental shelf* case (Libya v Malta, 1985), the Court said:

Since the jurisdiction of the Court derives from the Special Agreement between the Parties, the definition of the task so conferred upon it is primarily a matter of ascertainment of the intention of the by interpretation of the Special Agreement.¹⁵⁸⁶

Here we can clearly see a modest change of course in the process of treaty-interpretation, since it is rare for the Court to lay stress on the parties' intentions. On the other hand, it will also be remembered that the Court was not so focused on the 'plain meaning' of the

¹⁵⁸³ *ICJ Reports* 1994, 122, § 29.

¹⁵⁸⁴ See above, section 1(b).

¹⁵⁸⁵ *ICJ Reports* 1992, 582–83, § 373.

¹⁵⁸⁶ *ICJ Reports* 1985, 23, § 19.

BROWNLIE'S PRINCIPLES OF
PUBLIC
INTERNATIONAL
LAW

Eighth Edition

BY

JAMES CRAWFORD, SC, FBA

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CONSEQUENCES OF AN INTERNATIONALLY WRONGFUL ACT

1. INTRODUCTION

In the event of an internationally wrongful act by a state or other subject of international law, other states or subjects may be entitled to respond. This may be done by invoking the responsibility of the wrongdoer, seeking cessation and/or reparation, or (if no other remedy is available) possibly by taking countermeasures. Cessation and reparation are dealt with in Part Two of the ILC's 2001 Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA),¹ whereas countermeasures are dealt with in Part Three. There are important differences between them: cessation and reparation are obligations which arise by operation of law on the commission of an internationally wrongful act, whereas countermeasures (if available at all) are an ultimate remedy which an injured state may take after efforts to obtain cessation and reparation have failed. They are responsive not just to the breach as such but to the responsible state's failure to fulfil its secondary obligations, which is why they are dealt with in Part Three on invocation.

Not all states are entitled to respond to all breaches. For example in bilateral relations (e.g. as between the parties to a bilateral treaty) only the parties are presumed to have rights, including standing to object. But not all legal relations are bilateral and that holds also for responsibility relations. This too is the subject-matter of Part Three on invocation.²

¹ Appended to GA Res 56/83, 12 December 2001.

² For analysis of ARSIWA on this point see Crawford, in Fastenrath et al (eds), *From Bilateralism to Community Interest: Essays in Honour of Judge Bruno Simma* (2011) 224.

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2. CESSATION, REPARATION, INVOCATION

The consequences of international responsibility must be treated with care. They raise substantial issues as to the character of responsibility and are far from being a mere appendix. While the systems of responsibility developed within municipal legal systems may be helpful by way of analogy, in the sphere of international relations there are important elements, including the rules as to satisfaction, which might seem out of place in the law of tort and contract in common law systems, or in the law of obligations in civil law jurisdictions.

The terminology adopted here largely follows that of the ILC Articles of 2001, with some additions. The term 'breach of an international obligation' denotes an unlawful act or omission. 'Damage' denotes loss, *damnum*, usually a financial quantification of physical or economic injury or damage or of other consequences of such a breach. 'Cessation' refers to the basic obligation of compliance with international law, which in principle remains due in spite of any breaches. Cessation is required, not as a means of reparation but as an independent obligation, whenever the obligation in question continues to exist. 'Reparation' will be used to refer to all measures which may be expected from the responsible state, over and above cessation: it includes restitution, compensation, and satisfaction. 'Restitution' refers to restitution in kind, a withdrawal of the wrongful measure or the return of persons or assets seized illegally. While restitution and cessation may sometimes overlap—for example, in the case of release of an individual detained unlawfully—they remain conceptually distinct. 'Compensation' will be used to describe reparation in the narrow sense of the payment of money in the measure of the wrong done. The award of compensation sometimes described as 'moral' or 'political' reparation, terms connected with concepts of 'moral' and 'political' injury, creates confusion. 'Injury' arises from a breach of a *legal* duty and in such cases the only special feature is the absence of a neat method of quantifying loss. 'Satisfaction' refers to means of redressing a wrong other than by restitution or compensation. It may take a variety of forms, including an apology, trial and punishment of the individuals responsible, taking steps to prevent a recurrence of the breach, etc.

Underlying this way of looking at the problem are certain basic propositions about international responsibility (and about states as the primary subjects of responsibility). First, international responsibility is undifferentiated: just as custom and treaty are alternative (and even complementary) ways of generating obligation, so there is no difference in principle between responsibility arising, so to speak, *ex contractu* or *ex delicto*.³ For a state party to the UN Convention on the Law of the Sea (UNCLOS), the obligation to allow innocent passage through the territorial sea arises by treaty; for the US as a non-party, it arises under general international law. Materially the obligations

³ The distinction, associated with the topic of 'crimes of state', was debated by the ILC since the 1976 draft, but excluded from the final version. Crawford, ILC *Ybk* 1998/II(1), 9–23; Crawford, in Crawford, Pellet & Olleson (eds), *The Law of International Responsibility* (2010) 17. For earlier literature see also Weiler, Cassese & Spinedi, *International Crimes of State* (1989). Further: chapter 27.

on his behalf, a State is in reality asserting its own rights—its right to ensure, in the person of its subjects, respect for the rules of international law'.⁹ But there are also cases where states seek to vindicate collective or innominate interests, for example, in the field of human rights or the environment. A different rule, expressed by the International Court in its famous dictum in *Barcelona Traction*, applies to these cases: '[i]n view of the importance of the rights involved, all States can be held to have a legal interest in their protection'.¹⁰ In practice, it may be difficult to apply reparation to interstate cases in which the obligations violated protect a community interest. The principle of full reparation applies generally, but the law has to take account of the entire range of possibilities.¹¹ In many cases claimants will focus on cessation and redress to the individuals affected, or on remediation of environmental harm, without seeking reparation for themselves.¹²

3. THE FORMS OF REPARATION¹³

(A) RESTITUTION IN KIND AND *RESTITUTIO IN INTEGRUM*¹⁴

To achieve the object of reparation tribunals may give 'legal restitution', in the form of a declaration that an offending act of the executive, legislature or judicature is unlawful and without international effect.¹⁵ Such action can be classified either as a genuine application of the principle of *restitutio in integrum* or as an aspect of satisfaction. Restitution in kind is a logical means of repairing an injury. Customary law or treaty may create obligations to which is annexed a power to demand specific restitution. Thus in *Chorzów Factory* the Permanent Court took the view that, the purpose of

⁹ *Mavrommatis Palestine Concessions* (1924) PCIJ Ser A No 2, 12.

¹⁰ *Barcelona Traction, Light and Power Company, Limited (Belgium v Spain)*, ICJ Reports 1970 p 3, 32.

¹¹ Further: Tomuschat (1993) 241 *Hague Recueil* 209, 353–68; Crawford (2006) 319 *Hague Recueil* 325, 421–51.

¹² Tams, *Enforcing Obligations Erga Omnes in International Law* (2005); Gaja, in Crawford, Pellet & Olleson (2010) 941; Vauris-Chaumette, *ibid*, 1023.

¹³ Generally: Eagleton (1929) 39 *Yale LJ* 52; Whiteman, *Damages in International Law* (1937–43); García Amador, ILC *Ybk* 1961/II, 2–45; Bollecker-Stern, *Le Préjudice dans la théorie de la responsabilité internationale* (1973); Gray, *Judicial Remedies in International Law* (1987); Shelton (2002) 96 *AJIL* 833; ARSIWA, Art 34 & commentary; and the essays in Crawford, Pellet & Olleson (2010) part IV, section 1.

¹⁴ Baade (1960) 54 *AJIL* 801, 814–30; García Amador, ILC *Ybk* 1961/II, 17–18; Wortley (1961) 55 *AJIL* 680; Jiménez de Aréchaga (1978) 159 *Hague Recueil* 1, 285–6; Schachter (1982) 178 *Hague Recueil* 9, 190–1; Gray (1987) 95–6. Also ARSIWA, Art 35 & commentary; Gray, in Crawford, Pellet & Olleson (2010) 599.

¹⁵ Such action has become important in the jurisprudence of the IACtHR. E.g. *Barrios Altos v Peru* IACtHR C/75, 14 March 2001, §51. Also: *Almonacid Arellano v Chile*, IACtHR C/154, 26 September 2006; *Gomes Lund v Brazil*, IACtHR C/219, 24 November 2010. On a similar trend in the ECtHR: Nifosi-Sutton (2010) 23 *Harv HRJ* 52. Outside human rights law this is unusual, but see *Martini* (1930) 2 *RIAA* 975, 1002. Also: McNair, 1 *Opinions* 78; *Barcelona Traction*, Preliminary Objections, ICJ Reports 1964 p 6; *Barcelona Traction*, Second Phase, ICJ Reports 1970 p 4; *South West Africa (Ethiopia v South Africa; Liberia v South Africa)*, Second Phase, ICJ Reports 1966 p 3, 32 (with particular reference to the apartheid laws).

are indistinguishable and it would be odd if a wholly different regime of responsibility applied to one as compared with the other.⁴ Secondly, the regime of responsibility is undifferentiated also in the sense that it applies to the whole array of obligations under international law. There is no *a priori* limit to the content of international obligations, which can range from rules about navigation of submarines to the protection of the ozone layer.⁵ In both cases, the primary point of having the rule is to ensure performance; the responsible state is not simply given an option to perform or pay (perhaps unquantifiable) damages. International law fulfils the function both of a public law system regulating shared resources (such as the oceans or the atmosphere) and a private law system covering bilateral (e.g. diplomatic) relations.⁶

Thirdly, and as a corollary, the function of reparation is, as far as possible, the restoration of relations reflected in the *status quo ante*. In *Factory at Chorzów (Merits)*, the Permanent Court declared that:

The essential principle contained in the actual notion of an illegal act... is that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.⁷

That was a claim for breach of a bilateral treaty having as its aim the protection of the interests of the claimant state. It is to be distinguished from the type of case in which the individual state is seeking to establish *locus standi* in order to protect legal interests not identifiable with itself alone or possibly with any state in particular. In standard cases, a state protects its own legal interests in seeking reparation for damage—material or otherwise—suffered by itself or its citizens. As put by ITLOS in *M/V Saiga (No 2)*:

It is a well-established rule of international law that a State which suffers damage as a result of an internationally wrongful act by another State is entitled to obtain reparation for the damage suffered from the State which committed the wrongful act and that 'reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed'.⁸

This is complemented, in the case of injury suffered by nationals, by the rule, enunciated by the Permanent Court in *Mavrommatis*, that '[b]y taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings

⁴ ARSIWA, Art 12 & commentary. This does not, of course, prevent states from designing particular regimes of responsibility by treaty: ARSIWA, Art 55 & commentary.

⁵ *SS Wimbledon* (1923) PCIJ Ser A No 1, 25.

⁶ See Simma (1994) 250 *Hague Recueil* 217, 229–55.

⁷ (1928) PCIJ Ser A No 17, 47.

⁸ (1999) 120 ILR 143, 199, citing *Factory at Chorzów (Merits)* (1928) PCIJ Ser A No 17, 47.

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the Geneva Convention of 1922 being to maintain the economic status quo in Polish Upper Silesia, restitution was the 'natural redress' for violation of or failure to observe the treaty provisions.¹⁶ In imposing obligations on aggressor states to make reparation for the results of illegal occupation, the victims may be justified in requiring restitution of 'objects of artistic, historical or archaeological value belonging to the cultural heritage of the [retro]ceded territory'.¹⁷ It would seem that territorial disputes may also be settled by specific restitution, although the declaratory form of judgments of the International Court often masks the element of restitution.¹⁸

Apart from express treaty provisions, restitution in kind, that is, specific restitution, is exceptional; the vast majority of claims conventions and agreements to submit to arbitration provide for the adjudication of pecuniary claims only.¹⁹ Writers²⁰ and, from time to time, governments and tribunals²¹ assert a right to specific restitution, sometimes quoting the *Chorzów Factory* dictum. The International Court reaffirmed in *Pulp Mills* that 'customary international law provides for restitution as one form of reparation for injury, restitution being the re-establishment of the situation which existed before occurrence of the wrongful act'.²² But, while this form of redress has a place in the law, it is difficult to state with any certainty the conditions of its application, outside of cases in which it is provided for explicitly.

In *Rainbow Warrior*, New Zealand demanded the return to custody of two agents released from detention by the French government in violation of a previous settlement. The tribunal understood that this was a case of cessation, and not of restitution, and went on to find that cessation could not be granted on the implausible ground that the unfulfilled obligation to detain had expired in the meantime.²³

Tribunals should avoid encouraging the purchase of impunity by the payment of damages; specific restitution will be appropriate in certain cases. At the same time,

¹⁶ (1927) PCIJ Ser A No 8, 28. Cf *Italy v FRG* (1959) 29 ILR 442, 474-6; *Amoco International Finance v Iran* (1987) 83 ILR 500.

¹⁷ Italian Peace Treaty, 10 February 1947, 49 UNTS 3, Arts 12, 37, 78, Annex XIV, §4; cf *Franco-Ethiopian Railway Co* (1957) 24 ILR 602. Further: part III of the Agreement on Reparation from Germany, on the Establishment of an Inter-Allied Reparation Agency and on the Restitution of Monetary Gold, 14 January 1945, 555 UNTS 70, §A.

¹⁸ *Legal Status of Eastern Greenland* (1933) PCIJ Ser A/B No 53; *Temple of Preah Vihear (Cambodia v Thailand)*, ICJ Reports 1961 p 17. In the latter the Court found *inter alia* that Thailand was obliged to restore to Cambodia any sculpture, stelae, fragments of monuments, and pottery which might have been removed by the Thai authorities. In fact nothing was shown to have been removed and Cambodia did not press the point at the time.

¹⁹ Also General Act for the Pacific Settlement of International Disputes, 26 September 1928, 93 LNTS 342, Art 32; Revised General Act, 28 April 1949, 71 UNTS 101, Arts 1, 17.

²⁰ Especially: Mann (1977) 48 BY 1, 2-5; Verzijl, 6 *International Law in Historical Perspective* (1973) 742.

²¹ *Walter Fletcher Smith* (1927) 2 RIAA 913, 918; *Greece v Bulgaria (Treaty of Neuilly)* (1933) 7 ILR 91, 99. In these two awards restitution was not considered appropriate for practical reasons. Cf *Interhandel (Switzerland v US)*, ICJ Reports 1959 p 6. Also: *BP Exploration Company (Libya) Ltd v Libyan Arab Republic* (1973) 53 ILR 297 (*restitutio in integrum* not favoured); *Texaco v Libyan Arab Republic* (1977) 53 ILR 389 (*restitutio* affirmed as a principle); *LIAMCO v Libyan Arab Republic* (1982) 62 ILR 140 (*restitutio* not favoured).

²² *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, 20 April 2010, §273.

²³ (1990) 20 RIAA 215, 268-71.

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in many situations it may be clear that a remedy which accommodates the internal competence of governments while giving redress to those adversely affected is to be preferred: restitution is too inflexible. ARSIWA Article 35 includes a proviso whereby restitution is only due if it 'does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation'. Two examples from the jurisprudence of the International Court illustrate the difficulty. In *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v Belgium)*, the Court recognized that a mere declaration of unlawfulness under international law would be insufficient, and considered that Belgium was under an obligation to cancel the arrest warrant issued illegally.²⁴ In *Avena and Other Mexican Nationals (Mexico v US)*, however, the Court rejected a request to order the cancellation of the death sentences passed without consular notification or assistance. It merely established that the US was under an obligation to provide means for review and reconsideration of sentences issued in violation of the Vienna Convention on Consular Relations.²⁵ In the latter case, the difficulties faced by the federal executive in the American political system had already generated non-compliance with the provisional measures ordered by the Court.²⁶ These difficulties would only be confirmed in the US Supreme Court decision in *Medellín v Texas*.²⁷

(B) COMPENSATION, DAMAGES²⁸

Pecuniary compensation is usually an appropriate and often the only remedy for injury caused by an unlawful act. Under ARSIWA Article 36 whenever restitution is not possible compensation becomes the standard consequence for injury, covering 'any financially assessable damage including loss of profits'. This is consistent with the long-standing jurisprudence of international courts, tribunals, and claims commissions. In its judgment in *Gabčíkovo-Nagymaros Project*, the Court reaffirmed the 'well-established rule of international law that an injured State is entitled to obtain compensation from the State which has committed an internationally wrongful act for the damage caused by it'.²⁹

Applying compensation is straightforward enough in the case of material damages, whether to a state or to its nationals. Starting with the commissions under the 1794 Jay Treaty, claims commissions and arbitral tribunals have been established by treaty

²⁴ ICJ Reports 2002 p 3, 32.

²⁵ ICJ Reports 2004 p 12, 60, 72.

²⁶ ICJ Reports 2003 p 77.

²⁷ (2008) 552 US 491, 525: '[t]he President has an array of political and diplomatic means available to enforce international obligations, but unilaterally converting a non-self-executing treaty into a self-executing one is not among them. The responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress'. See Charnovitz (2008) 102 *AJIL* 551.

²⁸ Further: Salvioli (1929) 28 *Hague Recueil* 231, 235–86; Yntema (1924) 24 *Col LR* 134. Gattini (2002) 13 *EJIL* 161; Shelton, *Remedies in International Human Rights Law* (2005); Marboe, *Calculation of Compensation and Damages in International Investment Law* (2009); Barker, in Crawford, Pellet & Olleson (2010) 599.

²⁹ ICJ Reports 1997 p 7, 81. Also *M/V Saiga (No 2)* (1999) 120 *ILR* 143, 199. *Chorzów Factory* (1928) PCIJ Ser A No 17, 47.

Oxford Public International Law



Restitution

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A. Notion

1 The term 'restitution', in its broader sense, may be considered as a synonym for → *reparation*, taken to encompass all the measures which an injured State may expect from the State responsible of an internationally wrongful act (→ *State Responsibility*) in order to 'wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed' (*Factory at Chorzów* 47); *Arrest Warrant of 11 April 2000 [Democratic Republic of the Congo v Belgium]* 76). Under a narrower view, the concept is synonymous for restitution in kind—*restitutio in integrum*—and it consists of the attainment of the *status quo ante* (→ *Status Quo*), that is the situation existing before the commission of the wrongful act or omission. In line with the choices made by the → *International Law Commission (ILC)* in the Draft Articles on Responsibility of States for Internationally Wrongful Acts ('ILC Draft Articles') adopted both in its first as well as in its second reading in 2001, the present entry will focus on the second meaning (Arts 34–35 ILC Draft Articles; see also → *Codification and Progressive Development of International Law*).

2 Restitution, or restitution in kind, usually consists of the return of objects, including territory, unlawfully seized (eg in → *Temple of Preah Vihear Case*, the International Court of Justice ['ICJ'] ruled that Thailand had to leave the unlawfully occupied temple in Cambodia and restore all religious objects it might have removed [at 36–37]), or of the release of persons unlawfully arrested or detained (eg → *United States Diplomatic and Consular Staff in Tehran Case [United States of America v Iran]* 44–45). It may also take the form of the revocation, annulment, or amendment of a piece of internal legislation enacted in violation of a rule of international law, or the rescinding or reconsideration of an administrative or judicial act, so-called 'legal restitution' (eg → *Martini Case* 1002; → *LaGrand Case [Germany v United States of America]*; → *Arrest Warrant Case [Democratic Republic of the Congo v Belgium]* 33). While from an international law point of view this is a matter of course on the basis of the general principle according to which a State may not justify a breach of an international rule invoking its internal legislation, significant difficulties are often incurred within domestic legal systems in repealing a law or revoking a judicial decision. Within a number of States facing such difficulties, domestic courts have called upon the legislative power to take action in order to bring the law and practice of the State concerned into conformity with its international obligations (eg the Italian Constitutional Court recently asked for the adoption of all necessary measures in order to comply with the → *European Court of Human Rights [ECtHR]* judgments which found Italy in violation of the → *European Convention for the Protection of Human Rights and Fundamental Freedoms [1950]* [213 UNTS 221] provisions; see, amongst others, *Sentenza No 129*).

3 Restitution can also take the form of an agreed → *negotiation*. On this score, the → *International Centre for Settlement of Investment Disputes (ICSID)* Arbitration Tribunal in the 2005 case *CMS Gas Transmission Company v Republic of Argentina*, after considering it 'unrealistic' for it to order the respondent to re-establish the situation existing before the emergency measures adopted during the economic crisis of 2002 in Argentina, affirmed that '[a]s long as the parties were to agree to new terms governing their relations, this would be considered as a form of restitution as both sides to the equation would have accepted that a rebalancing had been achieved' (at paras 406–7). Two years later in *Enron Corporation and Ponderosa Assets LP v Republic of Argentina*, the ICSID Tribunal made reference to an 'agreed form of restitution by means of renegotiation of contracts or otherwise' (at para. 359). Restitution may also take the form of provisional reparation as in the case of the provisional measures decided by the → *International Tribunal for the Law of the Sea (ITLOS)* in relation to the immediate release of ships under Art. 290 (1) United Nations Convention on the Law of the Sea (1833 UNTS 3), to 'preserve the respective rights of the parties to the dispute' and to 'prevent serious harm to the maritime environment'. The first case in which the Tribunal considered a request for the prescription of provisional measures was the *M/V Saiga No 2* case, under Art. 290 (1) of UNCLOS, then followed by the *Southern Bluefin Tuna* and the *MOX Plant* cases. In all three cases, the Tribunal agreed to prescribe provisional measures

B. Historical Development and Context

4 Restitution goes back to Roman law under which it constituted the redress which the *praetor* granted in order to re-establish the situation prior to the occurrence of a wrongful harm, such as the rescission of a contract produced through fraud or force.

5 Nowadays, within the framework of the law of international responsibility of States, despite few indications to the contrary (eg Gray [1999] 416; *BP Exploration Company [Libya] Limited v Libyan Arab Republic*), restitution constitutes the primary form of reparation of an internationally wrongful act. This was upheld by the → *Permanent Court of International Justice (PCIJ)* in 1928 when it stated that the responsible State was under ‘the obligation to restore the undertaking and, if this be not possible, to pay its value at the time of the indemnification, which value is designed to take place of restitution which has become impossible’ (*Factory at Chorzów* 48). The primacy of restitution within the concept of reparation has been confirmed by the ILC in Art. 34 ILC Draft Articles, which puts restitution first in the list of means of reparation: ‘[f]ull reparation for the injury caused by the internationally wrongful act shall take the form of restitution, compensation and satisfaction, either singly or in combination’ (→ *Compensation*; → *Satisfaction*). Restitution as the first standard of reparation aimed at the re-establishment the situation *quo ante* is confirmed by Art. 36 (1) ILC Draft Articles on compensation, which provides for the obligation to compensate ‘insofar as such damage is not made good by restitution’.

6 The priority to restitution over other means of reparation has been further confirmed through most recent investment arbitrations. In the 2007 *Enron v Argentina* case, the ICSID Tribunal observed that ‘[a]bsent an agreed form of restitution ... the appropriate standard of reparation under international law is compensation for the losses suffered by the affected party’ (at para. 359). The same position was taken by the ICSID Tribunal in the 2007 case *Sempra Energy International v Republic of Argentina* (at para. 401).

7 On rare occasions, the authority of an international tribunal to grant restitution has been excluded under the terms of the → *compromis* grounding its jurisdiction. However, the *compromis* generally affords arbitrators a sufficiently wide discretion in awarding the forms of reparations they deem appropriate (see eg *Walter Fletcher Smith v The Compania Urbanizadora del Parque y Playa de Mariana* 918), including restitution.

8 While under general law restitution has priority over compensation, the injured State may claim the latter instead of the former. That is reflected in Art. 43 (2) lit. b ILC Draft Articles according to which ‘[t]he injured State may specify in particular ... what form reparation should take’. However, the right for the injured State to choose between different forms of reparation—in our case, the possibility to ask for compensation instead of restitution—is not an absolute right of election. Indeed, when the obligation breached has an *erga omnes* character (→ *Obligations erga omnes*), hence protecting values of a universal nature, restitution in the form of the specific performance of the primary obligation breached may not be bargained with compensation instead (Commentary 7 to Art. 43 ILC Draft Articles). In principle, obligation of restitution is distinguished from the obligation of cessation of the wrongful conduct. Indeed, the former operates within the framework of the secondary rules of State responsibility with a view to re-establishing the situation existing before the commission of the latter; whereas the obligation of cessation, aimed at securing an end to a wrongful act, derives directly from the primary obligation infringed. Nonetheless, on occasions, restitution coincides with the cessation of the wrongful conduct. As emphasized by Special Rapporteur Crawford, ‘the distinction between them is not always clear’ (UN ILC Special Rapporteur J Crawford ‘Third Report on State Responsibility: Addendum’ para. 131; see also Commentary 7 to Art. 30 ILC Draft Articles).

9 This is inevitable when the obligation breached is of a continuing character. Accordingly, the ILC concludes that sometimes measures adopted under Art. 35 ILC Draft Articles on restitution, such as ‘the return of persons or property seized in the course of an invasion [can] be required as an

aspect either of cessation or restitution' (Commentary 6 to Art. 35 Draft). A most relevant example of this is to be found in the *United States Diplomatic and Consular Staff in Tehran Case* in which the ICJ ordered Iran to 'immediately terminate the unlawful detention of the United States Chargé d'affaires and other diplomatic and consular staff' (at 44). The release of the consular and diplomatic agents by the Iranian government represented precisely an example of coincidence between the obligation of cessation of the wrongful conduct and the obligation of restitution.

C. Conditions and Limits

10 International case-law and legal literature support the view that restitution operates 'provided and to the extent that' it is neither materially impossible, nor wholly disproportionate (Art. 35 ILC Draft Articles). An example of the first condition is to be found in a situation under which property to be restored has been permanently deteriorated or lost. On that score, one may refer to the ICJ → *Israeli Wall Advisory Opinion (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory)*. In that case, having regard to the legal consequences deriving from the violations of international law which it found to have occurred as a result of the construction of the wall by Israel, the ICJ affirmed that the latter was

under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall on the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered (at 198; similarly, see → *Application of the Convention on the Prevention and Punishment of the Crime of Genocide Case [Bosnia and Herzegovina v Serbia and Montenegro]* para. 460).

11 Impossibility, for the purpose of precluding the obligation of restitution, does not have to be exclusively of a material nature. Reference has been made to the concept of 'legal impossibility' indicating the situation in which the conduct aimed at re-establishing the status quo ante would be at variance with an international obligation. To that end, former Special Rapporteur Arangio Ruiz referred to the case in which conduct required by restitution would be in contrast with obligations arising from peremptory norms of general international law (Preliminary Report on State Responsibility by Mr Gaetano Arangio-Ruiz, Special Rapporteur at 29; → *Ius cogens*). Art. 35 ILC Draft Articles does not make express reference to the case of a possible contrast with imperative norms on the point at issue, but the above considerations on the inadmissibility of any form of restitution which would require conduct in breach of an international obligation apply in general, all the more so, when such an obligation stems from a peremptory norm of international law.

12 As to the admissibility of the invocation of a situation of internal legal impossibility as a limit to the claim for restitution, the ILC took the view that legal impossibility of restitution cannot be grounded on internal legal difficulties. As a direct application of the general principle set out in Art. 32 ILC Draft Articles, according to which a State 'may not rely on the provision of its internal law as justification for failure to comply with its obligations' under Part Two ILC Draft Articles dealing with the legal consequences of an internationally wrongful act, Art. 35 ILC Draft Articles does not refer to internal legal obstacles as a justification exempting the wrongdoing State from the obligation to re-establish the situation *quo ante* (see also → *International Law and Domestic [Municipal] Law*). On the contrary, the ILC Draft Articles Commentary to this provision clearly states that 'restitution is not impossible merely on grounds of legal or practical difficulties, even though the responsible State may have to make special efforts to overcome these' (Commentary 8 to Art. 35 ILC Draft Articles). While, as a matter of principle, one would fully subscribe to this general statement, both international case-law and conventional practice show that when States are not in a position to annul a domestic judicial decision or other legal acts which amounts to an internationally wrongful act, monetary compensation is awarded instead (eg Art. 32 General Act for the Pacific Settlement of International Disputes [concluded 26 September 1928, entered into force 16 August 1929] 93 LNTS

343).

13 As to the condition to the effect that restitution should be refused if it 'involve[s] a burden out of all proportion to the benefit deriving from restitution instead of compensation' (Art. 35 lit. b ILC Draft Articles), it has been recently applied in the arbitration *Occidental Petroleum Corporation v Republic of Ecuador*, dealing with Ecuador's termination of a participation contract for the exploitation of hydrocarbon reserves, which was alleged to be in breach of both the participation contract and the applicable bilateral investment treaty (→ *Investments, Bilateral Treaties*). There, the ICSID Tribunal, in discussing whether the claimant had established an arguable right to restitution, affirmed that 'specific performance must not only be possible in order to be granted to a claimant. Specific performance, even if possible, will nevertheless be refused if it imposes too heavy a burden on the party against whom it is directed' (*Occidental Petroleum Corporation v Republic of Ecuador* para. 82). In keeping with this line of reasoning, the ICJ in the → *Pulp Mills on the River Uruguay (Argentina v Uruguay)* case stated that '[I]ike other forms of reparation, restitution must be appropriate to the injury suffered, taking into account the nature of the wrongful act having caused it' (para. 274). Here the term 'appropriate' appears to stand as a synonym for 'proportional'.

D. Evaluation

14 Given the difficulties often arising in implementing the obligation of restitution in kind, arbitrators, in the exercise of their discretion in selecting the most adequate form of reparation in a given case, generally tend to prefer to award pecuniary compensation instead of restitution. The same applies to the ICJ on the basis of the same discretion under Art. 36 (2) Statute of the International Court of Justice ([adopted 26 June 1945, entered into force 24 October 1945] 145 BSP 832). Accordingly, even though restitution remains, as a matter of principle, the primary form of reparation, in practice, it is generally replaced by monetary compensation. This is true, in general, with respect to reparation for material damage stemming from breaches of traditional synallagmatic obligations, protecting material interests in a bilateral perspective. The crucial importance, however, is to emphasize the adjustment of the law of State responsibility, in the issue under consideration, to the major developments that have brought about legal protection to peremptory values. Accordingly, compensation may not be claimed as a substitute for restitution when the latter would consist in the specific performance of an obligation stemming from a peremptory norm of international law.

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