

THE CHALLENGES IN THE PROTECTION OF THE RIGHTS AND INTERESTS OF CITIZENS BY A CONSULAR INSTITUTION

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Abstract.

Consular institutions play an essential role in protecting the rights and interests of citizens who reside or travel abroad. However, they encounter numerous obstacles in fulfilling this responsibility effectively. This abstract examines the primary obstacles consular institutions face in protecting the rights and interests of citizens. Challenges include limited resources, navigating legal and jurisdictional complexities, overcoming language and cultural barriers, ensuring consular access and cooperation, managing emergency response and crisis situations, protecting vulnerable groups, addressing cybersecurity and data privacy concerns, and increasing public outreach and awareness. To effectively address these challenges, collaboration with relevant stakeholders, investments in technology and infrastructure, diplomatic negotiations, staff training, and close cooperation with local communities and international partners are required. In an increasingly complex global landscape, consular institutions can strengthen their ability to safeguard the rights and interests of citizens by understanding and addressing these challenges comprehensively.

Keywords.

Consular institution, Citizen rights, Citizen interests, Legal complexities, Jurisdictional boundaries, Language barriers, Cultural barriers

Every nation has the responsibility to ensure that its citizens are afforded the protection of the law abroad, and as such, all governments offer consular services to their citizens. It is national policy, not international law, that determines the nature and extent of consular assistance. Only a handful of emigration nations are wealthy enough to provide consular services to all of their citizens living abroad.⁴²

The term "international protection of rights" has been used in the region since the signing of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Council of Europe on 4 November 1950 and the ratification of the Covenant on Civil and Political Rights by the UN General

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⁴² Cooper, A., Heine, J., & Thakur, R. (Eds.) (2013). *The Oxford handbook of modern diplomacy*. Oxford: Oxford University Press

Assembly on 19 November 1966, 2200A (XXI) has been in effect since the date of its adoption.⁴³

The fundamental purpose of consular law is to foster peaceful international relations predicated on respect for sovereignty, non-interference in domestic matters, and mutual benefit. The liberalization of laws in many countries has led to an increase in the number of situations in which property is owned by more than one state, the number of citizens leaving the country for a variety of reasons and purposes, and the number of citizens living abroad for a variety of time periods, all of which highlight the practical importance of consular protection. Since globalization is currently occurring, a positive strategy for consular protection is required. In contrast to human rights, diplomatic law, and other areas of public law, consular legal protection has become increasingly important due to changes in the economy, technology, and migration, as well as the increased involvement of non-governmental groups in international relations. This is due to the fact that the consular functions encompass essential components that protect the rights and interests of those involved in international trade, technology, migration, culture, and humanitarianism.⁴⁴

Providing consular services to its nationals abroad is one of the roles of government recognized by international customary law. Some of the legal services that fall under the umbrella of "consular services" include notarizing papers, serving as a civil registrar, searching for missing nationals, aiding needy nationals, and assisting with evacuations from foreign countries. The offer to aid nationals arrested by a foreign government is the most crucial consular service.⁴⁵

The Vienna Convention of 1963 formalized international customary law pertaining to consular services, although individual states' policies and practices may vary when it comes to providing consular services, especially to their nationals incarcerated overseas. The states' consular aid practices are influenced by a number of factors, including the repercussions their citizens suffer if they break the law overseas, political reaction, media coverage, and social media posts.⁴⁶

⁴³ Gafurova, Sevara, Coherence of the Consular Protection Institution with Other Legal Branches and Institutions of International Law (January 12, 2020). TJJ - Tematics journal of Law 2020 ISSN 2249-9806, Available at SSRN: <https://ssrn.com/abstract=3771344>

⁴⁴ Martin and Christian Tams. "The Right to Consular Assistance Under International Law: The LaGrand Case Before the International Court of Justice." German Yearbook of International Law 42 (1999): 192-241.

⁴⁵ Sepúlveda-Amor, Bernardo, 'Diplomatic and Consular Protection: the Rights of the State and the Rights of the Individual in the *LaGrand* and *Avena* Cases', in Ulrich Fastenrath and others (eds), *From Bilateralism to Community Interest: Essays in Honour of Bruno Simma* (Oxford, 2011; online edn, Oxford Academic, 1 May 2011), <https://doi.org/10.1093/acprof:oso/9780199588817.003.0068>,

Today, it cannot seriously be disputed that the VCCR is self-executing. According to Article 36(1), the receiving states should facilitate the exercise of consular functions in relation to nationals of the sending state. The VCCR guarantees that the consular officials can freely exercise their rights under the VCCR: to access and communicate with nationals of the sending state. Further, Article 36(1)b sets out the obligation of the receiving state to inform consular officials from the sending state regarding arrest, detention, or imprisonment of nationals of the sending state, if the arrestee/ detainee/prisoner requests: If he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. ⁴⁷The said authorities shall inform the person concerned without delay of his rights under this subparagraph.⁴⁸

Fair Trials International found that the policy and form of consular assistance for its detained nationals varies from country to country, based on the five reviewed countries (Australia, the United Kingdom, the United States, the Netherlands, and Germany), and their findings were published in 2009. The most startling discovery was that not all countries examined provide consular aid to their people who are detained overseas. The right to consular assistance is legally protected only in Germany.⁴⁹

The relevance of consular institutions in safeguarding the rights and interests of individuals living and working abroad cannot be overstated. However, there are several obstacles in the way of them successfully carrying out this duty. Some of the biggest obstacles are as follows.

– Many consular offices lack the personnel and financial means to assist the vast numbers of citizens who seek their aid. Because of this, their ability to help people in time of crisis (whether medical, legal, or otherwise) may be compromised.⁵⁰

– Consular services require knowledge of and skill in navigating intricate legal systems and multiple overlapping jurisdictions. There can be substantial

⁴⁷ Article 36 of Vienna Convention on Consular Relation of 1963

⁴⁸ Kolesnikov, Yuri A. "Meddling with the Vienna Convention on Consular Relations: The Dilemma and Proposed Statutory Solutions." *McGeorge Law Review* 40 (2009): 180-225.

⁴⁹ Dewi Avilia Consular assistance for nationals detained by a foreign government: states' policies and practises *Indonesia Law Review* (2017) 1113 - 134

⁵⁰ Coates, P. D. (1988). *The China consuls: British consular officers, 1843–1943*. Hong Kong: Oxford University Press

differences between the laws and regulations of the home nation and the host country, and consulates must adhere to both. These nuances can make it difficult for consular officers to step in and help when it's needed.⁵¹

– Consular access and cooperation: In certain instances, host countries may restrict consular access to their citizens or impede the efforts of consular officers to render assistance. This can hinder the ability of consular institutions to effectively safeguard the rights and interests of their citizens.⁵²

– Emergency response and crisis management: Consular institutions must be prepared to respond promptly and effectively to crises like natural disasters, civil unrest, and terrorist attacks. During such crises, it may be logistically challenging to coordinate evacuation plans, communicate with citizens, and provide necessary support.⁵³

– Consular protection for vulnerable groups Consular offices frequently encounter obstacles when attempting to provide adequate protection to vulnerable groups, such as undocumented immigrants, victims of human trafficking, and individuals with abusive employers. It requires specialized knowledge and resources to ensure their safety and address their specific requirements.⁵⁴

– Consular institutions manage sensitive personal information of citizens, such as passport details, financial information, and health records. Consulates face significant challenges in protecting this information from cyber threats and assuring compliance with data privacy laws.⁵⁵

– Consular institutions must proactively engage with their citizens to promote awareness of consular services and the rights and responsibilities of citizens living abroad. This includes disseminating information on travel advisories, local laws, and available assistance, but reaching all citizens can be difficult⁵⁶

To address these challenges, consular institutions must engage in ongoing efforts, such as collaboration with other government agencies, diplomatic

⁵¹ Guillaume, X. (2019). The duty of care and deterritorialized citizenship: From governing citizenship to acts of citizenship. In N. Graeger, & H. Leira (Eds.), *The duty of care in international relations: Protecting citizens beyond the border* (1st ed., pp. 105–117). London and New York: Routledge

⁵² Melissen, J. Consular diplomacy's first challenge: Communicating assistance to nationals abroad. *Asia Pac Policy Stud.* 2020; 7: 217– 228. <https://doi.org/10.1002/app5.298>

⁵³ Löwenheim, O. (2007). The responsibility to responsabilize: Foreign offices and the issuing of travel warnings. *International Political Sociology*, 1(3), 203–221. MELISSEN227

⁵⁴ Melissen, J., & Caesar-Gordon, M. (2016). 'Digital diplomacy' and the securing of nationals in a citizen-centric world. *Global Affairs*, 2(3), 321–330. <https://doi.org/10.1080/23340460.2016.1239381>

⁵⁵ Manor, I. (2019). *The digitalization of public diplomacy*. Cham: Palgrave Macmillan

⁵⁶ Maley, W. (2011). Risk, populism, and the evolution of consular responsibilities. In J. Melissen, & A. M. Fernández (Eds.), *Consular affairs and diplomacy* (pp. 43–62). Leiden and Boston: Martinus Nijhoff Publishers.

negotiations, investment in technology and infrastructure, and staff training. In addition, consulates can collaborate closely with local communities, civil society organizations, and international partners to enhance their capacity to effectively safeguard the rights and interests of citizens.

In conclusion, Diplomats should always put the needs of their constituents first when discussing the consular assistance, they provide. The current period offers the justifications for doing so, and the challenge for MFAs is to become more technologically mature. The job of consuls is not immune to the spread of false information, and additional difficulties can be expected in the future. The shifting sociotechnical landscape has increased the organizational demands on MFAs, but it has also brought new opportunities for improvement. Untapped potential exists in consular diplomacy to explain how seemingly "abstract" foreign policy issues are actually rather relevant to the well-being of people. MFAs require as much public backing as possible for their international activity in times when the home effects of international crises are being given more attention. There are significant constraints on market thinking in the consular sector. It would be dangerous for MFAs to downgrade their engagement with domestic society to the point where governments treat complex citizens as customers. In light of this research, I provide five suggestions for enhancing the effectiveness of consular outreach to citizens living abroad in the face of growing expectations from cultures on the cusp of full digital literacy. First, society is in the driver's seat when it comes to consular communications, thus governments should pay more attention to societal communication patterns and modify their communications strategy to prioritize the needs of citizens. Second, the consular services should resist the temptation of market thinking and commercialization, which could dehumanize citizens and work against the goals of foreign ministries that are trying to win public support.⁵⁷

The following suggestions can be considered as solutions to the problems associated with consular institutions protecting citizens' rights and interests:

- Improve operational capacity by increasing funds and resources for consular entities. Among these measures are increased spending on personnel, consular services, infrastructure, and technology. With adequate funding, consular staff can better assist individuals in a timely manner.

- Increased emphasis should be placed on education and training, with consular employees receiving extensive instruction in international law, human rights, diplomatic etiquette, and crisis management. Advocates for citizens' rights

⁵⁷ Melissen, J. Consular diplomacy's first challenge: Communicating assistance to nationals abroad. *Asia Pac Policy Stud.* 2020; 7: 217– 228. <https://doi.org/10.1002/app5.298>

can be kept abreast of the ever-changing legal landscape and sharpened through participation in ongoing professional development programs. In addition, there needs to be specialized training for dealing with certain problems, such resolving legal issues or helping marginalized groups.

- Encourage multilateralism through establishing productive working relationships between consular institutions and their counterparts in other nations, intergovernmental organizations, and NGOs. It is possible to better defend citizens' rights when agencies share best practices, share information, and work together to address shared concerns. Establishing consular networks, developing platforms for knowledge sharing, and coordinating consular services during emergencies are all examples of what can be accomplished when people work together.

- Improve consular assistance by pressuring consular agencies to supply individuals with a full range of easily available services. This includes providing consular services in many languages and building user-friendly online platforms. To ensure uniformity and fairness in their approach, consulates should establish transparent standards and norms for dealing with various types of cases.

- To better protect the rights and interests of their nationals, consular institutions should increase their diplomatic efforts and communicate with host countries. Human rights advocates, conflict arbitrators, and victims of human rights abuses should all go through diplomatic channels to advance their causes. To effectively represent people' interests, consular personnel must keep in touch with the appropriate government entities and work to build strong relationships with them.

- Providing individuals with the knowledge, resources, and tools they need to defend their own rights and interests should be a top priority for consular institutions. Campaigns to inform the public, distribute instructional materials, and organize consular outreach programs are all effective ways to do this. In order to make educated judgments and take preventative actions, citizens need to be aware of their rights, legal procedures, and accessible consular services.

- To better protect citizen data and stave off data breaches, consular institutions should prioritize cybersecurity measures. Protecting sensitive information requires the use of strong security procedures, encryption tools, and routine audits. It is the responsibility of consulates to preserve the privacy and security of their citizens' personal data by adhering to all applicable data protection laws and regulations.

•In order to better defend citizens' rights and interests, consular institutions can apply these suggestions. The improved efficiency and responsiveness of consular services will guarantee that expats are cared for and safe.

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