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# The Consular Function in the 21<sup>st</sup> Century

A report for Foreign Affairs and International Trade Canada

George Haynal, Michael Welsh, Louis Century & Sean Tyler

27 March 2013

## **Project Overview**

In January 2013, the Department of Foreign Affairs and International Trade commissioned the University of Toronto Munk School of Global Affairs to undertake (i) a review of academic literature and (ii) a survey of intergovernmental agreements dealing with consular affairs. Consular affairs was defined as services to citizens seeking assistance or protection prior to and during travel, work or residence abroad.

The study was carried out between January 28 and March 15 and involved searches of the Internet, University of Toronto libraries, and court documentation in Canada. English-language materials made up the bulk of the literature under consideration.

A preview of the results of the study was provided to DFAIT on February 25; the principal oral and document presentation was provided to Mr. W. Crosbie, Assistant Deputy Minister, DFAIT, on March 13. The final report containing this overview and report, an annotated bibliography and a review of international agreements, was submitted on March 27, 2013.

There are three components of this research, each of which may be viewed as a stand-alone document. This document consolidates all three components:

- 1. The Consular Function in the 21st Century: Analysis of research findings**
  - a. *Including a two-page overview of the research at page 1, below***
- 2. Annex I: Recent Trends in the Consular Function: A literature review**
- 3. Annex II: International Consular Agreements: A survey of bilateral and multilateral cooperation**

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# The Consular Function in the 21st Century

Analysis of research findings

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## **Overview**

1. There is a great deal of literature publicly available on consular affairs. Studies appear from sources in a number of disciplines, including law, medicine, travel and tourism, emergency and crisis management, sociology, IT studies, geographic and regional studies, and international affairs. Consular studies are being undertaken on a global basis, including, more recently, within the major emerging economies.
2. The literature describes the challenges arising from greater international travel, natural and civil disasters, multiple citizenship, international employment in dangerous environments, niche tourism (adventure, medical services, etc.), retirement abroad, child abductions and forced marriages, and illegal and repugnant activities (child sex tourism, human trafficking). Countries which had until recently not permitted citizen travel are now dealing with large scale consular problems (e.g. China, Korea). Others (e.g. Philippines, India, Mexico) are dealing with protection of fast-growing numbers of vulnerable expatriate workers who provide remittances critical to the national economy. Governments of emerging economies regard successful discharge of consular responsibilities as hallmarks of their legitimacy.
3. All governments are responding to rising demand for consular services, often in the same manner: greater cautionary advice to travellers and warnings about the limits to government support; greater use of technology to deliver travel advice, citizen registration, passport issuance and advice in emergencies; and expansion of partnerships with the private sector, non-governmental organizations, other governments and international organizations. While these initiatives have helped deal with rising demand, the challenges continue to stretch governmental capacity to respond.
4. Recent intergovernmental consular agreements are focussed on practical cooperation to share service delivery, address specific needs (e.g. social security regimes for overseas workers), and promote informal resolution of consular disputes. Topics of significant intergovernmental interest include collective initiatives for common consular services outside the region, cooperation on natural disaster preparation and emergency response, international health protection for travellers, promotion of international private law regimes on child abduction and family disputes, and worker protection agreements. On a national basis, some governments are engaged in diaspora outreach. While not strictly intergovernmental, diaspora policies indirectly engage host governments with potential benefits in the form of two-way trade and investment and occasionally disputes.

The present study draws two broad conclusions. First, governments face similar challenges in responding to the trends in consular affairs. National reports describing frustration with consular challenges suggest that informal discussions among governments on common problems, ‘lessons learned’, and operational matters would likely gain significant support. Among the topics which could

attract widespread interest are: multiple citizenship; children's issues; communications; technology; partnerships; service delivery; and diaspora engagement.

A second conclusion to be drawn from the research is the value of tracking academic study of the consular function, especially on a multi-disciplinary and global basis. Governments should find significant value in further academic study of specialized consular issues (e.g. inter-cultural differences in child custody disputes) and more integrative analysis (e.g. how law, politics, international relations and media impact management of consular disputes). There might also be value in studying methods to assess the effectiveness of travel websites and cautionary advice to citizens. These and other topics are ripe for continued study within and outside governments.

## **A. The evolving context for the consular function: demand & supply**

The consular function of 2013 operates in a rapidly changing environment. This is a prominent theme of the growing but still nascent body of literature on “consular affairs,”<sup>1</sup> defined by Maaïke Okano-Heijmans as “assistance to a state's own citizens in distress abroad and, when necessary, their family or other designated contacts at home.”<sup>2</sup> Changes are evident in the literature but also in the novelty and gravity of challenges faced by consulates everywhere and reported in the media. This section first illuminates key issues of evolving *demand* for consular services, followed by a discussion of how consular *supply* – the nature and extent of assistance provided by states – can and should respond.

### ***i) Demand for consular services has exploded***

Rising consular demand is a product of several overlapping factors. First, the *sheer numbers* of travellers and expatriates are themselves telling. The following is a sample intended to illustrate the scale of change. There are 2.8 million Canadians abroad, an abstract number given immediacy by the Asia Pacific Foundation’s visual representation of their geographic dispersal.<sup>3</sup> The *Economist* magazine similarly represents the geography of overseas Chinese and Indians, of whom there are 50 and 22 million, respectively.<sup>4</sup> Over 3 million Brazilians live abroad.<sup>5</sup> Annual numbers of travellers are also rising: Australia documented 7.6 million resident departures in 2011,<sup>6</sup> while the annual number of outbound Indian travellers surpassed 10 million in 2008-2009.<sup>7</sup>

Second, the extraordinary new levels of demand faced by rising powers or emerging economies represent a broader trend in the evolution of the consular function, with significant policy implications. In China in 2010, there were 57 million departures to worldwide travel destinations; the forecast for 2020 is over 100 million.<sup>8</sup> In South Korea in 2005, there were 10.7 million departures.<sup>9</sup> Of 3.7 million international students studying abroad in 2010, one fifth, or 700,000, were Indian or Chinese.<sup>10</sup> Overseas

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<sup>1</sup> See the excellent collection of essays in Jan Melissen and Ana Mar Fernandez, eds., *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011).

<sup>2</sup> Maaïke Okano-Heijmans, “Change in Consular Assistance and the Emergence of Consular Diplomacy,” in *Ibid.*, pages 21-22.

<sup>3</sup> Asia Pacific Foundation of Canada, “Mapping Canadians Abroad,” 2011, online: [http://www.asiapacific.ca/sites/default/files/canadians\\_abroad\\_infographic\\_large2.jpg](http://www.asiapacific.ca/sites/default/files/canadians_abroad_infographic_large2.jpg).

<sup>4</sup> *The Economist*, “Diasporas: Mapping Migration” (17 Nov 2011), online: <http://www.economist.com/blogs/dailychart/2011/11/diasporas>.

<sup>5</sup> Beatriz Padilla, “Engagement Policies and Practices: Expanding the Citizenship of the Brazilian Diaspora,” (2011) 49:3 *International Migration* 10 (citing the Brazilian Minister of Foreign Affairs).

<sup>6</sup> Australian Ministry of Foreign Affairs, “Remarks at the launch of Smartraveller III” Remarks of MP Kevin Rudd, 25 November 2011, online: [http://www.foreignminister.gov.au/speeches/2011/kr\\_sp\\_111125a.html](http://www.foreignminister.gov.au/speeches/2011/kr_sp_111125a.html).

<sup>7</sup> “Big jump in Indians travelling overseas,” *India Today* (21 November 2009), online: <http://indiatoday.intoday.in/story/Big+jump+in+Indians+travelling+overseas/1/71766.html>, citing World Travel and Tourism Council figures.

<sup>8</sup> UN World Tourism Organization, “Tourism Highlights, 2012 Edition,” 2012, online: <http://mkt.unwto.org/en/publication/unwto-tourism-highlights-2012-edition>.

<sup>9</sup> *Ibid.*

<sup>10</sup> Global Education Digest, citing 2010 UNESCO figures.

workers are a major source of remittances for rising powers.<sup>11</sup> Ensuring their assistance and protection in increasingly risky environments is a growing challenge. At the outset of the Libyan war, for example, there were 30,000 Filipino<sup>12</sup> and 36,000 Chinese workers living in Libya.<sup>13</sup>

Third, the nature of “citizens in distress” is changing. There are more people in dangerous environments overseas, including more adventurous tourism<sup>14</sup> and business operations in higher-risk environments. Complexity of consular cases has increased correspondingly, aggravated, for example, by increasing multiple citizenship,<sup>15</sup> new types of travel such as medical tourism, child abduction across legal systems, and transnational terrorism. These and other largely twenty-first century developments have transformed the nature of services demanded of the consular function.

Finally, compounding rising numbers, emerging economies and complexity of cases, citizen expectations for service have correspondingly risen. Mediatization is a prominent theme in the literature: consular functions “receive positive press when they demonstrate the capacity to rescue citizens, but criticism when they are seen to violate a perceived, but ill-defined, duty to assist citizens abroad.”<sup>16</sup> Technology puts information at travellers’ fingertips, creating expectations for prompt, usable and engaging service. Importantly, the issue of rising expectations affects all countries, not only Western democracies. In China in 2006, state news agency Sina published 696 stories under the heading “Safety of overseas Chinese citizens becomes a concern.”<sup>17</sup>

## ***ii) Supply: transformation of the consular function***

How do governments respond to rising demand and to their perceived duties or responsibilities in this transformed environment? Responses can be viewed in three ways, all of which are apparent in the literature: expanding the function in proportion with demand; managing expectations to alter demand; and innovating service delivery to meet demand. The first two will be discussed here, while the third will be discussed in the following section.

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<sup>11</sup> The World Bank documents \$53 billion in remittances for India, \$51 billion for China, \$22 billion for Mexico, and \$21 billion for the Philippines. The United States was the largest source country, followed by the United Arab Emirates. World Bank, “Migration and Development Brief No. 16” Migration and Remittances Unit 2011, online: <http://siteresources.worldbank.org/EXTDECPROSPECTS/Resources/476882-1157133580628/MigrationandDevelopmentBrief16.pdf>.

<sup>12</sup> Henelito A. Sevilla, Jr., *The Emergency Evacuation of Overseas Filipino Workers (OFWs) from Libya and Syria*, Middle East Institute, 9 February 2013, online: <http://www.mideasti.org/content/emergency-evacuation-overseas-filipino-workers-ofws-libya-and-syria>.

<sup>13</sup> “China says suffers ‘large-scale’ economic losses in Libya,” *Reuters* (24 February 2011), online: <http://www.reuters.com/article/2011/02/24/libya-protests-china-idAFTOE71N06L20110224>, citing the Chinese Ministry of Commerce.

<sup>14</sup> See generally, Jeff Wilks, Donna Pendergast, and Peter A. Leggat, eds., *Tourism in Turbulent Times: Towards Safe Experiences for Visitors* (Amsterdam: Elsevier, 2006).

<sup>15</sup> Thomas Faist and Jürgen Gerdes, *Dual Citizenship in an Age of Mobility*, TransAtlantic Council on Migration, Migration Policy Institute, 2008 (on the trend of increasing tolerance of dual citizenship).

<sup>16</sup> Karen Tindall, “Governments’ Ability to Assist Nationals in Disasters Abroad: What Do We Know about Consular Emergency Management?” *Journal of Contingencies and Crisis Management* 20.2 (2012): 106-107.

<sup>17</sup> Xia Liping, “China’s Consular Service Reform and Changes in Diplomacy,” in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011).



Some national consular networks are expanding. Mexico, for instance, has established 50 consulates in the United States in support of Mexican workers, while the Philippines has opened four new posts since 2009 to meet new diaspora needs.<sup>18</sup> The scope of services performed by embassies and consulates are also increasing. Many consulates now provide social services or other forms of support specific to the needs of their “citizens in distress,” for example language and employment support at Mexican consulates in the US, or domestic worker hotlines for Indian workers in the UAE.<sup>19</sup> In managing crises, consulates increasingly undertake “diplomacy-like” tasks and other non-traditional functions, breaking down the traditional divide between consular services and diplomacy.<sup>20</sup> Reflecting this growth, consular has become the largest part of foreign ministries in the Netherlands, Mexico, Russia and China.<sup>21</sup>

No government can meet rising demand and expectations simply by increasing supply – adding resources, opening new missions, and so on. The challenge is too great. Some countries have taken to proactively *managing expectations*. Unlike other strategies which respond to a certain level of demand as given, “expectation management” seeks to alter demand. Australia and the UK, for instance, use informational campaigns to encourage individual responsibility, focusing on acquisition of private insurance.<sup>22</sup> In Australia, this approach emerged after national debate about the responsibilities of travellers following the 2005 Bali bombings, and a 2009 Blue Ribbon Report.<sup>23</sup> Other countries, including Canada, publish online lists of what consular officials “can” and “cannot” do to underline the limits of state responsibility.<sup>24</sup>

Managing expectations depends on the unique legal environments of each country, which vary dramatically. Consular responsibilities range from discretionary, to regulatory obligations, to obligations written into statute, to constitutional obligations.<sup>25</sup> In recent years, several Western governments have

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<sup>18</sup> International Organization for Migration and Migration Policy Institute, *Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries*, 2012, online: [http://www.gfmd.org/documents/pfp/diaspora-handbook/Diaspora\\_Handbook\\_For%20Web\\_17April2012.pdf](http://www.gfmd.org/documents/pfp/diaspora-handbook/Diaspora_Handbook_For%20Web_17April2012.pdf).

<sup>19</sup> IOM and MPI, *Developing a Road Map for Engaging Diasporas in Development*, *supra* note 18.

<sup>20</sup> Okano-Heijmans defines “consular diplomacy” as “international negotiations on a consular (legal) framework and individual consular cases that attract substantial attention from the media, public and politicians.” Okano-Heijmans, “Change in Consular Assistance,” *supra* note 2.

<sup>21</sup> Jan Melissen, “Introduction: The Consular Dimension of Diplomacy,” in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011).

<sup>22</sup> British FCO, “Foreign travel insurance,” online: <https://www.gov.uk/foreign-travel-insurance>; Australian DFAT, “Smartraveller,” online: <http://www.smartraveller.gov.au/>; see also, Oded Lowenheim, *The Responsibility to Responsibilize: Foreign Offices and the Issuing of Travel Warnings*, International Political Sociology, Vol. 1 2007 (critiquing the move to “responsibilize” citizens).

<sup>23</sup> Noting a rise of 221% in caseload over 10 years, with staff constant, the Lowy Institute calls for a “major reconsideration” that “recognizes reality” in consular services. It calls for institutional and funding changes, and, more importantly, ways to limit government responsibility, such as “an obligation to take out travel insurance, register with Smartraveller and, where appropriate, pay for consular services.” Jillian Broadbent AO, William Maley AM, Brad Orgill, Peter Shergold AC, Ric Smith AO PSM, Allan Gyngell (Chairman), *Australia’s Diplomatic Deficit*, The Blue Ribbon Panel Report, The Lowy Institute, March 2009, online: [http://lowyinstitute.cachefly.net/files/pubfiles/BlueRibbonPanelReport\\_WEB.pdf](http://lowyinstitute.cachefly.net/files/pubfiles/BlueRibbonPanelReport_WEB.pdf).

<sup>24</sup> Canadian DFAIT, “Consular Services,” online: <http://travel.gc.ca/about/assistance/consular>.

<sup>25</sup> For example, Art. 69(3) of the Hungarian Constitution provides: “Every Hungarian citizen is entitled to the protection of the Republic of Hungary, during his/her legal staying abroad.” An overview of consular legal obligations can be found in Luke T. Lee and John Quigley, *Consular Law and Practice*, 3rd ed (London: Oxford University Press, 2008). These range from constitutional obligations (e.g. Hungary, China and, as interpreted by the

vocally sought to restrain demand. However, in many rising powers, there is a strong sense that it is the responsibility or even duty of the state to protect its overseas citizens. Protection is associated with state legitimacy. Xia Liping, for example, discusses the importance in Chinese politics of “serving” citizens,<sup>26</sup> while Indian consular policy is marked by a dramatic expansion of state engagement with diaspora.<sup>27</sup>

Where countries have not explicitly sought to limit expectations about state responsibility, they nevertheless face challenges of exploding demand and have pursued other ways to layer responsibility across different sources. China, for example, places primary responsibility for overseas worker safety with the sending company, mandates insurance for all overseas businesses, and involves local Chinese authorities in the assistance and protection of their citizens and companies abroad.<sup>28</sup>

The following section will explore three ways in which countries are innovating how the consular function is delivered: communication, technology and partnerships.

## **B. Responding by reframing consular services: communication, technology and partnerships**

The following is a sampling of innovations observed in literature and reports on consular affairs. The research comes principally from case studies and country-specific information rather than disciplinary studies. The three categories of communication, technology and partnerships were identified to represent the broad range of innovations being undertaken. Effective communication occupies a central role in consular research and policy development. Technology is both an environmental factor and a tool leveraged by consular services. Partnerships refer to the varied ways of layering responsibility, including cooperation with countries, businesses and civil society.

### ***i) Communication: risks and expectations***

Preventive communication is of universal concern among consular services. How can risks be effectively communicated to inform decisions about travel? Travel advisories remain a core aspect of the consular function, but there is widespread recognition that this in itself is not sufficient, and that effective communication will require rethinking conventional approaches.<sup>29</sup> Websites, similarly, are a commonplace and necessary tool for consular communication, but design quality and effectiveness vary.

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Constitutional Court, Germany), to obligations written into statute (e.g. Brazil, Kazakhstan, Ukraine, Estonia), to regulatory obligations (e.g. France and Dominica), to discretionary obligations with possible rule of law or constitutional dimensions (e.g. South Africa, the UK and Canada).

<sup>26</sup> Xia, “China’s Consular Service Reform and Changes in Diplomacy,” *supra* note 17.

<sup>27</sup> See for example, Kishan S. Rana, “India’s Diaspora Diplomacy,” *The Hague Journal of Diplomacy* 4 (2009) 361-372.

<sup>28</sup> While companies sending workers overseas take “primary responsibility” for worker safety, Xia describes China’s 3-level network of consular assistance, involving central government agencies; foreign affairs offices and local governments; and diplomatic and consular missions (203-205).

<sup>29</sup> Rachel Briggs, *Travel Advice: Getting Information to Those Who Need It*, The Foreign Policy Centre, London (2002), Available online: [www.fpc.org.uk](http://www.fpc.org.uk); RAND Europe, *International Review of Consular Services*, prepared for the National Audit Office (UK). 2005. Available online: [http://www.nao.org.uk/wp-content/uploads/2005/11/RAND\\_vol2.594.pdf](http://www.nao.org.uk/wp-content/uploads/2005/11/RAND_vol2.594.pdf).

There are calls for formalized review processes to ensure accuracy, timeliness and completeness of advisory information published online, and whether it is both accessed and heeded by travellers.<sup>30</sup>

Widespread use of mobile phones has opened up SMS as a tool of consular communication, with exciting new case studies emerging. The UK, for example, piloted the use of “welcome SMS messages” sent to +44 mobile phones upon arrival in foreign countries, with the goal of increasing online registration.<sup>31</sup> Some consulates have begun utilizing social media – both reactively, following social media outcries about specific cases, as well as proactively. The US State Department’s 600-plus social media platforms, including many within consular, are used for “broadcasting, but also for listening, engaging, organizing and for crisis public relations.”<sup>32</sup>

Importantly, the need for effective communication is universal. Just as Canada and Australia explore new ways to inform tourists and expatriates about risks and expectations, Thailand is undertaking major advertising efforts to forewarn its nationals about the risks of travelling and working abroad.<sup>33</sup> China’s Foreign Affairs website is active in precaution, and the Ministry publishes brochures and sends officials to give lessons to private sector staff going abroad.<sup>34</sup>

## ***ii) Technology: replacing “face-to-face”***

What consular tasks can be digitized to save “face-to-face” resources and innovate service delivery? Conversely, what are the legitimate limits to digitization? Information on the use of technology by consular comes primarily from case studies rather than disciplinary scholarship, although technological change is a central theme of the literature. Excellent information sources include recent reports mapping the use of eDiplomacy by the United States, written expressly in response to “the slow pace of adaptation to eDiplomacy by many foreign ministries,”<sup>35</sup> as well as the UK Foreign and Commonwealth Office’s Digital Strategy, which outlines plans to embed digital into every element of foreign policy work;<sup>36</sup> both include numerous applications to consular.

Intelligent use of technology can no doubt transform preventive communication, and has already done so in various contexts. Social media and SMS messaging examples are described above. Smarter website design and management may similarly enhance governments’ ability to proactively engage with citizens. The US consular website, [travel.state.gov](http://travel.state.gov), was overhauled in 2004 and 2006 and is now run by

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<sup>30</sup> Wesley Wark, *National Security and Human Rights Concerns in Canada: A Survey of Eight Critical Issues in the Post-9/11 Environment*, Canadian Human Rights Commission (2006).

<sup>31</sup> The premise of the pilot project was to encourage travellers to register with the FCO by greeting them as they entered foreign cellular coverage with their UK-registered phone. UK FCO, *Digital Strategy*, 2012, online: <http://blogs.fco.gov.uk/digitaldiplomacy/digital-strategy>.

<sup>32</sup> Fergus Hanson, *Baked In and Wired: eDiplomacy@State*, Brookings Institute, October 2012, online: <http://www.brookings.edu/research/reports/2012/10/25-ediplomacy-hanson>.

<sup>33</sup> Thailand, “Protection of Thai Nationals: The Protection of Thai Nationals Abroad Division’s Main Responsibilities” 2012. Available online: <http://www.mfa.go.th/main/en/services/16266-Protection-of-Thai-Nationals.html>.

<sup>34</sup> Xia, “China’s Consular Service Reform and Changes in Diplomacy” *supra* note 17.

<sup>35</sup> Fergus Hanson, *Revolution @State: The Spread of eDiplomacy*, Lowy Institute for International Policy, March 2012, p 22, online:

[http://www.brookings.edu/~media/research/files/reports/2012/3/ediplomacy%20hanson/03\\_ediplomacy\\_hanson.pdf](http://www.brookings.edu/~media/research/files/reports/2012/3/ediplomacy%20hanson/03_ediplomacy_hanson.pdf) ; Hanson, *Baked In and Wired*, *supra* note 32.

<sup>36</sup> UK FCO, *Digital Strategy*, *supra* note 31.

contractors with expertise in maintenance and security, graphic design, site architecture and navigation.<sup>37</sup> Australia's *Smartraveller* campaign restructured its consular website and corresponding phone apps around three action items: *register*, *subscribe* and *insure*.<sup>38</sup>

In crisis response, applications of the Internet, SMS and social media tools are emerging areas of research and practice. Noteworthy cases include the UK's piloting of SMS communication in Nairobi (2012),<sup>39</sup> the role of the Haitian diaspora in translating Twitter feeds post-earthquake (2010)<sup>40</sup> and TechCamps organized by State Department (ongoing).<sup>41</sup> With technological developments proceeding apace, questions of results and purpose loom large. What are the precise benefits of saving face-to-face resources and enhancing effectiveness of prevention and response, as compared to the costs of implementation, training and maintenance? How does technology address concerns of identity verification, risk of fraud, domestic privacy or cyber security? More generally, what services can be legitimately and efficiently digitized, and which must continue to be provided by people?<sup>42</sup> These and other questions require concerted attention among consular services and commentators.

### ***iii) Partnerships: governments, businesses and NGOs***

Just as expectation management seeks to transfer responsibility to the individual, governments have also sought to allocate responsibility elsewhere. In organizing research on various forms of partnerships, the authors conceptualized responsibility layering in three directions: upward (supranational institutions), outward (state-to-state cooperation) and downward (private sector and NGOs). The first category – supranational institutions – is the most written about in English, but arguably the least relevant for non-European states. There is abundant scholarship on European citizenship,<sup>43</sup> the right of EU citizens to consular assistance,<sup>44</sup> and the realization of the European External Action Service, a common consular

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<sup>37</sup> Donna Hamilton, "The United States Experience," in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011).

<sup>38</sup> Australia, "Smartraveller," online: [www.smartraveller.gov.au](http://www.smartraveller.gov.au).

<sup>39</sup> The pilot uses mobile phones to register British nationals and communicate in times of crisis. "The technology is simple to use and provides an effective database that can be used to target messages (e.g. by region of the country)." UK FCO, *Digital Strategy*, *supra* note 31, page 11-12.

<sup>40</sup> Hanson, *Revolution @State*, *supra* note 35, page 5.

<sup>41</sup> Indonesian, Chilean and Haitian TechCamps have each brought together civil society and IT specialists to address disaster management, among other issues. *Ibid.*, pp 23, 26.

<sup>42</sup> UK FCO, *Digital Strategy*, *supra* note 31.

<sup>43</sup> See, for example: Madalina Bianca Moraru, "Protection of EU citizens Abroad: A legal assessment of the EU citizen's right to consular and diplomatic protection" (2011) 3:2 *Perspectives on Federalism* 67; Vermeer-Kunzli, Annemarieke, "Where the Law Becomes Irrelevant: Consular Assistance and the European Union" (2011) 60:4 *International and Comparative Law Quarterly* 965.

<sup>44</sup> The EU has developed a number of instruments affording EU citizens access to consular service where their home state is unrepresented. See: Article 23 of the *Treaty on the Functioning of the European Union*; Article 46 of the *Charter of Fundamental Rights of the European Union*; European Commission, Proposal for a Council Directive on Consular Protection for Citizens of the Union Abroad, 2011/0432 (CNS), Brussels, 14.12.2011, online: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011PC0881:en:NOT>; and Citizens Consular Assistance Regulations in Europe (CARE) Project, "Consular and Diplomatic Protection: Legal Framework in the EU Member States," 2010, online: <http://www.ittig.cnr.it/Ricerca/ConsularAndDiplomaticProtection.pdf>.

service for the EU.<sup>45</sup> One scholar suggested the European experience reveals the limits and opportunities of consular cooperation, as supranational aspirations run up against sovereignty concerns.<sup>46</sup>

State-to-state, or outward, cooperation includes the sharing of general consular services as well as more issue-specific arrangements. The Vienna Convention on Consular Relations provides for the exercise of consular functions on behalf of a third state,<sup>47</sup> and various formal and informal agreements have put this in practice. The following section discusses consular agreements in detail, focusing on four areas of lively cooperation: crisis management, children and families (notably child abduction), diaspora support (including worker protection) and sharing of consular services.

Finally, cooperation with the private sector and civil society is an area of increasing importance for many consular services. Partnerships with the insurance industry, for example, have provided countries with ways of spreading responsibility for assistance and protection outside the consular function. This includes actively pushing for acquisition of travel insurance through informational campaigns, prominent in Australian, Dutch and British consular communication strategies.<sup>48</sup> Australia's 2009 Blue Ribbon Report had considered creating an obligation to take out insurance, which was not pursued;<sup>49</sup> China imposes mandatory insurance on businesses operating abroad.<sup>50</sup> Insurance companies are significant stakeholders in tourism and multinational business where complicated liability questions arise; in "medical tourism," some insurance companies actually send patients overseas for treatment.<sup>51</sup> Partnerships with the tourism industry have been viewed as ways of enhancing communication of risks. The Australian *Charter for Safe Travel*, for example, is an agreement reached between DFAT and the Australian tourism industry following disputes over travel advisories; the industry agreed to endorse DFAT advisories on condition that they be consulted.<sup>52</sup> Such partnerships may increase the relevancy of travel advisories.<sup>53</sup> The British "Consular Stakeholder Panel," which meets twice a year to plan consular policy, includes travel agents, insurers, airlines, travel guides and NGOs.<sup>54</sup>

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<sup>45</sup> See, for example: Simon Duke, "Providing for European-Level Diplomacy after Lisbon: The Case for the European External Action Service," *Hague Journal of Diplomacy* 4 (2009) 211; R. Jones-Bos & M. van Dalen, "Trends and Developments in Consular Services: The Dutch Experience" *The Hague Journal of Diplomacy* 3 (2008) 87.

<sup>46</sup> Okano-Heijmans, "Change in Consular Assistance," *supra* note 2.

<sup>47</sup> Article 8: "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." *Vienna Convention on Consular Relations*, 24 April 1963, 596 UNTS 261 [VCCR].

<sup>48</sup> See, for example, Jones-Bos & van Dalen, "The Dutch Experience," *supra* note 45. The annual "Wijs op Reis ('Travel Smart') campaign" informs the public in detail about risks; a key recommendation is buying good travel insurance.

<sup>49</sup> Blue Ribbon Report, *supra* note 23.

<sup>50</sup> Xia, "China's Consular Service Reform and Changes in Diplomacy" *supra* note 17.

<sup>51</sup> See, for example, Deloitte, *Medical Tourism: Consumers in Search of Value*, 2008, online: [http://www.deloitte.com/assets/Dcom-unitedStates/Local%20Assets/Documents/us\\_chs\\_MedicalTourismStudy\(3\).pdf](http://www.deloitte.com/assets/Dcom-unitedStates/Local%20Assets/Documents/us_chs_MedicalTourismStudy(3).pdf); Center for Disease Control, "Medical Tourism," <http://www.cdc.gov/Features/MedicalTourism/>.

<sup>52</sup> Government of Australia, *Charter for Safe Travel*, online: <http://www.smartraveller.gov.au/industry/charter.html>; David Bierman, "A Travel Industry Perspective on Government Travel Advisories," in *Tourism in Turbulent Times* (Amsterdam: Elsevier, 2006).

<sup>53</sup> See, for example: Briggs, "Travel Advice," *supra* note 29; Bierman, "A Travel Industry Perspective," *supra* note 52.

<sup>54</sup> Okano-Heijmans, "Change in Consular Assistance and the Emergence of Consular Diplomacy," *supra* note 2.



On a more operational level, some countries have begun outsourcing aspects of their consular function,<sup>55</sup> with calls for more.<sup>56</sup> Outsourcing offers the potential to economize resources and preserve staff for “governmental” work, namely “work that is sensitive or requires legal adjudication or protection of privacy.”<sup>57</sup> States have also turned to NGOs and community organizations on an operational level. The UK authorizes NGOs to conduct visits of British prisoners detained abroad and claims to have 400 commercial and NGO partners.<sup>58</sup> Colombia and Mexico both have extensive partnerships with local organizations in host countries, which assist in the provision of services to diaspora and expatriate communities. Local partners may serve as “multipliers” in relaying information particularly in times of crisis.<sup>59</sup> As the benefits of outsourcing are pursued, states grapple with where to draw the line – questions of privacy, liability, efficiency and basic state legitimacy are ever present.

### **C. Consular agreements and salient issues**

In researching bilateral and multilateral agreements on consular affairs, it became clear that the majority of recent activity is of a bureaucratic, working-level nature. There are no apparent initiatives to renegotiate the VCCR or craft a broad, new multilateral framework for consular affairs. Rather, countries are collaborating to solve specific problems, typically on a bilateral or regional basis. Four areas were identified as uniquely salient and the subject of escalating cooperation: (i) sharing of consular service delivery, (ii) crisis management, (iii) children and families, and (iv) support for diaspora communities. In each of these areas, countries are proactively pursuing formal and informal agreements to secure their consular priorities.

Before examining each in detail, a brief discussion of the consular legal framework is warranted. The VCCR provides the general framework for consular work and some concrete obligations – notably Article 36, which specifies notification requirements upon arrest of a foreign national and consular rights of access. There is a great deal of academic literature on Article 36 with a focus on foreign nationals subject to capital punishment in the United States and corresponding US Supreme Court and International Court of Justice litigation.<sup>60</sup> Outside public international law, countries have cooperated on private international law issues through the *Hague Conventions* framework, for example on child custody,

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<sup>55</sup> For example, the United States has outsourced consular telephone inquiries, as well as the administration of its travel.state.gov domain: Hamilton, “The United States Experience,” *supra* note 37; the UK’s Consular Stakeholder Panel is another example of MFAs going shifting consular functions to external actors: Okano-Heijmans, “Change in Consular Assistance,” *supra* note 2.

<sup>56</sup> See, for example: William Maley, “Risk, Populism, and the Evolution of Consular Responsibilities,” in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011).

<sup>57</sup> Hamilton, “The United States Experience,” *supra* note 37.

<sup>58</sup> United Kingdom, Consular Strategy 2010-2013: Putting People First, online: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/32966/consular-strategy-2010-13.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32966/consular-strategy-2010-13.pdf).

<sup>59</sup> IOM & MPI, *Developing a Road Map for Engaging Diasporas in Development*, *supra* note 18.

<sup>60</sup> See, for example, Mark Warren, *Timeframes for Consular Notification and Access: Determining Contemporary State Practice*, Human Rights Research (2009); John Quigley, William J. Aceves and S. Adele Shank, *The Law of Consular Access: A Documentary Guide* (Routledge Research in International Law, 2009); and Barbara H. Bean, “Guide to Research on Vienna Convention on Consular Relations Notification Requirements,” NYU, 2007, online: [http://www.nyulawglobal.org/globalex/vienna\\_convention\\_consular\\_relations1.htm](http://www.nyulawglobal.org/globalex/vienna_convention_consular_relations1.htm).

discussed below. The rest of the consular legal terrain is occupied by bilateral treaties and memoranda of understanding as well as regional agreements, many of which are covered under the specific issues below.

Finally, some bilateral treaties have clarified Article 36 obligations, for instance on the treatment of dual nationals. Chinese agreements with the US (1982), Canada (1999) and Australia (2000) state that the passport of entry determines nationality; however China's 2008 agreement with Japan extends consular rights to "a person who claims to be a national of the sending state, unless proved otherwise,"<sup>61</sup> while Australia and Vietnam agreed (2004) to consider anyone who holds a passport of the sending state to be a national for consular purposes, whatever passport was used in entering the country. This variance is representative of broader challenges flowing from rising numbers of dual and multiple nationals, an issue not specifically listed below, but on which there is lively debate – ranging from proactive citizenship and diaspora policies of countries such as India, to public debates over the evacuation of dual nationals and so-called "citizens of convenience" in Canada.<sup>62</sup>

### *i) Sharing of consular service delivery*

Given rising global demand, partnerships in the delivery of consular assistance and protection have become relatively commonplace. The legal foundation for consular sharing agreements is found in Article 8 of the VCCR, which authorizes states to "exercise consular functions in the receiving State on behalf of a third State."<sup>63</sup> These agreements are typically embraced in the context of well-established relationships between states.<sup>64</sup> Commonwealth states have a long history in this regard. Agreements traditionally involved the UK carrying out consular functions for other Commonwealth states, but increasingly, agreements among non-UK Commonwealth states emerged.<sup>65</sup> Canada has a consular sharing agreement with Australia, which specifies, among other things, that Australian personnel acting for Canada "shall be considered as acting as agents for the Government of Canada" under the *Crown Liability Act*.<sup>66</sup> Canada's 2012 Memorandum of Understanding with the UK seeks to "optimise their respective diplomatic resources by sharing embassy and consulate sites, the joint acquisition, supply and use of services, as well as collaboration on crisis response, consular services, security, diplomatic mail, information management and IT."<sup>67</sup>

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<sup>61</sup> Agreement on Consular Relations between Japan and the People's Republic of China, October 24, 2008, Article 8(1)(b), <http://www.mofa.go.jp/region/asia-paci/china/agree0810.pdf>.

<sup>62</sup> Audrey Macklin and François Crépeau, *Multiple Citizenship, Identity and Entitlement in Canada*, Institute for Research on Public Policy, June 2010 (discussing the Lebanese evacuation in detail, concluding that "no reliable evidence was ever proffered" in support of the "citizens of convenience" narrative).

<sup>63</sup> Notification to the receiving state is required and the receiving state may object.

<sup>64</sup> For an early example, see the *Accord entre la Bolivie, la Colombie, l'Equateur, le Pérou et le Venezuela relative aux attributions des consuls respectifs dans chacune des Républiques contractantes*, 18 July 1911. Nordic countries have long-standing consular cooperation going back to 1954. More examples emerged with new states in the 1950s, for example consular services for Libyans were provided by Jordan in Spain, by Lebanon in France and Ghana, by Iraq in Iran and Pakistan, and by the UK in other countries.

<sup>65</sup> The UK, for example, may provide consular services for Ghanaians, Canadians and Sri Lankans in the absence of consulates of those countries. Australia began issuing visas for New Zealanders in Argentina in 1984, and providing services for Papua New Guineans in 1975. Lee & Quigley, *Consular Law and Practice*, *supra* note 25.

<sup>66</sup> *Ibid.*, pages 62-63.

<sup>67</sup> DFAIT, "Further Strengthening the Canada-United Kingdom Partnership," 24 September 2012, online: <http://www.international.gc.ca/media/aff/news-communiques/2012/09/24a.aspx?lang=eng&view=d>.

Other examples include sharing agreements between Spain and Lithuania, Norway and Sweden, and France and Germany, who are implementing colocation of consulates in Malawi, Mozambique, Bangladesh, Kuwait and Brazil.<sup>68</sup> Agreements on assistance in third states exist between Brazil and Argentina, Brazil and Portugal, and Argentina and Chile.<sup>69</sup> Discussions are underway between Thailand and Vietnam. In April 2010, member states of Southeastern Europe (Albania, Bosnia-Herzegovina, Macedonia, Montenegro, and Serbia) concluded a Memorandum of Understanding covering mutual representation in third countries.<sup>70</sup>

The EU codifies consular cooperation in the *Treaty on the Functioning of the European Union*, of which Article 23 guarantees consular protection from any EU state for EU citizens where their state is not represented.<sup>71</sup> In light of debates about the precise scope of this guarantee, there have been proposals for a European Council Directive<sup>72</sup> and significant literature on Article 23,<sup>73</sup> as well as on the European External Action Service, which would consolidate EU consular protection under a common consular service.<sup>74</sup> Jones-Bos and van Dalen conclude that despite increased consular cooperation, “one central ‘European consular service’ will not materialize for the time being, because consular affairs are still very

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<sup>68</sup> Le portail franco-allemand, “Les colocalisations franco-allemandes,” online: <http://www.france-allemande.fr/Les-colocalisations-franco.2811.html>.

<sup>69</sup> Brazil-Argentina, Convention... on consular assistance to nationals of the other party who are in the territory of states which have no diplomatic or consular representation of their country, Entry Into Force 7 October 2003; Brazil-Portugal, Agreement on consular cooperation for the protection and consular assistance to their nationals in third countries, Entry Into Force 3 July 1997; Argentina-Chile, Supplementary Protocol to the Maipú Treaty of integration and cooperation... on consular assistance to the nationals of the other Party who find themselves on the territory of States in which there is no consular representation of their country, Entry Into Force 26 February 2011.

<sup>70</sup> MARRI, Memorandum of Understanding, online: [http://marri-rc.org/upload/novi/New%20Folder/MoU%20Consular\\_20%2004%202010.pdf](http://marri-rc.org/upload/novi/New%20Folder/MoU%20Consular_20%2004%202010.pdf).

<sup>71</sup> Article 23: “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. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.”

<sup>72</sup> “There is no clear consensus on the content of Article 23 TFEU and about the responsibilities which this right entails... National consular laws and practices diverge as do views about the underlying concepts of consular protection for unrepresented EU citizens.” European Commission, Proposal for a COUNCIL DIRECTIVE on consular protection for citizens of the Union abroad, 2011/0432 (CNS), Brussels, 14.12.2011.

<sup>73</sup> Patrizia Vigni, *Diplomatic and Consular Protection in EU Law: Misleading Combination or Creative Solution?*, European University Institute Department of Law, Florence, EUI Working Papers, Department of Law 2010/11; Madalina Bianca Moraru, “Protection of EU citizens abroad: A legal assessment of the EU citizen’s right to consular and diplomatic protection” *Perspectives on Federalism* 3(2) 2011 67; Ana Mar Fernandez, “Consular Affairs in an Integrated Europe,” chapter 4 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011); Vermeer-Kunzli, Annemarieke, “Where the Law Becomes Irrelevant: Consular Assistance and the European Union”, *International and Comparative Law Quarterly* 60(04) (October 2011) 965-995; Federico Forni, “The Consular Protection of EU Citizens during Emergencies in Third Countries,” *International Disaster Response Law* (2012): 155-174; Mara Wesseling and Jérôme Boniface, “New Trends in European Consular Services: Visa Policy in the EU Neighbourhood,” chapter 5 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011); Consular and Diplomatic Protection: Legal Framework in the EU Member States, Citizens Consular Assistance Regulations in Europe (CARE) Project, 2010.

<sup>74</sup> Simon Duke, “Providing for European-Level Diplomacy after Lisbon: The Case for the European External Action Service,” *Hague Journal of Diplomacy* 4 (2009) (discussing implementation challenges and two possible versions, “maximalist” and “minimalist”).



much interwoven with domestic politics.”<sup>75</sup> The Canada-UK agreement was criticized by the Centre for European Policy Studies as undermining EU consular cooperation.<sup>76</sup>

## *ii) Crisis management*

Literature on consular emergency management spans many academic disciplines. Much of the consular-specific literature comes from diplomacy perspectives (focusing on EU integration) or legal perspectives (focusing on rights under the VCCR).<sup>77</sup> Following several recent disasters, the response of Western countries received considerable public scrutiny, sometimes leading to reforms. Australia’s “whole of government” response to the 2005 Bali bombings<sup>78</sup> achieved greater cooperation, but the experience triggered debates about state responsibility vis-à-vis Australians abroad. Canada’s evacuation of its citizens during the 2006 Lebanese war triggered controversy about the protection owed to non-resident dual citizens.<sup>79</sup> Sweden’s response to the 2004 Tsunami was criticized for disorganization and inadequate communication, leading to consular reforms.<sup>80</sup>

Effective proactive communication is an essential part of emergency management. Donna Hamilton, for example, discusses the US’ shift from response to anticipation of needs and active outreach.<sup>81</sup> This includes reliance on technology and social media, discussed above. Technology is also increasingly innovating crisis response, not just planning. American eDiplomacy examples include projects to move crisis hotlines onto the Internet; “cloud-based” collaboration between the US and Mexico involving each country’s embassy and other departments; harnessing Haitian diaspora to translate Twitter messages after the 2010 earthquake; and hosting “TechCamps” to train civil society actors worldwide in leveraging technology for crisis response.<sup>82</sup> Partnerships with industry, for example tourism, insurance and general business operations, are expanding.

In terms of formal cooperation between states, there has been a growth of regional initiatives. Within ASEAN, immigration and consular affairs officials meet regularly, and in August 2012 committed to providing emergency assistance to ASEAN nationals during crises in third countries. ASEAN’s Disaster Management and Emergency Response Work Programme for 2010-2015 is the first legally

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<sup>75</sup> Jones-Bos & van Dalen, “The Dutch Experience” *supra* note 45.

<sup>76</sup> Steven Blockmans and Sergio Carrera, *The UK-Canada Agreement on Mutual Support of Missions Abroad: Loyalty compromised?* Centre for European Policy Studies, 18 October 2012. The authors argue the UK-Canada MoU “runs counter to the spirit of loyal cooperation, in particular in the realm of EU foreign policy... raises challenges to coherence, consistency and effectiveness of EU action in policy areas concerning visas, trade and consular protection... [and] may throw a spanner in the works of EU solidarity and the creation of a stronger EU identity, both internally and externally.”

<sup>77</sup> See Tindall, “Governments’ Ability to Assist Nationals in Disasters Abroad,” *supra* note 16; Karen Tindall, “Coping with consular emergencies: four key governmental coordination relationships,” *International Journal of Emergency Management* 7 (2010): 281-295.

<sup>78</sup> Jeff Roach and Ian Kemish, “Bali Bombings: A Whole of Government Approach,” in *Tourism in Turbulent Times* (Amsterdam: Elsevier, 2006).

<sup>79</sup> For example, Macklin and Crépeau, *Multiple Citizenship, Identity and Entitlement in Canada*, *supra* note 62.

<sup>80</sup> Stephanie Buus, “The People’s Home goes Gulliver: Sweden and the 2004 tsunami crisis” 1(3-4) *International Journal of Tourism Anthropology* (2011); Sweden and the Tsunami: Evaluation and Proposals, Swedish Tsunami Commission, Stockholm, 2005.

<sup>81</sup> Hamilton, “The United States Experience,” *supra* note 37.

<sup>82</sup> Hanson, *Revolution @State*, *supra* note 35 at pages 5, 23, 26.

binding Hyogo Framework of Action-related instrument in the world.<sup>83</sup> ANDEAN similarly cooperates in disaster and emergency response, under the 2003 Andean Cooperation Mechanism on Consular Assistance and Protection and Migratory Matters.<sup>84</sup> Benelux and Baltic states in December 2012 affirmed the goal of cooperation during disasters.<sup>85</sup> Disaster Risk Reduction and Management featured prominently among priority items at the Organization of American States 2012 Summit in Cartagena.<sup>86</sup>

In short, cooperation in emergency response is an area of relative consensus among states. Although English-language literature focuses on Western country experiences, this focus is not exclusive. Sevilla discusses the challenges of evacuating tens of thousands of Filipino workers from Libya and Syria,<sup>87</sup> while Xia describes China's three-tiered structure of emergency consular protection, consisting of (1) early warning and prevention, (2) coordination and emergency response, and (3) financial guarantee mechanism.<sup>88</sup> There have been substantial improvements in cooperation in crisis management in recent years.

### *iii) Children and families*

Consular cooperation on children and family issues faces a growing caseload. Child abduction has received the most attention from policy-makers, but international adoption, forced marriage, child support enforcement and other issues are garnering attention. States have turned to the *Hague Conventions on Private International Law* to develop and implement dispute resolution mechanisms. These mechanisms function smoothly, but they do not apply to non-signatories: as of December 2012, for example, there were 89 states party to the *Hague Convention on the Civil Aspects of International Child Abduction*.<sup>89</sup> Tension between Islamic and Western family law is a principal barrier to more widespread adoption.<sup>90</sup>

In response to these limitations, a patchwork of bilaterals has sought to fill the gap, typically between Middle Eastern countries such as Egypt, Morocco, Tunisia and Algeria, and Western countries such as Australia, France, the US and Canada.<sup>91</sup> Canadian treaties with Egypt and Lebanon, considered by

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<sup>83</sup> ASEAN, Agreement on Disaster Management and Emergency Response, Work Programme for 2010-2015, online: <http://www.asean.org/resources/publications/asean-publications/item/asean-agreement-on-disaster-management-and-emergency-response-work-programme-for-2010-2015>.

<sup>84</sup> ANDEAN, "Intracommunity Migration," online: <http://www.comunidadandina.org/ingles/Exterior/migrations.htm>.

<sup>85</sup> Netherlands, "Benelux and the Baltic states want more consular cooperation within Europe," 11 December 2012, <http://www.government.nl/news/2012/12/10/benelux-and-the-baltic-states-want-more-consular-cooperation-within-europe.html>.

<sup>86</sup> OAS, 6th Summit of the Americas, online: <http://www.summit-americas.org/sixthsummit.htm>.

<sup>87</sup> Sevilla, *The Emergency Evacuation of Overseas Filipino Workers*, *supra* note 12.

<sup>88</sup> Xia, "China's Consular Service Reform and Changes in Diplomacy," *supra* note 17.

<sup>89</sup> TIAS No. 11670, 1343 UNTS 98, Adopted 24 October 1980.

<sup>90</sup> William Duncan, "Globalisation of the Hague Children's Conventions with Emphasis on the Child Abduction Convention" (2010-2011) 63 Okla L Rev 607. Duncan suggests other explanations for non-signing for different states: a lack of familiarity with the Hague Conference among African states, Japan's concerns about domestic violence cases and access to justice, and Russia's preference for bilaterals (though they have since signed the Convention).

<sup>91</sup> The full list of these bilateral agreements is available online: [http://www.hcch.net/index\\_en.php?act=publications.details&pid=5215&dtid=28](http://www.hcch.net/index_en.php?act=publications.details&pid=5215&dtid=28).

Gar Pardy as “necessary” due to these countries’ failure to sign the *Hague Convention*, are typical.<sup>92</sup> The Malta Process and Declarations (2004, 2006 and 2009) bring together Convention and non-Convention states building formal and informal dispute resolution mechanisms. Goals include broader ratification of the *Hague Conventions*, mutual recognition of decisions, and establishment of Central Authorities in all states.<sup>93</sup> Cooperation also takes place at the regional level, with European and Inter-American conventions addressing child abduction.<sup>94</sup>

**iv) Support for expatriate and diaspora communities**

Some countries, particularly emerging economies, view expatriate and diaspora communities as valuable assets and a principal focus in the development of consular policy. The volume of remittances in these countries – \$53 billion in India, \$51 billion in China, \$22 billion in Mexico and \$21 billion in the Philippines, for example<sup>95</sup> – helps explain the incentives for engagement. Policies of diaspora engagement include expansion of consular networks (Mexico, Philippines, Ethiopia), partnerships with local organizations which serve as “multipliers” in relaying information (Colombia, Mexico), expansion of programs such as health and community services at consulates (Mexico, Ecuador, Israel and others), assistance in difficult situations (counseling about deportations by the Dominican Republic in the US; hotline for “women and housemaids in distress” by India in the UAE; safe house for migrants escaping abusive employers by the Philippines in the UAE), and issuance of consular identity cards (many countries).<sup>96</sup>

Countries with large overseas worker populations are pushing for improved protection of their workers. India has an “impressive record” of negotiating agreements on “emigration of Indian workers, and social security agreements,” including MOUs with the Gulf Cooperation Council, Jordan and Malaysia, but one author observed a lack of evidence that these agreements “improved governance and protection of low-skilled Indian workers.”<sup>97</sup> The Philippines, with 8.5 million overseas workers (3.8 million of whom are temporary), lists labour agreements with Taiwan, South Korea, Bahrain, Japan and

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<sup>92</sup> Agreement Between the Government of Canada and the Government of the Arab Republic of Egypt Regarding Cooperation on Consular Elements of Family Matters <http://travel.gc.ca/about/assistance/consular/framework/egypt>. Agreement Between the Government of Canada and the Government of the Lebanese Republic Regarding Cooperation on Consular Matters of a Humanitarian Nature, <http://www.treaty-accord.gc.ca/text-texte.aspx?id=103477&lang=eng>. Pardy, “Consular and Diplomatic Protection in an Age of Terrorism: Filling the Gaps,” in *The Human Rights of Anti-Terrorism*, Nicole LaViolette and Craig Forcese (eds) (Toronto: Irwin Law, 2008).

<sup>93</sup> Hague Conference on Private International Law, “Malta Declarations” Document drawn up by the Permanent Bureau, 2012, online: <http://www.hcch.net/upload/wop/abduct2012info08e.pdf>.

<sup>94</sup> European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, Entry Into Force 1983. Inter-American Convention on the International Return of Children, Entry Into Force 1994.

<sup>95</sup> World Bank, “Migration and Development Brief No. 16”, *supra* note 11.

<sup>96</sup> IOM & MPI, *Developing a Road Map for Engaging Diasporas in Development*, *supra* note 18, pp 86, 119.

<sup>97</sup> Piyasiri Wickramasekara, “Something is Better than Nothing: Enhancing the protection of Indian migrant workers through Bilateral Agreements and Memoranda of Understanding,” Migrant Forum in Asia, February 2012 (online: [link](#)).

four Canadian provinces,<sup>98</sup> signed a consular agreement with China in 2009,<sup>99</sup> and includes protection of the rights and interests of Filipinos overseas as one of three pillars of the government's foreign policy.

Related to diaspora policies, various countries are becoming more proactive in their citizenship policies. India is regarded as a model. Overseas Citizenship of India (OCI) is not full citizenship, but extends rights up to fourth generation Indian emigrants. Indian diaspora policy includes a range of institutions divided into general engagement, facilitation of trade and investment, and protection of migrants' rights abroad. In an interesting case of exporting policy design, Ethiopia emulated many of India's diaspora engagement policies, demonstrating the degree to which rising powers are driving the consular agenda.<sup>100</sup> Ethiopia, like India and Israel before it, now issues diaspora bonds. In the last 15 years, Brazil has developed policies enabling its more than 3 million overseas nationals to exercise their citizenship, including organizing "itinerating consulate" meetings for outreach (something Mexican consulates also undertake), appointing citizens bureaus and creating a dedicated body within the Ministry of External Relations.<sup>101</sup>

#### **D. Taking stock and going forward**

The following is a short list of potential agenda items for intergovernmental discussions. This list is based on our assessment of the literature: What issues are states prioritizing in consular policy development? Where is progress being made, and how might this be built upon? Are there new areas of possible consensus between states? By way of conclusion, we will emphasize one broad trend that emerged consistently from our research: consular interests are increasingly converging. Whereas the VCCR was negotiated in the context of Western states seeking to ensure the protection of their citizen travellers in developing countries, emerging economies now face equal if not greater demand. Millions of Chinese, Koreans, Indians, Filipinos, Brazilians and Mexicans are travelling, living and working abroad. All governments are seeking new and collaborative ways to assist and protect their "citizens in distress." Here are areas where cooperation might be pursued:

1. **Multiple citizenship** → The global trend is toward increasing tolerance of multiple citizenship, but there remains a plurality of approaches. Key questions are levels of assistance to non-resident dual nationals; determination of nationality under Article 36; and citizenship policies vis-à-vis diaspora. Are there prospects for greater uniformity in approaches?

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<sup>98</sup> The Philippine Overseas Employment Administration has labour agreements with Alberta, British Columbia, Manitoba and Saskatchewan. Philippine Overseas Employment Administration, "Labour Agreements", online: <http://www.poea.gov.ph/>.

<sup>99</sup> *Xinhua*, "China, Philippines sign agreements to boost relations" (29 October 2009), online: [http://www.china.org.cn/world/2009-10/29/content\\_18793988.htm](http://www.china.org.cn/world/2009-10/29/content_18793988.htm).

<sup>100</sup> Metka Hercog & Katie Kuschminder, "The Power of the Strong State: A Comparative Analysis of the Diaspora Engagement Strategies of India and Ethiopia," UNU-MERIT Working Paper, 2011. Online: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1971726](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1971726).

<sup>101</sup> Padilla, "Engagement Policies and Practices" (2011).

2. **State partnerships** → Recent regional and bilateral agreements have been concluded in the four areas above: sharing of consular services, crisis management, child abduction and diaspora support. Can these and other efforts be built upon?
3. **Private sector & NGOs** → Facing exploding demand, some governments have turned to businesses and NGOs in outsourcing operations and developing policy. What best practices are emerging? What legal and/or legitimacy barriers exist? What are the limits of outsourcing?
4. **Technology** → Technology is both an external factor transforming the field, putting pressure on consular functions through rising expectations, and a tool. Applications of the Internet, SMS, social media and digitization of tasks are multiplying. There is potential to “disintermediate” services formerly provided by the state. But purpose and cost-benefit must remain at the forefront. What are technological best practices?
5. **Communication** → Consular demand, including higher expectations for assistance, necessitates effective communication with citizens abroad. Technology has transformed the environment. How can technological innovation, industry partnerships and civil society help governments communicate effectively? What strategies do and do not work?
6. **Consular operations management** → The consular function has undergone fundamental transformations, particularly post-2000. How are countries renovating the plumbing of consular service delivery: case management, professionalization, access to information, data analysis, website design, mobile services?
7. **Diaspora policy** → Rising powers such as Mexico, the Philippines and India view diaspora support, particularly foreign worker protection, as central to consular policy development. What are the lessons learned and/or benefits derived from diaspora initiatives? Does this open up avenues for cooperation between and among sending and host countries on diaspora issues?
8. **Others?** → This list is non-exhaustive in that the literature may not yet reflect certain issues of prominence, and new issues will inevitably emerge. As states continue to engage with changing circumstances, how can the consular function remain adaptable and responsive?

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## **Annex I: Recent Trends in the Consular Function**

**A review of the literature and of documentation**

George Haynal, Michael Welsh, Louis Century & Sean Tyler

27 March 2013

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## **Introduction**

The purpose of this document is to present the current state of commentary on consular affairs. Literature on consular service delivery cuts across many fields. Some articles and reports are explicitly about “consular affairs,” while others focused on fields nevertheless touch on consular themes (e.g. child abduction, disaster management, medical tourism or diaspora outreach). This literature review aimed to cover the interdisciplinary scope of literature addressing consular affairs. English-language sources, and material available through university library and Internet searches comprised the bulk of our materials. For consolidated analysis of these findings, see our attached paper, *The Consular Function in the 21st Century*.

Our research points to a number of pressures shaping the context and delivery of the consular function for Ministries of Foreign Affairs. The context for consular services has changed, as a disconnect has emerged between the intensity of the demand for consular services and Ministries’ to respond. Both Western states and emerging economies are experiencing these pressures, and exploring ways to respond. They are looking for innovation (for example, in greater use of technology, emphasis on individual responsibility, and deeper partnerships with NGOs and the private sector) to help them bridge the gap. Emerging economies such as China, Brazil and India are engaging actively with their diasporas through their consular arms.

The literature review is divided into four parts. Part I: **The Institutional Framework** considers institutional changes within governments; the use of honorary consuls; international cooperation (bearing in mind that this is the principal focus of *Annex II*); and third-party partnerships (private sector and civil society). Part II: **The Environment** considers legal obligations to provide assistance; privacy and access to information; the role of the media; and use of technology. Part III: **Substantive Issue Areas** considers specific aspects of consular work in detail: arrest and detention (Article 36 of the VCCR on notification and access); children and family issues (including child abduction and marriage); the implications of dual citizenship; crisis management (including several case studies); medical tourism; and diaspora outreach policies. Finally, Part IV: **Government Documents** provides a resource of government documents from countries such as the UK, US, and Australia. The Consolidated Findings section is a condensed version of this document, including page references.

## **Consolidated Findings**

### **I: The Institutional Framework for Consular Services**

- **A) Institutional Relationships** (7) – “Consular affairs” literature has emphasized the expanding role of consular services within diplomacy. With increased travel and global interactions, consular affairs machinery has become the largest part of various foreign ministries, e.g., the Netherlands, Mexico, Russia and China (Melissen 2011). Globalization has elevated “consular and business services, traditionally the step-children of diplomacy, to prime rank” (Christensen &



Peterson 2005). As new consular posts are created to aid “citizens in distress,” foreign ministries have also turned to other actors: other ministries, police, private companies and NGOs (Okano-Heijmans 2011). Leira & Neumann (2012) note that consular services are agile and often gain priority when the international system is changing, while Melissen (2011) writes that consular functions may be performed by different people, in different types of missions, and may be less recognizable as “consular” because of different names, but that the consular institution has been “typified by an amazing flexibility” over centuries. Some examples of recent institutional changes include:

- Chinese three-level government networks (central government agencies; foreign affairs offices and local governments; and diplomatic/consular missions) (Liping 2011)
  - Interagency “eDiplomacy” institutions in the US State Department, including the hub Office of eDiplomacy and knowledge management platforms (Hanson 2012)
  - British and Australian changes following major reports on consular services (UK Audit 2005; Lowy Institute 2009), both emphasizing individual traveller responsibility
  - Diaspora-serving institutions, e.g., Philippines and India; there is a possible trend, as Indian institutions were recently replicated in Ethiopia (Hercog & Kuschminder 2011)
  - Diversification of services provided by Mexican consulates in the US, now including a wide range social and other services for Mexican diaspora (IOM & MPI 2012)
- **B) Honorary Consuls and Locally Engaged Staff** (12) – There is limited literature on the use of honorary consuls. Stringer (2011) describes their true value as “business acumen, experience and networks... to develop trade, investment and tourism,” particularly beneficial to small states with limited consular networks. He includes case studies on Iceland, Bangladesh, Canada and the Philippines (Stringer 2007), as well as Liechtenstein (2011).
  - **C) International Cooperation** (14) – Intergovernmental treaties, MOUs, MOAs and other forms of cooperation are the subject of *Annex II*. Briefly, Okano-Heijmans (2011) cites the emergence of multilateral accords on minimum consular assistance in the 1990s, a kind of “preventative consular diplomacy.” See *Annex II* for examples.
  - **D) Third-Party Partnerships** (17) – With greater responsibility, some MFAs are outsourcing to private companies, e.g., British Consular Stakeholder Panel, and associations of travel agents, insurers, airlines, travel guides and NGOs (Okano-Heijmans 2011); almost 400 commercial and NGO partners, including Art 36 prison visits. Several MFAs actively push acquisition of private travel insurance, e.g., the Netherlands (Jones-Bos & van Dalen 2008) and Australia (*Smarttraveller*). Australia’s *Charter for Safe Travel* is a collaboration between DFAT and the travel industry regarding issuance of travel advisories (Beirman 2006). Maley (2011) argues for the creation of an independent or outsourced travel advisory; Briggs (2002) calls for increased partnerships with travel companies in issuing advisories. Outsourcing raises legal limitations, e.g., only the state can get Article 36 access rights, issue travel documents, or negotiate with countries on citizen’s behalf. The US has outsourced management of travel.state.gov, telephone inquiries and other activities; Hamilton (2011) discusses the appeal of saving consular staff for “governmental” work, i.e. “work that is sensitive or requires legal adjudication or protection of

privacy.” Note also diaspora-serving partnerships, for instance “quasi-government institutions,” useful where countries do not want to appear to meddle in host state affairs (IOM & MPI 2012). Information on ICRC, Fair Trials International, Prisoners Abroad (UK), and Foreign Prisoners Support Service (Aus).

## **II: The Environment: Legal, Media & Technology**

- **A) Legal Obligations to Provide Assistance** (22) – *Consular Law and Practice* (2008) surveys the scope of legal obligations in many countries. These range from regulatory obligations (e.g. France and Dominica), to obligations written into statute (e.g. Brazil, Kazakhstan, Ukraine, Estonia), to constitutional obligations (e.g. Hungary, China and, as interpreted by the Constitutional Court, Germany). Case law from South Africa (e.g. *Kaunda*), Canada (e.g. *Khadr*) and the UK (e.g. *Abbasi*) explores the scope of consular obligations in those countries. Macklin & Crépeau (2010) write that the claim of a Canadian right to consular assistance is “precarious, at best,” but that the constitutionality of Canada’s stance (discretion to refuse assistance) is undecided. The Treaty of the European Union established a right to consular assistance from any other member state. The scope of this right is debated; Moraru (2011) says it amounts to a non-discrimination provision and therefore divergent consular frameworks hinder its effectiveness, while Saliceti (2011) argues the rule of law under ECJ case law constrains discretion (see Annex II for more details on EU cooperation).
- **B) Privacy and Access to Information** (29) – Levin and Nicholson (2005) compare conceptual grounds for privacy legislation in Canada, the EU and the US, writing that differences give rise to conflict in privacy regulation of business and investment in the global marketplace. The Australian Consular Handbook (2011) notes that the right to consular assistance and the protections of the *Privacy Act* do not shield Australians from the consequences of extraterritorial offences. Exceptions to non-disclosure for “very important reasons,” such as “where your life or health, or the life or health of another person, may be threatened”; Australian Foreign Affairs is granted a limited waiver from the *Privacy Act*. The US Foreign Affairs Manual notes that most sharing of consular information is listed under “routine use exceptions.” Most regulations are permissive not mandatory, i.e. the post “may” share information in cases of “a violation or potential violation of the law,” and so on; however there is no discretion for instances of child sex exploitation (7 FAM 064). In Canada, in general, the *Privacy Act* compels non-disclosure with law enforcement, unless there is a departmental regulation or directive under Deputy Head authority.
- **C) The Role of the Media** (32) – The “mediatization” trend is a “prominent theme” in consular affairs literature (Tindall 2012), including “domestic reputation management” and the centrality of consular services in communicating with citizens (Okano-Heijmans 2011). Mediatization raises public expectations, creating a “moral hazard” as current assistance raises expectations for future assistance. Thus, some commentators argue for the public clarification of roles and responsibilities to limit expectations and encourage individual responsibility (Lowy Institute 2007). Australia’s “Smartraveller” initiative includes TV ads seeking to limit expectations and promote travel insurance; the Netherlands MFA has extensive public information projects

involving the media (Jones-Bos & van Dalen 2008); Hanson (2012) describes the US State Department as a “global media empire” with 600-plus social media platforms: “Social media is being used at State for broadcasting, but also for listening, engaging, organizing and for crisis public relations”; the UK Foreign and Commonwealth Office has extensive social media presence (digitaldiplomacy.fco.gov.uk). In China in 2006, state news agency Sina published 696 stories under the heading “Safety of overseas Chinese citizens becomes a concern”; these significantly rising expectations have resulted in extensive consular reforms, which Liping (2011) supports.

- **D) Utilizing Technology** (34) – Various articles discuss innovative uses of technology by the US State Department (Hamilton 2011). Hanson writes two reports (Lowy Institute 2012; Brookings Institute 2012) mapping eDiplomacy efforts at State, responding to what he calls “the slow pace of adaptation to eDiplomacy by many foreign ministries.” The reports are comprehensive and revealing, the result of extended research from within State. The UK FCO’s Digital Strategy outlines plans to embed digital into every element of foreign policy work. Although “face-to-face assistance” will remain the mainstay, the focus of digitization is on (a) transactional services and (b) aspects of consular that reduce the time of face-to-face, e.g., welcome SMS messages and mobile communication during crisis (see Nairobi pilot project). Use of the Internet and government websites for travel advisories has expanded across the board.

### III: Substantive Issue Areas

- **A) Arrest and Detention: Notification and Access** (37) – Article 36 of the VCCR (notification and access) is the most researched consular issue. We have included a sampling of articles and reports providing, for example, contemporary state practice regarding notification timeframes (Warren 2009); a guide to research on notification requirements (Bean 2007); approaches to dual citizenship (James 2007); US instructions to law enforcement and consular officials (USDS 2010); a review of trial attendance policies and practices by the US, Australia, the UK, the Netherlands and Germany (Mantouvalou 2009); and NGO advocacy reports concerning protection of prisoners abroad (see Fair Trials International and REDRESS). There is an abundance of literature on international and domestic interpretation of Article 36, should further research be desired.
- **B) Children and Family Issues** (42) – On international child abductions, *Consular Law and Practice* (2008) notes an increase in caseload; in 2000, the UK appointed a Child Abduction Policy Officer to work with consular. The *Hague Convention on the Civil Aspects of International Child Abduction* provides the framework for 80 states party; the US denies visas to persons who abduct children to a non-Hague country, while Canada set up bilateral “commissions” with Lebanon and Egypt. The US Foreign Affairs Manual chapter on “Safety and Protection of Minors” includes documents on: adoption case processing in non-Hague countries; parental child abduction; child abuse or neglect; forced marriage of minors; child support enforcement; and other issues. The *Trafficking in Persons Report* (USDS 2012) surveys consular programs fighting sex tourism/trafficking, including Canadian, Australian and American laws and practices. Viera (2010) criticizes the proposed Megan’s Law in the US on oversight of convicted sex criminals.

- **C) Implications of Dual Citizenship** (45) – Macklin and Crépeau (IRPP 2010) examine the legal implications of dual citizenship, including analysis of consular assistance and evacuation of Canadians during the Lebanon and Haiti crises. They discuss the “citizens of convenience” narrative, note that “[no] reliable evidence was ever proffered in support of this narrative,” and argue against distinguishing nonresident dual citizens in consular service delivery. Interestingly, they note that US, UK and Australian media stories about the evacuation of their dual citizens evinced no comparable legitimacy concerns, nor did Canadian coverage of the Haiti crisis (in contrast to Lebanon). Various Canadian articles partake in this debate (Dudgeon 2006; Nyers 2010; Forcese 2006), particularly regarding the Lebanon evacuations (CBC 2008; Standing Senate Committee 2007). Faist and Gerdes (MPI 2008) note a trend of increasing tolerance of dual citizenship. EU citizenship, an emergent concept, is central to the right to consular assistance from any EU member state (Vigni 2010). Wang (2010) considers whether China’s non-recognition principle needs reform in light of international developments.
  
- **D) Crisis Management** (49) – The nature of “citizens in distress” has changed (Okano-Heijmans 2011). Tindall (2012) provides a literature review of “consular emergency management,” combining academic and non-academic sources and case studies. She notes that most literature is from diplomacy perspectives (focusing on EU integration) or legal perspectives (focusing on VCCR rights), and argues for increased engagement in interactive modes of communication with affected citizens and the broader public during emergencies. Country examples include:
  - Dutch crisis management focusing on speed, visibility and proximity, including career-long training (Jones-Bos & van Dalen 2008)
  - The US’ changed relationship with the public from response to anticipation of needs and active outreach, including heavy reliance on IT in crisis management (Hamilton 2011); Hanson (Lowy Institute 2012) details tech-based crisis management
  - Liping (2011) details Chinese consular protection: (1) early warning and prevention, (2) coordination and emergency response, and (3) financial guarantee mechanism
  - Sevilla (2013) discusses the evacuation of Filipino workers from Libya and Syria
  - Lindstrom and Olsson (2009) discuss EU consular cooperation in crisis situations
  - Dudgeon (2006) and Roach & Kemish (2006) discuss Australia’s “whole of government” response to the Bali bombing, while various reports consider Canada’s response to Lebanon (e.g. Standing Senate Committee 2007)
  - Sweden released a report very critical of its lack of efficient organization during the 2004 tsunami (Swedish Tsunami Commission 2005; see also Buus 2011)

Prevention through travel advisories is a prominent theme in the literature. Lowenheim (2007) discusses the drive to “responsibilize” nationals. “Smartraveller” is an example; Australia’s Blue Ribbon Report specifically called for ways to reduce government responsibility, e.g., by creating an obligation to take out travel insurance, register with Smartraveller and, where appropriate, pay for consular services (Lowy Institute 2009). The Australian *Charter for Safe Travel* partners DFAT and the travel industry in formulating advisories. Briggs (2002) argues that cautionary

advice did not reach required targets despite apparent popularity of the FCO website. The UK Audit includes a comparison of travel advisory coverage by the UK, Australia, Germany, France, Netherlands, Sweden and the US (2005). Wark (2006) discusses a “duty of prudence” for travellers abroad; he commends the DFAIT website but says more study is required to assess the accuracy, timeliness and completeness of the information, and whether it is heeded by travellers. He calls for regular audits of consular services by an external agency or Parliamentary committee. Further research considers health disaster preparedness, the rise of the “kidnapping business” and need for collaborative responses (Briggs 2001), and other issues.

- **E) Medical Tourism and Retirement Abroad** (58) – There is extensive literature on medical tourism, a selection of which is included: e.g. the Medical Tourism Research Group at Simon Fraser University (publishing various reports); Inhorn & Gurtin (2011) on cross-border reproductive care in the EU, also WHO (2006); Inhorn (2011) on the reasons why the Middle East diaspora returns to Egypt, Lebanon, UAE and Arab America for reproductive services; the Korean case study (2011); and several others. An estimated 50,000 UK individuals fund treatment abroad each year (Lunt et al 2013), compared to 750,000 Americans each year (CDC online). US health institutions increasingly have international partners (e.g. in Thailand, India, Brazil, Singapore, Costa Rica, UAE and Philippines: Deloitte 2008), while US insurance providers have begun sending patients overseas (CDC online). On tourism in general, Gil-Pareja (2007) analyzes the impact of embassies and consulates on tourist flows from G-7 countries, concluding that foreign missions increase tourist flows by close to 30%. The European Commission (2009) addresses protection afforded under the EC Package Travel Directive, while Silva (2001) describes the pressures created by this directive to improve hygiene and safety standards in Caribbean destinations. A number of tourism-related issues are addressed in *Tourism in Turbulent Times* (2006), including current issues in tourism law and the role of the World Tourism Organization.
- **F) Diaspora Outreach Policies** (64) – IOM & MPI (2012) comprehensively list government efforts to engage diasporas. This includes expansion of consular networks (Mexico, Philippines, Ethiopia); consular partnerships with local organizations, which serve as “multipliers” in relaying information (Colombia, Mexico); expansion of programs such as health and community services at consulates (Mexico, Ecuador, Israel and others); assistance in difficult situations (counseling about deportations by Dominican Republic in US; hotline for “women and housemaids in distress” by India in UAE; safe house for migrants escaping abusive employers by Philippines in UAE); and increasing popularity of consular identification cards (many countries). Gutierrez (1997) and Laglagaron (2010) examine Mexico’s initiatives in the US, while Hercog & Kuschminder (2011) examine India, seen as a model in diaspora engagement, and Ethiopia, which replicated India’s institutions; see also Rana (2009). Wickramasekara (2012) evaluates the success of Indian MOUs with Jordan and Malaysia on migration of Indian workers. Additional articles discuss Philippine, Thai, Chinese and Brazilian institutions, all of which actively engage in protecting diaspora, particularly workers, overseas.

## **I. The Institutional Framework for Consular Services**

### **A) Institutional Relationships**

**Maaïke Heymans & Jan Mellissen, *Foreign Ministries and the Rising Challenge of Consular Affairs: Cinderella in the Limelight*, Netherlands Institute of International Relations Clingendael 2006.**  
(online: [link](#))

With an eye to practitioners, the authors outline at a high level how increased travel and global interactions are elevating and altering the role of consular services within diplomacy. They emphasize professionalization of consular affairs to improve service delivery, the creation of adaptable legal frameworks and partnerships, and the role of consular in shaping public perception abroad and at home.

**Jan Mellissen, “Introduction: The Consular Dimension of Diplomacy,” in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

Due to rising demand in 1990s, requiring more human resources, consular has become the largest part of MFA's in, e.g., the Netherlands, Mexico, Russia and China. Causes of rise include surge in foreign travel (inc. adventurous young, elderly, more and more dangerous places), child abduction, forced marriage, cross-border crime, and major crises (moments of “maximum consular communication”). End of the old distinction between high-priority sovereign representation and low-priority service; MFAs now handle a mixture of tasks, and priorities are not given in advance.

Need for consulates? Specialized agencies are increasingly taking over export promotion and inward investment tasks (e.g. Netherlands Business Support Offices, UBIFRANCE, Canadian Trade Commission, Finpro Trade Centres, Spain's ICEX Office, this is pronounced in the BRICs). Mellissen says consular functions are not extinct, but they may be performed (1) by different people other than consular officers / diplomats; (2) in different types of missions, and may be (3) less recognizable as “consular” because of different names. This is consistent with history: early on, people doing “consular” work had different names. He says the consular institution has been “typified by an amazing flexibility” over centuries, which should relieve foreign ministries' apprehension.

**Maaïke Okano-Heijmans, “Change in Consular Assistance and the Emergence of Consular Diplomacy,” chapter 1 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011) (online: [link](#))**

Defines consular diplomacy: “international negotiations on a consular (legal) framework and individual consular cases that attract substantial attention from the media, public and politicians.” Not all consular work is diplomatic, but trend is more and more “consular diplomacy”; consular

affairs as the public's window into diplomacy, and a tool of the MFA to communicate with the public. Defines consular affairs: "assistance to a state's own citizens in distress abroad and, when necessary, their family or other designated contacts at home." (21-22) With increased demand, consulates turn to other actors: ministries, police, private companies and NGOs.

With new crises, trend of new consular roles within MFA's (e.g. ADM for Consular Services and Emergency Management in Canada; Centre for Consular Services in Japan). Author asks if these changes are permanent – Sweden's Director-General for Consular was created following tsunami, then abolished after urgency lost. (27) Need for a consular policy agenda: author quotes an unnamed Canadian consular official in 2008: "we have been busy like children, handling cases, but now we need to become adults." (28)

**Jorgen Gronnegaard Christensen and Nikolaj Petersen, *Managing Foreign Affairs: A Comparative Perspective*, Copenhagen: Danish Institute of International Studies, 2005 (online: [link](#))**

Comparative study of the modernization of six West European ministries of foreign affairs. Limited info on consular affairs specifically. Notes that globalization elevated "consular and business services, traditionally the step-children of diplomacy, to prime rank." In all 6 countries, consular services became central to the MFA (e.g. in Denmark, new post of Undersecretary for Consular Services reporting directly to Permanent Secretary). Under "From Sovereign Representation to Public Service," the authors note that all MFA's have increased role of citizen service and consular affairs, both in home service and missions; bolstered by need to boost capacity to support companies and individuals.

**Xia Liping, "China's Consular Service Reform and Changes in Diplomacy," in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

This is a detailed article on Chinese consular service delivery, a central aspect of which is multi-agency partnerships. More than 20 central government bodies have become MFA partners in consular protection/assistance (for Chinese citizens and businesses). All provincial governments have foreign affairs offices; some big cities too. They assist MFA in protecting residents of that province/city (e.g. Tonga unrest in 2006, majority of Chinese came from Fujian province, so the Foreign Affairs Office of that province helped). For companies, 2009 "Regulation on Prevention and Disposal of Incidents Involving Overseas Chinese Workers" means companies sending workers must take "primary responsibility for ensuring workers' safety, while the local authorities where the company is registered also have a duty to assist embassies, consulates and the relevant company. In sum: 3-level network of assistance (central government agencies; foreign affairs offices and local govts; diplomatic and consular missions). (203-5)

See *Diaspora* section below for more on Chinese diaspora protection.

**Halvard Leira & Iver B. Neumann, "Consular Diplomacy" in Pauline Kerr & Geoffrey Wiseman (eds) *Diplomacy in a Globalizing World: Theories and practices* (Oxford: Oxford University Press, 2012) 160.**

In this chapter, Leira and Neumann give a brief presentation of the history of consuls and the consul system, and relate it to diplomacy today and in the past. They find that in the past, consular tasks were often not linked to diplomacy, and that consular tasks have been given priority in times when the international system is perceived to be changing. The consul system is both more agile and less tied to the idea of imposing sovereignty than diplomacy, they argue. (Author's summary, from [here](#))

**Keith W. Mines “A Horizontal Model for Transformational Diplomacy” *Foreign Service Journal* March (2006) 50.**

Inspired by Thomas Friedman's view that the World is Flat and the American experience in Iraq and Afghanistan, Mines discusses changes to the practice of diplomacy towards more diffused, localized representation by smaller “micro-posts”.

**Fergus Hanson, *Revolution @State: The Spread of eDiplomacy*, Lowy Institute for International Policy, March 2012 (online: [link](#))**

See *Utilizing Technology* section for how ediplomacy has transformed interagency work across State Department, including the hub Office of eDiplomacy and many knowledge management platforms.

**Jillian Broadbent AO, William Maley AM, Brad Orgill, Peter Shergold AC, Ric Smith AO PSM, Allan Gyngell (Chairman), *Australia's Diplomatic Deficit*, The Blue Ribbon Panel Report, The Lowy Institute, March 2009 (online: [link](#))**

See *Crisis Management* section. Part of a comprehensive report on Australian foreign affairs, includes recommendations for consular service reform within larger institutional context. (Note the Smartraveller initiative, under *Technology*, which fosters individual responsibility through private insurance.)

**Halvard Leira & Iver B. Neumann, *Judges, Merchants and Envoys: The Growth and Development of the Consular Institution*, Norwegian Institute of International Affairs (2007)**

**United Kingdom National Audit Office, *Consular Services to British Nationals*, 24 November 2005 (online: [link](#))**

The FCO faces increasing and changing demands for consular services arising from 13 million nationals living abroad; declining cost of travel; more frequent and casual trips; more travel to dangerous locations; more vulnerable clients (women, elderly, children); and non-traditional demands, e.g. assisting Haj visitors and forced marriages. These trends impose new pressures, which, when not met, lead to greater media scrutiny and criticism.



UK consular services were comparable to marker countries and best in some things, e.g. its highly consultative approach to improve services and enhance professionalism. There is room for improvement to change the behaviour of travellers and enhance consistency and quality of service delivery.

The FCO should (a) study the root causes of assistance cases and develop targeted messages on the basis of such research;

(b) accept that different circumstances require different services. Setting clear criteria for services is the best way to address rising expectations;

(c) undertake more regular and rigorous reviews of consular work at HQ and posts;

(d) ensure emergency planning remains robust based on 'lessons-learned', e.g. Asian tsunami;

(d) expand and maximize the synergies from partnerships;

(f) keep investing in training, technology, and options for passport delivery; and

(g) work with the Treasury for funding based on clear targets and standards.

**United Kingdom, *Consular Strategy 2010-2013: Putting People First* (online: [link](#))**

The FCO is currently working within its "Consular Strategy 2010 - 2013: Putting People First". The document outlines the broad goals for the programme, with four pillars: (a) improving the quality of service to customers based on extensive consultations on what they want and need; (b) investing in training and enhanced professionalism among staff; (c) strengthening the FCO consular network through different types of representation, new technology, and partnerships; and (d) bringing greater clarity and transparency to consular programme funding.

See *Third-Party Partnerships* for information on insurance industry and partners.

The Consular Strategy also discusses retirement abroad. The FCO site has a link to "*Brits Abroad: Mapping the Scale and Nature of British Emigration*", Dhanajayan Sriskandarajah and Catherine Drew, Institute of Public Policy Research (2006). The article notes that 5.5 million British citizens live overseas (9% of UK population) and a further 500,000 live abroad part of the year. The authors argue that the UK government will be obliged to serve the diaspora to provide governmental services, assist in cases of death, destitution and legal problems, and respond to citizens caught in natural or man-made disasters. Further commentary (diaspora as asset, not liability) appeared in *Global Brit: Making the Most of the British Diaspora*, Tim Finch, Institute for Public Policy Research (2010).

**Huub Ruël and Lennart Zuidema, "The Effectiveness of Commercial Diplomacy: A Survey Among Dutch Embassies and Consulates," *Clingendael Institute, Discussion Papers in Diplomacy*, No. 123 March 2012 (online: [link](#))**

Described as the first study seeking a framework for commercial diplomacy effectiveness.

**See *Diasporas* section for diaspora-serving institutions:**

Especially: *Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries*, International Organization for Migration (IOM) and Migration Policy Institute (MPI), 2012 (online: [link](#))

**Korean case: (From comments of Foreign Minister to Press, available online here: [link](#))**

In 2008, the Foreign Minister pledged to "improve consular services and the protection of Koreans abroad in order to better meet the needs of our people...Koreans travelling abroad already number 1.3 million. One fourth of our people travel abroad each year." The Minister spoke of the new 24-hour call centre and situation room: "we are promoting the establishment of a comprehensive system that provides necessary services for Koreans from the start of their travel to the time they return..."

## **B) Honorary Consuls and Locally Engaged Staff**

**“Honorary Consuls,” in *Consular Law and Practice*, 3rd ed (Oxford, 2008)**

Section on general information, criteria for establishing honorary consular posts, appointment, functions and privileges and immunities, at pages 515-540.

Many countries, conscious over the cost of regular consular posts, have expanded their networks of honorary consulates to provide protection for their nationals. (117)

**Kevin Stringer, “Honorary Consuls in an Era of Globalization, Trade, and Investment,” chapter 3 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

Stringer provides a background on honorary consuls, including their use by Canada. Definition: private citizen appointed by the sending state to handle consular matters. VCCR Art 68: every state is free to name or receive honorary consular officials. Honorary consuls are not beneficiaries of diplomatic immunities. Stringer says their true value is “business acumen, experience and networks... to develop trade, investment and tourism.” Huge benefits for microstates (expand consular coverage and cut costs). The Netherlands is an advanced user; may provide a model for other states wanting to expand economic interests. Canada has 118 honorary consuls in 77 countries, including where DFAIT has no consular office. Stringer mentions Canada’s “branding problem” and the potential role of honorary consuls; he also cites the Enhanced Representation Initiative (ERI) of 2004, envisioning a special relationship with the US and plans for 20 new honorary consuls in the US. The US ignored honorary consuls when expanding its coverage; instead, Virtual Presence Posts (Internet kiosks) and American Presence Posts (small one- or two-man posts).

**Kevin Stringer, “Honorary Consuls in Small-State Diplomacy: Through Lichtenstein’s Lens” Discussion Papers in Diplomacy, Netherlands Institute of International Relations Clingendael 2011. (Available online: [link](#))**

Stringer examines how Lichtenstein uses honorary consuls to extend its bilateral representation in the context of small state diplomacy. The author outlines benefits and limitations of honorary consuls. He also highlights Lichtenstein’s efforts to increase its prominence and brand by using honorary consul for public and cultural diplomacy, effectively sub-national ‘ambassadors’, rather than traditional citizen services such as visa issuance.

**Kevin Stringer, “Think Global, Act Local: Honorary Consuls in a Transforming Diplomatic World” Discussion Papers in Diplomacy, Netherlands Institute of International Relations Clingendael 2007. (online: [link](#))**

The author discusses how honorary consuls are used to expand diplomatic reach, penetrate into sub-national regions and cities, and focus more on commercial ties than political relations. Stringer includes discussion of brief country case studies, including Iceland, Bangladesh, Canada, and Philippines.

**Anne James, *A Universal Safeguard*, 2007**

See *Arrest and Detention*. On rights of consular access to detained nationals abroad, honorary consuls may have a role. At minimum, they should be required to immediately report cases they encounter to the consular mission. (6)

**Euripides L. Evriviades, “The Demands of Diplomacy: The Role of Career and Honorary Consuls” *The Whitehead Journal of Diplomacy and International Relations*, 2005 21. (Available online: [link](#))**

In this speech, the Ambassador of Cyprus to the United States outlines his views on the role of honorary consuls and consuls in general. He views them as “civilian servants” who are first responders for citizens abroad. He suggests the role is very challenging, and tends not to receive the honour it warrants. They are especially important for small states such as Cyprus, which has three times as many honorary consuls as diplomatic missions.

**Melissen (2011) provides arguments about benefits to trade (see *Institutions*, above):**

Consider the indirect benefits to trade from presence on the ground, personal linkages, networking: "MFAs that are considering the closure of consulates as a relatively easy target in their drive to cut costs had therefore better establish whether they contribute to bilateral trade flows." (11)

**“Quasi-Government Institutions” serving diaspora communities**

See *Developing a Road Map for Engaging Diasporas in Development* (IOM and MPI, 2012), many institutions consist of diaspora and host state nationals - in *Diaspora* section below.

**See also: Smith Simpson, “Political Functions of Consuls and Consulates: The Consular Contribution to Diplomacy” in Martin F. Herz (ed), *The Consular Dimension of Diplomacy* (Washington DC: University Press of America, 1983).**

### **C) International Cooperation**

Much of the following information is replicated and expanded upon in the second memo, *Consular Agreements*.

**Maaïke Okano-Heijmans, “Change in Consular Assistance and the Emergence of Consular Diplomacy,” chapter 1 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011) (also available online: [link](#))**

Starting in 1990s, in response to change, there emerged multilateral accords on minimum consular assistance, a kind of “preventative consular diplomacy.” Examples of collaboration:

- Scandinavian countries have long coordinated consular affairs;
- “Group of Five” English-speaking countries (Aus, Can, NZ, UK, US): undertake proactive efforts to improve framework for consular assistance, including regular consultation and also *démarches* to third-country governments, e.g. foreign govt representation in contingency planning. Expanded to include Japan, Netherlands and others.

Governments are reluctant about multilateral agreements because of domestic politics. "At the end of the day, citizens in distress expect and desire assistance from representatives of their own government and, if applicable, hold this institution accountable." The goal is cooperation, but there are fears about (1) quality of service, (2) basic values and norms, (3) language & cultural barriers. (35)

European experience shows limits and opportunities of international cooperation. VCCR: consular affairs are national, but EU has developed various policies: 1967 European Convention on Consular Functions and its Protocols; 1992 Maastricht Treaty (creating EU citizenship, and Art 8(c) on right to consular protection from the authorities of any EU member state where a person's country is not represented); 1997 Treaty of Amsterdam (Art 20).

*This chapter addresses many consular issues; see also sections on Institutions, Third-Party Partnerships and Crisis Management.*

**The following articles and reports on the EU are all summarized in *Annex II*:**

***Diplomatic and Consular Protection in EU Law: Misleading Combination or Creative Solution?*, Patrizia Vigni, European University Institute Department of Law, Florence, EUI Working Papers, Department of Law 2010/11 (online: [link](#))**

**Madalina Bianca Moraru, “Protection of EU citizens abroad: A legal assessment of the EU citizen's right to consular and diplomatic protection” *Perspectives on Federalism* 3(2) 2011 67. (online: [link](#)).**

**Ana Mar Fernandez, “Consular Affairs in an Integrated Europe,” chapter 4 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

Vermeer-Kunzli, Annemarieke, “Where the Law Becomes Irrelevant: Consular Assistance and the European Union”, *International and Comparative Law Quarterly* 60(04) (October 2011) 965-995 (online abstract: [link](#))

Simon Duke, "Providing for European-Level Diplomacy after Lisbon: The Case for the European External Action Service," *Hague Journal of Diplomacy* 4 (2009)

Mara Wesseling and Jérôme Boniface, “New Trends in European Consular Services: Visa Policy in the EU Neighbourhood,” chapter 5 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)

*Consular and Diplomatic Protection: Legal Framework in the EU Member States*, Citizens Consular Assistance Regulations in Europe (CARE) Project, 2010. (Available online: [link](#))

European Commission, “Consular protection,” (website: [link](#))

European Commission, Proposal for a COUNCIL DIRECTIVE on consular protection for citizens of the Union abroad, 2011/0432 (CNS), Brussels, 14.12.2011 (online: [link](#))

Federico Forni, “The Consular Protection of EU Citizens during Emergencies in Third Countries,” *International Disaster Response Law* (2012): 155-174 (abstract: [link](#))

Jones-Bos & van Dalen, "Trends and Developments in Consular Services: The Dutch Experience" *The Hague Journal of Diplomacy* 3 (2008) 87-92

Fergus Hanson, *Revolution @State: The Spread of eDiplomacy*, Lowy Institute for International Policy, March 2012 (online: [link](#))

Seeing some new bilateral protocols utilizing technology in effective and innovative ways (e.g. US-Mexico, involving cloud-based communications for crisis response). See *Utilizing Technology* section below.

Piyasiri Wickramasekara, *Something is Better than Nothing Enhancing the protection of Indian migrant workers through Bilateral Agreements and Memoranda of Understanding*, Migrant Forum in Asia, February 2012 (online: [link](#))

India has pursued MOUs and agreements protecting low-skilled workers in foreign states (see *Diaspora* section).

Radziah Abdul Rahim, *The Changing Norms in Commonwealth Consular Relations: From Quasi to Formal Arrangements (1963-1972)*, *Journal of International Studies*, Vol. 5 2009

***Final Report: Consular Affairs Public Outreach Tools Evaluation: Airport Intercept Tracking Study, prepared for DFAIT, The Strategic Counsel, March 31, 2007***

**Christina Spencer, "Bon Voyage, Bon Courage: Consular Crises and Bilateral Relations", M.A. Thesis, Norman Paterson School of International Affairs, Carleton University (2005)**

The author looks at 4 distressed Canadian cases to consider how consular issues become "politicized" and how they can affect bilateral relations and Canadian foreign policy. She argues that public imagination and political attention to consular issues are shaped by two central 'master myths': the Canadian abroad as victim or hero; and fear and ignorance of the foreign.

How government manages the foreign affairs implications can best be understood through the intensity of the bilateral relationship: a "thick" relationship with a wide set of connections and common interests can limit negative impacts while a "thin" relationship is more likely to see highly politicized responses and lingering effects across the entire relationship.

The broad national interest would be well served by (a) better understanding by Canadians about their vulnerabilities and responsibilities overseas, the limits for government to protect them, and offsetting foreign policy considerations that come into play; (b) clarification of the dual national conundrum; (c) greater effort to "thicken" international relationships and expand consular coverage; and (d) more research on consular issues.

**Karen Tindall, "Coping with consular emergencies: four key governmental coordination relationships," *International Journal of Emergency Management* 7 (2010): 281-295**

#### **D) Third-party Partnerships**

**Maaïke Okano-Heijmans, “Change in Consular Assistance and the Emergence of Consular Diplomacy,” chapter 1 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011) (online: [link](#))**

With greater responsibility and role, some MFA's are (paradoxically) outsourcing to private companies – e.g. British “Consular Stakeholder Panel” (previously “Consular Strategy Board and Travel Advice Group”). Associations of travel agents, insurers, airlines, travel guides and NGOs. However, legal limitations on outsourcing: the “core of consular issues” can only be dealt with by the state – e.g. no person besides consular officials is granted Art 36 rights to access citizens in prison; only state can issue emergency travel documents, or negotiate with other countries on citizen's behalf. (31)

**William Maley, “Risk, Populism, and the Evolution of Consular Responsibilities,” chapter 2 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

Maley argues for the creation of an independent or outsourced travel advisory. This responds to a new activity not contemplated in the VCCR: the appraisal of political and security environments in foreign countries, not for policy-making, but for protection of nationals abroad. In travel advisory, there is a tension between (1) risk that a strong warning offends a friendly government, and (2) an insufficiently robust warning may expose the ministry to populist attack at home. The argument: ministries should vacate public threat assessment, and instead either (1) establish a transnational agency offering specific warnings, or (2) extensively outsource to agencies like Swisspeace or the International Crisis Group. (44-45)

**Jones-Bos & van Dalen, “Trends and Developments in Consular Services: The Dutch Experience” *The Hague Journal of Diplomacy* 3 (2008) 87-92**

The Netherlands have pursued partnerships to reduce workload in response to rising demand for services, especially in prevention through informing the public. The annual “Wijs op Reis (‘Travel Smart’) campaign” informs the public in detail about risks; a key recommendation is buying good travel insurance. Ministry works with travel agencies and emergency hotlines; campaign gets media attention. Civil servants appear at tourism fairs and a booklet is published. Ministry assists in the production of educational TV programs and publication of brochures (e.g. on drug smuggling and imprisonment abroad).

*(Note: Australia's “Smartraveller” includes a similar ad push, emphasizing insurance.)*

**Donna Hamilton, “The United States Experience,” in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**



See *Technology* section for more on US experience. Regarding outsourcing, the travel.state.gov site, overhauled in 2004 and 2006, is run by contractors with expertise in maintenance and security, graphic design, site architecture, navigation. More contracting out under Gore's "Reinventing Government" of 1993: e.g. telephone inquiries, saves consular staff for "governmental" work, i.e. "work that is sensitive or requires legal adjudication or protection of privacy". Call centres very effective.

**Fergus Hanson, *Revolution @State: The Spread of eDiplomacy*, Lowy Institute for International Policy, March 2012 (online: [link](#))**

See *Utilizing Technology* section: civil society partnerships, e.g. TechCamps and crisiscommons.org which leverage technology for crisis response.

**Rachel Briggs, *Travel Advice: Getting Information to Those Who Need It*, The Foreign Policy Centre, London (2002), [www.fpc.org.uk](http://www.fpc.org.uk)**

On travel advisories, Briggs calls for increased partnerships with travel companies. See *Crisis Management* section.

**Australia's "Charter for Safe Travel" (partnership between DFAT and travel industry)**

Discussed at length in David Beirman, "A Travel Industry Perspective on Government Travel Advisories," in *Tourism in Turbulent Times* (Amsterdam: Elsevier, 2006) (page 316-318): following Bali bombings, there was backlash that Australia did not adequately warn its citizens of risks. In developing *Smartertraveller* to disseminate advisories and encourage responsible actions, DFAT saw the travel industry as a worthwhile ally. The *Charter for Safe Travel* followed discussions between DFAT and travel industry representatives, in particular disagreements over travel advisories: the travel industry would pledge its support to travel advisories, while DFAT would ensure that the travel industry would be consulted in their formulation.

**Note "Quasi-government institutions" as ways to serve diasporas: see *Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries*, IOM and MPI, 2012 (online: [link](#))**

See *Diaspora Outreach* section: 8 countries in the survey established quasi-government institutions, useful where countries do not want to appear to meddle in host state affairs: Foundations (Morocco's Hassan II Foundation for Moroccans Residing Abroad, closely tied to Ministry), Advisory Councils mixing community leaders and government officials (e.g. Mali's High Council of Malians Abroad serves as official representative of diaspora; Consultative Council of Mexico's IME combines community leaders and government representatives) and others in Dominican Republic, Israel, Malta, Peru, Republic of Korea. Concludes that government-financed councils can be an effective conduit of information and feedback between governments and diasporas. (90)

## **United Kingdom, *Consular Strategy 2010-2013: Putting People First* (online: [link](#))**

The FCO notes that through its partnership and outreach programmes, it has almost 400 commercial and NGO partners. A list is not readily accessible on the consular website.

The Insurance industry, however, is very prominent in the Travel Advisory website, with ready access to useful information on general and travel-specific insurance policies. The Association of British Insurers (ABI) has a FAQ service which describes the types of insurance available, including for travel. Many go well beyond trip cancellation and medical coverage: see plans to cover loss and stolen property, legal expenses due to motor vehicle accidents, compensation for injury and loss of income, supplementary insurance for 'dynamic' travel packages, including where travel is booked to a place which subsequently is subject to a no-travel advisory, accommodation and other services are denied, flights are interrupted or cancelled, providers go bankrupt, etc. Insurance is available for adventure tourism, hazardous sports, winter activities, and terrorist threats.

## **International Non-Governmental Groups**

### **International Committee of the Red Cross and Red Crescent (ICRC)**

The ICRC acts under the Geneva Conventions of 1949 and has a universally recognized right to undertake humanitarian initiatives in cases of war, non-international conflict, and internal disturbances and tensions. In each context, the ICRC acts as an impartial, independent and neutral party to ensure humanitarian protection and assistance for victims of war and armed violence. Its work is conducted under the strictest terms of discretion and confidentiality, ICRC jealous of a reputation that it is not the agent of any other government or agency. ICRC does work with governments and NGO's to promote broad respect for international humanitarian law, including through national ICRC organizations.

The ICRC website has a number of initiatives and materials quite relevant for consular studies:

(a) *Islamic Law and the Geneva Conventions*, an article which discusses ICRC outreach with the Iranian Government. A symposium in 2006 with senior Iranian and Middle Eastern religious figures reached the conclusion that there was much in common between international humanitarian law (IHL) and Islamic law: "both agree on the sanctity of life, the preservation of human dignity, and compassion toward enemy captives". The ICRC and Iran's National Committee of Humanitarian Law are currently co-hosting events on implementation of IHL in Iran.

(b) ICRC Seminar with Sri Lanka on *Contemporary Challenges to International Humanitarian Law with a focus on South Asia*", December, 2012.

(c) ICRC Materials on Disaster Preparation and Response.

(d) *The Role of the Doctor in ICRC Visits to Prisoners*, Dr. Hernan Reyes and Dr. Remi Russbach, CIDBIMENA-Centre for Disaster and Health Information, National University of Honduras (1991).

(e) Several articles, leaflets, and brochures on protection of prisoners, standards of water, sanitation and hygiene in prisons, and special considerations for the most vulnerable detainees, i.e. women, children, disabled and elderly.

ICRC is making a special effort now to generate intergovernmental attention to the UNGA/UN Commission on Crime Prevention and Criminal Justice call for review of the Standard Minimum Rules for the Treatment of Prisoners (SMR). The ICRC has already held three regional seminars with government experts (Africa - Latin America and Caribbean - North America, Europe and Israel), with the final one in Asia Pacific, March, 2013. The ICRC is under direction from its board to "promote research, consultations and discussions and [develop] a range of options, and recommendations to strengthen rules on the material conditions of detention and humane treatment, meet the special needs of women, children, the elderly and disabled, and protect against arbitrary detention, persecution, torture, disappearance, and murder at the hands of detaining authorities."

### **Fair Trials International (FTI)**

FTI directs most of its attention to legal issues within the European Community and in doing so produces some interesting items of general interest for consular studies. The *Comparison of Trial Attendance* has already been mentioned above. Others publications are:

- (a) *Defence Rights in Europe: Towards a Law Guaranteeing the Right to a Lawyer and to Communicate with Consular Staff and Others on Arrest*, August, 2012;
- (b) *FTI Series: Defence Rights in Member States*, October, 2012
- (c) *The Practical Operation of Safeguards for Vulnerable Suspects*, August, 2012
- (d) *The Practical Operation of Legal Aid in the EU*, August, 2012
- (e) *The Power of the Interpol Red Notice*, July 2012
- (f) *The Implementation of the European Arrest Warrant: Comparative Research*, July 2011

FTI also has some interesting learning tools offered via short AV lectures, including

- (a) *A Guide to Using the Media in Criminal Cases*
- (b) *A Guide to 'Roadmap' Rights in the EU*
- (c) *A Guide to the Court of Justice of the European Union*
- (d) *A Guide to the European Supervision Order*
- (e) *A Guide to the European Court of Human Rights*
- (f) *A Guide to the European Arrest Warrant*

See more under *Arrest & Detention*.

### **Prisoners Abroad (U.K.).**

Prisoners Abroad (PA) is a UK charity with a mission to care for the welfare of British citizens held in foreign prisons. PA works closely with the FCO, from which it receives referrals and funding to carry out the mission. PA provides services to families of the prisoner in Britain, e.g. toll-free phone access and emotional support, country information, including basics of the local legal system, visit and welfare package regulations; and actual prison visits through a PA network of local (in-country) volunteers; and finally re-settlement assistance when the prisoner returns to the UK. PA works with the FCO in 80 countries.

PA provides funds to destitute prisoners for the essentials for life and health where a prisoner pays for his own medicine, food, clothing and items (e.g. books, writing materials)

### **Foreign Prisoners Support Service (Australia)**

FPSS is an Australian charity which provides assistance to families of Australians imprisoned abroad. It collects and maintains descriptions of foreign prisons, local legal system, lawyers who have represented foreign nationals before, and other foreign prisoners in the institution.

## **II. The Environment: Legal, Media & Technology**

### **A) Legal Obligations to Provide Assistance**

**“Sending State’s Duty to Provide Protection,” in *Consular Law and Practice*, 3rd ed (Oxford, 2008)**

This chapter surveys the extent of legal obligations of consular assistance in different countries, ranging from discretionary to constitutionally mandated:

- France by regulation required its consuls to aid French nationals in attaining justice in the courts of receiving state. If a French national expelled, French consul was to demand explanation.
- Dominican consuls charged by regulation with protecting Dominican nationals abroad. Even in civil disputes between Dominican nationals and locals, consuls may intervene as arbiters upon request. Duty to facilitate repatriation of destitute nationals.
- Mexican consuls enjoined to protect Mexican nationals abroad, providing good officers, assistance and protection... with specific activities.
- Brazilian statute required consuls to protect Brazilians abroad and ensure compliance with their rights under treaties, usage, and principles of international law.
- Kazakhstan law: consuls “obliged to take measures to restore any violated rights of legal persons or citizens of the Kazakhstan republic”.
- Estonian legislation characterizes consular services as “owed” to a national, to protect the interests and rights of the Estonian State, Estonian nationals and legal persons.
- In Hungary, the proposition written into the constitution: “Art. 69(3) of the Hungarian Constitution, as amended in 1989, provided: ‘Every Hungarian citizen is entitled to the protection of the Republic of Hungary, during his/her legal staying abroad.’”
- In China, State’s obligations written into the constitution: “The People’s Republic of China shall protect the legitimate rights and interests of Chinese nationals residing abroad.”
- Germany’s Constitutional Court views Germany as being under a legal obligation to its nationals under German constitutional law, to protect “their interests vis-à-vis foreign states.” Under German law, an individual would be entitled to sue to demand protection.
- US consuls instructed to provide protection, establishment of nationality generally also establishes the right to receive protection. US Supreme Court characterized consular protection as a right, “finding the issuance by the executive branch of a passport as carrying with it a governmental obligation to protect” (US v Laub 385 US 475 (1966). (133)
- On South Africa, see Gerhard Erasmus and Lyle Davidson, “Do South Africans have a right to diplomatic protection,” 25 South African Yearbook of International Law 113 (2000), making similar argument based on citizenship. (fn 97)
  - (See Kaunda case, below.)
- Domestic statutes may require some services, discretion for others: e.g. Canadian Manual (133)
- Netherlands similarly rejected “obligation” of state to provide assistance.
- However, obligation towards nationals arrested abroad recognized:
  - Kazakhstan *Consular Statute*: “obliged” to ensure legislation and treaties observed.
  - Ukrainian statute: “obliged” to see rights observed.

- US accepts obligation to assist, instructs consuls to inform arrested nationals of entitlement to claim consular protection.
- Some UK cases of lawsuits compelling protection:
  - *Al Rawi* case: UK has discretion about what representations to make, and whether to seek redress sought by the national (in Guantanamo)
  - *Abbasi* case: accepts common law duty to protect citizens abroad. Extent of the duty set out in a leaflet available for all who travel abroad. Such representations give rise to a “legitimate expectation” of assistance. UK’s *Foreign Service Instructions* provide duty of Foreign Service Officer to “watch over and take all proper steps to safeguard the interests of British subjects...” but this general duty is interpreted to be “non-judicial.” (135)
- Canadian cases:
  - *Khadr* 2004 FC 1145: legitimate and reasonable expectations of services by virtue of DFAIT Act. “Indeed, Canadians abroad would be surprised, if not shocked, to learn that the provision of consular services in an individual case is left to the complete and unreviewable discretion of the Minister.”
  - Canada expressed concerns that expectations may grow too high.
- “No one shall be arbitrarily deprived the right to enter his own country.” *ICCPR* Art 12(4) 999 UNTS 171 (136)
- European Commission obligation to provide assistance across many services. EU *Lisbon Treaty* right to assistance from other EU countries where own country not represented, “on the same conditions as the nationals of that State.”
  - Also Charter of fundamental Rights of the EU.

**Stefano Battini, “The Impact of EU Law and Globalization on Consular Assistance and Diplomatic Protection,” in *Global Administrative Law and EU Administrative Law* (2011) pp 173-184**

Chapter discusses consular assistance as “international administrative law” in light of two developments: EU law and globalization. Concludes that globalization increases the scope of domestic administrative law (situations involving foreign affairs regulated by administrative law) and decreases the specificity of that law (as foreign affairs are submitted to general requirements of the rule of law). In other words, there are two conflicting trends affecting the legal obligations of consular officials: increasing domestic legal scrutiny of consular decisions, and deference for foreign affairs prerogative.

**European Commission, Proposal for a COUNCIL DIRECTIVE on consular protection for citizens of the Union abroad, 2011/0432 (CNS), Brussels, 14.12.2011 (online: [link](#))**

See summary in *International Partnerships* section, outlines scope of Article 23 right to consular protection for EU citizens.

**Passports and Consular Services provided to Canadian Citizens Abroad, Library of Parliament PRB09-19E, Daphne Keevil Harrold, Parliamentary Information and Research Service, 2009 ([link](#))**

Excellent, well-sourced overview of:

- Consular Service Rights Under International Law (citing VCCR Arts 36 & 37, ICJ death penalty case law, Hague Convention, bilateral treaties)
- Consular Service Rights Under Canadian Law and Policies (citing DFAIT Act, Art 10 (MFA has discretion to “determine whether and when to request the repatriation of a Canadian citizen detained in a foreign country”), Khadr cases)
- Consular Services Available to Canadians

**Audrey Macklin and François Crépeau, *Multiple Citizenship, Identity and Entitlement in Canada*, Institute for Research on Public Policy, June 2010**

*(See also Dual Citizenship section.)*

Is there a right to consular assistance? Authors say this claim is “precarious, at best.” Canadian government position is that consular assistance, diplomatic protection and provision of passport are “privileges” that the government has discretion to refuse. Constitutionality of this stance is undecided: may raise section 7 life, liberty and security interests, and also section 6 right to enter and remain in Canada (since a citizen’s ability to return to Canada can be negated if refused a passport). The Supreme Court has not ruled on the issue, but Justice Zinn of the Federal Court commented, “Canadians abroad would be surprised, if not shocked, to learn that the provision of consular services in an individual case is left to the complete and unreviewable discretion of the Minister” (*Abdelrazik v Canada*). (11)

**Annemarieke Vermeer-Kunzli, *As If: The Legal Fiction in Diplomatic Protection*, European Journal of International Law, Vol. 18 no. 1, EJIL 2007**

A legal theory piece examining the basis for diplomatic protections for a state's individuals as an injury to the state itself. Works through this "legal fiction" and determines that it serves a purpose: protection of individuals under int'l human rights law.

**Madalina Bianca Moraru, “Protection of EU citizens abroad: A legal assessment of the EU citizen’s right to consular and diplomatic protection,” *Perspectives on Federalism*, Vol 3, Iss 2 (2011) (online: [link](#))**

Author examines the legal content of EU citizens’ Art 20(2)(c) right to protection abroad. She concludes that “the EU citizen has a clear, individual and directly effective right to receive non-discriminatory protection in third countries abroad from any of the Member States that is represented in loco.” Since the right is currently limited to non-discriminatory protection, the effectiveness of protection is hindered by divergent consular frameworks. Concludes by discussing new EU roles following the Lisbon Treaty re consular protection.

**Alessandro Ianniello Saliceti, “The Protection of EU Citizens Abroad: Accountability, Rule of Law, Role of Consular and Diplomatic Services” *European Public Law* 17(1) 2011 91.**

The concept of protection of distressed citizens abroad comes from international law of the 17th and 18th centuries, based on strict relationship between state and “its” subjects. Post-1992 EU law has given “zest” to the novel concept of the protection of EU citizens. Author analyzes Art 23 of the Treaty of the European Union in depth and concludes, not unlike Canadian case law, that rule of law poses limits on discretionary decisions: “Rule of law and Member State accountability are two basic milestones in EU law and well-settled case law of the European Court of Justice, so that the traditional theories of State immunity and on discretionary power of consular and diplomatic agents cannot be reasonably maintained.”

**Rainer Bauböck, “The rights and duties of external citizenship,” *Citizenship Studies* 13.5 (October 2009): 475-499**

**Gar Pardy, “Failing Canadians Abroad,” *The Globe and Mail*, 19 August 2009 ([link](#))**

Argues that Canada should establish an independent ombudsman authorized specifically to deal with consular disputes (commenting on Khadr, Abdelrazik, Smith and other cases).

**David Kilgour and Julian Bauer, “Op-Ed: Protecting our Own,” *Canadian International Council Blog*, 17 August 2009**

Argue it’s “necessary to establish transparent rules and mechanisms to ensure that Canadians can indeed count on their government’s assistance and protection when they travel overseas.”

***Consular and Diplomatic Protection: Legal Framework in the EU Member States*, Citizens Consular Assistance Regulations in Europe (CARE) Project, 2010. (Available online: [link](#))**

See also *International Cooperation*: A thoroughly comprehensive compilation of the country-level legislation and practice of all 27 EU Member States. Country experts provide the legal basis for consular protection (International, EU, domestic law), fulfillment of EU obligations, consular protection in detail, emergency travel documents, and other consular functions.

**Book review: *Diplomatic Protection*, C.F. Amerasinghe, Oxford University Press, 2008.  
Annemarieke Vermeer-Kunzli, *Netherlands International Law Review*, Vol. LV Issue 3 2008**

***Exercising Diplomatic Protection: The Fine Line Between Litigation, Demarches, and Consular Assistance*, Annemarieke Vermeer-Kunzli, Max Planck Institute, 66ZaoRV 321-350 (2006) ([link](#))**

**Annemarieke Vermeer-Kunzli, *Restricting Discretion: Judicial Review of Diplomatic Protection*, *Nordic Journal of International Law*, Vol. 75 no. 2 2006**

**Anna Maria Helena Vermeer-Kunzli, *The Protection of Individuals by means of Diplomatic Protection: Diplomatic Protection as a Human Rights Instrument*, Doctoral Thesis, Leiden University, Promoter C.J.R. Dugard, 2007 (online: [link](#))**



## **The Canadian Context**

### ***Smith v Canada (Attorney General, Minister of Foreign Affairs and Minister of Public safety of Canada), 2009 FC 228***

Application compelling DFAIT to assist Smith in seeking computation of death penalty in Montana. Justice Barnes agreed that (a) the case was justiciable: even where the government exercises foreign affairs prerogative, decisions affecting rights of individuals are reviewable for procedural fairness; and (b) Smith's procedural fairness rights violated in this case: Smith was entitled to know the new clemency policy, be consulted regarding the application of the new policy to his case. Evidence showed Canadian intervention would influence the Governor's decision.

### ***Khadr v Canada #2***

Federal Court: *Khadr v Canada* 2009 FC 405: applied *Smith*, found s7 violation and required Canada to request Khadr's repatriation as soon as practicable.

Federal Court of Appeal: *Khadr v Canada* 2009 FCA 246: denied Crown appeal, upheld the Federal Court's decision that Canada request Khadr's repatriation.

Supreme Court: *Khadr v Canada* 2010 SCC 3 ([link](#)): upholds decision in part. First, finds Khadr's *Charter* rights violated -- Canada's participation in US's illegal process of detention contributed to rights violations; specifically, Canadian statements contribute to ongoing detention, violates principles of fundamental justice. However, the trial judge "misdirected himself" in ordering Canada to request Khadr's repatriation. "The appropriate remedy in this case is to declare that K's *Charter* rights were violated, leaving it to the government to decide how best to respond in light of current information, its responsibility over foreign affairs, and the *Charter*."

Federal Court: *Khadr v. Canada (Prime Minister)*, 2010 FC 715: Judicial review of Canada's response to the Supreme Court's decision: Justice Zinn held that the *Charter* remained engaged until the breach cured or all reasonably practicable steps taken to provide remedy for breach; ordered Canada to continue advancing remedies... but Federal Court of Appeal denied stay, then Khadr pled guilty.

### ***Kaunda v. President of the Republic of South Africa, Case CCT 23/04, BCLR 1009, reprinted in 44ILM 173 (2005), Mary Coombs, University of Miami School of Law, The American Journal of International Law, Vol. 99 681 (2005)***

Held: "the Constitutional Court of South Africa found that the state's Constitution obligates the government to consider requests for diplomatic protection from citizens who are facing actions by other states that may violate international law, and to deal with those requests appropriately.

Although the government has wide discretion in how to respond, its decisions are subject to constitutional control and judicial scrutiny.” Rejects duty of diplomatic protection in international law, but upholds municipal duty in South Africa. Decisions that are irrational or bad faith may warrant court intervention. Concurrences held a larger substantive duty, e.g., Justice Sachs ordered government to do “whatever is reasonably within its power” to prevent South Africans abroad from being tortured.

Cites leading cases in other jurisdictions (both of which stress executive discretion in finding the government had done all that was legally required:

*Hess*, BverfGE 55, 349 (1980), available in English translation at 90 ILR 387.

*Abassi*, R. v. Sec’y of State for Foreign & Commonwealth Af, [2002] All ER (D) 70 (C.A.).

***R (Abbasi) v Secretary of State for Foreign and Commonwealth Affairs*, [2002] EWCA Civ 1598, CA**

“In apparent contravention of fundamental principles of law two British nationals indefinitely detained by US in Cuba without access to court or tribunal to challenge legality of detention — Foreign Office no enforceable duty to protect British citizens but had discretion and its decision or inaction reviewable by English court if could be shown to be irrational or contrary to legitimate expectation although court could not review decisions affecting foreign policy — Extent to which court might require Foreign Secretary to give more than due consideration to request for assistance depended on facts of particular case.”

(<http://www.deathpenaltyproject.org/authorities/314>)

**Janice Williamson (ed), Omar Khadr, Oh Canada, McGill-Queen’s University Press, 2012**

**Craig Forcese & Nicole LaViolette, The Human Rights of Anti-Terrorism, Irwin Law, 2008**

**Gar Pardy, “Consular and Diplomatic Protection in an Age of Terrorism: Filling the Gaps,” chapter 7 in *The Human Rights of Anti-Terrorism*, Nicole LaViolette and Craig Forcese (eds) (Toronto: Irwin Law, 2008)**

Makes proposals for a new multilateral treaty to provide additional protections for persons encountering difficulties in countries of second or non-citizenship (at pages 251-255); proposal grounded in ILC draft articles.

Historical: *Hague Convention on Conflict of Nationality Laws* (Art 4) prohibited countries from asserting diplomatic protection of a citizen in a second country of citizenship; Canada was a signatory, but is no longer (denounced the CCNL in 1996). Discussion of VCCR Art 36 obligations.

On bilateral consular agreements: Canada signed 3 bilateral consular agreements (China, Egypt, Jordan). See Pardy’s comments in *Consular Agreements* memo.

**Passports and Consular Services provided to Canadian Citizens Abroad, Library of Parliament PRB09-19E, Daphne Keevil Harrold, Parliamentary Information and Research Service, 2009**

Outlines the policies and legislation governing consular service provision, the rights of Canadians to appeal when services are not provided, and suggested reforms to the legislative and policy framework. It includes a discussion of Canadian case law regarding citizens detained abroad, specifically Khadr, Abdelrazik, and Smith (13-15).

**Douglas W. MacPherson, Brian D. Gushulak, & James Sandhu, “Arrest and Detention in International Travellers” *Travel Medicine and Infectious Disease* (2007) 5, 217. (Available online: [link](#))**

An empirical analysis of Canadians arrested abroad between 1996 and 2004, based on data from DFAIT’s Consular Management and Operations System. Identifies demographic and geographic trends.

**O’Connor Commission of Inquiry into the Actions of Canadian officials in Relation to Maher Arar (2006) (online: [link](#))**

**Iacobucci Commission - Internal Inquiry into the Actions of Canadian Officials in relation to Abdullah Almalki, Ahmed Abou-Elmaati, and Muayyed Nureddin, 2008**

**Abdelrazik v. Minister of Foreign Affairs et al. 2009 FC 580, [2010] 1 FCR 267**

***Responsibility to Protect (R2P) as Duty to Protect?: Reassessing the Traditional Doctrine of Diplomatic Protection in Light of Modern Developments in International Law*, Nicholas T. Hooge, Masters Thesis, Faculty of Law, University of Toronto, 2010 (online: [link](#))**

Argues based on recent developments in international law (expansion of human rights law and the Responsibility to Protect doctrine) for a reassessment of the traditional doctrine of diplomatic protection, which holds that states have a discretionary right (but no duty) to espouse the claims of citizens abroad. Suggests that R2P supports the existence of limited rights and duties relating to diplomatic protection.

## **B) Privacy and Access to Information**

**Office of the Privacy Commissioner of Canada, *Privacy Audit of Passport Canada, 2008*. (online: [link](#)).**

After a two-year audit, the Privacy Commissioner released its report on operations at Passport Canada. It included 15 recommendations for action. Generally, the focus was on improved safety of information, longer term storage and better preventative measures.

**Canadian Consular Services Privacy Notice Statement**  
**<http://travel.gc.ca/about/assistance/consular/framework/privacy>**

Sets out the conditions under which consular officials at DFAIT may disclose private information. There are some conditions in which information may be disclosed without consent: if you would benefit from its disclosure, national security, and where clearly in the public interest.

**Avener Levin and Mary Jo Nicholson, *Privacy Law in the United States, the EU and Canada: The Allure of the Middle Ground*, University of Ottawa Law and Technology Journal (2005)**

The article highlights the different conceptual grounds for privacy legislation in Canada, the EU and United States. In the U.S. privacy protection is essentially directed at protecting the citizen from abuses by the government. European privacy legislation is geared toward the protection of the dignity and public image of the individual. Canada focuses on individual autonomy through personal control of information. The U.S. leans toward letting the marketplace determine how personal information is collected and managed by the private sector. The EU and Canada are both intent on supervising the private sector's use of personal data. These differences give rise to conflict in privacy regulation of business and investment in a global marketplace.

The article contains minimal discussion of security-related approaches to personal information management and nothing of direct application to the consular or foreign affairs realm.

**Australian Consular Handbook, “Part I - Confidentiality, Privacy and Police Matters,” 2011 (online: [link](#))**

Australian consular policy and practice make it clear that an Australian's right to consular assistance and the protections extended to him under the Privacy Act 1988 do not shield him from the consequences of actions prohibited under Australian or local law. Extraterritorial offences include corruption and bribery, transnational organized crime, child sex tourism, terrorism, breach of UNSC sanctions, and conduct undermining international peace and security.

"Consular officers who become aware of information which could reasonably be suspected to relate to an offence under Australian law must observe the following procedures: report to the

Head of Mission...(who) will cable all relevant information to (headquarters) and consult with Australian Federal Police if represented at the mission." Any follow-up is the responsibility of law enforcement officers. Consular officers are instructed not to conduct investigations themselves.

With special reference to Child Sex Tourism, consular officers are directed to maintain an active outreach program at the post to inform local authorities and the Australian community of Australia's firm stance against such crimes; and facilitate communication between individuals and the local government with the Australian Federal Police.

**“The Australian Consular Service and Your Privacy,” online:**

**<http://www.smarttraveller.gov.au/services/your-privacy.html>**

Under the Privacy Act 1988, consular officers will not disclose personal information without consent (where possible in writing). Exceptions: where “very important reasons” exist, such as “where your life or health, or the life or health of another person, may be threatened.” Foreign Affairs is granted a limited waiver from the *Privacy Act* (Public Interest Determination No. 7). “Disclosure of that kind occurs rarely and only where there are compelling health or humanitarian grounds, or where it becomes necessary to confirm the arrest and imprisonment of a person overseas.”

**U.S. Department of State: Foreign Affairs Manual - Chapter 7 Consular Affairs**

*The Privacy Act and Americans Citizens Services* (7 FAM 060)

Routine Use Exceptions (7 FAM 064)

U.S. policy imposes a number of limitations on sharing information between the consular program and law enforcement agencies. Most provisions authorizing sharing of consular information are listed under "routine use exceptions", ie. disclosure as per the public record in the Federal Register; disclosure compatible with the objectives in collecting the information; and disclosure consistent with the reasonable expectations of the individual who provided the information.

Regulations on sharing consular information with law enforcement are expressed for the most part in the use of discretionary language: the post "may" share information in cases of "a violation or potential violation of law"; in response to an agency's written request; and "for the integration and use of information to protect against terrorism...".

While most releases are governed by "may", there is no discretion for instances of child sex exploitation: "you should share information with the Regional Security Officer and US law enforcement agencies about child exploitation, sexual predators and pedophiles that come to your attention in the course of Americans Citizens Services work, including cases involving US citizens as alleged perpetrators. This authority under 'routine use' condition of disclosure is of

particular importance with respect to the enforcement of criminal statutes of the United States that are aimed at preventing the exploitation of children. The US Government maintains zero tolerance of those individuals intent on exploiting children in the US or abroad."

### **Canada's Privacy Act, Consular Services and Criminal Activity Abroad**

Canada's Manual of Consular Instructions is not publicly available so one can only make general comparisons with Australian and U.S. policy and practice.

Canada's Privacy Act states that personal information collected by a department may not be disclosed without the individual's permission. Exceptions are permitted when in accord with an Act of Parliament, in response to a warrant or subpoena, in accordance with a written request from an investigating body, to an M.P. for the purpose of assisting the individual, to auditors seeking funds owed the Government of Canada, for research and statistical analyses consistent with the purposes for which the information was collected, and for any other purpose which the Deputy Head might deem is in the public interest.

The operative principle suggests that, unless there is a departmental regulation or directive under Deputy Head authority, consular officers must adopt a silent and strictly responsive manner with respect to sharing of any consular information with law enforcement agencies.

DFAIT brochures dealing with criminal activity abroad also suggest that the consular program limits itself to warning travellers of the risks and consequences of illegal activities abroad. The brochure on Child Sex Tourism does use strong and direct wording, noting that child sex offences are crimes over which Canada asserts extraterritorial jurisdiction: "Canadians could be charged for child sex tourism offences where they have not been convicted of this offence in a foreign country". It goes on to state that anyone convicted of a sex offence abroad must report such conviction to authorities within 7 days of returning to Canada. But there is no suggestion - nor apparently any intention - that the consular program has a role or duty to monitor or follow-up on either score.

Canada seems to embrace a very low standard of responsibility with respect to consular collaboration with law enforcement to tackle extraterritorial crime by Canadians abroad.

### **"Advice for South African Citizens Travelling Abroad"**

[http://www.dfa.gov.za/consular/travel\\_advice.htm](http://www.dfa.gov.za/consular/travel_advice.htm)

Under privacy heading: Assures that information will only be accessed by authorized officials from the Department and used "in the event of a disaster, emergency or other crisis as outlined above." The site uses encryption to secure privacy.

### **C) The Role of the Media**

**Karen Tindall, "Governments' Ability to Assist Nationals in Disasters Abroad: What Do We Know about Consular Emergency Management?" 20 *Journal of Contingencies and Crisis Management* 2 (June 2012)**

A section of Tindall's literature review is on the role of media. Tindall says the mediatization trend is a "prominent theme" in consular affairs literature (citing Okano-Heijmans at length, e.g. on "domestic reputation management" and the centrality of consular in communicating with citizens). Mediatization raises public expectations; there is also the "moral hazard" of providing assistance, thus rising expectations. White 2007 argues to clarify and limit expectations ahead of time.

**Hugh White, *Policy Brief: Looking after Australians Overseas*, Lowy Institute for International Policy, 2007 (online: [link](#))**

See *Crisis Management* section. Argues the Australian government should publicly clarify and limit expectations about consular assistance, encouraging individual responsibility.

(See Australia's "Smartraveller" initiatives which utilize new media and TV ads, under *Technology* section; may be seen as a response to criticisms from Lowy et al.)

**Jones-Bos & van Dalen, "Trends and Developments in Consular Services: The Dutch Experience" *The Hague Journal of Diplomacy* 3 (2008) 87-92**

See *Third-Party Partnerships* for list of the Netherlands MFA's extensive public information projects, many of which involve the media.

**Xia Liping, "China's Consular Service Reform and Changes in Diplomacy," in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

See *Institutions* and *Crisis Management* sections for extensive summary of Chinese policy. China experiences significantly rising expectations and demand due to media. In 2006, state news agency Sina published 696 stories under the heading "Safety of overseas Chinese citizens becomes a concern." Regarding consular protection, the author makes an interesting point about Chinese politics and the emphasis on "serving" every Chinese citizen, which, combined with rising travel and media coverage, has led to major reforms in consular delivery (which the author supports). (215-218)

**Fergus Hanson, *Revolution @State: The Spread of eDiplomacy*, Lowy Institute for International Policy, March 2012 (online: [link](#))**

See *Utilizing Technology* section: US State Department as “global media empire” through its 600-plus social media platforms.

**Fergus Hanson, *Baked In and Wired: eDiplomacy@State*, Brookings Institute, October 2012 (online: [link](#))**

This report includes a history of eDiplomacy at the State Department, an overview of the way social media has transformed diplomatic work (with many examples), and specific areas where social media used, including consular affairs: “Social media is being used to provide foreign publics with U.S. visa information, to provide travel information to U.S. citizens travelling abroad and to coordinate in disaster response situations. Examples include the [Consular Affairs Facebook](#) page and @TravelGov Twitter feed... In general, however, consular issues are yet to generate the same level of innovative flair State has exhibited elsewhere.” (18)  
“Social media is being used at State for broadcasting, but also for listening, engaging, organizing and for crisis public relations.” (22)

**UK FCO, Digital Diplomacy, <http://digitaldiplomacy.fco.gov.uk/en/about/digital-diplomacy/>**

This page includes an impressive list of all the “platforms” in which the FCO has presence: <http://blogs.fco.gov.uk/digitaldiplomacy/platforms/>

**Thailand, “Protection of Thai Nationals” (online: [link](#))**

Thailand is proactive in protecting its nationals overseas. This includes “preventive” measure “using multimedia to forewarn Thai public and potential victims of the consequences of going abroad illegally as follows,” including: TV documentaries, regular radio warnings, newspaper warnings, MFA website ([www.mfa.go.th](http://www.mfa.go.th)), and leaflets/brochures for 60 countries.



#### **D) Utilizing Technology**

**Donna Hamilton, “The United States Experience,” in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

Responding to increased expectations for immediate answers in crisis, the US has utilized technology extensively. This includes: Automation of services pre-9/11 (Consular Lookout and Support System, DOS’s Intranet, Consular Consolidated Database); biodata (visa work more involved in identifying threats); overhaul of travel.state.gov (see *Third-Party Relationships*; the site is run by contractors) and studentsabroad.state.gov; consulates use Twitter and Facebook; Internet-based system for Consular Task Force, to enter or search for info on US citizens in crisis, can update and access anywhere via Open Net Everywhere program.

**Tatiana Zonova, “The Consular Service in Russia,” in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

This article describes the interesting history of Russian consular services – from its earliest consulates in the 1700s, to the Soviet consular service, to the post-1990 rise in demand due to increased travel. Russian consular faces overwhelming challenges. Some new uses of technology include: automated system providing visas, passports, invitations and citizenship; electronic queue system; Internet communications with citizens; biometric. Also electronic communications platform for response to terrorist acts and crisis.

**Fergus Hanson, *Revolution @State: The Spread of eDiplomacy*, Lowy Institute for International Policy, March 2012 (online: [link](#))**

Exec Summary: “This report is the first time the rapidly growing ediplomacy effort at the U.S. State Department has been mapped. It reveals that State now employs over 150 full-time ediplomacy personnel working in 25 different nodes at Headquarters. More than 900 people use ediplomacy at U.S. missions abroad...” In Public Diplomacy, e.g., State operates a “global media empire, reaching a larger direct audience than the paid circulation of the ten largest US dailies,” 600-plus social media platforms. This report aims to respond to the “slow pace of adaptation to ediplomacy by many foreign ministries.”

Ediplomacy “is at its heart a connection and customisation revolution driven by the advent of connective technologies that harness the digitisation of almost everything.” Author maps use of ediplomacy into 8 categories, including “Consular communications and response.” Extensive charts mapping the institutional presence of ediplomacy in State.

With 6 billion mobile phone subscribers (many of which access Internet), “it is now technically viable for foreign ministries to easily reach an increasingly large proportion of their citizens travelling or living overseas in crisis situations.” Much of consular efforts focused on digitizing visa, security and passport processes. Other initiatives: travel.state.gov, Facebook, Twitter,

iPhone app for travellers ([link](#)). Framework to guide consular officers using social media (“train and trust” model). (22)

In Crisis response, various projects (see *Crisis Management* section): move crisis hotline online; use Twitter & Foursquare; work with crisiscommons.org; TechCamps with civil society. (23)

Office of eDiplomacy – from 6 staff in 2002 to 80 in 2011; author calls it “bureaucratic Googleplex” for its dynamism. An external review found 40 “passion projects” underway; staff encouraged to experiment (e.g. one official cut a deal w/ Amazon to send Kindles to missions instead of books to save money). This Office is one of 20 ediplomacy nodes.

Knowledge management platforms: Corridor, est. 2011 – Facebook-like platform (using free BuddyPress software), 6,800 State members: form groups, search based on skills; communicate informally; share knowledge/info within State. Diplopedia, est. 2006 – internal State wiki. Communications@State, est. 2005 – WordPress-based platform, facilitates interagency communications and groups. Search, est. 2004 – millions of documents available to State personnel. Innovation Fund – Clinton set aside \$2 million to crowd source innovations; staff w/ successful idea gets award to implement/oversee (examples: air quality app for staff in Guangzhou; study in USA mobile app, for Chinese students; social media monitoring and engagement pilot; OpenSource phone system).

Examples of ediplomacy serving international partnerships: US-Mexico crisis management management (US embassy, Mexican embassy, Mexican MFA, etc. collaborate using cloud-based tools); or harnessing of Haitian diaspora to translate Twitter messages during Haitian earthquake.

**Fergus Hanson, *Baked In and Wired: eDiplomacy@State*, Brookings Institute, October 2012 (online: [link](#))**

See *Media* section; report is on eDiplomacy but relevant aspects focus on social media.

**Australia’s “Smartraveller” program: <http://www.smartraveller.gov.au/>**

Main page pushes Australians to Register, Subscribe, and Insure (pushing Australians to obtain private insurance)

See Kevin Rudd’s launch of Smartraveller III, November 2011 ([link](#)):

- 7.6 million resident departures in year ending June 2011
  - 1,600 active consular cases, up from 1,000 in 2005; in year prior, 24,000 consular cases
- Smartraveller III: \$13 million over 4 years
- Television adds (see Youtube page here: <http://bit.ly/VvSdZw>)
  - Relunched website, and iphone, ipad, android apps, and Twitter account ([link](#))

“Consular Services Charter”

- Clearly lists services Australia does *and does not* provide.

- “Our commitment and your responsibilities” has subheadings: “You can expect that we will” and “We expect that you will” <http://www.smartraveller.gov.au/services/consular-services-charter.html>

**UK’s “Digital Diplomacy”:** <http://blogs.fco.gov.uk/digitaldiplomacy/>

**“The FCO Digital Strategy” (6 November 2012: [link](#))**

Comprehensive report outlining the UK’s plans to embed digital into every element of foreign policy work, leading to a “more effective, more open” FCO.

One section lists a range of FCO services and the percentage of said services that are delivered online; note that small percentage of consular assistance provided online. (10-11)

Plans for the future:

Affirms that “face-to-face assistance to vulnerable British nationals” will remain the mainstay of their work. Focus for digitisation is on (a) transactional services and (b) aspects of consular assistance that reduce the time of face-to-face.

Examples: Welcome SMS messages: “A number of our overseas Posts have worked with local mobile network providers to send welcome SMS messages to all +44 mobile phones entering their country.” Registration in countries using this message has increased. In addition, the British High Commission in Nairobi running a pilot using mobile phones to communicate during crisis or heightened tension.

The report includes

- Barriers to digitisation (e.g. UK legislation requiring physical, not digital records; identity verification to prevent fraud; country cooperation on digital);
- Next steps to achieve the vision: Ensuring capability (resources; recruitment; training, development and best practice; learning from external best practice); Providing staff with access to digital tools; Open policy development: Communications; etc.

The report includes concrete action items.

**Singapore Consular Services:**

[http://www.mfa.gov.sg/content/mfa/consular\\_information/for\\_singapore\\_citizens/consular\\_services.html](http://www.mfa.gov.sg/content/mfa/consular_information/for_singapore_citizens/consular_services.html)

Includes extensive information: what Singapore can and cannot do, pre-departure precautions, Twitter feed, and so on.

Register online: [link](#)

**“Advice for South African Citizens Travelling Abroad”**

[http://www.dfa.gov.za/consular/travel\\_advice.htm](http://www.dfa.gov.za/consular/travel_advice.htm)

### **III. Substantive Issue Areas**

#### **A) Arrest & Detention: Notification and Access**

**John Quigley, William J. Aceves and S. Adele Shank, *The Law of Consular Access: A Documentary Guide* (Routledge Research in International Law, 2009)**

From Eileen Denza's review: During the Cold War, there were no clear interpretations of Art 36 of VCCR; it was supplemented by a network of bilateral conventions. Over the past 15 years, this has changed. The *Law of Consular Access* is intended as a "guide to consuls, to national enforcement officers in police, prison or immigration authorities, and to those representing detainees..." It offers "practical guidance on what support consuls can and actually do provide and on the nature of the individual right" (human rights, constitutional right, right against the sending state?).

**Mark Warren, *Timeframes for Consular Notification and Access: Determining Contemporary State Practice, Human Rights Research* (2009)**

#### **Overview**

The VCCR (1963) established the international framework for the exercise of consular functions. It now constitutes customary law, whether or not a country is a signatory. Article 36 - Communication and Contact with nationals - sets out the rights of the sending State and its national as well as the duties of the receiving State in arrest and detention circumstances.

The detaining state is obliged to (1) inform the detainee of his right to alert his consulate; (2) notify the consulate if the detainee wishes; and (3) grant the consular officer access to the detainee. Each of these duties must be done "without delay". To ensure these obligations are respected, Article 36 states that local law and regulations must grant "full effect" to the rights accorded in the Article.

The International Court of Justice has considered several disputes involving foreign nationals convicted of capital crimes in the United States. Government-plaintiffs argued that Article 36 notification rights had not been respected; and the "full effect" requirement was nullified by U.S. procedural default rules at the sub-national level.

#### **Key aspects of ICJ decisions:**

- Each element of Article 36 is part of an "inter-related regime" of rights;
- "Without delay" should not be seen as having different meanings for different obligations;
- No specific temporal meaning can be applied to "without delay";
- "Without delay" notification of a Consulate depends on the circumstances of the case;
- There is no requirement to suspend normal police procedures to await a consular officer;
- 5 days notification after detention is acceptable in the right circumstances;

- 40 hours to inform a foreign national of his consular rights is too long when his foreign status was obvious;
- Local laws which prevent Consulates from giving timely assistance must yield to the requirement to give full effect to the rights accorded in Article 36.

#### National Practice: Article 36

The majority of common law jurisdictions link consular notification with helping detainees exercise their legal rights: UK courts see notification as an important means to enhance a detainee's understanding of UK law; Australia interprets "without delay" as "immediately", including before police interrogation; and US guidance for domestic and overseas practice is notification should be "within 24 hours but certainly within 72 hours."

#### Survey of 50 Bilateral Consular Agreements Post-VCCR

- clear majority (30 ex 50) require notification within 3 days of a detention;
- 90% require notification within no more than 5 days;
- A majority (28 ex 50) require access to a detainee within 5 days or less after detention;
- 82% require access within no more than one week after detention;
- The more recent the agreement, the shorter the time limits.

**Barbara H. Bean, "Guide to Research on Vienna Convention on Consular Relations Notification Requirements," NYU, 2007 (online: [link](#))**

This is a very thorough research guide compiled by a legal research librarian, on Article 36 of the VCCR. It includes links to treaties, preparatory works, State Department guidelines, US and ICJ cases, US state statutes requiring consular notification, US federal regulations on consular notification, secondary sources and more.

**Anne James, *A Universal Safeguard: Providing Consular Assistance to Nationals in Custody: An Introductory Guide for Consular Officers* (International Justice Project, Woodbridge, VA) & Mark Warren (Human Rights Research, Ottawa), 2007 (online: [link](#))**

This article provides a practical overview of the law of consular access: detainee rights and the rights of consular officers under Art 36. Broad consular functions from Art 5 may also apply to cases of detained nationals. On mandatory notification, notes Art 37 (on appointment of guardian/trustee); also, bilateral agreements may take precedence over general VCCR provisions, e.g., mandatory notification within 72 hours of detention.

On dual citizenship: If detained in a third country, Art 36 applies normally. If detained in one of two countries of citizenship, some countries (e.g. USA) take the position that dual nationals are not entitled to consular rights upon arrest; other countries (e.g. Vietnam) do not recognize dual nationality. Discusses the role of honorary consuls. Surveys ICJ case law. On domestic litigation, it depends whether VCCR is domesticated: in Canada, it has not been legislated; in the US, the VCCR is "self-executing" so can be enforced; in the UK, it has been incorporated into domestic law.

**Foreign Affairs Manual, United States Department of State, 7 FAM 400 (online: [link](#))**

Comprehensive instructions and procedures for US consular officials. Many of the manual's recommendations regarding assistance to detainees and prisoners would be applicable to other consular services.

**US Department of State, *Instructions for Law Enforcement and Other Officials Regarding Foreign Nationals in the United States and the Rights of Consular Officials to Assist Them*, 3rd ed, September 2010 (online: [link](#))**

Instructions for law enforcement relating to “obligations of consular notification and access that pertain to the arrest and detention of foreign nationals; the appointment of guardians for minor and adult foreign nationals; deaths and serious injuries of foreign nationals; and wrecks or crashes of foreign ships or aircraft on U.S. territory.”

See also the website, “Consular Notification and Access” ([link](#)), with useful information and links relating to consular notification and access in the US. List of countries for which mandatory notification is required: [link](#). Information on State Department outreach activities to inform law enforcement of notification requirements: [link](#).

**Katerina Mantouvalou, *Consular Assistance and Trial Attendance: A Comparative Examination of the American, Australian, British, Dutch, and German Ministries of Foreign Affairs*, Fair Trials International and Nuffield Foundation, London, 2009 (online: [link](#))**

The report's objective is to “compare the policies and practices of the American, Australian, British, Dutch and German Ministries of Foreign Affairs on consular assistance provided to those facing trial overseas and the subject of consular attendance at trial.”

Some findings: Consular assistance is a legally protected right only in Germany; in other countries it is government policy. The report explains the varied approaches to trial attendance. Recommends developing lists of defence lawyers; factors when deciding on trial attendance policy; improved data collection on trial attendance; and training.

See also: *Consular Assistance and Trial Attendance: Follow-up Report*, Fair Trials International, July 2011 ([link](#)): no significant policy change by Ministries studied.

**DFAIT, “Arrest and Detention” (website: [link](#))**

Public list of what Canadian consular officials “can” and “cannot” do. (Note that no actions are listed as “must.”)

**REDRESS, Comments on the EU Green Paper: Diplomatic and Consular Protection of Union Citizens in Third Countries, 30 April 2007 ([link](#))**

Comments on the EU Green Paper by REDRESS focusing on the protection and assistance of victims of torture. Critiques include the failure to protect citizens of EU countries that have not legislated consular protection; protection of dual citizens or long-term residents; and others.

**Fair Trials International, website:** [link](#)

Publications on consular access, and information on several criminal jurisdictions, to support nationals arrested abroad.

See also: Amanda Cumberland, *Trials and Tribulations: How Inconsistent Consular Assistance Fails Foreign National Detainees*, Fair Trials International, 2009/10

**U.S. Congressional Research Report for Congress: Vienna Convention on Consular Relations: Overview of U.S. Implementation and International Court of Justice (ICJ) Investigation of Consular Notification Requirements, May 17, 2004**

**REDRESS (UK): : Seeking Reparation for Torture Survivors, *The Protection of British Nationals Detained Abroad: A Discussion Paper Concerning Consular and Diplomatic Protection*, February 2005 ([link](#))**

Advocacy group REDRESS argues for a consistent UK policy in response to recent cases of torture abroad. Divides into consular assistance (following detention abroad) and diplomatic protection (in seeking remedies and repatriation for harm suffered).

**Klein, Natalie, “David Hicks, Stern Hu, Scott Rush, Jock Palfreeman and the Legal Parameters of Australia’s Protection of its citizens abroad”, *Melbourne University Law Review* 35 (2011) (online: [link](#))**

This article explores the international law avenues open to Australia to protect its nationals when they are imprisoned abroad. It examines how Australia’s right of diplomatic protection has shifted slightly in recent years, and addition rights and duties inhere to the state by virtue of different treaties (including consular agreements, mutual legal assistance treaties and prisoner transfer agreements) that may be available to provide further protection to Australians overseas.

**Nigel Rodley, *The Treatment of Prisoners Abroad Under International Law*, 3rd ed, Oxford University Press, 2009**

**Cindy Galway Buys et al, "Do Unto Others: The Importance of Better Compliance with Consular Notification Rights," 21 *Duke Journal Comparative and International Law* 461 (2011) ([link](#))**

Survey of case law before the ICJ; consular actions proposed or taken to enhance consular notification rights; litigation strategies; ideas for further action to secure notification rights.

See *Third-Party Partnerships* for NGOs involved in Art 36 notification and access.



## **B) Children and Family Issues**

### **“Chapter 10: Child Abduction,” in *Consular Law and Practice*, 3rd ed (Oxford, 2008)**

Increase in caseload. In 2000, UK appointed Child Abduction Policy Officer in London to work with Consular Division to resolve abduction cases. Efforts coordinated with the Family Law Division of the Royal Courts of Justice.

Hague Convention on the Civil Aspects of International Child Abduction, TIAS No. 11670, 1343 UNTS 98, Adopted 24 October 1980:

- 80 States party (as of publication)
- Discussion of the Convention at page 187-188
- The Convention’s main concern is to restore the situation that existed before the child’s removal, rather than to settle custody disputes. This normally means return to the state of “habitual residence,” where custody disputes heard. For states party to the Council of Europe’s Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, recognition of a custody decree is required. (188)
- Gonzalez case (Cuba-US) at page 189

Recent cases are receiving greater publicity, particularly abductions to the Middle East.

- US adopted statute denying a visa to a person who commits child abduction and takes child to a state not party to Hague Convention
- Canada set up bilateral “commissions” with Lebanon and Egypt, meant to promote “respect for the right of a child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis,” unless contrary to best interests of the child. Also ensures rights of access for non-custodial parent. (see Annex II on international agreements)

**Maaïke Okano-Heijmans, “Change in Consular Assistance and the Emergence of Consular Diplomacy,” chapter 1 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011) (also available online: [link](#))**

Discusses bilateral and multilateral treaties on prisoner exchange, child abduction and dual citizenship. This cooperation faces challenges because they raise sensitive issues.

**DFAIT, “Consular Services: Children and Family” (website: [link](#))**

List of services consulates can and cannot provide.

**State Department, “Safety and Protection of Minors” Foreign Affairs Manual, part 7, 1700. (online: <http://www.state.gov/m/a/dir/regs/fam/07fam/c22720.htm>)**

Includes documents on: adoption case processing in non-Hague countries; international parental child abduction; child abuse or neglect; forced marriage of minors; international child support enforcement; and other issues.

**Hague Convention on the Civil Aspects of International Child Abduction (online:**  
[http://www.hcch.net/index\\_en.php?act=text.display&tid=21](http://www.hcch.net/index_en.php?act=text.display&tid=21))

A repository of information related to international child abductions. Includes text of the convention, commentaries and briefings, best practice guides, links to other agreements.

**See Canada's bilateral treaties with Egypt and Lebanon (see Annex II)**

Both establish joint consultative commissions to resolve parental child abduction issues (since Egypt and Lebanon did not sign the Convention on the Civil Aspects of Child Abduction). See also Pardy 2008 discussion of said treaties (he says they work well and may provide model for future treaties)

**Council of Baltic States, Handbook for consular and diplomatic staff on how to assist and protect victims of human trafficking, 2011**

### *On sex tourism*

**2012 Trafficking in Persons Report, U.S. Department of State**

The relevant sections of this report, ie. relating to what consular programmes at foreign ministries are doing to fight tourism/trafficking activities overseas, are:

Canada (p. 112)

"Canada is a source country for child sex tourists and the country prohibits its nationals from engaging in child sex tourism through Sect. 7(4.1) of its Criminal Code. This law has extraterritorial application, and carries penalties of up to 14 years imprisonment. DFAIT continued to distribute a publication warning Canadians travelling abroad about penalties under Canada's child sex tourism law, and every new Canadian passport issued continued to be accompanied by a copy of the booklet. However, authorities reported no investigations, prosecutions, or convictions of child sex tourism during the year..." (There is also mention of CIDA and DFAIT programmes to improve local justice and law enforcement capacity.)

Australia (p. 75)

"Australia is a regional leader in combating trafficking in persons. Australian diplomats and consular personnel received training on their obligations to report extraterritorial offences of

serious crimes, including child sex cases and trafficking in persons..." (Aussies also doing a great deal of education and training of law enforcement overseas.)

United States (p. 365)

"U.S. laws provide extraterritorial jurisdiction over child sex tourism offences perpetrated overseas by U.S. citizens. Dept of Homeland Security made three criminal arrests resulting in five indictments and eight convictions in child sex tourism cases in FY 2011. The Dept of State Bureau of Consular Affairs Passport Services took action during the reporting period to preclude issuance of passports in the case of two individuals who were convicted of child sex tourism crimes that subjected them to passport restrictions."

**Danielle Viera, "Try as They Might, Just Can't Get it Right: Shortcomings of the International Megan's Law 2010 Bill", Emory University School of Law, 2010**

This piece outlines that flaws in a bill which keeps getting introduced in Congress to expand oversight of those convicted of sexual offences, including having embassies notify countries of the presence of US citizens convicted of sex crimes, maintain an embassy/consulate list of offenders, etc.

### **C) The Implications of Dual Citizenship**

**Audrey Macklin and François Crépeau, *Multiple Citizenship, Identity and Entitlement in Canada*, Institute for Research on Public Policy, June 2010**

This report examines the legal implications of dual citizenship, including extensive analysis of consular assistance, citing the Lebanon and Haiti crises. (See its discussion of the “right to consular assistance” under *Legal Obligations*.) In 2006 Lebanon, 40-50,000 Canadians were visiting or residing in Lebanon; 39,000 registered with embassy; 15,000 sought evacuation. A narrative emerged that a large proportion of evacuees were “citizens of convenience” using Canadian citizenship as an “insurance policy.” Authors write, “No reliable evidence was ever proffered in support of this narrative.” Some commentators argue nonresidence ought to disentitle dual citizens from consular assistance. The authors argue against distinguishing nonresident dual citizens in service delivery, on “principled and pragmatic grounds.” Logistically, consular assistance is typically sought during crisis; proving Canadian residency (in addition to citizenship) would be impractical and inhumane when lives are at risk. What would residency test look like: authors raise many questions critiquing the unfeasibility and undesirability of excluding nonresident dual citizens. Even if some are “citizens of convenience,” would need non-arbitrary criteria to ensure others aren’t excluded.

Authors refute the fiscal argument: that non-residents do not pay taxes and thus should be deprived of services. Non-citizen residents pay taxes but cannot vote. (23-4)

Some interesting observations: US, UK and Australian media stories about the evacuation of their dual citizens evince no comparable concern about legitimacy. Further, during the 2010 Haitian earthquake, media coverage revealed no objections to the evacuation of dual Haitian-Canadian citizens. (22)

**Thomas Faist and Jürgen Gerdes, *Dual Citizenship in an Age of Mobility*, TransAtlantic Council on Migration, Migration Policy Institute, 2008**

Trend of increasing tolerance of dual citizenship (cites United States Office of Personnel Management, Investigations Service, “Citizenship Laws of the World,” <http://opm.gov/extra/investigate/IS-01.pdf>)

Argues for expanding dual citizenship as a means to increase rates of naturalization.

**John Chant, *The Passport Package: Rethinking the Citizenship Benefits of Non-Resident Canadians*, C.D. Howe Institute, December 2006 ([link](#))**

Argues for options including substantial passport renewals fees for non-residents wanting to maintain a “lifeline” to Canada while living abroad.

**DFAIT, Consular Services, “Dual Citizenship: What Canadians Should Know?” (Pamphlet) ([link](#))**

**Ian Dudgeon, “Crisis Contingency Plans: The Lebanon Experience,” *The Defender*, 23.3 (2006): 22–25**

This is a short case study. In the Lebanese crisis, Australia charged no cost for travel to first point of evacuation, and only charged for travel to Australia where citizens could not prove they’d lived in Australia for one year out of past two, and two out of past five. See also *Crisis Management* section.

**Peter Nyers, “Dueling designs: The politics of rescuing dual citizens,” *Citizenship Studies* 14.1 (2010)**

Theoretical paper looking at Canada’s evacuation of 15,000 from Lebanon. Problematises Cynthia Weber’s elements of “safe citizenship” (dying, caring, and immersing for one’s country) in light of dual citizenship.

**Craig Forcese, “The Capacity to Protect: Diplomatic Protection of Dual nationals in the ‘War on Terror’” *European Journal of International Law* 17.2 (2006)**

Forcese examines cases of unlawful rendition, focusing on Maher Arar’s case (since it is the best documented), and asks if international law prevents countries from extending diplomatic protection to rendered dual nationals. “The article concludes that old rules precluding protection in a contest between two states of nationality are no longer part of international law. For this and other reasons, dual nationality is not a legal bar to diplomatic protection of persons swept up in extraordinary renditions.”

**Anne James, *A Universal Safeguard: Providing Consular Assistance to Nationals in Custody: An Introductory Guide for Consular Officers* (International Justice Project, Woodbridge, VA) & Mark Warren (Human Rights Research, Ottawa), 2007 (online: [link](#))**

This is much broader guide on Art 36 (see *Arrest & Detention* section).

On dual citizenship: If detained in a third country, Art 36 applies normally. If detained in one of two countries of citizenship, some countries (e.g. USA) take the position that dual nationals are not entitled to consular rights upon arrest; other countries (e.g. Vietnam) do not recognize dual nationality.

**CBC Access-to-Information Documents: Briefing Material on Lebanon Evacuation, Foreign Affairs, March 29, 2008 (online: [link](#))**

Includes extensive details on the operation: number of Canadians evacuated, DFAIT staff reassigned, number of calls made, dates of key events, and so on.  
Notes that Canada was “instrumental” in helping the evacuation of Americans, Australians and Ukrainians. Grateful to Cyprus and Turkey for assistance.

Detailed “Evacuation Chronology” (7-page document).

Contacted Canadians by email, website updates, phone calls, Lebanese TV, radio and newspapers. At height of operations, 5,000 phone calls per day made.

Sub-section B(4): “Why are we paying to evacuate people who have not been resident in Canada, and have not paid taxes, in years?” Response: “Foreign Affairs and International Trade Canada is mandated to provide, on behalf of the Canadian government, assistance to all Canadian citizens abroad regardless of their country of residence.”

Permanent residents evacuated as “third priority” after Canadian citizens and minors. Often accompanied minor Canadian children.

***The Evacuation of Canadians from Lebanon in July 2006: Implications for the Government of Canada, The Standing Senate Committee on Foreign Affairs and International Trade, Hon. Sen. Consiglio Di Nino, Chair & Hon. Sen. Peter Stollery, Dep. Chair, May 2007 (online: [link](#))***

For crisis evacuation recommendations, see *Crisis Management*.

On citizenship, notes Asia Pacific Foundation critique: debates were “long on emotion and short on facts” ([link](#)). Doesn’t recommend any action on dual citizenship issues.

***Lebanon Evacuation Summary, Market Research Series, Worldreach Software Corporation, June, 2007 (also: Crisis Management)***

***Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality, Robert D. Sloane, Boston University School of Law, Harvard International Law Review, Vol. 50 no. 1 Winter 2009 ([link](#))***

**Book review: Beyond Citizenship: American Identity After Globalization, Peter J. Spiro, Oxford University Press, NY 2008. *The End of Citizenship?*, Jonathan Weinberg, Michigan Law Review, 2009**

**Passports and Consular Services provided to Canadian Citizens Abroad, Library of Parliament PRB09-19E, Daphne Keevil Harrold, Parliamentary Information and Research Service, 2009 ([link](#))**

Among other things, discusses issues of multiple citizenship: namely, Canada’s denouncement of the *Hague Convention on Conflict of Nationality Laws*, and Canada’s bilateral agreements with China (with details), Egypt, and Lebanon (10-11).

**Patrizia Vigni, *Diplomatic and Consular Protection in EU Law: Misleading Combination or Creative Solution?*, European University Institute Department of Law, Florence, EUI Working Papers, Department of Law 2010/11 (online: [link](#))**

This paper probes the implications of Article 23 of the *Treaty on the Functioning of the European Union*, which provides EU citizens diplomatic and consular representation by member states other than their own nationality outside of the EU. (Also listed under *International Cooperation*)

**Stephanie Wang, “Does the Nationality Law, and its Prohibition of Dual Nationality, Need Reform?” *Tsinghua China Law Review* 3.1 (2010-2011)**

Defines Chinese citizenship and nationality, and overseas nationality. Current law: the non-recognition principle. Critiques the law, argues for change on various grounds. International developments in citizenship law: Hong Kong, India, Flexible Approach, Separating Citizenship from Sociopolitical Rights, Gradual Reform.

**“Protection of Dual Nationals,” in *Consular Law and Practice*, 3rd ed (Oxford, 2008)**

Many interesting examples at pages 125-130

**Ahyan Kaya, “Transnational citizenship: German-Turks and liberalizing citizenship regimes,” *Citizenship Studies* 16.2 (2012)**

**David Cook-Martin, *The Scramble for Citizens: Dual Nationality and State Competition for Citizens* (Stanford: Stanford University Press, 2013)**

**Note bilateral treaties altering Article 36 undertakings with respect to nationality (see Annex II: Arrest and Detention):**

The PRC-US agreement (1982) states that the passport on which the individual entered the country determines nationality for consular protection. This was repeated for Canada (1999) and Australia (2000). The PRC-Japan agreement (2008) however noted that consular rights applied to "a person who claims to be a national of the sending State, unless proved otherwise...".

Australia's consular agreement with the Socialist Republic of Vietnam (2004) is noteworthy for breaking new ground with regard to dual nationality. The agreement states that anyone who holds a passport of the sending State shall be considered a national for consular purposes whatever passport was used in entering the country.

#### D) Crisis Management

**Maaïke Okano-Heijmans, “Change in Consular Assistance and the Emergence of Consular Diplomacy,” chapter 1 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011) (online: [link](#))**

Responding to rising public expectations in resolving highly mediatized crises. There’s a risk of making diplomacy emotive and contradicting national interests. What is new? The nature of “citizens in distress,” and the environment. (*See Institutions, above, for more detail (definition of consular diplomacy, need for new consular policy, institutional changes). See also Third-Party Partnerships, as the author discusses outsourcing.*)

**Karen Tindall, "Governments’ Ability to Assist Nationals in Disasters Abroad: What Do We Know about Consular Emergency Management?" 20 *Journal of Contingencies and Crisis Management* 2 (June 2012)**

This is a very valuable literature review on “large-scale consular emergency management,” combining a wide range of academic and non-academic sources and case studies. Pages 103-4 on the state of literature on consular emergencies: Much of the literature is from diplomacy perspective (e.g. Melissen and Fernandez 2011) or legal perspective (e.g. Lee and Quigley 2008). Diplomacy literature focuses on EU integration. Legal literature focuses on rights under the VCCR. There is little on the legal aspects of large-scale assistance.

“There is a clear need for governments to engage in more interactive modes of communication when attempting to communicate with affected citizens and the broader public during a consular emergency. This is particularly important because perceptions of abandonment or neglect of citizens can negatively affect public confidence in the government’s political leadership and crisis management abilities.” (107-8)

**Karen Tindall and Paul Hart, “Evaluating government performance during consular emergencies: Toward an analytical framework,” *Policy and Society* 30 (2011) 137–149**

“This article develops an evaluation framework that is tailored to large-scale consular emergencies. [The authors] operationalise six key response functions into indicators, which provide a more nuanced perspective on governments’ performance in an emergency.”

**Karen Tindall, “Coping with consular emergencies: four key governmental coordination relationships,” *International Journal of Emergency Management* 7 (2010): 281-295**

#### Country-specific examples



**Jones-Bos & van Dalen, "Trends and Developments in Consular Services: The Dutch Experience" *The Hague Journal of Diplomacy* 3 (2008) 87-92**

The Netherlands' crisis management policies focus on speed, visibility and proximity. Established a permanent Rapid Deployment Consular Support Team (SCOT) in 2006, consisting of approximately 20 specially trained staff with substantial consular experience, who are called from their posts during crisis. SCOT is supported by a Crisis Telephone Team (CTT) of 150 staff in The Hague. Also, career-long training is integral part.

**Donna Hamilton, "The United States Experience," in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

Hamilton describes the United States' changed relationship with the public from response to anticipation of needs and active outreach; this involves an active approach to public information, using the Internet as a means of outreach. In addition to programs described in the *Utilizing Technology* section, Hamilton describes the US 24-hour Operations Centre, which establishes task force run by affected bureau during crises; if US citizens involved, a second task force under the Bureau of Consular Affairs. Crisis management relies on IT more than any other area. (More details under *Utilizing Technology*.)

**Fergus Hanson, *Revolution @State: The Spread of eDiplomacy*, Lowy Institute for International Policy, March 2012 (online: [link](#))**

In Crisis response, there are plans to move crisis hotline calling online: users can enter info online rather than wait on hold; also plans to use Twitter and Foursquare in crisis response. Informal involvement with [crisiscommons.org](http://crisiscommons.org), a civil society movement that hosts CrisisCamps "leveraging technology and telecommunications systems to assist communities in times of crisis." State also organizes "TechCamps," collaboration with civil society. (23)

See *Utilizing Technology* section for details.

**Xia Liping, "China's Consular Service Reform and Changes in Diplomacy," in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

The author describes standardization of Chinese consular protection, consisting of 3 mechanisms: (a) Early warning and prevention involves travel warnings and info about travel, and strengthening safety precautions of overseas institutions. MFA website is very active in precaution, MFA publishes brochures, sends officials to give lessons to private sector staff going abroad. "Joint Preventive Warning Mechanism" involves MFA & other agencies. (207-8) (b) Coordination and emergency response: the Inter-Ministerial Meeting on the Safety of Chinese Nationals and Institutions Abroad (2004); Consular Protection Centre (20 members and expanding, within Dept of Consular Affairs, 2007). 24-hour hotline, citizens can also report emergencies to provincial/local level, which contacts MFA.

(c) Financial guarantee mechanism: major allocation to special fund for consular protection in 2005. Also, local/provincial governments raise funds, financial subsidies, and compulsory insurance for high-risk industries. All businesses must have insurance.

**Henelito A. Sevilla, Jr., *The Emergency Evacuation of Overseas Filipino Workers (OFWs) from Libya and Syria*, Middle East Institute, February 9, 2013 (online: [link](#))**

The two evacuation scenarios played out quite differently, with Libya a success thanks to collaboration among the Filipino government, international organizations, and companies employing OFWs. It was much more difficult in Syria where most OFWs were undocumented, exit permits from Syrian authorities were not forthcoming, and employers insisted on financial penalties for breaking contracts. Problems were compounded when new OFWs arrived looking for conflict-premium wages. Strict warnings about dangerous circumstances and better relations with recruiting agencies and host country governments should help but the government must recognize there will always be a need to assist nationals in places where they should not be.

30,000 Filipino OFWs in Libya, 17,000 in Syria. Philippines abstained from voting to condemn Syria at the UN Human Rights Council, June 1, 2012, “based on the imperative to secure the ‘welfare of our people,’ and that this was the Philippine government’s ‘primary concern’” (citing Foreign Affairs secretary Albert del Rosario).

**Lindstrom, Madeleine, and Olsson, Stefan, “Chapter: EU Consular Cooperation in Crisis Situations” in *Crisis Management in the European Union* (2009) 109-126**

Based on the experiences of recent crisis, the EU has engaged in consular cooperation to improve the protection of EU citizens in third countries. This chapter discusses the consulate cooperation that leads to citizens of the European Union now being able to receive consular assistance from any other Member State in a country where a persons' own country lacks representation.

**Ian Dudgeon, “Crisis Contingency Plans: The Lebanon Experience,” *The Defender*, 23.3 (2006): 22–25**

This is cited by Tindall as an overview of Australian “whole of government” approach during crisis, discusses Australian crisis response policy and the Lebanese case.

***The Evacuation of Canadians from Lebanon in July 2006: Implications for the Government of Canada*, The Standing Senate Committee on Foreign Affairs and International Trade, Hon. Sen. Consiglio Di Nino, Chair & Hon. Sen. Peter Stollery, Dep. Chair, May 2007 ([link](#))**

Recommendations: DFAIT should consider new modes of communication beyond website updates, including text messaging to mobile phones, to make it easier to contact Canadians during large-scale crises. More regular assessments of missions. Review allocation of personnel (e.g. Lebanese mission had too few staff). DND should coordinate evacuation efforts. Canada should

“clarify and strengthen existing agreements with like-minded countries for mutual assistance in times of crisis” and enact new agreements where they don’t exist.

**Stephanie Buus, “The People’s Home goes Gulliver: Sweden and the 2004 tsunami crisis” 1(3-4) 2011 *International Journal of Tourism Anthropology*, 293.**

The author uses Sweden as a case study to investigate how sending and receiving states are reacting to the negative political, health, and economic impacts of increased tourism. In particular, it highlights Sweden’s independent Catastrophe Commission (Katastrofkommission), charged with investigating the Swedish tsunami response and producing an extensive final report of its findings; the election of a new centre-right government in September 2006 and the creation of a new consular catastrophe law in August 2010 aimed at better regulating Swedish travel abroad.

***Sweden and the Tsunami: Evaluation and Proposals*, Swedish Tsunami Commission, Stockholm, 2005 (online: [link](#))**

This is a scathing report on deficiencies of government response to tsunami, including recommendations. General lack of efficient organization in crisis. In first few days, lack of organization at executive level; absence of executives hurt external contacts. Consequences of delay in many areas. Disaster medical planning: resources available, but not utilized speedily. Says partnership with Thai medical institutions could have avoided errors.

Consular management: Adopted too slowly. Personnel reinforcements insufficient initially. A lack of empathy with tourists was reported. Procedures for registering missing persons were inadequate. Communication with general public inefficient.

Cooperation with other countries could have been further developed. Ditto for NGOs. Recommends for, among other things, increased importance for consular services within MFA: “Consular work must be given the importance and priority it deserves.” (See Maaïke Okano-Heijmans, above: new post of Director-General was created, then abolished 2 years later after urgency faded.)

### **Prevention and travel advisories**

**Rachel Briggs, *Travel Advice: Getting Information to Those Who Need It*, The Foreign Policy Centre, London (2002), [www.fpc.org.uk](http://www.fpc.org.uk)**

The author looks at growth in UK travel and the increase in consular problems. Her analysis of consular data indicates a disproportionate number of serious consular problems arose in places outside top 10 destinations. Problems were generally preventable but cautionary advice was not getting to the people who needed it. Fewer than 10% of travelers consulted Foreign Office advice,

despite 'hits' suggesting it was a very popular website. There was a deep confusion among travelers as to who was responsible if problems arose. Briggs recommends renewed emphasis on partnerships with travel companies and agencies to get cautionary messages out; and a system which tailored advice to meet different needs for different travelers (universal messaging frustrated those with more specific needs). She calls for clear metrics to continuously test the effectiveness of travel warnings through better feedback loops, surveys and pre/post travel interviews.

**“Appendix 3: International comparisons” in *Consular Services to British Nationals*, 24 November 2005 (online: [link](#))**

Includes comparison of the travel advisory coverage (countries and issues) of 7 countries: UK, Australia, Germany, France, Netherlands, Sweden, US.

**William Maley, “Risk, Populism, and the Evolution of Consular Responsibilities,” chapter 2 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

On public threat assessments, Maley argues for independent or outsourced travel advisory. See section on *Third-Party Partnerships* for his argument.

**Wesley Wark, *National Security and Human Rights Concerns in Canada: A Survey of Eight Critical Issues in the Post-9/11 Environment*, Section 6: Federal Government Responsibility and Capacity to Protect Canadians and Their Rights Overseas, Including Respect for International Law Provisions, Canadian Human Rights Commission (2006)**

Foreign Affairs Canada has the responsibility to protect Canadians abroad. Its ability to do so depends on a complex web of international law, state-to-state relations, and foreign legal practices and codes. Recent cases show that even when substantial resources are deployed, Canada has no foolproof ability to protect Canadians abroad.

Individual Canadians living and traveling abroad have a duty of prudence. Where individual and government responsibilities overlap is in the area of information. FAC manages a useful travellers website, with warnings about personal safety and security, natural disasters, and health concerns. However, failure to highlight human rights and provide a summary of the justice system of states to which Canada attaches a travel warning is a notable shortcoming.

The website content seems reasonable but more detailed study is required to assess whether the information has been timely, accurate, complete - and heeded by travellers. There should be regular and broad-based public audits of the consular program. These are not routinely done by an external agency or the relevant parliamentary committee.

**United States Government Accountability Office, “Wide Range of Emergency Services Provided to American Citizens Overseas, but Improved Monitoring is Needed”, Report to Congressional Requesters (September 2009) GAO-09-989**

This report describes what services State provides to U.S. citizens who are victims of crimes, suffer accidents, or otherwise need emergency services, how State is prepared to assist U.S. citizens who are in need of emergency services, and how State monitors the assistance it provides to U.S. citizens in need of emergency services. It also makes recommendations to ensure State has accurate, reliable data to monitor and evaluate its provision of emergency services worldwide.

**Comparative Analysis of National Pandemic Influenza Preparedness Plans, World Health Organization, 2011**

Based on an assessment of 119 National Pandemic Plans, the WHO found that the majority of members had good plans. Common weaknesses however were a lack of consideration of sub-national elements; not enough tested their national plans; a focus on Avian flu not the full range of influenza variants; not enough countries linked pandemic planning to national emergency response systems; health agency coordination with other national ministries was uneven; there was over-reliance on access to drugs from external sources; and three-quarters of the plans had no mention of the International Health Regulations 2005, "the legally binding document...that provides a global legal framework to prevent, control or respond to public health risks that may spread internationally."

Consular issues arise in ensuring Consulates have reliable access into National Planning Committees, particularly if most plans do not have Foreign Ministry participation, have weak sub-national links, and Consulates and communities of foreign nationals (including high risk individuals such as children and elderly) are located outside of capitals.

**International Health Regulations 2005, World Health Organization**

The IHR is intended to "prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade." Much of the document addresses appropriate health-based responses to risks posed to and by travellers.

Consular issues are engaged throughout the regulations, e.g. use of medical travel documents, screenings and examinations at entry points, quarantine/isolation policies, charges for medical services, non-discrimination between nationals and visitors, food, clothing and accommodation during medical isolation, the need to justify special measures to the WHO Director General, and the right to conduct government to government consultations for disputes over treatment of foreign nationals. The IHR notes that "The provisions of the IHR shall not affect the rights and obligations of any State Party deriving from other international agreements." VCCR Article 36 and 37 rights are clearly engaged in National IHR plans.

**Christina Spencer, "Bon Voyage, Bon Courage: Consular Crises and Bilateral Relations", M.A. Thesis, Norman Paterson School of International Affairs, Carleton University (2005)**

See *International Partnerships*, on how issues become politicized and affect bilateral relations and foreign policy. Looks at 4 distressed Canadian cases. Argues for (a) better understanding by Canadians about their vulnerabilities and responsibilities overseas, the limits for government to protect them, and offsetting foreign policy considerations that come into play; (b) clarification of the dual national conundrum; (c) greater effort to "thicken" international relationships and expand consular coverage; and (d) more research on consular issues.

**Rachel Briggs, *The Kidnapping Business*, The Foreign Policy Centre, London (2001)**  
**[www.fpc.org.uk](http://www.fpc.org.uk)**

Kidnapping is now big business - kidnappers are motivated by profit, not principle. Simplistic policies based on "we don't negotiate with terrorists" create a policy vacuum in which business interests, NGO's and governments respond to cases in an uncoordinated fashion. Briggs states that while governments are often drawn into kidnapping cases, the private sector and NGO's are increasingly in the lead. This opens the door to undesirable precedents and rewards for criminality. Briggs argues that what is required is a rational understanding and coordinated strategy toward the kidnapping-as-business phenomenon. She calls for a clear understanding of the respective roles played by government, business, and NGO's to: (a) create greater public and corporate understanding of the nature and risks of kidnappings abroad; (b) devote greater attention to collective and individualized measures to reduce vulnerability; (c) engage in greater sharing of knowledge and experience; and (d) foster greater collaboration internationally for government, business, and NGO networks.

**Rachel Briggs, *Doing Business in a Dangerous World: Corporate Personnel Security in Emerging Markets*, The Foreign Policy Centre, London (July 2003), [www.fpc.org.uk](http://www.fpc.org.uk)**

See *Diaspora* section (on supporting companies overseas).

**Oded Lowenheim, *The Responsibility to Responsibilize: Foreign Offices and the Issuing of Travel Warnings*, International Political Sociology, Vol. 1 2007**

Neo-liberal governments are increasingly driven by a philosophy which seeks to "responsibilize" their nationals, i.e. to act as prudent and rational citizens who are not a burden on their fellow citizens. International Travel Advisories are an understudied example of this trend in the foreign affairs realm.

Foreign ministries see travel advisories as the one of their principal services to citizens. The public expects government to be alert to dangers posed to the nation at home and abroad. Governments are themselves conscious of the moral, legal, financial and political costs of not sharing risk information with the public (eg. Lockerbie, Bali, Luxor, etc.).

Official travel advisories allow governments to address citizen problems overseas according to whether or not the danger was avoidable and whether the traveller acted in a responsible manner. Governments reserve the right to impose costs and to decline to assist in cases of "irresponsible behaviour". The fact advisories are public sets the scene for the general public to judge and denounce morally unacceptable conduct.

Business, non-profits, international organizations, and others take their lead from travel advisories and adjust their own decisions, services and compensation plans (e.g. insurance companies) according to the advisories.

Travel advisories have thus become an important means by which governments provide an important service to citizens, direct the behaviour of nationals overseas, and expand discretion as to how to respond to citizens who encounter difficulties abroad.

**Hugh White, *Policy Brief: Looking after Australians Overseas*, Lowy Institute for International Policy, 2007 (online: [link](#))**

On protecting Australians during crisis, White identifies two major challenges: rising expectations that cannot be met, and resource constraints, resulting in diversion of resources away from diplomacy and trade. He recommends that Australia "set, publicise, explain and observe clear limits to consular assistance," and send messages to Australians to take responsibility for their safety and well-being abroad (e.g. Smartraveller website, which encourages private travel insurance); and increasing resources.

**See Australia's "Smartraveller" program (apparent response to Lowy report):**  
<http://www.smartraveller.gov.au/>

Details in *Technology* section, above.

**Jillian Broadbent AO, William Maley AM, Brad Orgill, Peter Shergold AC, Ric Smith AO PSM, Allan Gyngell (Chairman), *Australia's Diplomatic Deficit*, The Blue Ribbon Panel Report, The Lowy Institute, March 2009 (online: [link](#))**

Comprehensive report on Australian foreign affairs. The section on consular services calls for a "major reconsideration" that "recognizes reality": separate consular role with transparent budget; funding increase; ways to limit government responsibility, such as "an obligation to take out travel insurance, register with Smartraveller and, where appropriate, pay for consular services"; and ways to inform travellers through new media. At page 28, outlines the exceptional rise in consular demand (e.g. 221% rise in cases over 10 years, with staff constant).

***Report of the Comptroller General of the United States: An Assessment of Selected US Embassy - Consular Efforts to Assist and Protect Americans Overseas During Crises and Emergencies*, December 4, 197**

***U.K. Government Response to the NAO Review of the Experience of UK Nationals Affected by the Indian Ocean Tsunami, Department of Culture, Media, and Sport, Foreign and Commonwealth Office, July 200***

**Thailand, “Protection of Thai Nationals” (online: [link](#))**

Thailand is proactive in protecting its nationals overseas. This includes “preventive” measure “using multimedia to forewarn Thai public and potential victims of the consequences of going abroad illegally as follows,” including: TV documentaries, regular radio warnings, newspaper warnings, MFA website ([www.mfa.go.th](http://www.mfa.go.th)), and leaflets/brochures for 60 countries.

**Alison Specht, “Natural Disaster Management,” in *Tourism in Turbulent Times* (Amsterdam: Elsevier, 2006).**

The attractiveness of high-risk, exotic destinations has exposed tourists to greater risk. “Adventure tourism” adds to this exposure. Specht discusses the unique features of tourism disaster management. She notes that that active participation of the tourism industry in regional planning and disaster management teams would ensure their needs are understood, and writes that a strong, effective, regional tourism industry body can be an insurance industry in itself.

**Jeff Roach and Ian Kemish, “Bali Bombings: A Whole of Government Approach,” in *Tourism in Turbulent Times* (Amsterdam: Elsevier, 2006).**

“Under the Australian constitution, each state and territory government retains responsibility for the protection of the lives and property of their citizens.” No legislation requires Australia to act in emergencies, but it has always accepted a responsibility to assist states and territories where their resources are insufficient. The article outlines Australia’s crisis response architecture, including an interagency emergency taskforce with DFAT at its centre.

**David Beirman, “A Travel Industry Perspective on Government Travel Advisories,” in *Tourism in Turbulent Times* (Amsterdam: Elsevier, 2006).**

Prior to 9/11, travel advisories were not very significant except in Japan and US. Sudden and widespread prominence post-9/11 had consequences: diplomatic (countries objected to warnings), market and media (shifts in demand for tourism destinations), industry and travel insurance (travel industry associations felt alienated from the determination of government advisories). Eventually the World Tourism Organization, the Pacific Asia Travel Association and others sought to convince governments to consult them. This chapter discusses various concerns of the travel industry (e.g. perceived inequality in risk assessment) and concludes with a discussion of Australia’s Charter for Safe Travel, a collaboration between DFAT and the travel industry (see *Third-Party Partnerships*).



### **E) Medical Tourism and Retirement Abroad**

**DFAIT, “Consular Services: Medical” (online: [link](#))**

**Simon Fraser University, Medical Tourism Research Group (online: [link](#))**

An interdisciplinary research group that focuses on understanding motivations and experiences of Canadians utilizing medical tourism.

Includes the following reports: Barbados' Medical Tourism Sector; Outbound Medical Tourism from Mongolia; Ethical Concerns about Canadian Patients' Involvement in Medical Tourism; Canadian Medical Tourism Facilitators' Business Practices; Canadian Family Doctors' Roles and Responsibilities Towards Outbound Medical Tourists; Health and Safety Risks in Outbound Medical Tourism by Canadian Patients; Canadian Patients' Decision-Making in Medical Tourism

**DFAIT, “Retiring Abroad: Seeing the Sunsets” (online: [link](#))**

A comprehensive booklet providing information for Canadians looking to retire abroad. Covers information including issues of taxation, healthcare, and consular services.

**MacPherson, D.W., Gushulak, B. and Sandu, J. “Death and International Travel - The Canadian Experience: 1996 to 2004” *Journal of Travel Medicine* 14(2) (2007): 77-84 (online: [link](#))**

The authors look at reported deaths during international travel by analyzing data collected by the Consular Management and Operations System used by the Consular Affairs Bureau, Foreign Affairs Canada to track Canadian deaths abroad notifications. It concludes that natural causes and suicide deaths may be anticipated or planned to occur abroad and consular service may be able to provide various types of support.

**Jill R. Hodges, Leigh Turner, & Ann Marie Kimball (eds), *Risks and Challenges in Medical Tourism : understanding the global market for health services* (Santa Barbara, California: Praeger, 2012).**

**Marcia C Inhorn, Zeynep B Gürtin, “Cross-border reproductive care: a future research agenda,” *Reproductive BioMedicine Online* (2011) 23, 665–676**

Literature review: although some empirical base emerging, “insights remain partial and fragmentary.” 24,000-30,000 cycles of CBRC in Europe per year. Need for “better estimates of the numbers of patients partaking in CBRC, details of their origins and destinations, and explanations of their reasons and motivations for travelling” (668). Organization of CBRC: ranges from “independent travel and self-referrals at one end of the spectrum to intricately connected shared-care arrangements.” Also need to investigate CBRC outside Europe and North

America. Also calls for legal studies of relevant laws/regulations on parentage and birth certificates in cases of “commercial surrogacy.”

**Marcia Inhorn, “Diasporic dreaming: return reproductive tourism to the Middle East,” *Reproductive BioMedicine Online* (2011) 23, 582– 591**

Documents reasons for Middle East diaspora returning to Egypt, Lebanon, United Arab Emirates and Arab America for reproductive services.

**Jiyun Yu, Timothy Jeonglyeol Lee and Hojeong Noh, “Characteristics of a Medical Tourism Industry: The Case of South Korea,” *Journal of Travel & Tourism Marketing*, 28:856–872, 2011**

Looks at Korean medical tourism sector as a case study, analyzes 252 articles posted to Korean Tourism Organization and the Korean International Medical Association. Articulates key developmental features of the industry, suggesting ways to replicate elsewhere. Legal framework in Korea, legally mandated to attract foreign patients, etc.

**Lorraine Culley et al, ““What are you going to do, confiscate their passports?” Professional perspectives on cross-border reproductive travel,” *Journal of Reproductive and Infant Psychology* (2013) Vol. 31, No. 1, 46–57**

Number of British engaged in reproductive tourism increasing, many studies criticize it as problematic. This study is qualitative review of the attitudes of people involved (patients and doctors). Results: tension between patient “choice” (especially in light of limited UK public funds) and patient risk (especially in less well-regulated jurisdictions; possibility that better information in the UK would lessen risk). International harmonisation of law on assisted reproduction would reduce incentives to travel, but this seems unlikely; further, if laws prohibiting reproductive tourism implemented, how would they be policed?

**Neil T. Lunt, Russell Mannion and Mark Exworthy, “A Framework for Exploring the Policy Implications of UK Medical Tourism and International Patient Flows,” *Social Policy & Administration* Vol. 47, No. 1, February 2013, pp. 1–25**

An estimated 50,000 UK individuals fund treatment abroad each year, including “cosmetic and dental surgery; cardio, orthopaedic and bariatric surgery; IVF treatment; and organ and tissue transplantation.” Also inward medical tourism. Denotes “commercialization, commodification and internationalization of health care” imposing new challenges. Theme that medical tourism is a new phenomenon requiring new thinking about health policy and health care delivery.

**Dan Jerker B. Svantesson, “From the Airport to the Surgery to the Courtroom – Private International Law and Medical Tourism,” *Commonwealth Law Bulletin* Vol. 34, No. 2, 265–276, June 2008**

“When people wish to take legal action in relation to damage suffered due to medical procedures carried out overseas, they are faced with complex issues. First, in which country can they sue? Second, which country’s laws will govern the dispute? And third, where can a potential favourable judgment be enforced?” Examines private international law issues in the context of medical tourism, focusing on Australian national seeking damages for harm committed overseas.

Background: Thailand, India and Singapore are well-established providers – e.g. in 2005, 374,000 people visited Singapore for medical treatment; industry worth billions in India. Low cost: heart bypass \$159,000 in US vs. \$9,500 in India. Other reasons: delays and lack of coverage at home.

Predicts an increase in lawsuits in this area. In many cases, Australian victims will be able to sue in Australian law, either in contract, tort or under Fair Trade Acts. Where foreign medical provider “attracts” business (e.g. by promoting in Australia), it opens up jurisdiction. Suggests that the only way forward is “international cooperation leading to an international framework,” perhaps under WHO rubric. Author says the WHO’s Framework Convention on Tobacco Control and the International Health Regulations “are both important precedents for the type of international framework required.”

**Center for Disease Control, “Medical Tourism,”** <http://www.cdc.gov/Features/MedicalTourism/>

Estimated 750,000 Americans seek care abroad each year. General information page on risks and precautions when seeking care abroad. Includes links to Guidances from professional organizations: American Medical Association ([link](#)), American Society of Plastic Surgeons ([link](#)) and others.

Cites stories of US insurance providers cutting costs by sending patients overseas for treatment ([link](#)) and another saying insurance companies generally not paying for medical tourism trips ([link](#)). Medical tourism companies rely on the US-based Joint Commission International to identify safe hospitals overseas; belief that JCI accreditation will avoid lawsuits from injured patients. Even so, some insurance providers have signed with overseas hospitals.

MarketnReports: medical tourism industry to cross \$100 billion mark in near future: [link](#)

**Deloitte, Medical Tourism: Consumers in Search of Value, 2008** ([link](#))

Predicts massive growth in outbound medical tourism from US, increasingly likely as organizations such as the Joint Commission International assure quality. Extensive list of US health institutions with international partners, and other international providers (e.g. Thailand, India, Brazil, Singapore, Costa Rica, UAE, Philippines). There is also inbound medical tourism, patients seeking specialist care only available in the US.

See 2009 update: continued projected growth, certain US insurance provider partnerships with health providers in India, Mexico, Thailand: [link](#). (*Note: the literature appears to have climaxed in 2008-09, then diminished, at least for now.*)

**Glenn Cohen, “Protecting Patients with Passports: Medical Tourism and the Patient-Protective Argument,” 95 Iowa Law Review [2010] ([link](#))**

Addresses legal issues in the “dark side” of medical tourism, including uninsured and underinsured Americans seeking treatment and “insurer-prompted medical tourism” (i.e. insurance providers using overseas tourism). Argues against prohibition, in favour of reformed regulation, including expanding insurance vicarious liability or altering civil procedure doctrines.

**WHO, Guiding Principles on Human Organ Transplantation, (online: [link](#))**

“[I]ntended to provide an orderly, ethical, and acceptable framework for regulating the acquisition and transplantation of human organs for therapeutic purposes.”

**Patient Mobility in the European Union: Learning from Experience, European Observatory on Health Systems and Policies, WHO, 2006**

Includes sections on cross-border care in the south (Slovenia, Austria and Italy), the north (Estonia, Finland and Latvia), Ireland; the needs of retirees in Spain

Also a number of sections on cross-border collaboration: Cross-border contracted care in Belgian hospitals; Sharing Capacities between Malta and the UK; Cross-border contracting in Germany; Hospital cooperation across French borders

**Sub-theme: tourism in general**

**Benjamin Perrin, "Taking a Vacation from the Law? Extraterritorial Criminal Jurisdiction and Section 7(4.1) of the Criminal Code", 13 Cdn Crim. Law Review 175, June 2009**

This piece looks at the legal and policing aspects of extraterritorial jurisdiction under Canadian and international law. The slim consular connection is the mention (page 190) of the role of consular staff taking voluntary statements from people with information on child sex tourism. No suggestion of any greater duty or responsibility in law or ethically in cases of child sex tourism.

**Salvador Gil-Pareja et al, “The impact of embassies and consulates on tourism,” *Tourism Management* 28 (2007) 355-360**

Aim of paper is to “analyse the impact of embassies and consulates on tourist flows from the G-7 countries.” Concludes that “after controlling for origin and destination fixed effects, these foreign

missions increase tourist flows by a percentage close to 30%” (even higher for developing countries: 42%). The effect of the first mission is clearly larger than that of subsequent missions.

**Mercedes Ines Silva, *Seminar Presentation: Hygiene and Safety Standards Required by European Tour Operators*, Caribbean Tourism Organization Conference, Barbados, 2001**

The European Commission Package Travel Directive (1990) has brought about considerable pressure to raise hygiene and safety standards for tourism services among CTO members. Successful litigation, particularly in Britain, and growing consumer activism are at the root of the pressures for higher standards. New requirements include greater precautions as to fire safety, higher balcony heights, narrower space between balcony slats, swimming pool safety, and kitchen/bar sanitation. Consolidation in the European tour operator industry means fewer players are exercising greater influence over market destinations. EU operators are sending professional inspectors authorized to negotiate action lists, with timetables and performance indicators; and failure to meet the standards means loss of business.

These requirements are being met within the industry but the public sector has not shown the same commitment. Governments must do more to improve public services (roadways, sidewalks, sanitation services, air/water quality, etc.) and keep improving national regulations covering building codes, food handling, power generation, service and delivery.

**London Economics, *Study on Consumer Detriment in the Area of Dynamic Packages: Final Report to the European Commission*, Health and Consumers Directorate General, European Commission, 2009**

The increasing trend for travellers to put together their own tour packages ("dynamic packages") led the Commission to study the implications for the EC Package Travel Directive, in particular, whether the consumer protection intended under the Directive was being undermined by declining use of traditional single-source operators and dispersal of service providers in various jurisdictions, including outside the EU.

The study conducted a poll of 49,000 travellers from 17 EU countries. The results indicated that 23% had used "dynamic packages"; of those, 67% believed that full consumer protection applied. Dynamic package users encountered more than twice as many problems (8.2% versus 3.1% with traditional packages). Difficulties arose from incomplete or incorrect information, transportation delays and cancellations, and non-provision of services. The net cost to consumers was £1,005 million after compensation. The study had difficulty identifying structural consequences of dynamic packages upon the entire travel industry. However, it was clear that consumers were uninformed about the lower levels of protection available to them with dynamic packages: consumers were over-valuing the benefits (savings) of making their own arrangements and underestimating the financial risks and consequences. More work was required to determine how to protect EU consumers in a changing travel marketplace.

**Jeff Wilks, Donna Pendergast and Peter Leggat, eds, *Tourism in Turbulent Times: Towards Safe Experiences for Visitors* (Amsterdam: Elsevier, 2006).**

David Grant, Stephen Mason, Malcolm Kahn and Rob Davis, “Current Issues in Travel and Tourism Law” – Authors survey applicable law following hurricanes, food poisoning, deep-vein thrombosis and terrorism, including discussion of the EU Package Travel Directive and litigation issues: requirement of a duty of care, damages recoverable, viable defendant, jurisdiction issues.

Jeff Wilks and Henryk Handszuh, “The World Tourism Organization Safety and Security Program” – The WTO is the UN’s specialized agency entrusted with promotion and development of tourism. 145 country membership, and 300 Affiliate Members representing private sector, education, tourism association, and local authorities. Responds to requests for assistance from members. List of activities since 1989 at page 234.

Jeff Wilks and Faisal Al-Mubarak, “Developing Tourism Safety and Security in the Kingdom of Saudi Arabia” -- Discusses Saudi Arabia’s Sustainable Tourism Development Plan under the Supreme Commission of Tourism, focusing on health and safety measures. Notes that over time, tourism can share information with counterterrorism efforts by sharing routinely collected database information. Tourism can also take a lead role in safety through licensing, regulation and accreditation of operators.

Michael Yates, “Project Phoenix: A Benchmark for Reputation Management in Travel and Tourism” -- Founded in 1951, PATA is the Asian Pacific region’s leading travel-trade association, providing “leadership and advocacy to the collective efforts of nearly 100 govt, state and city tourism bodies, more than 55 airlines and cruise lines, and hundreds of travel industry companies throughout the Asia Pacific.” This article outlines PATA’s response to the SARS crisis which was devastating for tourism. In discussing takeaways, Yates notes that “while global consumers are becoming more inured to security threats, they are still terrified of undiagnosed health threats.”

## **F) Diaspora Outreach Policies**

**Developing a Road Map for Engaging Diasporas in Development: A Handbook for Policymakers and Practitioners in Home and Host Countries, International Organization for Migration (IOM) and Migration Policy Institute (MPI), 2012 (online: [link](#))**

This is a comprehensive report intended as a guide for policy and practitioners, providing a synthesis and analysis of the results of governments' efforts to engage their diasporas. It selects policy options and highlights good practices, challenges, lessons learned and promising cases, in both origin and host countries. Research includes a survey answered by 62 national governments. The following highlights the role of consular throughout:

Active consular networks help build trust. "Few governments have taken the task of gaining the trust of a diaspora as seriously as the government of Mexico." Starting 1990s, invested in communication with intention of servicing diaspora; in 2002, dense network of over 56 consular offices in North America. "Tres por Uno (3x1) program" matches contributions of migrant orgs to infrastructure projects in communities of origin; thousands funded. (30)

Examples of separate diaspora-serving institutions: Institute for Mexicans Abroad (IME), Ministry of Overseas Indian Affairs (MOIA), Ministry for Malians Abroad and African Integration.

Section on consular networks: "Consulates remain the most important interlocutors for diaspora populations. A 2004 survey of International Organization for Migration (IOM) member governments revealed that 76 percent had consular services interacting with citizens abroad. Consulates are in a unique position to gauge diaspora needs and partner with other actors in the private and public realm. They can play a key role both for countries with well-established diaspora policies, where consulates are given special recognition and resources, as well as those with frail policies, where consulates seem the sole link to diaspora populations."

Many governments have expanded diplomatic presence in locations with high diaspora pops: e.g. beginning in 2000, Mexico established new consulates in US (50 in mid-2009); Philippines opened four posts since 2009 to reflect increasing diaspora in Ireland, Syria and China. Composition of staff also evolves: each Ethiopian embassy has a diplomat assigned to expat issues; 70-75 IME representatives at Mexican consulates in the US are tasked with implementing IME programs; many Philippines consulates have welfare and labour attachés.

Public-private initiatives: "Colombian consulates abroad work closely with about 800 migrant associations dubbed by the government as "multipliers" since they effectively relay information on consular activities to members of their communities as well as revert back with the needs of those communities." Mexico partners extensively with local organizations to engage with diaspora in the US: includes language training, health promotion, financial education, and remittances. (47)

Partnerships among governments: Cites examples of developed countries supporting homeland-development initiatives of resident diasporas: e.g. DFID (UK) 3 million pound program in 2008 with VSO, to support diasporas to volunteer in their home countries. “Codevelopment” (French policy of 1990s) is “back in vogue”; Italy, Spain and France have initiated plans to support codevelopment projects: e.g. France-Mali \$4.8 million codevelopment project. (48)

List of countries with subministry-level diaspora institutions: page 77.

Various services provided at consulates: Mexican network of 50 consulates in US focuses on “assisting and advising Mexicans on US laws and their legal rights.” (84) Consulates of Guatemala, El Salvador, Honduras, Colombia, Ecuador, and Peru participate in Mexico’s Binational Health Week program in the US. Community houses: e.g. Ecuador Houses at embassies in London, Madrid, Caracas and Santiago, or Israeli consulates/embassies in LA, New York and Paris host activities; Israeli consulate in LA created online networking site (Citizen Ambassador). (85)

Assistance in difficult situations: Embassy of Dominican Republic in the US provides counselling and information about deportations to prisoners and relatives. In the UAE, the Indian Embassy offers a hotline for “women and housemaids in distress”; Philippines consulate in UAE “maintains a safe house for migrants who escape abusive employers.” Philippines consulate in South Korea assists in disputes, e.g. mediates marital disputes. (86)

Extensive list of services provided at various consulates regarding links to homeland: news, educational info, business opportunities, diaspora bonds (Ethiopia recently joined India and Israel). (87)

Quasi-government institutions: 8 countries in the survey established such institutions, useful where countries do not want to appear to meddle in host state affairs: Foundations (Morocco’s Hassan II Foundation for Moroccans Residing Abroad, closely tied to Ministry), Advisory Councils mixing community leaders and government officials (e.g. Mali’s High Council of Malians Abroad serves as official representative of diaspora; Consultative Council of Mexico’s IME combines community leaders and government representatives) and others in Dominican Republic, Israel, Malta, Peru, Republic of Korea. Concludes that government-financed councils can be an effective conduit of information and feedback between governments and diasporas. (90)

Consular identification cards: Increasingly popular in recent years, some US financial institutions have even begun recognizing them as official ID. List of countries on page 119: Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Guinea, Mali, Mexico, Nigeria, Pakistan, Peru, Senegal.

Final section enumerates 6 focus areas for diaspora engagement: (1) remittances, (2) direct investment, (3) transfer of human capital, (4) philanthropic contributions, (5) capital market investments, (6) diaspora tourism.



**Carlos Gonz  les Guti  rrez, “Decentralized Diplomacy: The role of Consular Offices in Mexico’s Relations with its Diaspora” in Rodolfo O. de la Garza & Jesus Velasco (eds), *Bridging the Border: Transforming Mexico - US Relations* (Lanham, Maryland: Rowman & Littlefield Publishing, 1997), 50.**

As Mexico’s relationship with the US changed through the nineties, the principle of nonintervention became a barrier to effective utilization of their extensive consulate network. Mexico had to reframe its approach to advocacy, and to service provision for the growing Mexican diaspora. The emphasis shifted from consular protection of Mexican expats’ human rights, to fostering a long-term relationship with the Mexican diaspora via cultural, sports, health, business, and community programs.

**Laureen Laglaron, *Protection through Integration: The Mexican Government’s Efforts to Aid Migrants in the United States*, Migration Policy Institute, January 2010 (online: [link](#))**

Mexico provides an expanding array of services to its diaspora – 95% of whom live in the US. The broad institutional structure, the Institute for Mexicans Abroad (IME) provides “an array of civic, health, education, and financial services,” such as collaborations with US school districts, hospitals, universities, foundations; fills gaps in social services. Also: “Establishment of in-consulate medical stations... where unauthorized immigrants and their families can receive basic medical information.” Shift from limited engagement with diaspora to the creation of an institution cultivating relationships with diaspora. Evolution of consular offices as they become important service delivery sites and coordinating entities for immigrant integration. Shift also coincides with an increase in Mexican immigrants to US, and expansion of Mexican consular offices in the last decade to meet their needs.

**Metka Hercog & Katie Kuschminder, “The Power of the Strong State: A Comparative Analysis of the Diaspora Engagement Strategies of India and Ethiopia,” UNU-MERIT Working Paper, 2011 (online: [link](#))**

Countries increasingly looking for strategies where “human capital of expatriates can be used for the benefit of the home country’s socioeconomic development.” India is viewed as a model. Its Ministry of Overseas Indian Affairs engages in 3 areas: general engagement, facilitation of trade and investment, and protection of migrants’ rights abroad. Many specific agencies through this Ministry: Global Advisory Council (PM’s office), India Development Foundation of Overseas Indians (coordinates philanthropy from diaspora), and Global Indian Network of Knowledge (communications interface). Engagement coordinated through Overseas India Centres (OIC) in Washington, Kuala Lumpur and Abu Dhabi; these offices network, organize events, “provide consular services to the diaspora at a more sophisticated level than [...] the embassies.” Ethiopia modelled its Expatriate Affairs General Directorate after India’s, but it is sub-ministerial, less important. Its service desks for Diaspora Services at 13 embassies (including in Ottawa) engages the diaspora in specific contexts: host events, share information on trade/investment, rights.

Trade/investment: Overseas Indian Facilitation Centre is dedicated only to Indian diaspora investment; Ethiopia has a similar agency, but less effective.

Protection of workers: India's Emigration Policy Division (est. 2006) deals with leg reforms. Indian Council of Overseas Employment has mandate to serve as govt think tank. India has established 42 "on site" welfare services for emigrants. India's Overseas Workers Resource Centre complements the service. Ethiopian equivalent is meant to serve a similar role.

Policies extending rights: Overseas Citizenship of India (OCI) is not citizenship, but extends extensive rights up to 4th generation Indian emigrants. The Protector General of Emigration is charged with protection Indian rights; certain workers require their employment agreement to be "attested by the Indian Diaspora," various requirements. Progressive step similar to the Philippines in protecting emigrant worker rights. India has also signed bilateral agreements on worker rights and social security. Ethiopia emulated India's policy. India and Ethiopia have both issued Diaspora Bonds, originated by Israel in 1950s.

**Constantino Xavier, "Experimenting with Diasporic Incorporation: The Overseas Citizenship of India," *Nationalism and Ethnic Politics* 17.1 (2011)**

Emergence of "Overseas Citizenship of India" as response to activist demands of diaspora, reconciling domestic opposition to citizenship expansion.

**Kishan S. Rana, "India's Diaspora Diplomacy," *The Hague Journal of Diplomacy* 4 (2009) 361-372**

Indian diaspora estimated at 20 million, second only to China's 30 million. \$43.8 billion remittances in 2008.

Lesson learned by India: the need for the host country to factor the Indian diaspora into its relationship with India, and for India to strive diplomatically to prevent situations that result in the diaspora's isolation - i.e. Burma, Uganda and Fiji.

Indian workers overseas: India evacuated 172,000 workers from Kuwait in 91-92.

Evolution of govt institutions at page 366, culminating in Ministry of Overseas Indian Affairs in 2004.

**Piyasiri Wickramasekara, *Something is Better than Nothing Enhancing the protection of Indian migrant workers through Bilateral Agreements and Memoranda of Understanding*, Migrant Forum in Asia, February 2012 (online: [link](#))**

Discusses India's "impressive record recently in negotiating bilateral Memoranda of Understanding (MOUs) and Memoranda of Agreement (MOAs) on emigration of Indian workers, and social security agreements for Indian workers with a number of destination countries." Reviews MOUs and MOAs on migration of Indian workers with Gulf Cooperation Council (GCC) states, Jordan and Malaysia. Findings: no evidence that MOUs and MOAs have improved governance and protection of low-skilled Indian workers. Not surprising, because: only general

provisions in the agreements; no publicity or awareness; the Joint Commissions are non-functional or non-existent; lack of enforcement and monitoring mechanisms; and other reasons. Abuse of low-skilled Asian migrant workers continues. However, the author concludes India is better off with the MOUs; foundation for more concerted actions.

**Aniceto Orbeta Jr., Michael Abrigo and Michael Cabalfin, Institutions Serving Philippine International Labor Migrants, Discussion Paper Series No. 2009-31, Philippine Institute for Development Studies, November 2009 (online: [link](#))**

Discussion of public and private institutions established over 30 years in the Philippines to promote, manage and protect migrant workers. Institutions address all aspects of outward migration, including pre-deployment, deployment, on-site services, and eventual return. Suggests that the Philippines is a model for other countries with large working diasporas; e.g. “the sophistication of the regulatory framework is worthy of emulation.”

**Philippine Overseas Employment Agency (<http://www.poea.gov.ph/html/aboutus.html>)**

Serves 3,000 to 5,000 clients daily. Mandate to promote and develop overseas employment program, protect the rights of migrant workers, regulate private sector recruitment, secure the best terms of employment. Website includes extensive info on their activities. Est. 1982.

Commission on Filipinos Overseas (CFO) (est. 1980) responsible for promoting and upholding the interest of Filipino emigrants and Filipino permanent residents in other countries, and for preserving and strengthening ties with Filipino communities outside the Philippines.

**Philippines: much more information on overseas workers in Annex II (especially labour agreements)**

**Thailand, “Protection of Thai Nationals” (online: [link](#))**

Thailand’s MFA objectives include “Promotion and Protection of Thai Workers Abroad (including providing information on labour market, etc.; protection of the rights and interests of Thai workers according to local laws; assisting stranded workers home); Providing Assistance to Thai Fishing or Commercial Vessels as well as Their Crews; other objectives concern crises and “Thai Nationals in Distress.”

**Excellent bibliography on English-language sources on Chinese consular protection:**

**[http://en.cnki.com.cn/Article\\_en/CJFDTOTAL-GDWY200905013.htm](http://en.cnki.com.cn/Article_en/CJFDTOTAL-GDWY200905013.htm)**

From the abstracts:

LIAO Xiao-jian, “Security of Overseas Chinese Citizens and Consul Protection”: addresses security concerns in light of rising numbers of Chinese abroad; China has introduced mechanisms

of emergency, consultation, coordination and early warning; challenges include insufficient consular personnel and inefficient early warning.

FANG Wei, "On Security and Consular Protection of Chinese Citizens in Africa": accidents and attacks on Chinese citizens in Africa have increased. China second only to the US in accidents among overseas citizens. Abstract asks what precautionary measures can be taken, how can consular protection be improved, but no answers.

Xia Liping, "The Cause for Institutional Changes in the Protection of the Security of Overseas Chinese Citizens by the Chinese Government" (2009): summarizes measures taken to protect Chinese citizens and firms abroad, and explains causes for changes.

**Xia Liping, "China's Consular Service Reform and Changes in Diplomacy," in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

See *Institutions* section: interesting institutional arrangements protecting citizens and businesses overseas, including involvement of Chinese cities and regions.

**Beatriz Padilla, "Engagement Policies and Practices: Expanding the Citizenship of the Brazilian Diaspora," *International Migration* 49.3 (2011) ([link](#))**

Brazil recently taking an interest in its diaspora. 2009 Brazilian Foreign Ministry report: 3,040,993 Brazilians live abroad, distributed unevenly around the globe. New policies to allow Brazilians to exercise their citizenship abroad: intensified consular services and protections, increased policy-making, agreements with US, Mexico, Portugal, Spain. Consular: Brazil "increased its activities in relation to Brazilians living abroad significantly in the last 15 years by providing more services through the consulates, organizing frequent "itinerating consulate" meetings that bring the consulate to the people (outreach), appointing citizens bureaus where needed, opening new Embassies/Consulates to reach more people and "businesses", and creating a specific body within the Itamaraty (Ministry of External Relations)." Other ministries involved: Ministry of Labour "Letter of rights, duties and risks" for departing Brazilians.

"Recent research has indicated that there is a growing regional importance of engagement policies among Latin American states... Policies used to be centred around migrant communities settled in the United States; however, with the increasing diversification of Latin American migration flows to other regions (mainly Europe), state policies have also diversified."

**Rachel Briggs, *Doing Business in a Dangerous World: Corporate Personnel Security in Emerging Markets*, The Foreign Policy Centre, London (July 2003), [www.fpc.org.uk](http://www.fpc.org.uk)**

The article looks at seven large British MNC's to assess corporate policies and attitudes toward protection of employees across world-wide operations. She finds a legal vacuum leading to confusion about corporate duty of care. She notes problems working with the FCO, citing criticism that travel advisories are for general use, not to meet the special needs of the business

community. Accessing high-cost specialized guidance puts SME's at a disadvantage, raising risks to small companies and staff in dangerous environments. The FCO should adopt a government-business security partnership akin to the U.S. State Department's Overseas Security Advisory Council which constitutes a sound model to share information and best practices to protect staff and dependents around the world.

## **IV. Government Documents**

**RAND Europe, International Review of Consular Services, prepared for the National Audit Office (UK). 2005. (Available online: [link](#))**

Commissioned as a part of a British review of consular services provided to British citizens, this report enumerates services provided by Australia, Germany, France, the United States, the Netherlands, and the United Kingdom. It outlines how each of these countries provides services to its citizens under a range of issue areas, including distressed citizens, major crises, and travel advice.

**Australia DFAT, Annual Report: Program 2.1: Consular services (online: [2009-10](#), [2010-11](#), [2011-12](#))**

**Australian Consular Operations Handbook, 2011 (online: [link](#)).**

**UK Foreign and Commonwealth Office, “Delivering Change Together: The Consular Strategy 2007-2011” (London: FCO, 2007) (online: [link](#))**

**UK Foreign and Commonwealth Office, “Putting People First: Consular Strategy 2010-2013” (London: FCO, 2010) (online: [link](#))**

**UK Foreign and Commonwealth Office, Consular Services Annual Report 2008-09: [link](#)**

**U.S. Department of State: Foreign Affairs Manual - Chapter 7 Consular Affairs**

**Canada DFAIT, Consular Services Delivery Framework (online: [link](#))**

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## **Annex II: International Consular Agreements**

**A survey of bilateral and multilateral cooperation**

George Haynal, Michael Welsh, Louis Century & Sean Tyler

27 March 2013

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## **Introduction**

The purpose of this document is to provide a snapshot of contemporary bilateral, plurilateral and multilateral consular agreements. Building on the literature review undertaken to identify recent trends in the consular function, this survey of international agreements speaks to how states have (and have not) been cooperating in response to rising demand for consular services. Primarily English-language sources, and material available through university library and Internet searches comprised the bulk of our materials. For consolidated analysis of these findings, see our attached paper, *The Consular Function in the 21st Century*.

Recent intergovernmental consular agreements are focussed on practical cooperation to share service delivery, address specific needs (e.g. social security regimes for overseas workers), and promote informal resolution of consular disputes. Topics of significant intergovernmental interest include collective initiatives for common consular services outside the region, cooperation on natural disaster preparation and emergency response, international health protection for travellers, promotion of international private law regimes on child abduction and family disputes, and worker protection agreements. On a national basis, some governments are engaged in diaspora outreach. While not strictly intergovernmental, diaspora policies indirectly engage host governments with potential benefits in the form of two-way trade and investment and occasionally disputes.

This paper is structured in three parts. Part I, Consular Agreements, sets out the legal and historical context for consular agreements and provides specific examples of states sharing consular services. Part II, Regional Cooperation, catalogues regional efforts to collaborate on consular issues underway in the Americas, Southeast Asia, and Europe. Part III, Issue-Specific Agreements, discusses areas where consular cooperation has solidified around problematic issues such as arrest and notification, child abduction, overseas workers, transfer of offenders, and medical tourism. The Consolidated Findings section is a condensed version of this document, including page references.

## **Consolidated Findings**

### **I. Consular Agreements**

- **General Discussion** – Okano-Heijmans (2011) discusses the general rise of multilateral accords on minimum consular assistance starting in the 1990s. The goal is cooperation, but there are fears about (1) quality of service, (2) basic values and norms, and (3) language & cultural barriers. “Citizens in distress” expect assistance and accountability from their governments, and under to the VCCR, consular affairs are national. However, consular cooperation is emerging particularly in the EU, which now upholds the right to consular assistance from any EU member state where one’s own state is not represented. Okano-Heijmans says the European experience shows the limits and opportunities of consular cooperation. Spencer (2005) writes that government

management of consular crises depends on the “thickness” of bilateral relationships, and makes recommendations for Canadian consular services.

- **Joint Appointment** (6) – VCCR Art 18: “Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.” This may be specified in statute (e.g. Kazakhstan, Estonia). VCCR Art 73(2) contemplates “international agreements confirming or supplementing or extending or amplifying the provisions thereof.”
- **Protection of Third State Nationals** (7) – Absent joint appointment, a consul may sometimes act for nationals of third states (VCCR Art 8). Examples from *Consular Law and Practice*: US for German nationals (1948-50); 1911 treaty between Bolivia, Colombia, Ecuador, Peru and Venezuela; in 1950s, Jordan for Libya, Lebanon for Ghana, Iraq for Pakistan; later, UK for Canada. The US distinguishes between “exercise of informal good offices” and the “assumption of a more formal relationship of interest.”
- **Protection by an “Interests Section”** (8) – Iranian interests section in Algerian Embassy in DC; Cuban in Czech, then Swiss Embassy in DC; UK in Swedish Embassy in Iran; US in Swiss Embassies in Iran and Cuba.
- **Sharing of Consular Services: Commonwealth** (8) – Sharing of consular services is common among Commonwealth states. The UK carries out consular functions for other states. Examples include: UK consular services for Ghana, Canada, Sri Lanka; Australia for Papua New Guinea, New Zealand; Dominica-Belize agreement. More detail is provided on the Canada-Australia agreement, and the recent Canada-UK MoU (including criticism from the Centre for European Policy Studies, which says it undermined European consular cooperation). Note also the activities of the “Group of Five” English-speaking countries, expanded to include Japan, the Netherlands and others (Okano-Heijmans 2011).
- **Sharing of Consular Services: Non-Commonwealth** (9) – Examples from *Consular Law and Practice* include: communal consular office in Oaxaca, Mexico (Can, France, Germany, Italy, Spain, US); Brazil-Portugal treaty (1990), including literature on Brazil’s engagement policy; Spain for Lithuania; Norway-Sweden sharing of services. The EU coordinates consular efforts to assist EU nationals in emergencies and shares services for routine consular assistance; see *Regional Cooperation* section for more on the EU and Article 23’s right to consular assistance. Other cases include: French-German “colocalisation” in Malawi, and plans for Mozambique, Bangladesh, Kuwait, Brazil; treaties on assistance in third party states between Brazil-Argentina, Brazil-Portugal and Argentina-Chile. Discussions between Thailand and Vietnam.
- **Select country information** (10) – This excludes information falling under other headings. China: very active in consular affairs, 41 bilateral agreements since 1979 (more under *Arrest & Detention*, below). Philippines: massive overseas employment, labour agreements with Taiwan, Korea, Bahrain, Japan and 4 Canadian provinces; \$21 billion remittances in 2012. UAE: high-level consultations with Saudi, Egypt, Iran and others. India: joint working group with Australia (2008), agreements with Pakistan & Belgium. Korea: cooperation with ASEAN, strategic

partnerships with India and Mexico, significant consular cooperation with Philippines, and expedited consular agreement with PRC.

## **II. Regional Cooperation**

- **Organization of American States (OAS)** (13) – The Annual Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas (REMJA) foster cooperation on justice, legal and judicial matters, including a recent initiative on family and child law. See also the OAS Committee on Juridical and Political Affairs. The Inter-American Commission on Human Rights publishes many worthwhile reports. The Inter-American Court of Human Rights has two relevant advisory opinions, on the right to information on consular assistance (1999) and the legal status and human rights of the child (2002). The 2012 Heads of Government Summit included a focus on planning and preparation for disaster prevention and response. Hanson (2012) cites two examples of US eDiplomacy partnerships: US-Mexico crisis management and Haiti earthquake response.
  - **ANDEAN** (15) – Members of the Andean Community (Peru, Ecuador, Bolivia, and Colombia) agreed in 2003 to establish the Andean Cooperation Mechanism on Consular Assistance and Protection and Migratory Matters, envisaging mutual representation in third countries, among other things.
- **Association of Southeast Asian States (ASEAN)** (15) – The 10 members of ASEAN are engaged in two broad areas of regional cooperation in consular affairs: First, the Directors General of Immigration Departments and Heads of Consular Affairs Divisions of Ministries of Foreign Affairs (DGICM) meet regularly on visa issues, migrant smuggling and transboundary criminal activity, however at the last meeting (Sept 2012) endorsed the commitment to provide emergency assistance to ASEAN nationals during crises in third countries. Australia is a ‘Dialogue Partner’. Second, the Disaster Management and Emergency Response Work Programme for 2010-2015 is the first legally binding Hyogi Framework of Action-related instrument in the world. Japan is a key partner in supporting regional investments in emergency response capacity and systems.
- **European Union (EU)** (16) – There is a wealth of literature on European citizenship and the right to consular assistance under Article 23 of the Treaty of the European Union. The memo includes a selection of articles, including Vigni (2010) on consular protection in EU law; Moraru (2011) on the non-discriminatory nature of Article 23; Fernandez (2011) on Europe as a model for collaborative consular agreements (focusing on visas); Vermeer-Kunzli (2011) on the ‘Lead State Concept’ and other forms of cooperation vis-à-vis international law; Duke (2009) on the case for the European External Action Service; Jones-Bos & van Dalen (2009) say the EEAS is unlikely to materialize; Forni (2012) reviews the EU track record in consular cooperation and breaks down crisis management into four stages; Wesseling & Boniface (2011) on trends in European consular services, including cases (e.g. Benelux countries in Morocco, France-Germany in Mozambique) and concerns about European cooperation (accountability; data protection; privacy). CARE (2010) thoroughly reviews the consular legal framework in each EU state. The

European Commission website outlines the consular rights of EU citizens, and recent Commission proposal for a European Council directive on consular protection provides detailed clarification of key issues including scope of Article 23 and Lead State model. Forni (2012) reviews the EU track record in consular cooperation and breaks down crisis management into four stages. Blockmans & Carrera (2012) criticize the UK-Canada MoU of 2012 for undermining EU cooperation.

- **Benelux and Baltic States** (20) – In December 2012, the Foreign Ministers of the Netherlands, Belgium, Luxembourg, Estonia, Latvia and Lithuania pledged to increase consular cooperation.
- **Nordic States** (20) – Norway, Sweden, Denmark, Finland and Iceland have cooperated formally in the consular field ever since the Nordic Passport Union of 1954. Excluding Iceland, Nordic countries provide the same general range and type of consular services.
- **MARRI States** (21) – In April 2010, member states of Southeastern Europe (Albania, Bosnia-Herzegovina, Macedonia, Montenegro, and Serbia) concluded an MoU covering mutual representation in third countries. The Consular Cooperation Network is an informal network based on this MoU.

### III. Issue-Specific Agreements

- **Notification and Arrest** (22) – Warren (2009) surveys 50 bilateral consular agreements post-VCCR, concluding that a clear majority (30/50) require notification within 3 days of detention; 90% require notification within 5 days; a majority (28/50) require access within 5 days or less; 82% require access within one week; and more recent agreements contain shorter timelines. Chinese bilateral treaties include noteworthy variations of Art 36 undertakings with respect to nationality, notification of detention, access, and language of communication. On nationality, the PRC-US agreement (1982) states that the passport of entry determines nationality (replicated for Canada in 1999 and Australia in 2000); however the PRC-Japan agreement extends consular rights to “a person who claims to be a national of the sending State, unless proved otherwise...” Australia’s agreement with Vietnam (2004) exhibits a different approach: anyone who holds a passport of the sending State shall be considered a national for consular purposes whatever passport was used in entering the country. The China-Canada agreement of 1999 is discussed.
- **Child Abduction** (23) – The *Hague Convention on the Civil Aspects of International Child Abduction* (89 states party) seeks to restore the situation that existed prior to removal, rather than settle custody disputes. Many state have refused to sign on, particularly Islamic countries because of a mutual skepticism between Islamic and Western legal systems (Duncan 2011). To address states unwilling to sign on to this and related Conventions, several bilateral agreements have been concluded between countries such as Australia, France, US and Canada, and Islamic states such as Egypt, Morocco, Tunisia and Algeria (list of treaties at hcch.net). States have also pursued working level interactions and discussions through the Malta Process and associated declarations.

- **Overseas Workers** (27) – The UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) is the most extensive description of the duties of a host state to their foreign nationals, in contrast to the VCCR which dealt principally with state-to-state obligations; however, Migration Citizenship Education notes the Convention “suffers from marked indifference from the international community” and only 40 countries have signed. Wickramasekara (2012) discusses India’s bilateral agreements and MOU’s with Gulf Cooperation Council states regarding worker rights, critiquing the effectiveness of their “joint commissions” but concluding they are a foundation for more concerted actions. The Philippines is seeking bilateral agreements protecting overseas workers; massive overseas employment, labour agreements with Taiwan, Korea, Bahrain, Japan and 4 Canadian provinces.
- **Transfer of Offenders** (28) – International architecture includes the Council of Europe’s Convention on the Transfer of Sentenced Persons, the Inter-American Convention on Serving Criminal Sentences Abroad, the UN Model Treaty on the Transfer of Supervision of Offenders, the Commonwealth Scheme for the Transfer of Offenders, and bilateral treaties, including several signed by Canada (with Argentina, Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Egypt, France, Mexico, Mongolia, Morocco, Peru, Thailand, Thailand (Exchange of notes), Venezuela, United States). Note that the *Divito* case challenging the Minister’s discretion to refuse transfer requests was heard by the Supreme Court of Canada on February 18, 2013, judgment reserved.
- **Medical Tourism** (29) – More information is available in *Memo #1*. The European Observatory on Health Systems and Policies (2006) reports on cross-border collaboration in Europe (e.g. contracted care in Belgian hospitals, sharing capacities between Malta and UK, cross-border contracting in Germany, and hospital collaboration across French borders). Svantesson (2008) surveys private international law in the context of medical tourism, advocating international cooperation leading to an international framework which would resolve liability issues.

## **I. Consular Agreements**

### **General Discussion**

**Maaïke Okano-Heijmans, "Change in Consular Assistance and the Emergence of Consular Diplomacy," chapter 1 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

Maaïke Okano-Heijmans writes that starting in the 1990s, in response to globalization and other changes, there emerged multilateral accords on minimum consular assistance, a kind of "preventative consular diplomacy." She cites examples of Scandinavian cooperation and the "Group of Five" English-speaking countries (both discussed below). Governments are reluctant about multilateral agreements because of domestic politics. "At the end of the day, citizens in distress expect and desire assistance from representatives of their own government and, if applicable, hold this institution accountable." The goal is cooperation, but there are fears about (1) quality of service, (2) basic values and norms, and (3) language & cultural barriers.

For Okano-Heijmans, the European experience shows the limits and opportunities of international cooperation. According to the VCCR, consular affairs are national, but the EU has developed various cooperation policies: 1967 European Convention on Consular Functions and its Protocols; 1992 Maastricht Treaty (creating EU citizenship, and Art 8(c) on right to consular protection from the authorities of any EU member state where a person's country is not represented); 1997 Treaty of Amsterdam (Art 20). The right to consular protection is now codified in Article 23 of the Treaty of the European Union. *See European Union, below, for discussion of Article 23 and Europe-wide cooperation.*

**Christina Spencer, "Bon Voyage, Bon Courage: Consular Crises and Bilateral Relations", M.A. Thesis, Norman Paterson School of International Affairs, Carleton University (2005)**

Christina Spencer argues that how government manages foreign affairs implications of consular crises can best be understood through the intensity of the bilateral relationship: a "thick" relationship with a wide set of connections and common interests can limit negative impacts while a "thin" relationship is more likely to see highly politicized responses and lingering effects across the entire relationship. The broad national interest would be well served by (a) better understanding by Canadians about their vulnerabilities and responsibilities overseas, the limits for government to protect them, and offsetting foreign policy considerations that come into play; (b) clarification of the dual national conundrum; (c) greater effort to "thicken" international relationships and expand consular coverage; and (d) more research on consular issues.

### **Joint Appointment**

**Luke T. Lee and John Quigley, *Consular Law and Practice*, 3rd ed (London: Oxford, 2008), p 55 [hereinafter *Consular Law and Practice*]**

VCCR Article 18: “Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.”

Some statutes specify that consuls may serve simultaneously as consul for another State (e.g. Kazakhstan’s *Consular Statute*, which requires a special order of the Ministry of Foreign Affairs; more examples below).

Article 73(2) of the VCCR gives explicit permission for bilateral agreements: “Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions thereof.”

### **Protection of Third State Nationals**

Absent joint appointment, a consul may sometimes act for nationals of third States – in war or emergency, or even in peacetime where joint appointment is not justified.

VCCR Article 8: “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.”

Examples of protecting third-state nationals (*Consular Law and Practice*, pages 55-58):

- In 1948-50, US Dept of State acted for German nationals.
- Sometimes provided for in treaties: *Accord entre la Bolivie, la Colombie, l’Equateur, le Pérou et le Venezuela relative aux attributions des consuls respectifs dans chacune des Républiques contractantes*, 18 July 1911.
- More examples with new states: in 1950s, consular services for Libya provided by Jordan in Spain, by Lebanon in France and Ghana, by Iraq in Iran and Pakistan, and by the UK in other countries.
- Australia arranged to provide consular services within Australia, including issuing visas, for Antigua and Barbuda, Belize, Commonwealth of Dominica, Gambia, Ghana and other countries.
- In States lacking a Canadian representative, UK consuls have extended emergency consular services to distressed Canadians, including: emergency British passports, advice/assistance, financial relief/repatriation...
- The US, in assisting nationals of other States, “distinguishes between the exercise of informal good offices and the assumption of a more formal representation of interest.” Procedure for requesting assistance through diplomatic channels. Actual protection not assumed by US consuls without Department authorization except in extreme emergencies.

### **Protection by an “Interests Section”**

When diplomatic relations are suspended, sending State may arrange for its nationals to be protected by an “interests section” by third state consulate:

- “Iranian interests section” in Algerian Embassy in DC
- “Cuban interests section” in Czech, then Swiss Embassy in DC
- “UK interests section” in Swedish Embassy in Iran (see UK Treaty Series No. 45 (1989)), until Britain reestablished diplomatic ties 18 months later
- “US interests section” in Swiss Embassies in Iran and Cuba

### **Sharing of Consular Services: Commonwealth**

Sharing of services is common among British Commonwealth States. The UK carries out consular functions for other Commonwealth States, particularly smaller ones. Examples in *Consular Law and Diplomacy*, page 59:

- Ghana, *Visa Instructions*, indicates that in the absence of a Ghanaian consulate, UK consuls are empowered to accept applications for visas to Ghana.
- Canada, *Manual 2007*, section 2.14.1, indicates that UK consular officers provide limited services to Canadian nationals in some locations at which there is no Canadian consulate (see details of 2012 UK-Canada MoU below).
- UK services for Sri Lankan nationals.
- In 1985, the Commonwealth recommended designating a “Consular Relations focal point” in the Commonwealth Secretariat, and a manual on consular relations in loose-leaf form. The manual was created in 1986; shows instances of consular cooperation:
  - 1975 Australia for Papua New Guinea
  - 1984 Australia issued visas for New Zealand in Argentina
- Dominican reciprocal agreements with Belize
- Canada-Australia Agreement concerning the Sharing of Consular Services (see pages 60-61 for agreement).

### **Canada-Australia Agreement concerning the Sharing of Consular Services**

Specifies liability for the purpose of the *Crown Liability Act* (Australian personnel acting for Canada under the MoU “shall be considered as acting as agents for the GoC”). Indemnification of damages incurred by other country acting on first country’s behalf. In a later memorandum, specification of consular services to be carried out (Exchange of Notes, in *Manual 2007*, s 9.1.1, Annex A-9). Continues the general trend of sharing services among the Commonwealth, not just



reliance on the UK; see list of Consular Areas and Responsible and Supervising Missions (Canada-Australia) in *Consular Law and Practice*, p 62-63.

## **Memorandum of Understanding between Canada and the UK to Enhance Mutual Support of Missions Abroad**

Government communique: [link](#)

Summary of goals: the MoU is “aimed at allowing the two countries to optimise their respective diplomatic resources by sharing embassy and consulate sites, the joint acquisition, supply and use of services, as well as collaboration on crisis response, consular services, security, diplomatic mail, information management and IT.”

Note the criticism of the agreement by the Centre for European Policy Studies, which finds it undermines European consular cooperation

Steven Blockmans and Sergio Carrera, *The UK-Canada Agreement on Mutual Support of Missions Abroad: Loyalty compromised?* Centre for European Policy Studies, 18 October 2012 (online: [link](#)); see *European Union*, below p 13.

## **“Group of Five” English-speaking countries (Aus, Can, NZ, UK, US)**

Group of Five undertake proactive efforts to improve framework for consular assistance, including regular consultation and also démarches to third-country governments, e.g. foreign government representation in contingency planning. Expanded to include Japan, Netherlands and others. (Maaïke Okano-Heijmans, “Change in Consular Assistance and the Emergence of Consular Diplomacy,” chapter 1 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011))

**Radziah Abdul Rahim, *The Changing Norms in Commonwealth Consular Relations: From Quasi to Formal Arrangements (1963-1972)*, Journal of International Studies, Vol. 5 2009**

## **Sharing of Consular Services: Non-Commonwealth**

*Consular Law and Practice* outlines a number of examples of sharing of consular services in non-Commonwealth countries:

- Communal consular office in Oaxaca, Mexico, by Canada, France, Germany, Italy, Spain and US.
- Estonia provides for arranging shared services in statute.
- Brazil and Portugal agreed by treaty to provide consular protection for each other’s nationals where one country does not have consular posts; 1990 *UNTS* 45.
  - Beatriz Padilla notes that Brazil has intensified consular services and protections, increased policy-making, and signed agreements with the US, Mexico, Portugal

and Spain (among others). See “Engagement Policies and Practices: Expanding the Citizenship of the Brazilian Diaspora,” *International Migration* 49.3 (2011) ([link](#)). See Brazil-Argentina and Argentina-Chile, below.

- Spain represents Lithuanians in Brazil.
- Norway and Sweden share consular services in some countries.
- EU coordinates consular efforts to assist EU nationals in emergencies (e.g. the EU evacuated EU (and non-EU) nationals from Lebanon in 2006). EU also shares services for routine consular assistance. Note that when EU added the right of EU citizens to assistance by Member States where his or her nationality not represented, only 3 States had representation from all EU States – meaning consular protection was opened up for many EU citizens. (*Consular Law and Practice*, page 64)
  - See below for more detail on EU cooperation (p13).

Additional cases are listed below, and follow in the *Regional Cooperation* section (p 10).

Other cases:

- French-German “colocalisations” (online: [link](#))
  - There exists a diplomatic “colocalisation” (sharing) in Lilongwe, Malawi, where the French diplomatic representation is lodged in the Germany Embassy. Following the “accord cadre relatif aux implantations communes de missions diplomatiques et de postes consulaires” of 12 October 2006, entry into force 1 March 2008, projects are underway in Maputo (Mozambique), Dhaka (Bangladesh), Kuwait City (Kuwait) and Rio de Janeiro (Brazil).
  - “Agreement... concerning the mutual implantation of diplomatic missions and consular posts” – EIF 1 March 2008
- Brazil-Argentina – Convention... on consular assistance to nationals of the other party who are in the territory of states which have no diplomatic or consular representation of their country – EIF 7 October 2003
- Brazil-Portugal – Agreement on consular cooperation for the protection and consular assistance to their nationals in third countries – EIF 3 July 1997
- Argentina-Chile – Supplementary Protocol to the Maipú Treaty of integration and cooperation ... on consular assistance to the nationals of the other Party who find themselves on the territory of States in which there is no consular representation of their country – EIF 26 February 2011
- Thailand-Vietnam – In October 2012, the governments of Thailand and Vietnam held a Joint Cabinet meeting and the agenda included the possibility of concluding an Agreement on Consular Cooperation as part of a wide-ranging list of bilateral accords across trade, political and socio-cultural fields.

### Select country information

The following is general information on consular cooperation undertaken by select countries, limited to information not contained elsewhere in the report (i.e. excluding consular sharing agreements, above, or cooperation on specific issues discussed below).

- The Peoples Republic of China - PRC has been among the most active international players on consular affairs over the last 30 years. Since it acceded to the VCCR in 1979, China has concluded 41 bilateral consular agreements: 12 in the 1980's; 25 in the 1990's; and 4 in the 2000's. The most recent was with the Philippines in 2012.
  - *See Arrest and Detention, below, for information on China's bilateral agreements modifying/clarifying its Article 36 undertakings, as well as other bilateral treaties on the same issue.*
- Philippines – The bilateral consular agreement with China (2012) was its first bilateral agreement on general consular services. Manila is active in seeking bilateral agreements for protection of Overseas Filipino Workers (OFWs), however these are not easily accessed through the internet.

The Philippines estimates that there are approximately 8.5 million Filipinos living or working abroad; approximately half (3.8 million) as temporary workers. The Philippine Overseas Employment Agency which manages the temporary worker programme (passport issuance, employment visa, recruitment agencies, labour attaches abroad, etc.) has listed labour agreements with Taiwan, Korea, Bahrain, Japan, and four Canadian provinces (Alberta, B.C., Manitoba and Saskatchewan).

The top 5 countries for Filipino temporary workers are Saudi Arabia, UAE, Singapore, Hong Kong, and Qatar. Top occupational categories were household services, nurses, waiters, caregivers, and wiremen/plumbers/welders/labourers. In 2012, the provisional figures for remittances from the entire Filipino community abroad (permanent residents and temporary workers) was US \$21.391 billion. Just under half came from the United States (\$9.1 billion) and Canada (\$1.9 billion). (Note: The topic of remittances is discussed in useful detail on the website of Migration Policy Institute (MPI), in particular its *Global Remittance Guide*.)

In announcing the PRC-Philippines Consular Agreement in 2012, the President said protection of the rights and interests of Filipinos overseas was one of three pillars of the government's foreign policy. In 2010, there were 7,200 Filipinos in prison abroad in six continents. There were almost 275,000 Filipinos in China and Hong Kong, 271 in detention, and 73 convicted of capital crimes but serving under China's suspended death penalty provisions

- The United Arab Emirates – The UAE Ministry of Foreign Affairs website notes via brief descriptions of meetings that the UAE has at least three formal high level consular consultations with Saudi Arabia, Egypt and Iran. No details are available on the terms of

reference, frequency or any joint activities. The website also indicates via photo ops that the Director of Consular Services is regularly called upon by visiting senior dignitaries from Canada (Minister of State Ablonzy), Japan, Australia, New Zealand, Algeria, Ireland, and the Philippines.

- India – India and Australia created a Joint Working Group on Consular, Passport, and Visa Matters (CPV) in 2008. Delegations are led at the senior official level and include the full range of ministries dealing with consular, immigration, law enforcement, transportation, passports, and foreign relations. Both sides are pledged to bring a "whole-of-government approach to [their dialogue on] bilateral and international movement of people issues." There is reference to an Agreement on Consular Access between India and Pakistan. India-Belgium Social Security Agreement (2006) to exempt Indian temporary residents from social security payments. India's diaspora policies are discussed in Memo 1 of this report. India has concluded only three bilateral consular agreements, all in the 1970's with now-defunct east bloc countries.
- The United States – The State Department website lists 59 bilateral consular agreements. The dates indicate that 36 (62%) were concluded before negotiation of the VCCR; 22 (37%) between 1963 and 1990; and only 1 (Hong Kong-China) since 1990.
- Korea – In their "Dialogue" relationship, Korean and Heads of ASEAN governments spoke of the importance of "protection for our nationals including tourists, business people and officials travelling to ASEAN and the ROK, as well as permanent residents and workers residing in" their respective countries (2009). The Korea-India Joint Commission (Foreign Minister level) have embarked on building a "strategic partnership", including cooperation on consular affairs (2010). Korea and Mexico have also begun a "strategic partnership" which included attention to consular affairs and the wellbeing of Korean residents in Mexico (2010). Korea-Philippines relations have a strong consular dimension: in 2011, the Korean Foreign Minister asked his counterpart "to take particular interest in some 115,000 local Korean residents and an annual average of some 700,000 Korean [visitors], adding that the Korean government would continue helping some 40,000 Filipinos in Korea find jobs... Secretary Romulo noted that the Philippine government is exerting particular efforts to protect the safety of local Korean residents and travellers and that it would cooperate closely in investigating crimes against Koreans." In late 2012, Korea and PRC Foreign Ministers agreed to expedite negotiations for an FTA and consular agreement.

## **II. Regional Cooperation**

## Organization of American States (OAS)

### **Annual Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas (REMJA)**

The meetings are intended to foster hemispheric cooperation and collective action on justice, legal and judicial matters. Their primary focus is on tackling crime, extradition, drugs, cybercrime, and prison policies, with a secondary focus on family law and children's issues.

The Inter-American system has four conventions dealing with family and children:

- *Inter-American Convention on Conflict of Laws Concerning Adoption of Minors* (1984)
- *Inter-American Convention on Support Obligations* (1989)
- *Inter-American Convention on the International Return of Minors* (1989)
- *Inter-American Convention on International Traffic in Minors* (1994)

These conventions are not widely subscribed by OAS members. REMJA has recently initiated efforts to build a hemispheric *Network for Legal Cooperation on Family and Child Law*. The OAS Department of Legal Affairs is the technical secretariat for this initiative, with the focus now on establishing a working group of interested members to identify areas of cooperation and promote wider engagement on family and children's issues.

The Inter-American Children's Institute, based in Uruguay, has been charged with fostering work on the risks to children who are unaccompanied migrants or vulnerable to human trafficking throughout the hemisphere.

### **Inter-American Commission on Human Rights (IACHR)**

The Commission seeks to promote adherence to high standards of protection for human rights and civil liberties in the Americas. The Commission is supported not only by OAS members but also by external partners, including members of the EU, NGO's, and counterpart regional human rights bodies. The IACmHR produces regular reports on issues of concern, including in areas which touch on consular matters:

- *The Death Penalty in the Inter-American Human Rights System: From Restriction to Abolition*, 2011 (funded by the Netherlands)
- *Report on Human Rights of Persons Deprived of Liberty in the Americas*, 2011 (funded by Spain)
- *Report on Immigration in the United States: Detention and Due Process*, 2010 (funded by Spain)
- *Report on Citizen Security and Human Rights*, 2009 (funded by Italy)
- *The Rights of the Child in the Inter-American Human Rights System*, 2nd Ed., 2008

- *Access to Justice as a Guarantee of Economic, Social and Cultural Rights: A Review of the Standards Adopted by the Inter-American System of Human Rights*, 2007
- *Recommendations of the Inter-American Commission on Human Rights for the Promotion and Protection of the Rights of the Mentally Ill*, 2000

### **Inter-American Court of Human Rights (IACHR)**

The Court considers disputes regarding human rights complaints and abuses in the hemisphere. It also issues advisory opinions for the purpose of stating what it believes is the hemispheric approach to human and civil rights in the region. Two advisory opinions are important for consular affairs:

- *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law* (responding to a request from Mexico for clarification of Article 36 of the VCCR and treatment of its citizens in the United States) OC-16/99, October 1, 1999
- *The Legal Status and Human Rights of the Child*, OC-17/2002, August 28, 2002

### **Disaster and Emergency Response Collaboration**

The Heads of Government Summit in Cartagena, 2012, called for each member to attach greater priority to planning and preparation for disaster prevention and response; and enhanced sub-regional, hemispheric and international preparation and response collaboration through better forecasting and response/logistics systems, 'lessons-learned' exercises, and hemisphere-wide assistance, including in humanitarian relief and economic recovery. "Disaster Risk Reduction and Management" featured prominently among priority items on the Summit agenda.

### **Fergus Hanson, Revolution @State: The Spread of eDiplomacy, Lowy Institute for International Policy, March 2012 (online: [link](#))**

Crisis management is one example Fergus Hanson cites of US eDiplomacy serving international partnerships through two examples:

- US-Mexico crisis management, involving US embassy, Mexican embassy, Mexican MFA, and other institutions, all collaborating using “cloud-based” tools.
- Harnessing of Haitian diaspora to translate Twitter messages during Haitian earthquake.

### **OAS Committee on Juridical and Political Affairs**

The committee oversees preparation of reports on various topics of interest to members, including:

- *Report of the Situation of Older Persons in the Hemisphere and the Effectiveness of Binding Universal and Regional Human Rights Instruments with Regard to Protection of the Human Right of Older Persons*, 11 January 2012
- *Annual Report – Inter-American Programme for the Promotion and Protection of the Human Rights of Migrants, including Migrant Workers and Their Families*, January 16, 2012

### **ANDEAN**

Members of the Andean Community (Peru, Ecuador, Bolivia, and Colombia) agreed in 2003 to establish the Andean Cooperation Mechanism on Consular Assistance and Protection and Migratory Matters. The agreement envisaged cooperation and cover-off representation in third countries, collective action to protect and promote the rights of migrants, creation of an Andean passport, cooperation in disaster and emergency response, repatriation assistance for nationals abroad, and common policies for notary and documentation recognition.

### **Association of Southeast Asian Nations (ASEAN)**

The 10 members of the Association of Southeast Asian Nations (ASEAN) (Brunei, Cambodia, Indonesia, Laos, Malaysia, Burma, Philippines, Singapore, Thailand, and Vietnam) are engaged in two broad areas of regional cooperation in consular affairs.

### **Directors General of Immigration Departments and Heads of Consular Affairs Divisions of Ministries of Foreign Affairs (DGICM)**

The DGICM meet regularly on a regional agenda which is largely focused on visa issues, migrant smuggling and transboundary criminal activity. However, the last meeting in Thailand (September 2012) endorsed the commitment of ASEAN members to provide emergency assistance to ASEAN nationals during crises in third countries.

Australia meets annually with the DGICM a part of its 'Dialogue Partner' relationship with ASEAN, the last meeting in 2012 noted that "ASEAN and Australia would continue to work together on cooperative arrangements in relation to immigration matters across the region." Australia's delegation was headed by the Deputy Secretary, Department of Immigration and Citizenship.

### **Disaster Management**

ASEAN has outlined a Disaster Management and Emergency Response Work Programme for 2010 - 2015. The plan calls for a "proactive regional framework for cooperation, coordination, technical assistance and resource mobilization in all aspects of disaster management. It also affirms ASEAN's commitment to the Hyogo Framework of Action (HFA) and is the first legally binding HFA-related instrument in the world." The HFA emerged from the 2005 World Disaster Reduction Conference

and was endorsed by the UNGA that same year. Japan is a key partner with ASEAN in supporting regional investments in emergency response capacity and systems.

### **European Union**

There is extensive literature on European citizenship and the right to consular assistance under Article 23 of the Treaty of the European Union. The following is a selection of articles:

**Patrizia Vigni, *Diplomatic and Consular Protection in EU Law: Misleading Combination or Creative Solution?*, European University Institute Department of Law, Florence, EUI Working Papers, Department of Law 2010/11 (online: [link](#))**

This paper probes the implications of Article 23 of the Treaty on the Functioning of the European Union, which provides EU citizens diplomatic and consular representation by member states other than their own nationality outside of the EU. The implications are considered from an internal EU perspective and from the perspective of non-EU countries. It includes a discussion of EU practice to date, mentioning cases such as France's leadership in the 2006 Lebanon evacuation, and an Italian priest detained in Djibouti (23-26). The authors suggest that states are free to choose how it provides consular assistance to its nationals, including through such treaties, and non-EU states would seem to have to honour non-national EU representation (27). On the practical side, this legal framework has been used mostly on the administrative side, with states preferring to retain political representation. This may change going forward as EU states further collaborate (28).

**Madalina Bianca Moraru, "Protection of EU citizens abroad: A legal assessment of the EU citizen's right to consular and diplomatic protection" *Perspectives on Federalism* 3(2) 2011 67. (online: [link](#)).**

The author examines the legal nature, content, and effects of EU citizens' right to diplomatic protection abroad. She concludes that citizens enjoy a clear right to non-discriminatory protection in third countries abroad from any EU Member State with local representation. However, the practical effectiveness of this right is constrained by the divergent regulatory and policy approaches to diplomatic and consular protections taken by Member States.

**Ana Mar Fernandez, "Consular Affairs in an Integrated Europe," chapter 4 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

Fernandez sees Europe as a model for collaborative consular agreements; but her examples seem focused on visas. Collaboration is within the context of EU citizenship (from Maastricht Treaty; rights of movement and residency in Art 8 of TEC; right to diplomatic and consular protection in Art 20 of TEC). Following crises of early 2000's, debates between horizontal cooperation and supranational "Euroconsulates"; this reflects other EU debates, particularly in security and foreign policy. (101)



Two models: “lead state” and “dominant state.” Spain is “lead state” for consular assistance in Equatorial Guinea and Honduras, while France represents Spain in Albania, Bangladesh, Burkina Faso, Botswana; but this is limited to temporary management of crisis situations. French proposal to charge one state with processing visas (even if other states represented), becoming “dominant state”. (111)

International relations theory: There is a new “logic of appropriateness” emerging (March and Olsen), making agreements more likely. But the obstacle is border security. (113)

**Vermeer-Kunzli, Annemarieke, “Where the Law Becomes Irrelevant: Consular Assistance and the European Union”, *International and Comparative Law Quarterly* 60(04) (October 2011) 965-995 (online abstract: [link](#))**

This article discusses EU initiatives to coordinate consular assistance in third countries. EU members are encouraged to cooperate by means of the Lead State Concept, and other forms of cooperation, which are very difficult to reconcile with general international law. It presents the situation, analyzes the complexities and offers some reflections on the global application and desirability of the regime created by the EU.

**Simon Duke, "Providing for European-Level Diplomacy after Lisbon: The Case for the European External Action Service," *Hague Journal of Diplomacy* 4 (2009)**

Duke examines the challenges to implementing the European External Action Service (EEAS) after the Lisbon Treaty, argues the EEAS will be the focus of reformed EU external relations. He discusses two possible versions of the EEAS, “minimalist” (mostly cooperative, small, limited presence) and “maximalist” (providing advice to Commissioners and President of the European Council, requiring geographical desks in all countries). Very complicated institutional questions. Duke is optimistic that national diplomats can be made available to the EEAS (each EU state maintains between 40 and 200 diplomatic missions, totaling around 3,000 missions and 30,000 diplomats). The Lisbon Treaty is important because it attributes legal personality to the EU, contemplates EU delegations advancing Common Foreign and Security Policy. But many questions and obstacles are unresolved.

**Jones-Bos & van Dalen, "Trends and Developments in Consular Services: The Dutch Experience" *The Hague Journal of Diplomacy* 3 (2008) 87-92**

Despite increased cooperation, “one central ‘European consular service’ will not materialize for the time being, because consular affairs are still very much interwoven with domestic politics.”

**Federico Forni, “The Consular Protection of EU Citizens during Emergencies in Third Countries,” *International Disaster Response Law* (2012): 155-174 (abstract: [link](#))**

Reviews implementation of Article 23 requirements. Decision 95/553 and the Council guidelines “contain rules and procedures coordinating the intervention of the member States’ diplomatic and

consular missions during catastrophes.” Repatriation of distressed EU citizens is included. Finds that EU countries generally cooperate in evacuating EU citizens, even if missions do not take the principle of non-discrimination into serious account. Effectiveness of assistance is limited by capacity of missions on the ground.

To evaluate the “effective content” of the EU right to consular assistance, the author analyzes four stages of crisis management: prevention, mitigation, relief and recovery. Strengths and weaknesses at each stage; highlights coordinating role of Presidency and “Lead State.” Problems could be overcome by evolution of an “external dimension” to EU citizenship.

**Mara Wesseling and Jérôme Boniface, “New Trends in European Consular Services: Visa Policy in the EU Neighbourhood,” chapter 5 in *Consular Affairs and Diplomacy* (Leiden: Martinus Nijhoff, 2011)**

The authors discuss three options for EU consular services: (1) enhanced cooperation between consulates, (2) common consular representation, and (3) outsourcing.

(1) raises three concerns: a) the automatic acceptance of decisions made by other EU member states and the related question of accountability; b) exchange of information and data-protection safeguards; c) privacy concerns.

(2) is contemplated in the VCCR: missions and consulates may share premises or entrust protection of their interests to another country. States have transferred some or all of their consular functions to a third state (e.g. Benelux countries opened a common application centre in Morocco 15 years ago, and in India in 2007; in 2006, France and Germany common consular service in Mozambique). EU pilot project, Common Visa Application Centre in Moldova (2007), more pilots to come. (131)

(3) VFS Global had a visa contract for 8 member states. Pros: efficiency, capacity. Cons: accountability, sovereignty, data protection, privacy. (134-5)

**Consular and Diplomatic Protection: Legal Framework in the EU Member States, Citizens Consular Assistance Regulations in Europe (CARE) Project, 2010. (Available online: [link](#))**

A thoroughly comprehensive compilation of the country-level legislation and practice of all 27 EU Member States, with respect to consular protections for their citizens, EU citizens, non-EU family members, resident foreign citizens, stateless persons, refugees, and persons under secondary international protections. This report also includes an in-depth analysis of regional consular agreements, in Scandinavia and in the Baltic region, and other formal and informal bilateral relations between EU states. Their comparison points to a wide range of domestic policy and legal frameworks, the diversity of which has disrupted the emerging supranational efforts to overhaul EU consular services. The authors advocate for the adoption of an EU legal measure that reflects contemporary norms and improves transparency and judicial remedies for citizens.

**European Commission, “Consular protection,” (website: [link](#))**

Good website overview of the consular rights of EU citizens in countries where their country of citizenship is not represented, including links to relevant EU laws and treaties. Protection offered includes:

- assistance in cases of death;
- assistance in cases of serious accident or illness;
- assistance in cases of arrest or detention;
- assistance to victims of violent crime;
- the relief and repatriation of distressed Union citizens.

**European Commission, Proposal for a Council Directive on consular protection for citizens of the Union abroad, 2011/0432 (CNS), Brussels, 14.12.2011 (online: [link](#))**

Previously, Member States established the rules among themselves. The Lisbon Treaty conferred on the Commission “the right to propose directives establishing the cooperation and coordination measures necessary to facilitate the right to equal consular protection for unrepresented EU citizens as for own nationals.” This Directive from the Commission follows a European Council invitation and European Parliament resolution on Article 23. It also carries out Action 8 of the EU Citizenship Report on dismantling the obstacles to EU citizens’ rights. “There is no clear consensus on the content of Article 23 TFEU and about the responsibilities which this right entails... National consular laws and practices diverge as do views about the underlying concepts of consular protection for unrepresented EU citizens.”

Directive addresses 4 areas:

- (1) Personal scope of Article 23: EU citizen considered unrepresented when his/her embassy/consulate not “accessible” (defined as cannot reach within one day; exception where urgency demands swifter assistance). Following non-discrimination obligations (Articles 7 and 24 of Charter of Fundamental Rights, and case law of ECJ), third country family members of EU citizens are protected to the same extent as member states provide protection to third country family members of their own nationals.
- (2) Access to consular services and cooperation/coordination: Proposal specifies which services are typically provided in response to different crises. EU citizens can turn to “any” Member State consulate or embassy, though special agreements between states are possible.
- (3) Local coordination/EU added value: Meetings on local coordination should include discussion of unrepresented EU citizens.
- (4) Assistance in crisis situations/financial reimbursement: Local contingency plans must systematically include unrepresented EU citizens. Proposal underlines the importance of Lead State and defines its role, “i.e. that the Lead State is in charge of coordinating and leading assistance of unrepresented EU citizens.” Additional support and use of synergies by including national consular experts (including from unrepresented EU states) in EU level responses. Introduces improved reimbursement procedure.

**Steven Blockmans and Sergio Carrera, *The UK-Canada Agreement on Mutual Support of Missions Abroad: Loyalty compromised?* Centre for European Policy Studies, 18 October 2012 (online: [link](#))**

The authors argue the UK-Canada MoU “runs counter to the spirit of loyal cooperation, in particular in the realm of EU foreign policy... raises challenges to coherence, consistency and effectiveness of EU action in policy areas concerning visas, trade and consular protection... [and] may throw a spanner in the works of EU solidarity and the creation of a stronger EU identity, both internally and externally.”

## **Hungary:**

Hungary has signed bilateral agreements with Latvia, Estonia, Lithuania and Austria on “the mutual representation by their diplomatic and consular agents in processing visas and collecting biometric data,” all of which came into force during 2007-2008.

## **Benelux and Baltic States**

On December 11, 2012, the Foreign Ministers of the Netherlands, Belgium, Luxembourg, Estonia, Latvia and Lithuania, pledged to increase consular cooperation. Ministers cited the recent turmoil in Libya and Syria as illustrating the importance of being prepared to help one another amidst civil crises and natural disasters overseas. Ministers also suggested that smaller scale collaboration would provide a spur toward more European-wide cooperation in consular matters. “I hope that this cooperation will show where the opportunities lie and the greater role that the European External Action Service should play,” said foreign minister Frans Timmermans.” (See press release by Netherlands MFA: [link](#))

## **Nordic States**

Norway, Sweden, Denmark, Finland and Iceland have cooperated formally in the consular field ever since the Nordic Passport Union (1954) which allowed Nordic citizens to travel freely across borders and reside anywhere without residence permits. Excluding Iceland, Nordic countries all provide the same general range and type of consular services. Differences arise in internal organization and resources available for consular activities. There are several Nordic Working Groups on consular affairs where senior officials meet regularly to exchange information, coordinate activities and oversee exchange programmes. Collaboration abroad mirrors what happens in HQ.

Specific areas of cooperation abroad include consulate office co-location, joint administration, shared visas sections and mutual representation for visa issuance. A collective response to major events and emergencies is commonplace as is cover-off assistance for consular services to distressed nationals whose country is not represented locally or is too distant.

There is some interest in further cooperation on travel documents, information collection at missions and common guidelines on appointing Honorary Consuls but, according to Norwegian accounts, further harmonization will be more difficult because of different rules and ways of organizing and funding consular services. The differing forms of association with the European Union also limits the extent of more intensive cooperation.

Maaïke Okano-Heijmans (2011) notes that Scandinavian countries have long coordinated their consular affairs.

### **MARRI States**

In April 2010, member states of Southeastern Europe (Albania, Bosnia-Herzegovina, Macedonia, Montenegro, and Serbia) concluded a Memorandum of Understanding covering mutual representation in third countries, including providing consular services to nationals whose country is not represented in territory. The group is also intent on creating a single migration policy for and within the sub-region.

Online version of Memorandum of Understanding: [link](#)

The Consular Cooperation Network (online: [link](#)) is an informal network based on the MoU on mutual consular protection and services. The goal of the Network is closer cooperation between the consular services and exchange of information, “which is a step forward in the process of creating a single migration policy and prevention of irregular migration in MARRI MS.” The Network has yearly meetings in the countries presiding SEECP.

### **III. Issue-Specific Agreements**

#### **Notification and Arrest**

#### **Mark Warren, Timeframes for Consular Notification and Access: Determining Contemporary State Practice, Human Rights Research (2009)**

Survey of 50 Bilateral Consular Agreements Post-VCCR

- a clear majority (30 ex 50) require notification within 3 days of a detention;
- 90% require notification within no more than 5 days;
- a majority (28 ex 50) require access to a detainee within 5 days or less after detention;
- 82% require access within no more than one week after detention;
- Trend: the more recent the agreement, the shorter the time limits.

#### **Chinese bilateral treaties on Notification and Arrest include noteworthy variations of Article 36 undertakings:**

Nationality: The PRC-U.S. agreement (1982) states that the passport on which the individual entered the country determines nationality for consular protection. This was repeated for Canada (1999) and Australia (2000). The PRC-Japan agreement (2008) however noted that consular rights applied to "a person who claims to be a national of the sending State, unless proved otherwise..."

Notification of Detention: The PRC agreements range from notification of the Consulate within 7 days in the PRC-UK agreement covering Hong Kong (1984); 4 days in the U.S., Philippine (2012) and Japan agreements (2008); 3 days in the Australian agreement; and simply "as soon as possible" for Canada and Vietnam (2004).

Access to a Detained National: PRC agreements show more consistency here, with the U.S., U.K., Canada, and Australia gaining right of access within 2 days of notification. The Philippine agreement grants access within 3 days of notification; while the Japan and Vietnam agreements simply indicate "as soon as possible".

Language: Most PRC agreements state the right to communicate without further comment, e.g. U.S., U.K. and Vietnam or acknowledge the right to use either the sending or receiving State languages, e.g. Canada and Australia. The Japan agreement grants the consular officer his choice of language, but he may be asked to translate and provide a written version of his remarks at the request of the receiving State.

#### **Australia's agreement with Vietnam exhibits a different approach to nationality:**

Australia's bilateral agreement with the PRC is discussed above. Australia's consular agreement with the Socialist Republic of Vietnam (2004) is noteworthy for breaking new ground with regard

to dual nationality. The agreement states that anyone who holds a passport of the sending State shall be considered a national for consular purposes whatever passport was used in entering the country.

### **Consular Agreement between Canada and the People's Republic of China**

Signed: 28 November 1997; Entry into force: 11 March 1999

(<http://travel.gc.ca/about/assistance/consular/framework/china>)

The bilateral between Canada and PRC provides for improved language on notification following arrest; specific standards on language to be used in communications; right to visit within 2 days of notification, and monthly thereafter; obligation to provide info on charges; right to attend the trial; obligation to provide interpretive services; rights granted in treaty not restricted by domestic laws. Notably, the treaty creates precedent for protection of dual citizens: signatories shall use the passport of entry in determining citizenship for consular protection purposes (see Article 12(3)). (Summary drawn from Gar Pardy, "Consular and Diplomatic Protection in an Age of Terrorism: Filling the Gaps," chapter 7 in *The Human Rights of Anti-Terrorism*, Nicole LaViolette and Craig Forcese (eds) (Toronto: Irwin Law, 2008))

Pardy (2008) says the treaty has "worked well". However, there was the controversial case of Huseyin Celil (Uyghur human rights activist who fled Chinese prison in 2000, arrested in Uzbekistan when visiting family, sent to China, sentenced for life) (at page 249).

Australia and the United States have signed similar agreements with China (Pardy 2008).

### **Agreement on Consular Relations Between the People's Republic of China And Australia (online: [link](#))**

### **Child Abduction**

#### ***Hague Convention on the Civil Aspects of International Child Abduction*, TIAS No. 11670, 1343 UNTS 98, Adopted 24 October 1980**

89 States party (as of 14 December 2012)

The Convention's main concern is to restore the situation that existed before the child's removal, rather than to settle custody disputes. This normally means return to the state of "habitual residence," where custody disputes heard. For states party to the Council of Europe's Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children, recognition of a custody decree is required.

Discussion of the Convention at page 187-188 of *Consular Law and Practice*.

### **Non-Hague Convention Bilateral Agreements on Child Abductions (Available online here: [link](#))**

Outside of the Hague Conventions, states have sought to coordinate through bilateral agreements between (a) Middle Eastern countries such as Egypt, Morocco, Tunisia, and Algeria, and (b) countries such as Australia, France, USA, and Canada.

(Note that the US adopted statute denying a visa to a person who commits child abduction and takes child to a state not party to Hague Convention. *Consular Law and Practice*, 88.)

Bilateral Agreements (PDFs [online](#)):

- Australia – Egypt (2000)
- Belgium – Morocco (1981)
- Belgium – Tunisia (1982)
- Canada – Egypt (1997)
- Canada – Lebanon (2000)
- France – Algeria (1988)
- France – Egypt (1982)
- France – Lebanon (2000)
- France – Morocco (1983)
- France – Tunisia (1982)
- Sweden – Egypt (1996)
- Sweden – Tunisia (1994)
- Switzerland – Lebanon (2005)
- USA – Egypt (2003)

***Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, 1870 UNTS 167, adopted 29 May 1993.***

89 States party (as of 3 December 2012)

The 1993 Convention builds upon Article 21 of the *UN Convention on the Rights of the Child* and facilitates intercountry adoptions while ensuring the best interests of the child are prioritized. It establishes procedures to facilitate cooperation between authorities in countries of origin and receiving countries. The subsidiarity principle states that intercountry adoption is less preferable to raising the child within the country of origin. The Convention also provides for automatic recognition of adoptions made in accordance with the Convention's provisions.

***Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, 2204 UNTS 503, 35 ILM 1391, adopted 19 October 1996.***

39 States party (as of 3 December 2012)

Much broader than the 1980 or 1993 Hague Conventions, this agreement establishes which country's authorities are competent to take measures for the protection of children. The country of the child's habitual residence is given primary responsibility, but the country in which a child is present can act if emergency or provisional measures are needed. The purpose of the 1996



Convention is to avoid legal and administrative conflict and build the structure for effective international co-operation in child protection matters between different legal systems.

***Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, adopted 23 November 2007.***

3 Contracting States (as of 13 November 2012)

This Convention, which was signed in 2007 and entered into force on 1 January 2013, builds on earlier conventions regarding family maintenance to reduce the barriers to establishing, altering, and enforcing maintenance decisions. Currently the Convention applies only between Norway, Albania, and Bosnia-Herzegovina.

**Canada-Egypt – Agreement Between the Government of Canada and the Government of the Arab Republic of Egypt Regarding Cooperation on Consular Elements of Family Matters**

<http://travel.gc.ca/about/assistance/consular/framework/egypt>

**Canada-Lebanon – Agreement Between the Government of Canada and the Government of the Lebanese Republic Regarding Cooperation on Consular Matters of a Humanitarian Nature**

<http://www.treaty-accord.gc.ca/text-texte.aspx?id=103477&lang=eng>

Pardy 2008: These treaties were necessary because of Lebanon and Egypt's refusal to sign the *Convention on the Civil Aspects of Child Abduction* (due to differences in Islamic family and social law). Both treaties reflect the concern to resolve issues of parental child abduction, and establish a joint consultative commission for this purpose.

**The Malta Process and Declarations (2004, 2006, and 2009 Declarations available online: [link](#))**

The Malta Process works to better protect cross-boundary rights of contact between parents and their children, and addressing the problems posed by international abduction by fostering better communication and collaboration between judiciaries and bureaucracies from different states. Conferences in 2004, 2006, and 2009 brought together a group that included Convention and Non-Convention States, as well as international organizations and NGOs with expertise in the field. Efforts focused on enhancing capacity for co-operation between Hague Convention states and Non-Convention states. The third conference declaration included calls for: ratification of the Conventions, mutual recognition of decisions, establishing Central Authorities in all states, developing mediation services for resolving disputes between Convention and Non-Convention States, judicial training and networking, and sharing of best practices.

**Inter-American Convention on the International Return of Children, adopted 15 July 1989, OAS Treaty series 70. Available online: [link](#).**

14 Contracting States (As of 28 February 2013).

A multilateral treaty concluded between Central and South American states that seeks “to secure the prompt return of children habitually resident in one State Party who have been wrongfully removed from any State to a State Party or who, having been lawfully removed, have been wrongfully retained. This Convention further seeks to secure enforcement of visitation and custody rights of parties entitled to them.” (Art. 1).

Commentary on Mexico’s experience with the Convention: <http://www.auswaertiges-amt.de/cae/servlet/contentblob/482364/publicationFile/4325/RedeLopez.pdf>

**The Hague Conference’s permanent bureau maintains a bibliography of commentary of commentary on each of the four Hague Conventions related to international family law. They are available here: 1980 convention [link](#), 1993 convention [link](#), 1996 convention [link](#), and 2007 convention [link](#).**

There is an abundance of literature discussing the application of the Hague Conventions. The effectiveness of these agreements has been lauded, particularly for relations among the signatories of the 1980 Convention (*see* Aiyar, “International Child Abductions Involving Non-Hague Convention States”). However, critiques have centred on issues such as: the resistance of some states or regions to sign on (*see* Duncan, “Globalisation of the Hague Children’s Conventions”), the challenges of application to non-Convention countries, inconsistencies in its implementation in Contracting States, and the readiness of Contracting States to implement the Convention’s obligations (*see* Lewis, “International Child Abduction and Domestic Violence”).

**William Duncan, “Globalisation of the Hague Children’s Conventions with Emphasis on the Child Abduction Convention” (2010-2011) 63 Okla L Rev 607.**

Duncan, the former Deputy Secretary General of the Hague Conference on Private International Law, discusses the wider adoption of the 1980, and why some gaps remain. In general, he suggests that resistance stems from country- and region-specific reasons rather than a rejection of the broad principles underlying the Convention (which were endorsed in the *UN Convention on the Rights of the Child*). He attributes the slow uptake by African states to a lack of familiarity with the Hague Conference, Japan’s hesitance to concerns about domestic violence cases and access to justice, and Russia’s deliberation to their preference for bilaterals (though they have since signed the Convention). The need for greater co-operation between Islamic states and others is identified as a great challenge remaining for international family law. Duncan suggests key barriers include a mutual skepticism about different legal systems, the lack of an agreed upon basis for establishing jurisdiction (though habitual residence is a neutral basis that may help resolve this). He also points to the working group on mediation as important progress towards an effective dispute resolution mechanism.

**Caroline Gosselain, “Child Abduction and Transfrontier Access: Bilateral Conventions and Islamic States” A Research Paper drawn up for the Permanent Bureau of the Hague Conference on Private International Law, 2002. Available online: [link](#).**

This report, prepared in advance of what would become the Malta Process, surveyed Central Authorities to discuss bilateral agreements made to facilitate co-operation between Islamic states and Convention States. The author identifies three broad types of agreements: agreements on administrative and judicial co-operation, consular co-operation agreements, and administrative agreement protocols. Regarding consular agreements, including Canada's, advisory commissions have been used to facilitate travel permits, ensure close cooperation and communication, facilitate a private resolution of the dispute, and monitor progress.

**Smita Aiyar, "International Child Abductions Involving Non-Hague Convention States: The Need for a Uniform Approach" (2007) 21 Emory Int'l L Rev 277.**

The author points to the challenge of resolving abductions when children are taken to Non-Convention states. The inconsistent judicial treatment of the appropriate considerations in Convention states when dealing with Non-Convention states suggests the need to amend the Convention in order to clarify the appropriate principles.

**Jeanine Lewis, "The Hague Convention on the Civil Aspects of International Child Abduction: When Domestic Violence and Child Abuse Impact the Goal of Comity" (2000) 13 Transnat'l Law 391.**

Lewis argues that countries and courts must ensure that their application of the 1980 Convention acknowledges the connections between abduction and domestic violence – especially that 20% of parents who abduct their children do so to escape domestic violence – and apply the risk of grave harm exemption appropriately. The author also critiques how the Convention has been applied in terms of a narrow focus, varied interpretations between Contracting States, and the limited number of Contracting States. The Convention has been more widely adopted since this article was published, but the author's suggestion that the drive for signatories was bringing in parties unable to implement their obligations.

### **Overseas Workers**

**UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990**

This Convention contains the most extensive description of the duties of a host state toward foreign nationals resident in other nations. Where the VCCR dealt principally with state to state obligations, the Migrant Workers Convention is principally about the rights of a vulnerable category of individuals and the duties of states to respect them. The Convention makes a connection to the VCCR by noting the right of migrant workers to have his consulate informed of an arrest or detention (Art. 16.7) and his right of recourse to his consulate or embassy when his rights have been impaired (Art. 23).

According to Migration Citizenship Education, the Convention "suffers from marked indifference from international community". Only 40 countries have signed, none from among major immigrant countries. Migrant rights are a "neglected dimension of globalization".

**Piyasiri Wickramasekara, “Something is Better than Nothing Enhancing the protection of Indian migrant workers through Bilateral Agreements and Memoranda of Understanding,” Migrant Forum in Asia, February 2012 (online: [link](#))**

Discusses India’s “impressive record recently in negotiating bilateral Memoranda of Understanding (MOUs) and Memoranda of Agreement (MOAs) on emigration of Indian workers, and social security agreements for Indian workers with a number of destination countries.” Reviews MOUs and MOAs on migration of Indian workers with Gulf Cooperation Council (GCC) states, Jordan and Malaysia. Findings: no evidence that MOUs and MOAs have improved governance and protection of low-skilled Indian workers. Not surprising, because: only general provisions in the agreements; no publicity or awareness; the Joint Commissions are non-functional or non-existent; lack of enforcement and monitoring mechanisms; and other reasons. Abuse of low-skilled Asian migrant workers continues. However, the author concludes India is better off with the MOUs; foundation for more concerted actions.

#### **The Philippines:**

The bilateral consular agreement with China (2012) was its first bilateral agreement on general consular services. Manila is active in seeking bilateral agreements for protection of Overseas Filipino Workers (OFWs).

*More information on Philippines bilaterals and worker protection initiatives under “Select Country Information,” above.*

#### **Transfer of Offenders**

##### **Several bilateral treaties signed by Canada:**

<http://travel.gc.ca/about/assistance/consular/framework>

List of countries includes: Argentina, Barbados, Bolivia, Brazil, Cuba, Dominican Republic, Egypt, France, Mexico, Mongolia, Morocco, Peru, Thailand, Thailand (Exchange of notes), Venezuela, United States (online: [link](#))

Note that the *Divito v Canada* case was heard by the Supreme Court of Canada on February 18, 2013. This case challenges the constitutionality of the Minister’s discretion to refuse the transfer request of a prisoner, under section 8 of the *International Transfer of Offenders Act*. The Court reserved judgment. See case information: [link](#)

Council of Europe, Convention on the Transfer of Sentenced Persons ([link](#))

Inter-American Convention on Serving Criminal Sentence Abroad ([link](#))

UN Model Treaty on the Transfer of Supervision of Offenders ([link](#)).

Commonwealth Scheme for the Transfer of Offenders

<http://travel.gc.ca/about/assistance/consular/framework/commonwealth>

### **Medical Tourism**

For more information on medical tourism, see Part III(E) of *Memo #1* (literature review).

### **Patient Mobility in the European Union: Learning from Experience, European Observatory on Health Systems and Policies, WHO, 2006**

A 2006 report by the European Observatory on Health Systems and Policies includes various sections on cross-border collaboration: e.g. Cross-border contracted care in Belgian hospitals; Sharing Capacities between Malta and the UK; Cross-border contracting in Germany; Hospital cooperation across French borders.

### **Dan Jerker B. Svantesson, “From the Airport to the Surgery to the Courtroom – Private International Law and Medical Tourism,” *Commonwealth Law Bulletin* Vol. 34, No. 2, 265–276, June 2008**

Dan Svantesson examines private international law issues in the context of medical tourism, focusing on Australian national seeking damages for harm committed overseas. After discussing liability issues in the Australian context, Svantesson suggests that the only way forward is “international cooperation leading to an international framework,” perhaps under WHO rubric. Author says the WHO’s Framework Convention on Tobacco Control and the International Health Regulations “are both important precedents for the type of international framework required.”

Relevant treaties cited in *Holiday Law: The Law Relating to Travel and Tourism* (2007):

- 2007 Lugano Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters
- 1999 Montreal Convention on International Carriage by Air
- 1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea
- 1962 Paris Convention on the Liability of Hotelkeepers
- 1961 Berne Convention on Carriage by Rail
- Also, many European regulations and directives