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ภาคผนวก

ภาคผนวก ก.

ธรรมนูญศาลโลก

Article 1

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Article 1

The International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

CHAPTER I - ORGANIZATION OF THE COURT

Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

Article 5

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfills the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Article 13

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 14

Vacancies shall be filled by the same method as that laid down for the first election subject to the following provision: the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

Article 15

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. Any doubt on this point shall be settled by the decision of the Court.

Article 17

1. No member of the Court may act as agent, counsel, or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.

3. Any doubt on this point shall be settled by the decision of the Court.

Article 18

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfill the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

Article 19

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

Article 21

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

Article 22

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.

Article 23

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.

3. If in any such case the member Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.

2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

3. A quorum of nine judges shall suffice to constitute the Court.

Article 26

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications.

2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

3. Cases shall be heard and determined by the chambers provided for in this article if the parties so request.

Article 27

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

Article 28

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

Article 29

With a view to the speedy dispatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfill the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President.

4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their travelling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

Article 33

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II - COMPETENCE OF THE COURT

Article 34

1. Only states may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

Article 35

1. The Court shall be open to the states parties to the present Statute.

2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court

Article 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state

accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.

CHAPTER III - PROCEDURE

Article 39

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

Article 41

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council

Article 42

1. The parties shall be represented by agents.

2. They may have the assistance of counsel or advocates before the Court.

3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

Article 43

1. The procedure shall consist of two parts: written and oral.

2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.

3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

4. A certified copy of every document produced by one party shall be communicated to the other party.

5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

Article 44

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.

2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted .

Article 47

1. Minutes shall be made at each hearing and signed by the Registrar and the President.

2. These minutes alone shall be authentic.

Article 48

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

Article 50

The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54

1. When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.

2. The Court shall withdraw to consider the judgment.

3. The deliberations of the Court shall take place in private and remain secret.

Article 55

1. All questions shall be decided by a majority of the judges present.

2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the judges who have taken part in the decision.

Article 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 58

The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62

I. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2 It shall be for the Court to decide upon this request.

Article 63

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV - ADVISORY OPINIONS

Article 65

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question

upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 66

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such state may express a desire to submit a written statement or to be heard; and the Court will decide.

4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

Article 67

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

Article 68

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V - AMENDMENT

Article 69

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

Article 70

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

ภาคผนวก ข.

อนุสัญญากรุงเวียนนาว่าด้วยความสัมพันธ์ทางกงสุล ค.ศ.1963 และพิธีสารยอมรับอำนาจศาลโลก

VIENNA CONVENTION ON CONSULAR RELATIONS AND OPTIONAL PROTOCOLS

U.N.T.S. Nos. 8638-8640, vol. 596, pp. 262-512 , DONE AT VIENNA, ON 24 APRIL 1963
The States Parties to the present Convention, Recalling that consular relations have been established between peoples since ancient times,

Having in mind the Purposes and Principles of the Charter of the United Nation concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Considering that the United Nations Conference on Diplomatic Intercourse and Immunities adopted the Vienna Convention on Diplomatic Relations which was opened for signature on 18 April 1961,

Believing that an international convention on consular relations, privileges and immunities would also contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of functions by consular posts on behalf of their respective States,

Affirming that the rules of customary international law continue to govern matters not expressly regulated by the provisions of the present Convention,

Have agreed as follows:

Article 1

DEFINITIONS

1. For the purposes of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

(a) "consular post" means any consulate-general, consulate, vice-consulate or consular agency;

(b) "consular district" means the area assigned to a consular post for the exercise of consular functions;

(c) "head of consular post" means the person charged with the duty of acting in that capacity;

(d) "consular officer" means any person, including the head of a consular post, entrusted in that capacity with the exercise of consular functions;

(e) "consular employee" means any person employed in the administrative or technical service of a consular post;

(f) "member of the service staff" means any person employed in the domestic service of a consular post;

(g) "members of the consular post" means consular officers, consular employees and members of the service staff;

(h) "members of the consular staff" means consular officers, other than the head of a consular post, consular employees and members of the service staff;

(i) "member of the private staff" means a person who is employed exclusively in the private service of a member of the consular post;

(j) "consular premises" means the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post;

(k) "consular archives" includes all the papers, documents, correspondence, books, films, tapes and registers of the consular post, together with the ciphers and codes, the card-indexes and any article of furniture intended for their protection or safekeeping.

2. Consular officers are of two categories, namely career consular officers and honorary consular officers. The provisions of Chapter II of the present Convention apply to consular posts headed by career consular officers; the provisions of Chapter III govern

consular posts headed by honorary consular officers.

3. The particular status of members of the consular posts who are nationals or permanent residents of the receiving State is governed by Article 71 of the present Convention.

CHAPTER I

CONSULAR RELATIONS IN GENERAL

Section I

ESTABLISHMENT AND CONDUCT OF CONSULAR RELATIONS

Article 2

ESTABLISHMENT OF CONSULAR RELATIONS

1. The establishment of consular relations between States takes place by mutual consent.

2. The consent given to the establishment of diplomatic relations between two States implies, unless otherwise stated, consent to the establishment of consular relations.

3. The severance of diplomatic relations shall not ipso facto involve the severance of consular relations.

Article 3

EXERCISE OF CONSULAR FUNCTIONS

Consular functions are exercised by consular posts. They are also exercised by diplomatic missions in accordance with the provisions of the present Convention.

Article 4

ESTABLISHMENT OF A CONSULAR POST

1. A consular post may be established in the territory of the receiving State only with that State's consent.

2. The seat of the consular post, its classification and the consular district shall be established by the sending State and shall be subject to the approval of the receiving State.

3. Subsequent changes in the seat of the consular post, its classification or the consular district may be made by the sending State only with the consent of the receiving State.

4. The consent of the receiving State shall also be required if a consulate-general or a consulate desires to open a vice-consulate or a consular agency in a locality other than that in which it is itself established.

5. The prior express consent of the receiving State shall also be required for the opening of an office forming part of an existing consular post elsewhere than at the seat thereof.

Article 5

CONSULAR FUNCTIONS

Consular functions consist in:

(a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law;

(b) furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State and otherwise promoting friendly relations between them in accordance with the provisions of the present Convention;

(c) ascertaining by all lawful means conditions and developments in the commercial, economic, cultural and scientific life of the receiving State, reporting thereon to the Government of the sending State and giving information to persons interested;

(d) issuing passports and travel documents to nationals of the sending State, and visas or appropriate documents to persons wishing to travel to the sending State;

(e) helping and assisting nationals, both individuals and bodies corporate, of the sending State;

(f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;

(g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;

(h) safeguarding, within the limits imposed by the laws and regulations of the receiving State, the interests of minors and other persons lacking full capacity who are nationals of the sending State,

particularly where any guardianship or trusteeship is required with respect to such persons;

(i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;

(j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft

registered in that State, and in respect of their crews;

(l) extending assistance to vessels and aircraft mentioned in sub-paragraph (k) of this Article and to their crews, taking statements regarding the voyage of a vessel, examining and stamping

the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage,

and settling disputes of any kind between the master, the officers and the seamen in so far as this may be authorized by the laws and regulations of the sending State;

(m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

Article 6

EXERCISE OF CONSULAR FUNCTIONS OUTSIDE THE CONSULAR DISTRICT

A consular officer may, in special circumstances, with the consent of the receiving State, exercise his functions outside his consular district.

Article 7

EXERCISE OF CONSULAR FUNCTIONS IN A THIRD STATE

The sending State may, after notifying the States concerned, entrust a consular post established in a particular State with the exercise of consular functions in another State, unless there is express objection by one of the States concerned.

Article 8

EXERCISE OF CONSULAR FUNCTIONS ON BEHALF OF A THIRD STATE

Upon appropriate notification to the receiving State, a consular post of the sending State may, unless the receiving State objects, exercise consular functions in the receiving State on behalf of a third State.

Article 9

CLASSES OF HEADS OF CONSULAR POSTS

1. Heads of consular posts are divided into four classes, namely:

(a) consuls-general;

(b) consuls;

(c) vice-consuls;

(d) consular agents.

2. Paragraph 1 of this Article in no way restricts the right of any of the Contracting Parties to fix the designation of consular officers other than the heads of consular posts.

Article 10

APPOINTMENT AND ADMISSION OF HEADS OF CONSULAR POSTS

1. Heads of consular posts are appointed by the sending State and are admitted to the exercise of their functions by the receiving State.

2. Subject to the provisions of the present Convention, the formalities for the appointment and for the admission of the head of a consular post are determined by the laws, regulations and usages of the sending State and of the receiving State respectively.

Article 11

THE CONSULAR COMMISSION OR NOTIFICATION OF APPOINTMENT

1. The head of a consular post shall be provided by the sending State with a document, in the form of a commission or similar instrument, made out for each appointment, certifying his capacity and showing, as a general rule, his full name, his category and class, the consular district and the seat of the consular post.

2. The sending State shall transmit the commission or similar instrument through the diplomatic or other appropriate channel to the Government of the State in whose territory the head of a consular post is to exercise his functions.

3. If the receiving State agrees, the sending State may, instead of a commission or similar instrument, send to the receiving State a notification containing the particulars required by paragraph 1 of this Article.

Article 12
THE EXEQUATUR

1. The head of a consular post is admitted to the exercise of his functions by an authorization from the receiving State termed an exequatur, whatever the form of this authorization.
2. A State which refuses to grant an exequatur is not obliged to give to the sending State reasons for such refusal.
3. Subject to the provisions of Articles 13 and 15, the head of a consular post shall not enter upon his duties until he has received an exequatur.

Article 13
PROVISIONAL ADMISSION OF HEADS OF CONSULAR POSTS

Pending delivery of the exequatur, the head of a consular post may be admitted on a provisional basis to the exercise of his functions. In that case, the provisions of the present Convention shall apply.

Article 14
NOTIFICATION TO THE AUTHORITIES OF THE CONSULAR DISTRICT

As soon as the head of a consular post is admitted even provisionally to the exercise of his functions, the receiving State shall immediately notify the competent authorities of the consular district. It shall also ensure that the necessary measures are taken to enable the head of a consular post to carry out the duties of his office and to have the benefit of the provisions of the present Convention.

Article 15
TEMPORARY EXERCISE OF THE FUNCTIONS OF THE HEAD OF A CONSULAR POST

1. If the head of a consular post is unable to carry out his functions or the position of head of consular post is vacant, an acting head of post may act provisionally as head of the consular post.

2. The full name of the acting head of post shall be notified either by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, or, if he is unable to do so, by any competent authority of the sending State, to the
Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry. As a general rule, this notification shall be given in advance. The receiving State may make the admission as acting head of post of a person who is neither a diplomatic agent nor a consular officer of the sending State in the receiving State conditional on its consent.

3. The competent authorities of the receiving State shall afford assistance and protection to the acting head of post. While he is in charge of the post, the provisions of the present Convention shall apply to him on the same basis as to the head of the consular post concerned. The receiving State shall not, however, be obliged to grant to an acting head of post any facility, privilege or immunity which the head of the consular post enjoys only subject to conditions not fulfilled by the acting head of post.

4. When, in the circumstances referred to in paragraph 1 of this Article, a member of the diplomatic staff of the diplomatic mission of the sending State in the receiving State is designated by the sending State as an acting head of post, he shall, if the receiving State does not object thereto, continue to enjoy diplomatic privileges and immunities.

Article 16

PRECEDENCE AS BETWEEN HEADS OF CONSULAR POSTS

1. Heads of consular posts shall rank in each class according to the date of the grant of the exequatur.

2. If, however, the head of a consular post before obtaining the exequatur is admitted to the exercise of his functions provisionally, his precedence shall be determined according to the date of the provisional admission; this precedence shall be maintained after the granting of the exequatur.

3. The order of precedence as between two or more heads of consular posts who obtained the exequatur or provisional admission on the same date shall be determined according to the dates on which their commissions or similar instruments or the notifications referred to in paragraph 3 of Article 11 were presented to the receiving State.

4. Acting heads of posts shall rank after all heads of consular posts and, as between themselves, they shall rank according to the dates on which they assumed their functions as acting heads of posts as indicated in the notifications given under paragraph 2 of Article 15.

5. Honorary consular officers who are heads of consular posts shall rank in each class after career heads of consular posts, in the order and according to the rules laid down in the foregoing paragraphs.

6. Heads of consular posts shall have precedence over consular officers not having that status.

Article 17

PERFORMANCE OF DIPLOMATIC ACTS BY CONSULAR OFFICERS

1. In a State where the sending State has no diplomatic mission and is not represented by a diplomatic mission of a third State, a consular officer may, with the consent of the receiving State, and without affecting his consular status, be authorized to perform diplomatic acts. The performance of such acts by a consular officer shall not confer

upon him any right to claim diplomatic privileges and immunities.

2. A consular officer may, after notification addressed to the receiving State, act as representative of the sending State to any inter-governmental organization. When so acting, he shall be entitled to enjoy any privileges and immunities accorded to such a representative by customary international law or by international agreements; however, in respect of the performance by him of any consular function, he shall not be entitled to any greater immunity from jurisdiction than that to which a consular officer is entitled under the present Convention.

Article 18
APPOINTMENT OF THE SAME PERSON BY TWO OR MORE STATES AS A CONSULAR OFFICER

Two or more States may, with the consent of the receiving State, appoint the same person as a consular officer in that State.

Article 19
APPOINTMENT OF MEMBERS OF CONSULAR STAFF

1. Subject to the provisions of Articles 20, 22 and 23, the sending State may freely appoint the members of the consular staff.

2. The full name, category and class of all consular officers, other than the head of a consular post, shall be notified by the sending State to the receiving State in sufficient time for the receiving State, if it so wishes, to exercise its rights under paragraph 3 of Article 23.

3. The sending State may, if required by its laws and regulations, request the receiving State to grant an exequatur to a consular officer other than the head of a consular post.

4. The receiving State may, if required by its laws and regulations, grant an exequatur to a consular officer other than the head of a consular post.

Article 20

SIZE OF THE CONSULAR STAFF

In the absence of an express agreement as to the size of the consular staff, the receiving State may require that the size of the staff be kept within limits considered by it to be reasonable and normal, having regard to circumstances and conditions in the consular district and to the needs
of the particular post.

Article 21

PRECEDENCE AS BETWEEN CONSULAR OFFICERS OF A CONSULAR POST

The order of precedence as between the consular officers of a consular post and any change thereof shall be notified by the diplomatic mission of the sending State or, if that State has no such mission in the receiving State, by the head of the consular post, to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

Article 22

NATIONALITY OF CONSULAR OFFICERS

1. Consular officers should, in principle, have the nationality of the sending State.
2. Consular officers may not be appointed from among persons having the nationality of the receiving State except with the express consent of that State which may be withdrawn at any time.
3. The receiving State may reserve the same right with regard to nationals of a third State who are not also nationals of the sending State.

Article 23

PERSONS DECLARED "NON GRATA"

1. The receiving State may at any time notify the sending State that a consular officer is persona non grata or that any other member of the consular staff is not acceptable. In that event, the sending State shall, as the case may be, either recall the person concerned or terminate his functions with the consular post.

2. If the sending State refuses or fails within a reasonable time to carry out its obligations under paragraph 1 of this Article, the receiving State may, as the case may be, either withdraw the exequatur from the person concerned or cease to consider him as a member of the consular staff.

3. A person appointed as a member of a consular post may be declared unacceptable before arriving in the territory of the receiving State or, if already in the receiving State, before entering on his duties with the consular post. In any such case, the sending State shall withdraw his appointment.

4. In the cases mentioned in paragraphs 1 and 3 of this Article, the receiving State is not obliged to give to the sending State reasons for its decision.

Article 24

NOTIFICATION TO THE RECEIVING STATE OF APPOINTMENTS, ARRIVALS AND DEPARTURES

1. The Ministry for Foreign Affairs of the receiving State or the authority designated by that Ministry shall be notified of:

(a) the appointment of members of a consular post, their arrival after appointment to the consular post, their final departure or the termination of their functions and any other changes affecting their status that may occur in the course of their service with the consular post;

(b) the arrival and final departure of a person belonging to the family of a member of a consular post forming part of his household and, where appropriate, the fact that a person becomes or ceases to be such a member of the family;

(c) the arrival and final departure of members of the private staff and, where appropriate, the termination of their service as such;

(d) the engagement and discharge of persons resident in the receiving State as members of a consular post or as members of the private staff entitled to privileges and immunities.

2. When possible, prior notification of arrival and final departure shall also be given.

Section II
END OF CONSULAR FUNCTIONS

Article 25
TERMINATION OF THE FUNCTIONS OF A MEMBER OF A CONSULAR POST

The functions of a member of a consular post shall come to an end inter alia:

(a) on notification by the sending State to the receiving State that his functions have come to an end;

(b) on withdrawal of the exequatur;

(c) on notification by the receiving State to the sending State that the receiving State has ceased to consider him as a member of the consular staff.

Article 26
DEPARTURE FROM THE TERRITORY OF THE RECEIVING STATE

The receiving State shall, even in case of armed conflict, grant to members of the consular post and members of the private staff, other than nationals of the receiving State, and to members of their families forming part of their households irrespective of nationality, the necessary time and facilities to enable them to prepare their departure and to leave at the earliest possible moment after the termination of the functions of the

members concerned. In particular, it shall, in case of need, place at their disposal the necessary means of transport for themselves and their property
other than property acquired in the receiving State the export of which is prohibited at the time of departure.

Article 27

PROTECTION OF CONSULAR PREMISES AND ARCHIVES AND OF THE INTERESTS OF THE SENDING STATE IN EXCEPTIONAL CIRCUMSTANCES

1. In the event of the severance of consular relations between two States:
(a) the receiving State shall, even in case of armed conflict, respect and protect the consular premises, together with the property of the consular post and the consular archives;
(b) the sending State may entrust the custody of the consular premises, together with the property contained therein and the consular archives, to a third State acceptable to the receiving State;
(c) the sending State may entrust the protection of its interests and those of its nationals to a third State acceptable to the receiving State.
2. In the event of the temporary or permanent closure of a consular post, the provisions of sub-paragraph (a) of paragraph 1 of this Article shall apply. In addition,
(a) if the sending State, although not represented in the receiving State by a diplomatic mission, has another consular post in the territory of that State, that consular post may be entrusted with the custody of the premises of the consular post which has been closed, together with the property contained therein and the consular archives, and, with the consent of the receiving State, with the exercise of consular functions in the district of that consular post; or
(b) if the sending State has no diplomatic mission and no other consular post in the receiving State, the provisions of sub-paragraphs (b) and (c) of paragraph 1 of this Article shall apply.

CHAPTER II

FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CONSULAR POSTS, CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

Section I
FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO A CONSULAR POST

Article 28
FACILITIES FOR THE WORK OF THE CONSULAR POST

The receiving State shall accord full facilities for the performance of the functions of the consular post.

Article 29
USE OF NATIONAL FLAG AND COAT-OF-ARMS

1. The sending State shall have the right to the use of its national flag and coat-of-arms in the receiving State in accordance with the provisions of this Article.
2. The national flag of the sending State may be flown and its coat-of-arms displayed on the building occupied by the consular post and at the entrance door thereof, on the residence of the head of the consular post and on his means of transport when used on official business.
3. In the exercise of the right accorded by this Article regard shall be had to the laws, regulations and usages of the receiving State.

Article 30
ACCOMMODATION

1. The receiving State shall either facilitate the acquisition on its territory, in accordance with its laws and regulations, by the sending State of premises necessary for its consular

post or assist the latter in obtaining accommodation in some other way.

2. It shall also, where necessary, assist the consular post in obtaining suitable accommodation for its members.

Article 31
INVIOLABILITY OF THE CONSULAR PREMISES

1. Consular premises shall be inviolable to the extent provided in this Article.

2. The authorities of the receiving State shall not enter that part of the consular premises which is used exclusively for the purpose of the work of the consular post except with the consent of the head of the consular post or of his designee or of the head of the diplomatic mission of the sending State. The consent of the head of the consular post may, however, be assumed in case of fire or other disaster requiring prompt protective action.

3. Subject to the provisions of paragraph 2 of this Article, the receiving State is under a special duty to take all appropriate steps to protect the consular premises against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

4. The consular premises, their furnishings, the property of the consular post and its means of transport shall be immune from any form of requisition for purposes of national defence or public utility. If expropriation is necessary for such purposes, all possible steps shall be taken to avoid impeding the performance of consular functions, and prompt, adequate and effective compensation shall be paid to the sending State.

Article 32
EXEMPTION FROM TAXATION OF CONSULAR PREMISES

1. Consular premises and the residence of the career head of consular post of which the sending State or any person acting on its behalf is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.

2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the law of the receiving State, they are payable by the person who contracted with the sending State or with the person acting on its behalf.

Article 33
INVIOLABILITY OF THE CONSULAR ARCHIVES AND DOCUMENTS

The consular archives and documents shall be inviolable at all times and wherever they may be.

Article 34
FREEDOM OF MOVEMENT

Subject to its laws and regulations concerning zones entry into which is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to all members of the consular post.

Article 35
FREEDOM OF COMMUNICATION

1. The receiving State shall permit and protect freedom of communication on the part of the consular post for all official purposes. In communicating with the Government, the diplomatic missions and other consular posts, wherever situated, of the sending State, the consular post may employ all appropriate means, including diplomatic or consular couriers, diplomatic or
consular bags and messages in code or cipher. However, the consular post may install and use a wireless transmitter only with the consent of the receiving State.
2. The official correspondence of the consular post shall be inviolable. Official correspondence means all correspondence relating to the consular post and its functions.

3. The consular bag shall be neither opened nor detained. Nevertheless, if the competent authorities of the receiving State have serious reason to believe that the bag contains something other than the correspondence, documents or articles referred to in paragraph 4 of this Article, they may request that the bag be opened in their presence by an authorized representative of the sending State. If this request is refused by the authorities of the sending State, the bag shall be returned to its place of origin.

4. The packages constituting the consular bag shall bear visible external marks of their character and may contain only official correspondence and documents or articles intended exclusively for official use.

5. The consular courier shall be provided with an official document indicating his status and the number of packages constituting the consular bag.

Except with the consent of the receiving State he shall be neither a national of the receiving State, nor, unless he is a national of the sending State, a permanent resident of the receiving State. In the performance of his functions he shall be protected by the receiving State. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.

6. The sending State, its diplomatic missions and its consular posts may designate consular couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the consular bag in his charge.

7. A consular bag may be entrusted to the captain of a ship or of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag, but he shall not be considered to be a consular courier. By arrangement with the appropriate local authorities, the consular post may send one of its members to take possession of the bag directly and freely from the captain of the ship or of the aircraft.

Article 36

COMMUNICATION AND CONTACT WITH NATIONALS OF THE SENDING STATE

1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:

(a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;

(b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, In prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;

(c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

2. The rights referred to in paragraph 1 of this Article shall be exercised in conformity with the laws and regulations of the receiving State, subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under this Article are intended.

Article 37

INFORMATION IN CASES OF DEATHS, GUARDIANSHIP OR TRUSTEESHIP, WRECKS AND AIR ACCIDENTS

If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty:

(a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred;

(b) to inform the competent consular post without delay of any case where the appointment of a guardian or trustee appears to be in the interests of a minor or other person lacking full capacity who is a national of the sending State. The giving of this information shall, however, be without prejudice to the operation of the laws and regulations of the receiving State concerning such appointments;

(c) if a vessel, having the nationality of the sending State, is wrecked or runs aground in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State, to inform without delay the consular post nearest to the scene of the occurrence.

Article 38

COMMUNICATION WITH THE AUTHORITIES OF THE RECEIVING STATE

In the exercise of their functions, consular officers may address:

(a) the competent local authorities of their consular district;

(b) the competent central authorities of the receiving State if and to the extent that this is allowed by the laws, regulations and usages of the receiving State or by the relevant international agreements.

Article 39

CONSULAR FEES AND CHARGES

1. The consular post may levy in the territory of the receiving State the fees and charges provided by the laws and regulations of the sending State for consular acts.

2. The sums collected in the form of the fees and charges referred to in paragraph 1 of this Article, and the receipts for such fees and charges, shall be exempt from all dues and taxes in the receiving State.

Section II

FACILITIES, PRIVILEGES AND IMMUNITIES RELATING TO CAREER CONSULAR OFFICERS AND OTHER MEMBERS OF A CONSULAR POST

Article 40

PROTECTION OF CONSULAR OFFICERS

The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity.

Article 41

PERSONAL INVIOLABILITY OF CONSULAR OFFICERS

1. Consular officers shall not be liable to arrest or detention pending trial, except in the case of a grave crime and pursuant to a decision by the competent judicial authority.
2. Except in the case specified in paragraph 1 of this Article, consular officers shall not be committed to prison or liable to any other form of restriction on their personal freedom save in execution of a judicial decision of final effect.
3. If criminal proceedings are instituted against a consular officer, he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except in the case specified in paragraph 1 of this Article, in a manner which will hamper the exercise of consular functions as little as possible. When, in the circumstances mentioned in paragraph 1 of this Article, it has become necessary to detain a consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 42

NOTIFICATION OF ARREST, DETENTION OR PROSECUTION

In the event of the arrest or detention, pending trial, of a member of the consular staff, or of criminal proceedings being instituted against him, the receiving State shall promptly notify the head of the consular post. Should the latter be himself the object of any such measure, the receiving State shall notify the sending State through the diplomatic channel.

Article 43

IMMUNITY FROM JURISDICTION

1. Consular officers and consular employees shall not be amenable to the jurisdiction of the judicial or administrative authorities of the receiving State in respect of acts performed in the exercise of consular functions.
2. The provisions of paragraph 1 of this Article shall not, however, apply in respect of a civil action either:
(a) arising out of a contract concluded by a consular officer or a consular employee in which he did not contract expressly or impliedly as an agent of the sending State; or
(b) by a third party for damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft.

Article 44

LIABILITY TO GIVE EVIDENCE

1. Members of a consular post may be called upon to attend as witnesses in the course of judicial or administrative proceedings. A consular employee or a member of the service staff shall not, except in the cases mentioned in paragraph 3 of this Article, decline to give evidence. If a consular officer should decline to do so, no coercive measure or penalty may be applied to him.

2. The authority requiring the evidence of a consular officer shall avoid interference with the performance of his functions. It may, when possible, take such evidence at his residence or at the consular post or accept a statement from him in writing.

3. Members of a consular post are under no obligation to give evidence concerning matters connected with the exercise of their functions or to produce official correspondence and documents relating thereto. They are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

Article 45

WAIVER OF PRIVILEGES AND IMMUNITIES

1. The sending State may waive, with regard to a member of the consular post, any of the privileges and immunities provided for in Articles 41, 43 and 44.

2. The waiver shall in all cases be express, except as provided in paragraph 3 of this Article, and shall be communicated to the receiving State in writing.

3. The initiation of proceedings by a consular officer or a consular employee in a matter where he might enjoy immunity from jurisdiction under Article 43 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. The waiver of immunity from jurisdiction for the purposes of civil or administrative proceedings shall not be deemed to imply the waiver of immunity from the measures of execution resulting from the judicial decision; in respect of such measures, a separate waiver shall be necessary.

Article 46

EXEMPTION FROM REGISTRATION OF ALIENS AND RESIDENCE PERMITS

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

2. The provisions of paragraph 1 of this Article shall not, however, apply to any consular employee who is not a permanent employee of the sending State or who carries on any private gainful occupation in the receiving State or to any member of the family of any such employee

Article 47
EXEMPTION FROM WORK PERMITS

1. Members of the consular post shall, with respect to services rendered for the sending State, be exempt from any obligations in regard to work permits imposed by the laws and regulations of the receiving State concerning the employment of foreign labour.
2. Members of the private staff of consular officers and of consular employees shall, if they do not carry on any other gainful occupation in the receiving State, be exempt from the obligations referred to in paragraph 1 of this Article.

Article 48
SOCIAL SECURITY EXEMPTION

1. Subject to the provisions of paragraph 3 of this Article, members of the consular post with respect to services rendered by them for the sending State, and members of their families forming part of their households, shall be exempt from social security provisions which may be in force in the receiving State.
2. The exemption provided for in paragraph 1 of this Article shall apply also to members of the private staff who are in the sole employ of members of the consular post, on condition:
(a) that they are not nationals of or permanently resident in the receiving State; and
(b) that they are covered by the social security provisions which are in force in the sending State or a third State.
3. Members of the consular post who employ persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations which the social security provisions of the receiving State impose upon employers.

4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State, provided that such participation is permitted by that State.

Article 49
EXEMPTION FROM TAXATION

1. Consular officers and consular employees and members of their families forming part of their households shall be exempt from all dues and taxes, personal or real, national, regional or municipal, except:

(a) indirect taxes of a kind which are normally incorporated in the price of goods or services;

(b) dues or taxes on private immovable property situated in the territory of the receiving State, subject to the provisions of Article 32;

(c) estate, succession or inheritance duties, and duties on transfers, levied by the receiving State, subject to the provisions of paragraph (b) of Article 51;

(d) dues and taxes on private income, including capital gains, having its source in the receiving State and capital taxes relating to investments made in commercial or financial undertakings in the receiving State;

(e) charges levied for specific services rendered;

(f) registration, court or record fees, mortgage dues and stamp duties, subject to the provisions of Article 32.

2. Members of the service staff shall be exempt from dues and taxes on the wages which they receive for their services.

3. Members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving State shall observe the obligations which the laws and regulations of that State impose upon employers concerning the levying of income tax.

Article 50

EXEMPTION FROM CUSTOMS DUTIES AND INSPECTION

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services, on:

(a) articles for the official use of the consular post;

(b) articles for the personal use of a consular officer or members of his family forming part of his household, including articles intended for his establishment. The articles intended for consumption shall not exceed the quantities necessary for direct utilization by the persons concerned.

2. Consular employees shall enjoy the privileges and exemptions specified in paragraph 1 of this Article in respect of articles imported at the time of first installation.

3. Personal baggage accompanying consular officers and members of their families forming part of their households shall be exempt from inspection. It may be inspected only if there is serious reason to believe that it contains articles other than those referred to in sub-paragraph (b) of paragraph 1 of this Article, or articles the import or export of which is prohibited by the laws and regulations of the receiving State or which are subject to its quarantine laws and regulations. Such inspection shall be carried out in the presence of the consular officer or member of his family concerned.

Article 51

ESTATE OF A MEMBER OF THE CONSULAR POST OR OF A MEMBER OF HIS FAMILY

In the event of the death of a member of the consular post or of a member of his family forming part of his household, the receiving State:

(a) shall permit the export of the movable property of the deceased, with the exception of any such property acquired in the receiving State the export of which was prohibited at the time of his death;

(b) shall not levy national, regional or municipal estate, succession or inheritance duties, and duties on transfers, on movable property the presence of which in the receiving State was due solely to the presence in that State of the deceased as a member of the consular
post or as a member of the family of a member of the consular post.

Article 52
EXEMPTION FROM PERSONAL SERVICES AND CONTRIBUTIONS

The receiving State shall exempt members of the consular post and members of their families forming part of their households from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 53
BEGINNING AND END OF CONSULAR PRIVILEGES AND IMMUNITIES

1. Every member of the consular post shall enjoy the privileges and immunities provided in the present Convention from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when he enters on his duties with the consular post.
2. Members of the family of a member of the consular post forming part of his household and members of his private staff shall receive the privileges and immunities provided in the present Convention from the date from which he enjoys privileges and immunities in accordance with paragraph 1 of this Article or from the date of their entry into the territory of the receiving State or from the date of their becoming a member of such family or private staff, whichever is the latest.
3. When the functions of a member of the consular post have come to an end, his privileges and immunities and those of a member of his family forming part of his household or a member of his private staff shall normally cease at the moment when the person concerned leaves the receiving State or on the expiry of a reasonable period in

which to do so, whichever is the sooner, but shall subsist until that time, even in case of armed conflict. In the case of the persons referred to in paragraph 2 of this Article, their privileges and immunities shall come to an end when they cease to belong to the household or to be in the service of a member of the consular post provided, however, that if such persons intend leaving the receiving State within a reasonable period thereafter, their privileges and immunities shall subsist until the time of their departure.

4. However, with respect to acts performed by a consular officer or a consular employee in the exercise of his functions, immunity from jurisdiction shall continue to subsist without limitation of time.

5. In the event of the death of a member of the consular post, the members of his family forming part of his household shall continue to enjoy the privileges and immunities accorded to them until they leave the receiving State or until the expiry of a reasonable period enabling them to do so, whichever is the sooner.

Article 54

OBLIGATIONS OF THIRD STATES

1. If a consular officer passes through or is in the territory of a third State, which has granted him a visa if a visa was necessary, while proceeding to take up or return to his post or when returning to the sending State, the third State shall accord to him all immunities provided for by the other Articles of the present Convention as may be required to ensure his transit or return. The same shall apply in the case of any member of his family forming part of his household enjoying such privileges and immunities who are accompanying the consular officer or travelling separately to join him or to return to the sending State.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the transit through their territory of other members of the consular post or of members of their families forming part of their households.

3. Third States shall accord to official correspondence and to other official communications in transit, including messages in code or cipher, the same freedom and protection as the receiving State is bound to accord under the present Convention. They

shall accord to consular couriers who have been granted a visa, if a visa was necessary, and to consular bags in transit, the same inviolability and protection as the receiving State is bound to accord under the present Convention.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and to consular bags, whose presence in the territory of the third State is due to force majeure.

Article 55

RESPECT FOR THE LAWS AND REGULATIONS OF THE RECEIVING STATE

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State. They also have a duty not to interfere in the internal affairs of that State.

2. The consular premises shall not be used in any manner incompatible with the exercise of consular functions.

3. The provisions of paragraph 2 of this Article shall not exclude the possibility of offices of other institutions or agencies being installed in part of the building in which the consular premises are situated, provided that the premises assigned to them are separate from those used by the consular post. In that event, the said offices shall not, for the purposes of the present Convention, be considered to form part of the consular premises.

Article 56

INSURANCE AGAINST THIRD PARTY RISKS

Members of the consular post shall comply with any requirement imposed by the laws and regulations of the receiving State in respect of insurance against third party risks arising from the use of any vehicle, vessel or aircraft.

Article 57

SPECIAL PROVISIONS CONCERNING PRIVATE GAINFUL OCCUPATION

1. Career consular officers shall not carry on for personal profit any professional or commercial activity in the receiving State.

2. Privileges and immunities provided in this Chapter shall not be accorded:

(a) to consular employees or to members of the service staff who carry on any private gainful occupation in the receiving State;

(b) to members of the family of a person referred to in sub-paragraph (a) of this paragraph or to members of his private staff;

(c) to members of the family of a member of a consular post who themselves carry on any private gainful occupation in the receiving State.

CHAPTER III

REGIME RELATING TO HONORARY CONSULAR OFFICERS AND CONSULAR POSTS HEADED BY SUCH OFFICERS

Article 58

GENERAL PROVISIONS RELATING TO FACILITIES, PRIVILEGES AND IMMUNITIES

1. Articles 28, 29, 30, 34, 35, 36, 37, 38 and 39, paragraph 3 of Article 54 and paragraphs 2 and 3 of Article 55 shall apply to consular posts headed by an honorary consular officer. In addition, the facilities, privileges and immunities of such consular posts shall be governed by Articles 59, 60, 61 and 62.

2. Articles 42 and 43, paragraph 3 of Article 44, Articles 45 and 53 and paragraph 1 of Article 55 shall apply to honorary consular officers. In addition, the facilities, privileges and immunities of such consular officers shall be governed by Articles 63, 64, 65, 66 and 67.

3. Privileges and immunities provided in the present Convention shall not be accorded to members of the family of an honorary consular officer or of a consular employee employed at a consular post headed by an honorary consular officer.
4. The exchange of consular bags between two consular posts headed by honorary consular officers in different States shall not be allowed without the consent of the two receiving States concerned.

Article 59
PROTECTION OF THE CONSULAR PREMISES

The receiving State shall take such steps as may be necessary to protect the consular premises of a consular post headed by an honorary consular officer against any intrusion or damage and to prevent any disturbance of the peace of the consular post or impairment of its dignity.

Article 60
EXEMPTION FROM TAXATION OF CONSULAR PREMISES

1. Consular premises of a consular post headed by an honorary consular officer of which the sending State is the owner or lessee shall be exempt from all national, regional or municipal dues and taxes whatsoever, other than such as represent payment for specific services rendered.
2. The exemption from taxation referred to in paragraph 1 of this Article shall not apply to such dues and taxes if, under the laws and regulations of the receiving State, they are payable by the person who contracted with the sending State.

Article 61
INVIOLABILITY OF CONSULAR ARCHIVES AND DOCUMENTS

The consular archives and documents of a consular post headed by an honorary consular officer shall be inviolable at all times and wherever they may be, provided that they are kept separate from other papers and documents and, in particular, from the

private correspondence of the head of a consular post and of any person working with him, and from the materials, books or documents relating to their profession or trade.

Article 62
EXEMPTION FROM CUSTOMS DUTIES

The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of, and grant exemption from all customs duties, taxes, and related charges other than charges for storage, cartage and similar services on the following articles, provided that they are for the official use of a consular post headed by an honorary consular officer: coats-of-arms, flags, signboards, seals and stamps, books, official printed matter, office furniture, office equipment and similar articles supplied by or at the instance of the sending State to the consular post.

Article 63
CRIMINAL PROCEEDINGS

If criminal proceedings are instituted against an honorary consular officer , he must appear before the competent authorities. Nevertheless, the proceedings shall be conducted with the respect due to him by reason of his official position and, except when he is under arrest or detention, in a manner which will hamper the exercise of consular functions as little as possible. When it has become necessary to detain an honorary consular officer, the proceedings against him shall be instituted with the minimum of delay.

Article 64
PROTECTION OF HONORARY CONSULAR OFFICERS

The receiving State is under a duty to accord to an honorary consular officer such protection as may be required by reason of his official position.

Article 65

EXEMPTION FROM REGISTRATION OF ALIENS AND RESIDENCE PERMITS

Honorary consular officers, with the exception of those who carry on for personal profit any professional or commercial activity in the receiving State, shall be exempt from all obligations under the laws and regulations of the receiving State in regard to the registration of aliens and residence permits.

Article 66

EXEMPTION FROM TAXATION

An honorary consular officer shall be exempt from all dues and taxes on the remuneration and emoluments which he receives from the sending State in respect of the exercise of consular functions.

Article 67

EXEMPTION FROM PERSONAL SERVICES AND CONTRIBUTIONS

The receiving State shall exempt honorary consular officers from all personal services and from all public services of any kind whatsoever and from military obligations such as those connected with requisitioning, military contributions and billeting.

Article 68

OPTIONAL CHARACTER OF THE INSTITUTION OF HONORARY CONSULAR OFFICERS

Each State is free to decide whether it will appoint or receive honorary consular officers.

CHAPTER IV

GENERAL PROVISIONS

Article 69
CONSULAR AGENTS WHO ARE NOT HEADS OF CONSULAR POSTS

1. Each State is free to decide whether it will establish or admit consular agencies conducted by consular agents not designated as heads of consular post by the sending State.

2. The conditions under which the consular agencies referred to in paragraph 1 of this Article may carry on their activities and the privileges and immunities which may be enjoyed by the consular agents in charge of them shall be determined by agreement between the sending State
and the receiving State.

Article 70
EXERCISE OF CONSULAR FUNCTIONS BY DIPLOMATIC MISSIONS

1. The provisions of the present Convention apply also, so far as the context permits, to the exercise of consular functions by a diplomatic mission.

2. The names of members of a diplomatic mission assigned to the consular section or otherwise charged with the exercise of the consular functions of the mission shall be notified to the Ministry for Foreign Affairs of the receiving State or to the authority designated by that Ministry.

3. In the exercise of consular functions a diplomatic mission may address:

(a) the local authorities of the consular district;

(b) the central authorities of the receiving State if this is allowed by the laws, regulations and usages of the receiving State or by relevant international agreements.

4. The privileges and immunities of the members of a diplomatic mission referred to in paragraph 2 of this Article shall continue to be governed by the rules of international law concerning diplomatic relations.

Article 71

NATIONALS OR PERMANENT RESIDENTS OF THE RECEIVING STATE

1. Except in so far as additional facilities, privileges and immunities may be granted by the receiving State, consular officers who are nationals of or permanently resident in the receiving State shall enjoy only immunity from jurisdiction and personal inviolability in respect of official acts performed in the exercise of their functions, and the privilege provided in paragraph 3 of Article 44. So far as these consular officers are concerned, the receiving State shall likewise be bound by the obligation laid down in Article 42. If criminal proceedings are instituted against such a consular officer, the proceedings shall, except when he is under arrest or detention, be conducted in a manner which will hamper the exercise of consular functions as little as possible.

2. Other members of the consular post who are nationals of or permanently resident in the receiving State and members of their families, as well as members of the families of consular officers referred to in paragraph 1 of this Article, shall enjoy facilities, privileges and immunities only in so far as these are granted to them by the receiving State. Those members of the families of members of the consular post and those members of the private staff who are themselves nationals of or permanently resident in the receiving State shall likewise enjoy facilities, privileges and immunit ies only in so far as these are granted to them by the receiving State. The receiving State shall, however, exercise its jurisdiction over those persons in such a way as not to hinder unduly the performance of the functions of the consular post.

Article 72

NON-DISCRIMINATION

1. In the application of the provisions of the present Convention the receiving State shall not discriminate as between States.

2. However, discrimination shall not be regarded as taking place:

(a) where the receiving State applies any of the provisions of the present Convention restrictively because of a restrictive application of that provision to its consular posts in the sending State;

(b) where by custom or agreement States extend to each other more favourable treatment than is required by the provisions of the present Convention.

Article 73
RELATIONSHIP BETWEEN THE PRESENT CONVENTION AND OTHER INTERNATIONAL AGREEMENTS

1. The provisions of the present Convention shall not affect other international agreements in force as between States parties to them.

2. Nothing in the present Convention shall preclude States from concluding international agreements confirming or supplementing or extending or amplifying the provisions there of.

CHAPTER V

FINAL PROVISIONS

Article 74
SIGNATURE

The present Convention shall be open for signature by all States Members of the United Nations or of any of the specialized agencies or Parties to the Statute of the International Court of Justice, and by any other State invited by the General Assembly of the United Nations to become a Party to the Convention, as follows until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article 75
RATIFICATION

The present Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 76
ACCESSION

The present Convention shall remain open for accession by any State belonging to any of the four categories mentioned in Article 74. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 77
ENTRY INTO FORCE

1. The present Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.
2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 78
NOTIFICATIONS BY THE SECRETARY-GENERAL

The Secretary-General of the United Nations shall inform all States belonging to any of the four categories mentioned in Article 74:
(a) of signatures to the present Convention and of the deposit of instruments of ratification or accession, in accordance with Articles 74, 75 and 76;

(b) of the date on which the present Convention will enter into force, in accordance with Article 77.

Article 79
AUTHENTIC TEXTS

The original of the present Convention, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States belonging to any of the four categories mentioned in Article 74.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

DONE at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

OPTIONAL PROTOCOL TO THE VIENNA CONVENTION ON CONSULAR RELATIONS CONCERNING THE COMPULSORY SETTLEMENT OF DISPUTES.

DONE AT VIENNA, ON 24 APRIL 1963

The States Parties to the present Protocol and to the Vienna Convention on Consular Relations, hereinafter referred to as "the Convention", adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963,

Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the

parties within a reasonable period, Have agreed as follows:

Article I

Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol.

Article II

The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application.

Article III

1. Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of

Justice.

2. The conciliation commission shall make its recommendations within five months after its appointment. If its recommendations are not accepted by the parties to the dispute within two months after they have been delivered, either party may bring the dispute before the Court by an application.

Article IV

States Parties to the Convention, to the Optional Protocol concerning Acquisition of Nationality, and to the present Protocol may at any time declare that they will extend the provisions of the present Protocol to disputes arising out of the interpretation or application of the Optional Protocol concerning Acquisition of Nationality. Such declarations shall be notified to the Secretary-General of the United Nations.

Article V

The present Protocol shall be open for signature by all States which may become Parties to the Convention as follows: until 31 October 1963 at the Federal Ministry for Foreign Affairs of the Republic of Austria and, subsequently, until 31 March 1964, at the United Nations Headquarters in New York.

Article VI

The present Protocol is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article VII

The present Protocol shall remain open for accession by all States which may become Parties to the Convention. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article VIII

1. The present Protocol shall enter into force on the same day as the Convention or on the thirtieth day following the date of deposit of the second instrument of ratification or accession to the Protocol with the Secretary-General of the United Nations, whichever date is the later.

2. For each State ratifying or acceding to the present Protocol after its entry into force in accordance with paragraph 1 of this Article, the Protocol shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article IX

The Secretary-General of the United Nations shall inform all States which may become Parties to the Convention:

(a) of signatures to the present Protocol and of the deposit of instruments of ratification or accession, in accordance with Articles V, VI and VII;

(b) of declarations made in accordance with Article IV of the present Protocol;

(c) of the date on which the present Protocol will enter into force, in accordance with Article VIII.

Article X

The original of the present Protocol, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States referred to in Article V.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present Protocol.

DONE at Vienna, this twenty-fourth day of April, one thousand nine hundred and sixty-three.

ภาคผนวก ค.

ประเทศสมาชิกอนุสัญญากรุงเวียนนาว่าด้วยความสัมพันธ์ทางกงสุล ค.ศ.1963

Vienna Convention on Consular Relations Participants

Vienna, 24 April 1963

Entry into force: 19 March 1967, in accordance with article 77.

Registration: 8 June 1967, No. 8638.

Status: Signatories: 48 ,Parties: 168.

Text: United Nations, Treaty Series, vol. 596, p. 261.

Note: The Convention was adopted on 22 April 1963 by the United Nations Conference on Consular Relations held at the Neue Hofburg in Vienna, Austria, from 4 March to 22 April 1963. The Conference also adopted the Optional Protocol concerning Acquisition of Nationality, the Optional Protocol concerning the Compulsory Settlement of Disputes, the Final Act and three resolutions annexed to that Act. The Convention and the two Protocols were deposited with the Secretary-General of the United Nations. The Final Act, by unanimous decision of the Conference, was deposited in the archives of the Federal Ministry for Foreign Affairs of Austria. For the proceedings of the Conference, see United Nations Conference on Consular Relations, Official Records, vols. I and II (United Nations publication, Sales Nos.: 63.X.2 and 64.X.1). The text of the Convention, two Protocols, Final Act and resolutions is published in vol. II.

Participant	Signature	Ratification, Accession (a), Succession (d)
Albania		4 Oct 1991 a
Algeria		14 Apr 1964 a
Andorra		3 Jul 1996 a
Angola		21 Nov 1990 a
Antigua and Barbuda		25 Oct 1988 d
Argentina	24 Apr 1963	7 Mar 1967

Participant	Signature	Ratification, Accession (a), Succession (d)
Armenia		23 Jun 1993 a
Australia	31 Mar 1964	12 Feb 1973
Austria	24 Apr 1963	12 Jun 1969
Azerbaijan		13 Aug 1992 a
Bahamas		17 Mar 1977 d
Bahrain		17 Sep 1992 a
Bangladesh		13 Jan 1978 d
Barbados		11 May 1992 a
Belarus		21 Mar 1989 a
Belgium	31 Mar 1964	9 Sep 1970
Belize		30 Nov 2000 a
Benin	24 Apr 1963	27 Apr 1979
Bhutan		28 Jul 1981 a
Bolivia	6 Aug 1963	22 Sep 1970
Bosnia and Herzegovina		1 Sep 1993 d
Brazil	24 Apr 1963	11 May 1967
Bulgaria		11 Jul 1989 a
Burkina Faso	24 Apr 1963	11 Aug 1964
Cameroon	21 Aug 1963	22 May 1967
Canada		18 Jul 1974 a
Cape Verde		30 Jul 1979 a
Central African Republic	24 Apr 1963	
Chile	24 Apr 1963	9 Jan 1968
China		2 Jul 1979 a
Colombia	24 Apr 1963	6 Sep 1972
Congo	24 Apr 1963	

Participant	Signature	Ratification, Accession (a), Succession (d)
Costa Rica	6 Jun 1963	29 Dec 1966
Côte d'Ivoire	24 Apr 1963	
Croatia1		12 Oct 1992 d
Cuba	24 Apr 1963	15 Oct 1965
Cyprus		14 Apr 1976 a
Czech Republic		22 Feb 1993 d
Democratic People's Republic of Korea		8 Aug 1984 a
Democratic Republic of the Congo	24 Apr 1963	15 Jul 1976
Denmark	24 Apr 1963	15 Nov 1972
Djibouti		2 Nov 1978 a
Dominica		24 Nov 1987 d
Dominican Republic	24 Apr 1963	4 Mar 1964
Ecuador	25 Mar 1964	11 Mar 1965
Egypt		21 Jun 1965 a
El Salvador		19 Jan 1973 a
Equatorial Guinea		30 Aug 1976 a
Eritrea		14 Jan 1997 a
Estonia		21 Oct 1991 a
Fiji		28 Apr 1972 a
Finland	28 Oct 1963	2 Jul 1980
France	24 Apr 1963	31 Dec 1970
Gabon	24 Apr 1963	23 Feb 1965
Georgia		12 Jul 1993 a
Germany	31 Oct 1963	7 Sep 1971
Ghana	24 Apr 1963	4 Oct 1963

Participant	Signature	Ratification, Accession (a), Succession (d)
Greece		14 Oct 1975 a
Grenada		2 Sep 1992 a
Guatemala		9 Feb 1973 a
Guinea		30 Jun 1988 a
Guyana		13 Sep 1973 a
Haiti		2 Feb 1978 a
Holy See	24 Apr 1963	8 Oct 1970
Honduras		13 Feb 1968 a
Hungary		19 Jun 1987 a
Iceland		1 Jun 1978 a
India		28 Nov 1977 a
Indonesia		4 Jun 1982 a
Iran (Islamic Republic of)	24 Apr 1963	5 Jun 1975
Iraq		14 Jan 1970 a
Ireland	24 Apr 1963	10 May 1967
Israel	25 Feb 1964	
Italy	22 Nov 1963	25 Jun 1969
Jamaica		9 Feb 1976 a
Japan		3 Oct 1983 a
Jordan		7 Mar 1973 a
Kazakhstan		5 Jan 1994 a
Kenya		1 Jul 1965 a
Kiribati		2 Apr 1982 d
Kuwait	10 Jan 1964	31 Jul 1975
Kyrgyzstan		7 Oct 1994 a
Lao People's Democratic Republic		9 Aug 1973 a

Participant	Signature	Ratification, Accession (a), Succession (d)
Latvia		13 Feb 1992 a
Lebanon	24 Apr 1963	20 Mar 1975
Lesotho		26 Jul 1972 a
Liberia	24 Apr 1963	28 Aug 1984
Libyan Arab Jamahiriya		4 Sep 1998 a
Liechtenstein	24 Apr 1963	18 May 1966
Lithuania		15 Jan 1992 a
Luxembourg	24 Mar 1964	8 Mar 1972
Madagascar		17 Feb 1967 a
Malawi		29 Apr 1980 a
Malaysia		1 Oct 1991 a
Maldives		21 Jan 1991 a
Mali		28 Mar 1968 a
Malta		10 Dec 1997 a
Marshall Islands		9 Aug 1991 a
Mauritania		21 Jul 2000 a
Mauritius		13 May 1970 a
Mexico	7 Oct 1963	16 Jun 1965
Micronesia (Federated States of)		29 Apr 1991 a
Monaco		4 Oct 2005 a
Mongolia		14 Mar 1989 a
Morocco		23 Feb 1977 a
Mozambique		18 Apr 1983 a
Myanmar		2 Jan 1997 a
Namibia		14 Sep 1992 a
Nepal		28 Sep 1965 a

Participant	Signature	Ratification, Accession (a), Succession (d)
Netherlands		17 Dec 1985 a
New Zealand		10 Sep 1974 a
Nicaragua		31 Oct 1975 a
Niger	24 Apr 1963	26 Apr 1966
Nigeria		22 Jan 1968 a
Norway	24 Apr 1963	13 Feb 1980
Oman		31 May 1974 a
Pakistan		14 Apr 1969 a
Panama	4 Dec 1963	28 Aug 1967
Papua New Guinea		4 Dec 1975 d
Paraguay		23 Dec 1969 a
Peru	24 Apr 1963	17 Feb 1978
Philippines	24 Apr 1963	15 Nov 1965
Poland	20 Mar 1964	13 Oct 1981
Portuga		13 Sep 1972 a
Qatar		4 Nov 1998 a
Republic of Korea		7 Mar 1977 a
Republic of Moldova		26 Jan 1993 a
Romania		24 Feb 1972 a
Russian Federation		15 Mar 1989 a
Rwanda		31 May 1974 a
Saint Lucia		27 Aug 1986 d
Saint Vincent and the Grenadines		27 Apr 1999 d
Samoa		26 Oct 1987 a
Sao Tome and Principe		3 May 1983 a
Saudi Arabia		29 Jun 1988 a

Participant	Signature	Ratification, Accession (a), Succession (d)
Senegal		29 Apr 1966 a
Serbia and Montenegro1		12 Mar 2001 d
Seychelles		29 May 1979 a
Singapore		1 Apr 2005 a
Slovakia4		28 May 1993 d
Slovenia1		6 Jul 1992 d
Somalia		29 Mar 1968 a
South Africa		21 Aug 1989 a
Spain		3 Feb 1970 a
Sudan		23 Mar 1995 a
Suriname		11 Sep 1980 a
Sweden	8 Oct 1963	19 Mar 1974
Switzerland	23 Oct 1963	3 May 1965
Syrian Arab Republic		13 Oct 1978 a
Tajikistan		6 May 1996 a
Thailand		15 Apr 1999 a
The Former Yugoslav Republic of Macedonia		18 Aug 1993 d
Timor-Leste		30 Jan 2004 a
Togo		26 Sep 1983 a
Tonga		7 Jan 1972 a
Trinidad and Tobago		19 Oct 1965 a
Tunisia		8 Jul 1964 a
Turkey		19 Feb 1976 a
Turkmenistan		25 Sep 1996 a
Tuvalu		15 Sep 1982 d

Participant	Signature	Ratification, Accession (a), Succession (d)
Ukraine		27 Apr 1989 a
United Arab Emirates		24 Feb 1977 a
United Kingdom of Great Britain and Northern Ireland	27 Mar 1964	9 May 1972
United Republic of Tanzania		18 Apr 1977 a
United States of America	24 Apr 1963	24 Nov 1969
Uruguay	24 Apr 1963	10 Mar 1970
Uzbekistan		2 Mar 1992 a
Vanuatu		18 Aug 1987 a
Venezuela (Bolivarian Republic of)	24 Apr 1963	27 Oct 1965
Viet Nam		8 Sep 1992 a
Yemen		10 Apr 1986 a
Zimbabwe		13 May 1991 a

ภาคผนวก ง.

นักโทษประหารชีวิตชาวต่างชาติในมลรัฐต่าง ๆ

By State of Confinement:

TOTALS BY JURISDICTION: **California (44), Texas (30), Florida (21), Arizona (3), Ohio (4), Oklahoma (1), Nevada (4), Pennsylvania (2), Louisiana (3), Virginia (1), Oregon(1), Montana(1), Georgia (1), Mississippi (1), Alabama (1), Nebraska (1), Federal (2)**

Totals include all reported foreign nationals under sentence of death, including those awaiting new sentencing hearings and cases where the individual's immigration status is uncertain or their nationality is disputed. Confirmed cases of dual citizenship (individuals possessing both US citizenship and that of another country) are not listed

A number of the cases listed below may require re-sentencing in light of the U.S. Supreme Court decisions in Ring v. Arizona and Atkins v. Virginia. Case status information will be updated as it becomes available.

List of symbols in tables below

- foreign nationality independently confirmed by two or more sources

! - awaiting re-sentencing or new trial after appellate court ruling

+ - awaiting formal sentencing by trial court

M - cases of reported mental illness, mental retardation learning disability, or brain damage (incomplete data)

INN - claim of innocence raised on appeal (incomplete data)

INS- inmate with INS detention number, but for whom no nationality has been specified

<< - facing possible execution in the near future

& - cases in which a violation of consular rights has been raised in court proceedings or otherwise directly reported.

^ - cases in which notification of consular rights was reportedly provided by authorities without delay (i.e. upon arrest, or prior to booking for detention).

***** cases in which a consular rights violation is disputed

Note: TOTALS DO NOT YET REFLECT POSSIBLE CHANGES TO SENTENCING IN A NUMBER OF STATES, AS A RESULT OF THE SUPREME COURT DECISIONS IN RING V. ARIZONA AND ATKINS V. VIRGINIA. ALL KNOWN JUVENILE CASES HAVE BEEN REMOVED, FOLLOWING ROPER V. SIMMONS.

ALABAMA (1)

Quang Ngoc Bui	!	Viet Nam	

ARIZONA (3)

Michael Apelt	& M	Germany	#
Rudi Apelt	& M	Germany	#
Kajornsak Prasertphong	&!	Thailand	

CALIFORNIA (44)

Carlos Avena Guillen	&	Mexico	#
Omar Fuentes Martinez	&	Mexico	#
Hector Juan Ayala	&	Mexico	#
Vicente Benavides Figueroa	& M	Mexico	#
Constantino Carrera Montenegro	& M!	Mexico	#
Jose Lupercio Casares	&	Mexico	#
Abelino Manriquez Jacquez	&	Mexico	#
Sergio Ochoa Tamayo	& M	Mexico	#
Ramon Salcido Bojorquez	*	Mexico	#
Alfredo Valdez Reyes	&	Mexico	#
Jaime Armando Hoyos	&	Mexico	#
Tomas Verano Cruz	&	Mexico	#
Manuel Machado Alvarez		Cuba	

Miguel Angel Bacigalupo	&	Peru	#
Tauro Waidla	&	Estonia	#
Hooman Ashkan Panah	&	Iran	#
Luis Alberto Maciel Hernandez	&	Mexico	#
Enrique Parra Duenas	&	Mexico	#
Samuel Zamudio Jimenez	&	Mexico	#
Martin Mendoza Garcia	&	Mexico	#
Daniel Covarrubias Sanchez	&	Mexico	#
Jorge Contreras Lopez	&	Mexico	#
Juan Sanchez Ramirez	&	Mexico	#
Ignacio Tafoya Arriola	&	Mexico	#
Sonny Enraca	&	Philippines	#
Miguel Angel Martinez Sanchez	&	Mexico	#
Juan Manuel Lopez	&	Mexico	#
Eduardo David Vargas	&	Mexico	#
Arturo Juarez Suarez	&	Mexico	#
Samreth Sam Pan		Cambodia	
John Ghobrial		Egypt	
Marcos Esquivel Barrera	&	Mexico	#
Juan de Dios Ramirez Villa	&	Mexico	#
Ruben Gomez Perez	&	Mexico	#
Magdaleno Salazar	&	Mexico	#
Jose Francisco Guerro	&	Guatemala	
Run Peter Chhoun		Cambodia	
Vaene Sivongxay		Laos	
Victor Miranda Guerrero		Mexico	

Dung Anh Trinh		Viet Nam	
Alfredo Valencia		Mexico	
Alfredo Prieto		El Salvador	
Huber Joel Mendoza Novoa	+ M	Mexico	#
Adrian Camacho Gil	+	Mexico	#

FLORIDA (21)

Dieter Riechmann	! & INN	Germany	#
Noel Doorbal		Trinidad	
Lynford Blackwood		Jamaica	
Robert Gordon		Jamaica	
Sean Smith		Bahamas	
Paul Howell		Jamaica	
Lancelot Armstrong		Jamaica	
Guillermo Arbelaez		Colombia	
Pedro Hernandez Alberto	^M	Mexico	#
Rory Enrique Conde		Colombia	
Manuel Valle	INS	Unknown	
Ian Lightbourn	INS	Unknown	
Omar Blanco		Cuba	
Manolo Rodriguez		Cuba	
Terance Valentine	INS	Unknown	
Leonardo Franqui	INS	Unknown	
Pablo San Martin	INS	Unknown	
Marbel Mendoza	INS	Unknown	
Jesus Delgado	INS	Unknown	

Pablo Ibar		Spain (possible dual national)	
Juan Carlos Chavez		Cuba	

GEORGIA (1)

Joaquin Arevalo	&	El Salvador	

LOUISIANA (3)

Thao Tan Lam		Viet Nam	
Manuel Ortiz	& M INN	El Salvador	#
Michael LeGrand		France (possible dual national)	

MISSISSIPPI (1)

Thong Le		Viet Nam	

MONTANA (1)

Ronald Smith	^	Canada	#

NEBRASKA (1)

Jorge Galindo		Mexico	#

NEVADA (4)

Carlos Rene Perez Gutierrez	&	Mexico	#
Avram Vineto Nika	&	Croatia	#
Sioasi Vanisi		Tonga	

Jose Echavarria		Cuba	

OHIO (4)

Jose Trinidad Loza	&	Mexico	#
Abdul Awkal		Lebanon	
Ahmad Fawzi Abdelnor Issa		Jordan	
Kenneth Richey		United Kingdom	

OKLAHOMA (1)

Isidro Marquez Burrola	M	Mexico	#

OREGON (1)

Horacio Alberto Reyes Camarena	&M	Mexico	#

PENNSYLVANIA (2)

Albert Reid		Jamaica	#
Borgela Philistin		Haiti	

TEXAS (30)

Cesar Roberto Fierro Reyna	& INN<<	Mexico	#
Hector Garcia Torres	& INN	Mexico	#
Humberto Leal Garcia	& M	Mexico	#
Jose Ernesto Medellin Rojas	&<<	Mexico	#
Daniel Angel Plata Estrada	& M	Mexico	#
Roberto Moreno Ramos	&<<	Mexico	#
Edgar Tamayo Arias	&	Mexico	#

Dennis Zelaya Corea (a.k.a. Carlos Ayestas)	&	Honduras	#
Lim Kim Ly		Cambodia	#
Syed Rabani		Bangladesh	#
Michael Blair		Thailand	#
Victor Saldano	! &	Argentina	#
Anibal Garcia Rousseau	&	Cuba	#
Ruben Ramirez Cardenas	&	Mexico	#
Ramiro Ibarra Rubi	&	Mexico	#
Ignacio Gomez	& M	Mexico	#
Virgilio Maldonado	&	Mexico	#
Felix Rocha Diaz	&	Mexico	#
Bernardo Tercero		Nicaragua	#
Ramiro Hernandez Llanas	& M	Mexico	#
Juan Carlos Alvarez	&	Mexico	#
Angel Maturino Resendiz	^	Mexico	#
Gilmar Alexander Guevara		El Salvador	#
Linda Carty	female	St. Kitts/UK	#
Heliberto Chi	&	Honduras	
Walter Alexander Sorto		El Salvador	
Chuong Duong Tong		Viet Nam	
Edgardo Cubas		Honduras	
Yosvanis Valle		Cuba	
Gregory Van Alstyne		Philippines	

VIRGINIA (1)

Edward Nathaniel Bell	&	Jamaica	#

FEDERAL (2)			
German Sinisterra	&	Colombia	#
Arboleda Ortiz	&	Colombia	#

TOTAL: 121 As of January 10, 2006

NOTES

Solely for the purposes of this list, a 'foreign national' is any individual under sentence of death in the USA who does not possess United States citizenship. More generally, foreign nationals in the USA would include: tourists and visitors, migrant workers with temporary permits, resident aliens, undocumented aliens, asylum-seekers and persons in transit. Foreign citizens comprise a significant portion of the population: more than 20 million foreigners visit the United States annually from overseas and approximately 18 million residents of the United States are non-citizens (according to the 2000 census results).

Along with the general consular notification obligations which apply under the Vienna Convention on Consular Relations, the USA has also negotiated separate bilateral consular agreements applicable to some 50 countries. Under the terms of most of these agreements, there is a mandatory obligation to promptly notify the consulate of an arrest irrespective of the national's wishes (typically within a specified time period, such as 72 hours following arrest).

Dual nationality

Individuals retaining dual nationality who are arrested in one of their countries of citizenship are problematic for the purposes of consular notification under the VCCR (which makes no reference to dual citizenship). Individuals are listed provisionally if a report is received that they possess citizenship in a country other than the USA; if U.S. citizenship is later confirmed, the name is removed from this list.

The U.S. Department of State has taken the position that individuals who retain U.S. citizenship along with another nationality are not entitled to notification of consular rights if arrested in the USA. Other nations do not necessarily share that interpretation of consular treaty obligations; at a minimum, consulates always have the right to

communicate with and visit their citizens in custody, if the consulate deems it appropriate to extend that assistance to its dual nationals. Foreign governments also retain the right to intervene for dual nationals on humanitarian grounds, as part of the general protective function that they may choose to provide to their citizens abroad. While the scope of consular notification rights for this category of dual nationals may thus be open to some interpretation, all non-U.S. citizens detained or arrested in the USA are unquestionably entitled to the full range of consular rights afforded under international law.

Sources of Information

Since U.S. authorities frequently do not list incarcerated individuals by nationality, it is difficult to identify and verify all foreign nationals under sentence of death. There is no accessible national registry of these individuals (although the USCIS data base of deportable aliens serving prison terms would likely include all known foreign nationals on death row nationwide). Compounding the problem is the still-widespread failure of U.S. law enforcement officials to notify detained foreigners of their consular rights. Without this notification and subsequent communication at the request of the detained national, foreign consulates in the United States are likely to remain unaware of the true number of their nationals who are imprisoned, let alone sentenced to death.

The information for this list comes from a variety of sources, including appellate attorneys, post-conviction resource centers, trial counsel, prosecutors, newspaper articles, journalists, consulates and prison officials.

Research to date indicates that there are no foreign nationals currently on death row in Arkansas, South Carolina and New Jersey. There is as yet no complete data from a number of U.S. states with significant death row populations, including Pennsylvania, Mississippi, Tennessee, Georgia, Kentucky, Florida and Missouri. A comprehensive list would likely include some 140 names (i.e., roughly 4% of the total U.S. death row population).

A name is included on the list if it is confirmed by at least one reliable contact. The eventual goal is to verify the nationalities of all individuals on this list from two or more independent sources. At present, approximately three-quarters of the names have been corroborated by multiple independent sources.

I welcome any and all additional information on this subject.

Mark Warren, Human Rights Research

aiwarren@sympatico.ca

tel: (613)278-2280

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* Human Rights Research provides free information on consular rights issues in death penalty cases, along with human rights consulting and research services to attorneys, consulates and non-governmental organizations.

ภาคผนวก จ.

โทรเลขจากกระทรวงการต่างประเทศส่งถึงสถานกงสุลสหรัฐอเมริกาในต่างประเทศ

U.S. Department of State telegram to all U.S. diplomatic and consular posts abroad concerning consular assistance for American nationals abroad, January 1, 2001.

UNCLASSIFIED

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FM SECSTATE WASHDC

TO ALL DIPLOMATIC AND CONSULAR POSTS ROUTINE

SPECIAL EMBASSY PROGRAM

PRISTINA POUCH

FREETOWN POUCH ZEN/DUSHAMBE POUCH ZEN/BELGRADE

UNCLAS STATE 10160

E.O. 12356: N/A

TAGS: CASC, CMGT, KCRM, KJUS, ASEC

SUBJECT: CONSULAR ACCESS AND NOTIFICATION

REF: (A) 97 STATE 155249, (B) 7 FAM 410-415.4-1

1. This is an action request. See para 6.

2. Summary: consular notification of and access to a detained or arrested U.S. citizen has long been crucial to providing basic protective services abroad. Recognizing the linkage of our performance within the U.S. in this area to the situation overseas, the Department is working to improve our record domestically. The Department attempts to monitor other countries' compliance with notification and access requirements and to ensure consistency between our domestic guidance in coordinating with U.S. law enforcement regarding foreign nationals and overseas practice. Recently we have noticed numerous examples where the delays in notification seem to be unreasonably long or where an explanation for the delay has not been provided. This cable provides updated guidance to posts on how to handle such delays. End summary.

WHAT IS CONSULAR NOTIFICATION?

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3. Rooted in customary international law and practice, consular notification was codified over the last half century in the Vienna Convention on Consular Relations of 1963 (VCCR) and various bilateral consular agreements. Because of its near universal applicability, article 36(1)(b) of the VCCR established the baseline for consular notification. This article provides that in arrests and detentions, detained foreign nationals must be informed "without delay" of their right to have their consular officials notified of their arrest or detention, and that, if the foreign national so requests, consular officials of the home country must be notified of the arrest or detention "without delay."

4. The Department has interpreted the term "without delay" in the VCCR as meaning, generally, that there should be no deliberate delay, and notification should occur as soon as reasonably possible under the circumstances. The Department believes that notification within 24 hours would, prima facia, be considered to be "without delay" and that notification within 72 hours would, in most circumstances, be considered to be "without delay." The Department similarly considers notification within 24-72 hours to be timely under bilateral consular treaties unless the language of the bilateral agreement specifies a different time frame.

5. Under the VCCR, the form of notification is not specified and may take any form reasonably calculated to relay the relevant information to the consular officer so that the officer may take necessary steps to provide consular protective services, including requesting and gaining consular access. thus, notification may be in writing (by diplomatic note, letter, or any other writing) or orally (in person or, for example, a message left on an answering machine). Faxing or e-mailing the notification to the consular officer can greatly expedite receipt of notification and should be encouraged. The Department believes that to be useful, the notification should, at a minimum, provide the name and place of detention of the foreign national, and instructions for obtaining additional information should the consular officer wish to do so. Posts may also encourage host governments to provide other details known to the host government, such as dpob, passport information, and any other information which could be helpful to

the consular officer such as the charges or allegations against the detainee. (only a few of our bilateral agreements address the nature of the information to be provided.)

AND IF DELAY IN NOTIFICATION IS UNREASONABLE?

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6. Action requested: Drawing on the guidance in paras 3-5 above and 7 FAM 411, 412, and 415, posts should assess whether an impermissible delay in notification has occurred whenever post becomes aware that an American citizen has been detained. If a delay has occurred, post must report that delay in paragraph 16 (notification) and paragraph 23 (remarks) of the standard arrest cable (7 FAM Exhibit 416.1). In addition to the date and manner of notification, post must also include a succinct statement as to the reason for the delay, if known, any information as to whether the detainee requested notification or was informed of the right to do so, and any action or protest post plans to take in response to a delay that appears unreasonable or unjustified. In countries that are parties to the VCCR, posts should presume that there is a question of compliance with VCCR article 36 if the host government has failed to notify the post of the arrest or detention of a U.S. citizen within 72 hours and the host country is a signatory to the VCCR. See 7 FAM 415.4-1.

7. In VCCR cases where notification has not been timely (not made within 72 hours), and post has not been able to confirm that the detainee did not ask for notification after being informed of the right to it, posts should promptly protest the notification violation in accordance with 7 fam 415.4-1. (in countries where consular notification is at the option of the detainee, the post should first ascertain whether or not the prisoner requested consular notification of the arrest/detention after being informed that he or she could do so. If not, this would preclude a conclusion that the delay in notification was unreasonable.) Note that, while the VCCR provides that consular notification is at the option of the detainee, 56 countries are governed by bilateral consular conventions under which consular notification is mandatory whether or not the detainee/arrestee

wishes the consular officer to be informed. Posts should be familiar with the treaty provisions applicable to the host country.

In the event of long notification delays, particularly in cases of serious crimes or where the U.S. citizen could face severe penalties, the protest should include a request for an investigation of the notification violation and a report from the investigating authority promptly. The form of protest is left to the post's discretion. It should be noted, however, that in any case where excessive delay in notification appears to be part of a pattern of activity by the host government, or where there is an indication of mental or physical mistreatment of the prisoner during the period of the delay in consular notification, post's diplomatic note of protest should be cleared and coordinated with the department. See 7 FAM 415, exhibit 415.2 for an example of a protest note. The protest should immediately be reported to the department, either in the initial arrest cable or by septel.

8. There will be instances where, in post's judgment, a notification beyond the 72-hour time period is reasonable under the circumstances and therefore does not constitute a deliberate or unacceptable delay. In such cases, a post should report the circumstances that justify the longer notification time period. For example, because an arrest occurs in a particularly remote area of the host country, or specific communications problems are present, notification is delayed beyond that normally experienced in the host country. When notification is received in such cases, post should report to the department why, in post's judgment, a delay beyond 72 hours is not unreasonable under the circumstances.

9. Per 7 FAM 415.4-1, protesting unreasonable delays in consular notification is not discretionary but has long been an integral element of u.s. policy to provide protective consular services to detained Americans overseas. A recent review of incoming arrest cables has demonstrated that at present there is significant inconsistency in the field in complying with the reporting and protesting requirements. Numerous arrest cables reveal significant gaps between the arrest and the date of consular notification but do not address the reason for the delay nor do they address the issue of protests. The Department reminds posts that arrest reporting must indicate timely notification or the

reason for delay and the intention to protest or an explanation of why a protest is not justified in the particular case.

DUAL NATIONALS

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10. Arrest in the Country of the Other Nationality:

Generally speaking, consular notification is not/not required by treaty if the U.S. citizen detainee is also a citizen of the country where the arrest occurred. This is true even if the detainee's other country of citizenship is a mandatory notification country. It is a generally recognized rule of international law that when a person who is a dual national is residing or traveling in either of the countries of nationality, the person owes paramount allegiance to that country. The country of residence generally has the right to assert its claim without interference from the other country of nationality. Thus, in the absence of agreements to the contrary between the United States and other nations, if a dual national encounters difficulties in the country of the second nationality, the U.S. government's representations on that person's behalf may or may not be accepted. Nevertheless, it is the Department's policy to intervene on behalf of all Americans, and make representations on their behalf, regardless of dual national status. In these situations, posts should notify the department of the particular circumstances of the case and seek guidance.

11. Naturalized U.S. Citizens and Dual Nationals Descended From Naturalized U.S. Citizens:

This situation can be particularly sensitive with regard to the arrest of U.S. citizens who were not aware they were also nationals of another country, or who are unable to relinquish their other nationality. This includes naturalized U.S. citizens who were unable to divest themselves of the nationality of their country of birth due to either the lack of procedures to permit relinquishment of the other nationality, or the fact that such procedures are extremely difficult to satisfy, are protracted and/or expensive. Such an individual may consider and conduct himself/herself exclusively as a U.S. citizen, but find that the country of origin still regards him/her as a national of that country. In addition, some countries regard allegiance to the subject's ancestral country of origin to

extend to the next generation. In countries with this extended family interpretation of citizenship, or where naturalized u.s. citizen dual nationals traditionally experience problems, this fact should be reflected in the consular information sheet and in the post arrest information sheet (7 FAM 413.4), which should be available on the post's home page on the internet. The Department would normally not agree that the host country could rely on the person's technical dual nationality to prevent the United States from extending consular protection to such a person. These cases raise tricky legal issues and should be coordinated with the Department.

12. Special Consular Agreements Regarding Consular Notification and Access to Dual Nationals:

The United States has consular agreements or arrangements with China, Poland, Vietnam, and North Korea that address questions of dual nationals and similar assistance. These agreements provide that "all nationals of the sending state entering the receiving state on the basis of travel documents of the sending state containing properly executed entry and exit visas of the receiving state will, during the period for which their status has been accorded, and in accordance with the visa's period of validity, be considered nationals of the sending state by the appropriate authorities of the receiving state for the purpose of ensuring consular access and protection by the sending state." This does not necessarily imply that the two governments recognize dual nationality. Note that the U.S. requires its citizens to enter/leave the U.S. on U.S. passports, a requirement that effectively bars question of these problems in the United States.

13. Rights and Responsibilities of the U.S. Regarding Dual National Arrests:

When dealing with dual nationals, it is helpful to distinguish between (1) the right of the U.S.G., through a U.S. consul, to provide consular services to the dual national and (2) the right of the dual national, as a u.s. citizen, to receive consular services from the U.S.G. without regard to his or her other nationality. It is important, per 7 FAM 413e, that a dual national traveling in a third country on a U.S. passport must clearly be regarded by the host country as a u.s. citizen to ensure that he/she is permitted to receive the full range of consular services provided to any American. On the other hand, a dual national

traveling abroad on a passport of that person's other country of nationality may find that the host country treats him/her only as a national of the country whose passport he/she carries, and does not recognize the united states as a country entitled to provide consular services. This does not, however, change the fact that the U.S.G. must treat the U.S. citizen like any other U.S. citizen, and should seek to do so to the fullest extent permitted by the host country. In such a situation, the U.S. consul should pursue all appropriate consular responsibilities. If the second country of nationality is providing protective services to a dual national, U.S. consular officers should consult with the prisoner and their foreign consular colleagues to ensure appropriate protection is provided to the arrestee. The post should continue to follow significant developments in the case and report them to the Department, particularly with regard to any mistreatment or severe penalty. Balancing which country of nationality will provide consular assistance may depend both on the extent of the individual's ties to each country and the immediate consular resources of each country. Again, posts should consult with the Department as necessary.

CONSULAR ACCESS

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14. Article 36(1)(c) of the VCCR sets forth the requirement that the host government allow consular officers access to detained nationals to converse with them, arrange for their legal representation and to take other actions to provide for their welfare, consistent with local law. Article 36(1)(a) provides that consular officers and their nationals shall be free to communicate and have access to each other. Similar to the requirement of timely notification, these provisions and similar language in bilateral treaties require host governments to provide consular officers timely access to detained U.S. citizens. It is U.S. policy that prompt personal access is necessary. This demonstrates to both the detained citizen and the host government the serious interest of the U.S. government in the case and in the welfare of our citizens, and allows first-hand confirmation of the citizen's wishes and needs. Even in the case where a U.S. citizen informs the host government he/she does not want consular assistance, the consular officer should visit the U.S. citizen personally to verify his/her U.S. citizenship, to reassure the citizen of our

interest in providing him/her assistance, and to verify directly that no assistance is desired. Only in this manner can a consular officer be satisfied that the citizen's rights within the host country are being protected. See 7 FAM 415.

15. Per 7 FAM 412.1, except under extraordinary circumstances, a consular officer must personally visit a detained American citizen as soon as possible, normally within 48 hours of receipt of notification, or an explanation must be provided to the department of why a personal visit could not take place in that time frame. If a personal visit is not possible within 48 hours, initial telephone contact or a visit by a consular agent or volunteer should take place, but this does not relieve the consular officer of the obligation for a personal visit as soon as possible (see 7 FAM 412). This initial contact should be included in the arrest reporting cable if possible.

16. Any delays in granting access by host governments must be reported to the Department in the arrest cable and protested to the host government per 7 FAM 415. A review of recent arrest cables indicate significant inconsistency among posts in this practice. It should be noted, however, that in any case where excessive delay in access appears to be part of a pattern of activity by the host government, or where there is an indication of mental or physical mistreatment of the prisoner during the period of the delay in consular access, post's diplomatic note of protest should be cleared and coordinated with the department. Similarly, post concerns regarding delays in frequency of access after initial visit for prisoners who may be at risk due to medical or mental health should be brought to the attention of the Department which will coordinate with post on any protest language. Patterns regarding delays in consular access should be reflected in the consular information sheet and the post arrest information sheet required by 7 FAM 413.4. In preparing the arrest information sheet consular sections should coordinate with other post sections engaged in reporting on prison conditions. The human rights report section on "respect for human rights, torture, and other cruel, inhuman or degrading treatment or punishment" frequently includes a discussion of local prison conditions, including problems with access to prisoners.

SPECIAL NOTIFICATION CASES - DEATHS, MINORS, PERSONS LACKING FULL CAPACITY, AVIATION/VESSEL ACCIDENT

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17. Posts should also be aware that Article 37 of the VCCR requires notification by host country officials in instances of the death of a foreign national; appointment of guardian or trustee of a minor or other person lacking full capacity who is a foreign national; and if a vessel or aircraft registered in a foreign country suffers an accident. With respect to notification of the death of a U.S. citizen arrested or detained abroad or the appointment of a guardian or trustee for a U.S. citizen arrestee found to lack full capacity, posts should follow similar procedures to monitor compliance with these provisions, protest failure to comply, and notify the Department. (Of course, this obligation under Article 37 of the VCCR to notify posts applies to any U.S. citizen under these circumstances not simply U.S. citizens incarcerated abroad. if in any case excessive delay in notification appears to be part of a pattern of activity by the host government, or where there is an indication of serious implications for the health or well-being of a U.S. citizen as a result of such a delay, post's diplomatic note of protest should be cleared and coordinated with the Department. (The topics of consular assistance for medically or mentally incapacitated u.s. citizens abroad, protection of minors (child abuse, abandonment, neglect and exploitation), and transportation accidents will be the subject of separate aldac telegrams now being prepared by the Department (CA/OCS/PRI)).

OUR PRIMARY MISSION - THE PROTECTION OF AMERICANS

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18. If we are to be effective in protecting the rights of U.S. citizens detained or otherwise in distress abroad, we must first know their situation and we must be vigilant in personally assisting them. By consistently protesting violations, of notification and access obligations, we reinforce with the host government the seriousness with which we take our consular responsibilities and underscore our efforts to protect our citizens against any abuse, mistreatment or discrimination.

AND FOR THE RECORD

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19. As posts are aware, cases involving U.S. citizens overseas are frequently of interest to congress and the media. Reporting any protests of delays in notification and access to the department and making them a matter of record in the acs file of the detained American is essential in the event questions about our vigilance or the equality of treatment of all U.S. citizens should be raised. Such reporting and record keeping allows the Department to be more responsive to Congressional and media requests.

OUTREACH PROGRAM

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20. In 1997, in response primarily to death penalty cases involving foreign nationals who had not been informed that they could request consular assistance, the Legal Adviser's office started a domestic effort to improve compliance with the consular notification and access provisions of the Vienna Convention on Consular Relations and some bilateral consular agreements and to address concerns of foreign governments about cases of apparent non-compliance by the U.S. In late 1998, the Secretary named a senior coordinator for consular notification to lead the Department's ongoing efforts to improve compliance by local, state and federal officials throughout the United States. The senior coordinator works closely with the regional bureaus, CA, DS, OFM, PA, Protocol and others to implement the Department's domestic outreach strategy through such efforts as seminars for law enforcement personnel, and distribution of the Department's "consular notification and access" brochure and pocket cards. (The brochure is available on the Department's website under the letter "c" in the index). The brochure contains (see Part V. Legal Material) text of relevant portions of the VCCR and bilateral treaties. The coordinator also works with others to investigate foreign embassies' alleged violations of consular notification and access by U.S. authorities, apologize if the allegation is confirmed, to undertake efforts to prevent future recurrences and frequently deals with foreign embassies in Washington to address concerns arising from these issues. To ensure consistency between our work domestically and abroad, it is essential

that possible violations of the consular notification and access provisions of the VCCR and bilateral conventions in instances of Americans detained/arrested abroad be reported to the department promptly and if appropriate that the delays be protested.

QUESTIONS

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21. Any questions posts may have regarding this guidance should be referred to the appropriate geographic office of CA/OCS/ACS or the CA/OCS/PRI e-mailbox askpri@state.gov. Posts assistance is appreciated.

Albright

ภาคผนวก ฉ.

ประกาศของประธานาธิบดีจอร์จ ดับเบิลยู บุช ว่าได้ยอมรับและจะปฏิบัติตามคำตัดสินของศาลโลก

THE WHITE HOUSE

WASHINGTON

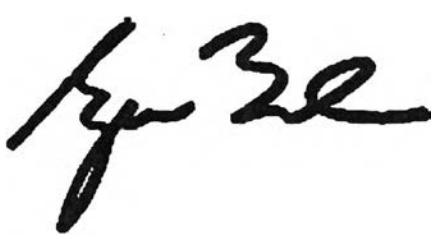
February 28, 2005

MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: Compliance with the Decision of the International Court of Justice in *Avena*

The United States is a party to the Vienna Convention on Consular Relations (the "Convention") and the Convention's Optional Protocol Concerning the Compulsory Settlement of Disputes (Optional Protocol), which gives the International Court of Justice (ICJ) jurisdiction to decide disputes concerning the "interpretation and application" of the Convention.

I have determined, pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, that the United States will discharge its international obligations under the decision of the International Court of Justice in the *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Avena)*, 2004 ICJ 128 (Mar. 31), by having State courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision.



ภาคผนวก ช.

ความเห็นผู้พิพากษาในคดีตอเรส

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

MAY 13 2004

MICHAEL S. RICHIE
CLERK

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

OSBALDO TORRES,	)	
	)	
Appellant,	)	
v.	)	Case No. PCD-04-442
	)	
THE STATE OF OKLAHOMA,	)	
	)	
Appellee.	)	

ORDER GRANTING STAY OF EXECUTION AND REMANDING CASE FOR EVIDENTIARY HEARING

Osbaldo Torres was tried by jury, convicted of first degree murder and other charges, and received the death penalty in the Oklahoma County District Court, Case No. CF-1993-4302. This Court affirmed Torres's conviction for murder, and the United States Supreme Court denied Torres's petition for certiorari.[1] This Court denied Torres's first Application for Post-Conviction Relief on August 4, 1998.[2] Torres's application for federal habeas relief was denied.[3] This Court subsequently denied Torres's second Application for Post-Conviction Relief.[4] Torres's execution date is set for Tuesday, May 18, 2004. On April 29, 2004, Torres filed a Subsequent Application for Post-Conviction Relief. The State filed a Response on May 11, 2004. Briefs were also filed on behalf of *amici curiae* the Government of the Republic of Mexico and international law experts and former diplomats.

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1 *Torres v. State*, 1998 OK CR 40, 962 P.2d 3, *cert. denied*, 525 U.S. 1082, 119 S.Ct. 826, 142 L.Ed.2d 683 (1999).
2 *Torres v. State*, Case No. PCD-1998-213 (Okl.Cr. August 4, 1998) (Order not for publication).
3 *Torres v. Mullen*, 317 F.3d 1145 (10th Cir. 2003), *cert. denied*, 540 U.S. __, 124 S.Ct. 562, 919, 157 L.Ed 2d 454 (2003).

After consideration of the pleadings filed with this Court, we order that Torres's execution date be **STAYED** indefinitely, pending further order of this Court.

We further order that Torres's request for an evidentiary hearing is **GRANTED**.[5] This case is **REMANDED** to the District Court of Oklahoma County for an evidentiary hearing on the issues of: (a) whether Torres was prejudiced by the State's violation of his Vienna Convention rights in failing to inform Torres, after he was detained, that he had the right to contact the Mexican consulate; and (b) ineffective assistance of counsel.

The evidentiary hearing shall be held within sixty (60) days from the date of this Order. The trial court shall file findings of fact and conclusions of law with this Court within forty-five (45) days of the conclusion of the evidentiary hearing, together with the transcripts and record of the proceedings. Torres shall file a supplemental brief addressing the trial court's findings of fact and conclusions of law within twenty (20) days after the District Court's findings and conclusions are filed with this Court. The State shall file a response brief within fifteen (15) days after Torres's supplemental brief is filed.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 13 day of May, 2004.

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[4] *Torres v. State*, 2002 OK CR 35, 58 P.3d 214, *cert. denied*, 538 U.S. 928, 123 S.Ct. 1580, 155 L.Ed.2d 323 (2003).

CHARLES A. JOHNSON, Presiding Judge

STEVE LILE, Vice Presiding Judge

GARY L. LUMPKIN, Judge

CHARLES S. CHAPEL, Judge

RETA M. STRUBHAR, Judge

ATTEST:

Clerk

[8] 22 O.S.2001, §1089(D)(5); Rule 9.7(D)(4)-(7), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2004).

CHAPEL, J., SPECIALLY CONCURRING:

I specially concur in this decision staying Torres's execution and remanding the case for an evidentiary hearing. I write to comment on the dissent's conclusion that the International Court of Justice decision here is not binding, and on dissent's statement that, under that case's terms, all this Court need do is to review Torres's case to see whether his trial and conviction afforded him minimal due process.

This case presents an issue of first impression for this Court, and for any other court within the United States. Torres bases his subsequent application for relief on the International Court of Justice decision, *Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America) [Avena]*.[1] That case was brought by the Government of Mexico against the United States of America to resolve a diplomatic dispute over alleged violations of the Vienna Convention on Consular Relations [Vienna Convention][2] in the United States criminal cases of fifty-two Mexican nationals, including Torres. In *Avena*, the International Court of Justice found that Torres's rights under the Vienna Convention were violated, and ordered the United States to review and reconsider Torres's conviction and sentence in light of the treaty breach. This Court must determine how to apply that ruling.

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[1] 2004 I.C.J. 128 (Judgment of March 31, 2004). The existence of this specific judgment in Torres's case distinguishes this situation from the one this Court faced in *Valdez v. State*, 2002 OK CR 20, 46 P.3d 703. In *Valdez*, the petitioner attempted to rely on an International Court of Justice case to which neither he nor his complaining government were party, and which did not specifically discuss his Vienna Convention claims.

The Vienna Convention is a multinational treaty respecting consular relations, which provides that law enforcement authorities shall inform detained foreign nationals of their right to contact consular officials for assistance.[3] Both the United States and Mexico are signatories to the Convention.[4] The Convention itself does not specify an enforcement mechanism. That mechanism is contained in the Optional Protocol, ratified along with the Convention itself, which provides that states may bring disputes under the Vienna Convention to the International Court of Justice for binding resolution. Under the treaty's terms, while states ratifying the Vienna Convention are free to accept or reject the Optional Protocol, acceptance creates a binding obligation. The United States proposed this provision on dispute settlement and was instrumental in drafting the Optional Protocol,[5] was the first state to bring a case under its provisions,[6] and has consistently looked to the International Court of Justice for binding decisions in international treaty disputes, including those brought under the Vienna Convention.[7] The United States was the first to bring a case in the

[3] Multilateral Vienna Convention on Consular Relations and Optional Protocol on Disputes, 21 U.S.T. 77 (1969), T.I.A.S. No. 6820.
[3] Vienna Convention, 21 U.S.T. 77, art. 36, ¶ 1.
[4] The United States Senate ratified the treaty and optional protocol on October 12, 1969, and President Richard Nixon ratified it on November 12, 1969. It was entered into force with respect to the United States on December 24, 1969, and President Nixon proclaimed the treaty's entry into force on January 29, 1970. 115 Cong. Rec. 30997 (Oct. 22., 1969); 21 U.S.T. 77, 373.
[5] Report of the United States Delegation to the Vienna Conference on Consular Relations, reprinted in Sen. Exec. E, 91st Cong., 1st Sess., May 8, 1969, at 41-59-61.
[6] *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*, 1979 I.C.J. 7; 1980 I.C.J. 3, 5, 24-26.
[7] "Under the fundamental principle of *pacta sunt servanda*, which states that 'treaties must be observed,' the United States has consistently invoked the Vienna Convention to protest other

International Court of Justice specifically under the Optional Protocol.[8] The United States has also defended against eleven cases brought in the International Court of Justice, including *Avena*.[9]

There is no question that this Court is bound by the Vienna Convention and Optional Protocol. The Supremacy Clause provides that "all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land."[10] The federal government's power to make treaties is independent of and superior to the power of the states.[11] Every state

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nations' failures to provide Americans with access to consular officials." *U.S. v. Superville*, 40 F.Supp.2d 672, 676 (D.Virgin Islands, 1999).

[8] *Tehran Hostages*, *supra* Note 13 ; *Treatment in Hungary of Aircraft and Crew of the United States of America (United States v. Hungary)*, 1954 I.C.J. 99, 103 (Vienna convention claim dismissed because Hungary had not consented to International Court of Justice jurisdiction). *See also Case Concerning Elettronica Sicula S.p.A. (ELSI) (U.S. v. Italy)* 1989 I.C.J. 15 (1948 Treaty of Friendship, Commerce and Navigation between Italy and United States, the Protocol and 1951 Supplementary Agreement); *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, 1984 I.C.J. 246 (1958 Convention on the Continental Shelf); *Aerial Incident of 7 November 1954 (United States v. USSR)* (1959); *Aerial Incident of 4 September 1954 (United States v. USSR)* (1958); *Aerial Incident of 27 July 1955 (United States v. Bulgaria)* (1957-1960); *Aerial Incident of 7 October 1952 (United States v. USSR)* (1955-1956); *Aerial Incident of 10 March 1953 (United States v. Czechoslovakia)* (1955-1956); *Treatment in Hungary of Aircraft and Crew of the United States of America (United States v. Hungary)* (1954); *Treatment in Hungary of Aircraft and Crew of the United States of America (United States v. USSR)* (1954).

[9] *See Case Concerning the Vienna Convention on Consular Relations (Paraguay v. United States)* 1998 I.C.J. 426, and the *LaGrand Case (F.R.G. v. United States)* 2001 I.C.J. 104, all brought under the Vienna Convention. The *Paraguay* case was dismissed at Paraguay's request after Virginia executed its subject, defendant Angel Francisco Breard. *LaGrand* found that Germany's and Walter LaGrand's rights under the Vienna Convention were violated when Arizona failed to inform LaGrand of his right to contact the German consulate; LaGrand was also executed during the pendency of International Court of Justice proceedings.

[10] U.S. Const. art. VI cl. 2. *See, e.g., Antoine v. Washington*, 420 U.S. 194, 201, 95 S.Ct. 944, 949, 43 L.Ed.2d 129 (1975) (treaties are binding upon affected states under the Supremacy Clause); *Mezquita v. State*, 125 S.W.3d 161, 169 (Ark., 2003); *State v. Prasertphong*, 75 P.3d 675, 688 (Ariz., 2003); *Garcia v. State*, 17 P.3d 994 (Nev., 2001); *State v. Issa*, 752 N.E.2d 904, 915 n.2 (Ohio, 2001); *State v. Miranda*, 622 N.W.2d 353, 355 (Minn.App., 2001); *U.S. v. Carrillo*, 70 F.Supp.2d 854, 859 (N.D.Ill.,1999); *U.S. v. Emuegbunam*, 268 F.3d 377, 389 (C.A.6 2001); *U.S. v. Jimenez-Nava*, 243 F.3d 192, 195 (C.A.5 2001); *U.S. v. Li*, 206 F.3d 56, 60 (C.A.1, 2000). *See also Busby v. State*, 40 P.3d 807, 8098 n.2 (Alaska App., 2002) (Convention on Road Traffic).

[11] *See, e.g., Nielsen v. Johnson*, 279 U.S. 47, 52, 49 S.Ct. 223, 224, 73 L.Ed. 607 (1929); *U.S. v. Emuegbunam*, 268 F.3d 377 (C.A.6 2001); *U.S. v. Jimenez-Nava*, 243 F.3d 192, 195 (C.A.5

or federal court considering the Vienna Convention, for any reason, has agreed that it is binding on all jurisdictions within the United States, individual states, districts and territories. Several courts have expressed concern that any failure of United States courts to abide by the Vienna Convention may have significant adverse consequences for United States citizens abroad. "Treaty violations not only undermine the "Law of the Land," but also international law, where reciprocity is key. If American law enforcement officials disregard, or perhaps more accurately, remain unaware of the notification provision in Article 36, then officials of foreign signatories are likely to flout those obligations when they detain American citizens."[12] I share those concerns.

2001); *Murphy v. Netherland*, 116 F.3d 97, 100 (C.A.4, 1997); *Busby v. State*, 40 P.3d 807, 809 (Alaska App., 2002).

[12] *U.S. v. Carrillo*, 70 F.Supp.2d 854, 860 (N.D.Ill.,1999). "Accordingly, the State Department has intervened and attempted to persuade state authorities to honor the Vienna Convention when state law enforcement officers have neglected or refused to inform detained foreign nationals of their right to contact consular officials. For example, the Secretary of State recently asked the Governor of Virginia to stay the execution of Paraguayan death-row prisoner Angel Francisco Breard until the International Court of Justice could consider whether Virginia's violation of the Vienna Convention warranted a new trial. The Secretary expressed concern that "[t]he execution ... could lead some countries to contend incorrectly that the U.S. does not take seriously its obligations under the Convention." [FN4] As the Secretary recognized, continued violation of the treaty imperils the rule of law, the stability of consular relations, and the safety of Americans detained abroad." *U.S. v. Superville*, 40 F.Supp.2d 672, 676 (D.Virgin Islands, 1999); "The United States, through this treaty [the Vienna Convention], has clearly granted certain specified rights to foreign nationals. The purpose behind those rights is two-fold: *i*) to afford minimal protections to foreign nationals detained by authorities in this country and ii) to assure minimal protections to United States (U.S.) citizens detained by authorities in foreign countries who are also signatories to the Treaty. In my judgment, the decision of this Court in this case, and the decision of the United States Supreme Court puts U.S. citizens traveling abroad at risk of being detained without notice to U.S. consular officials. Why should Mexico, or any other signatory country, honor the Treaty if the U.S. will not enforce it? The next time we see a 60 Minutes piece on a U.S. citizen locked up in a Mexican jail without notice to any U.S. governmental official we ought to remember these cases." *Flores v. State*, 1999 OK CR 52, 994 P.2d 782, 788 (Chapel, J., concurring in result).

At its simplest, this is a matter of contract. A treaty is a contract between sovereigns.[13] The notion that contracts must be enforceable against those who enter into them is fundamental to the Rule of Law. This case is resolved by that very basic idea. The United States voluntarily and legally entered into a treaty, a contract with over 100 other countries. The United States is bound by the terms of the treaty and the State of Oklahoma is obligated by virtue of the Supremacy Clause to give effect to the treaty.

As this Court is bound by the treaty itself, we are bound to give full faith and credit to the *Avena* decision. I am not suggesting that the International Court of Justice has jurisdiction over this Court – far from it. However, in these unusual circumstances the issue of whether this Court must abide by that court's opinion in Torres's case is not ours to determine. The United States Senate and the President have made that decision for us. The Optional Protocol, an integral part of the treaty, provides that the International Court of Justice is the forum for resolution of disputes under the Vienna Convention.[14] The negotiation and administration of treaties is reserved to the Executive

[13] *United States v. Stuart*, 489 U.S. 353, 365-66, 109 S.Ct. 1183, 1190-91, 103 L.Ed.2d 388 (1989); *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 238 (C.A.D.C., 2003); *In re Commissioner's Subpoenas*, 325 F.3d 1287, 1301 (C.A.11 2003); *U.S. v. Emuegbunam*, 268 F.3d 377, 389 (C.A.6 2001); *U.S. v. Jimenez-Nava*, 243 F.3d 192, 195 (C.A.5 2001); *U.S. v. Li*, 206 F.3d 56, 60 (C.A.1, 2000); *Tabion v. Mufti*, 73 F.3d 535, 537 (C.A.4 1996).

[14] "The States Parties to the present Protocol and to the Vienna Convention on Consular Relations, hereinafter referred to as 'the Convention', adopted by the United Nations Conference held at Vienna from 4 March to 22 April 1963, Expressing their wish to resort in all matters concerning them in respect of any dispute arising out of the interpretation or application of the Convention to the compulsory jurisdiction of the International Court of Justice, unless some other form of settlement has been agreed upon by the parties within a reasonable period, Have agreed as follows: Article I. Disputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice and may accordingly be brought before the Court by an application made by any party to the dispute being a Party to the present Protocol." 21 U.S.T. 77, 325-29.

Branch, with Senate ratification.[15] Therefore, when interpreting a treaty, we give great weight to the opinion and practice of the government department primarily responsible for it.[16] The State Department has consistently taken the position that the only remedies under the Vienna Convention are diplomatic, political, or exist between states under international law.[17] As noted above, the State Department has also consistently turned to the International Court of Justice to provide a binding resolution of disputes under the Vienna Convention, and has relied on the binding nature of International Court of Justice decisions to enforce United States rights under the Convention. The *Avena* decision mandates a remedy for a particular violation of Torres's, and Mexico's rights under the Vienna Convention.[18] *Avena* is the product of the

[15] U.S.Const., art. II §2 cl. 2.

[16] *El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155, 168, 119 S.Ct. 662, 671, 142 L.Ed.2d 576 (1999); *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 185, 102 S.Ct. 2374, 72 L.Ed.2d 765 (1982); *U.S. v. Duarte-Acero*, 296 F.3d 1277, 1282 (C.A.11 2002); *Emuegbunam*, 268 F.3d at 392; *United States v. De La Pava*, 268 F.3d 157, 165 (2nd Cir.2001); *Li*, 206 F.3d at 63.

[17] In a First Circuit case, the State Department submitted answers to questions posed by the Court regarding its interpretation of the Vienna Convention. The Court subsequently cited that response: "[In] Department of State Answers to the Questions Posed by the First Circuit in United States v. Nai Fook Li ('Answers') at A-2, the State Department has concluded that [t]he [Vienna Convention] and the US-China bilateral consular convention are treaties that establish state-to-state rights and obligations.... They are not treaties establishing rights of individuals. The right of an individual to communicate with his consular official is derivative of the sending state's right to extend consular protection to its nationals when consular relations exist between the states concerned. Id. at A-3; see also id. at A-1. 'The [only] remedies for failures of consular notification under the [Vienna Convention] are diplomatic, political, or exist between states under international law.' See id. at A-3." *Li*, 206 F.3d at 63. These Answers have been subsequently cited in a number of state and federal cases. *See, e.g., State v. Navarro*, 659 N.W.2d 487, 491, (Wis.App., 2003) *Review Denied by State v. Navarro*, 661 N.W.2d 101, (Wis. 2003) (TABLE, NO. 02-0850-CR); *U.S. v. Duarte-Acero*, 296 F.3d 1277, 1282 (C.A.11 2002); *State v. Martinez-Rodriguez*, 33 P.3d 267, 272 n. 5 (N.M., 2001); *U.S. v. Carrillo*, 70 F.Supp.2d 854, 860 (N.D.Ill.,1999); *U.S. v. Superville*, 40 F.Supp.2d 672, 676 (D.Virgin Islands, 1999);

[18] This essential aspect of the case distinguishes it from *Committee of U.S. Citizens Living in Nicaragua v. Reagan*, 859 F.2d 929, 937-938 (D.C.Cir. 1988). The plaintiffs in *Nicaragua* attempted to invoke an International Court of Justice decision made under international law and a treaty with Nicaragua. However, the plaintiffs were not parties to the International Court of Justice decision, and the treaties relied on were not self-executing. By contrast, *Avena*

process set forth in the Optional Protocol, under which Mexico brought a suit against the United States for alleged treaty violations. This process is promulgated by the treaty itself and exists between states as a result of international law – well within the State Department's definition of an appropriate remedy for violations of the Vienna Convention.

Having determined that this Court is bound by the treaty and the *Avena* decision, I turn to the decision itself. The International Court of Justice found that Torres's, and Mexico's, rights under the Vienna Convention were violated when he was not informed of his right to contact his consulate for aid after his Oklahoma arrest for murder. I note that neither the State of Oklahoma nor the United States has ever disputed (a) that Torres is a Mexican national, or (b) that he was not informed of his rights under the Vienna Convention. At the time of his arrest, Torres was registered as a resident alien with the Immigration and Naturalization Service.[19] As a remedy for this violation, *Avena* directs the United States to review and reconsider Torres's conviction and sentence in light of the consequences of the treaty violation.[20] That review and reconsideration falls to this Court. This is the first state pleading in which Torres has raised his Vienna Convention claim, and normally this Court would consider it procedurally barred. However, while leaving the particular method of review and reconsideration up to the United States, *Avena* states that a

applies directly to Torres's case, and the Vienna Convention is self-executing through the Optional Protocol.

[19] Exhibits O, S, Appendix, Subsequent Application for Post-Conviction Relief. As the dissent notes, the State claims that there is conflicting information regarding when Mexico was first told of Torres's detention. However, any such conflict does not change the fact that Torres was never personally informed of his right to contact the consulate, as required under the treaty.

complete application of procedural bar will not fulfill the mandate to review and reconsider the conviction, if procedural bar prevents the Vienna Convention claim from being heard.[21] In order to give full effect to *Avena*, we are bound by its holding to review Torres's conviction and sentence in light of the Vienna Convention violation, without recourse to procedural bar. Common sense and fairness also suggest this result. Torres, like many foreign nationals, was unaware he had the right to contact his consulate after his arrest for murder.[22] Torres's Vienna Convention claim was generated by the State of Oklahoma's initial failure to comply with a treaty. I believe we cannot fulfill the goal of a fair and just review of Torres's case if we refuse to look at his Vienna Convention claims on the merits.

Torres argues that the violation of his Vienna Convention rights deprived him of the substantial investigative, legal, and financial assistance which would have been, and eventually was, afforded him by the Mexican government. He claims that the information developed with this assistance would, if presented to a jury, have resulted in a different outcome. He also claims that trial counsel was ineffective for failing to inform him of his right to

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[20] *Avena*, slip op. at 52.

[21] *Avena*, slip op. at 51-52. This holding distinguishes this case from cases in which Vienna Convention claims were brought to United States state and federal courts in the first instance. Courts, including this court, have routinely applied procedural bar to such claims. *See, e.g., Valdez v. State*, 2002 OK CR 20, 46 P.3d 703, 709; *Breard v. Greene*, 523 U.S. 371, 375, 118 S.Ct. 1352, 1354, 140 L.Ed.2d 529 (1998); *Murphy v. Netherland*, 116 F.3d 97, 100 (C.A.4, 1997); *Mezquita v. State*, 125 S.W.3d 161 (Ark., 2003); *Ademodi v. State*, 616 N.W.2d 716, 717 n. 2 (Minn., 2000); *State v. Reyes-Camarena*, 7 P.3d 522 (2000); *State v. Ameen*, 183-84, 1 P.3d 330 (Kan. App. 2000).

[22] In an earlier opinion in Torres's case, Justice Stevens noted it was "manifestly unfair" to apply procedural bar to "a foreign national who is presumptively ignorant of his right to notification." *Torres v. Mullin*, __ U.S. __, 124 S.Ct. 919, 919, 157 L.Ed.2d 454 (2003) (Stevens, J., dissenting to denial of petition for writ of certiorari).

consular assistance under the Vienna Convention and was rendered ineffective by counsel's lack of experience and funds, which could have been remedied had the Mexican government been notified of his detention and the charges against him.

In determining the merits of these claims, I first look to see whether Torres has shown prejudice. In dicta, the United States Supreme Court has noted that any claim of error under the Vienna Convention is subject to a requirement of prejudice.[23] Other courts, considering Vienna Convention claims brought initially in state and federal courts, have used a three-prong test to determine prejudice: (1) the defendant did not know he had a right to contact his consulate for assistance, (2) he would have availed himself of the right had he known of it; and (3) it was likely that the consulate would have assisted the defendant.[24] I would adopt this test. The first of these prongs is uncontested. Regarding the second prong, Torres has provided this Court with an affidavit stating that he would have asked the Mexican consulate for help.[25] This assertion is bolstered by the fact that Torres did request help from the

[23] *Breard v. Greene*, 523 U.S. 371, 377, 118 S.Ct. 1352, 1356, 140 L.Ed.2d 529 (1998) (refusing to stay Breard's execution during pendency of International Court of Justice case, case was decided on procedural bar grounds).

[24] *People v. Preciado-Flores*, 66 P.3d 155, 161 (Colo.App., 2002); *Zavala v. State*, 739 N.E.2d 133, 142 (Ind.App., 2000); *State v. Cevallos-Bermeo*, 754 A.2d 1224, 1227 (N.J.Super.A.D., 2000); *U.S. V. Chaparro-Alcantara*, 37 F.Supp.2d 1122, 1126 (N.D.Ill. 1999); *United States v. Esparza-Ponce*, 7 F.Supp.2d 1084 (S.D.Cal.1998); *United States v. Villa-Fabela*, 882 F.2d 434, 440 (9th Cir.1989), overruled on other grounds, *United States v. Proa-Tovar*, 975 F.2d 592 (9th Cir.1992).

[25] Affidavit of Osvaldo Torres Aguilera, Exhibit W, Appendix, Subsequent Application for Post-Conviction Relief [Appendix].

Mexican government when he became aware of his right to do so, after his direct appeal had been filed.[26]

Torres offers this Court a great deal of material regarding the third prong. The Mexican government has actively assisted Mexican nationals since well before Torres's 1993 arrest. This tradition of active assistance extends back to the 1920s.[27] In 1993, the Mexican government monitored and participated in capital cases throughout the United States involving Mexican nationals through consulates, Mexican government departments, and retained counsel in the United States.[28] Mexico has a systematic procedure to offer very specific consular assistance in defending these cases.[29] Consular officials monitor defense counsel's efforts, speak regularly with defense counsel, the defendant and his family, and attend court proceedings; officials often assist in gathering evidence in preparation for both stages of capital trials.[30] Mexico provides funds for experts and investigators, particularly regarding discovery and presentation of mitigating evidence, but for DNA testing, jury consultants, and

[26] Torres's family contacted the Mexican Consulate in 1997. Affidavit of Arturo A. Dager Gomez, ¶¶ 29-31, Exhibit A, Appendix..
[27] Affidavit of Everard Kidder Meade IV, Exhibit G, Appendix.
[28] Affidavit of Arturo A. Dager Gomez, Exhibit A, Appendix; Affidavit of Ramon Xiloti Ramirez, Exhibit B, Appendix; Affidavit of Scott J. Atlas, Exhibit C, Appendix; Affidavit of Barbara K. Strickland, Exhibit D, Appendix; Affidavit of Jaime Paz Y Puente Gutierrez, Exhibit E, Appendix; Affidavit of Bonnie Lee Goldstein, Exhibit F, Appendix; Declaration of Michael Iaria, Exhibit H, Appendix.
[29] Affidavit of Ramon Xiloti Ramirez, ¶¶ 13, 14, Exhibit B, Appendix; Affidavit of Jaime Paz Y Puente Gutierrez, ¶ 4, Exhibit E, Appendix; Affidavit of Scott J. Atlas, ¶¶ 4, 5, 7, Exhibit C, Appendix; Affidavit of Barbara K. Strickland, *passim*, Exhibit D, Appendix. In one example, after a thorough criminal investigation by the Mexican consulate, capital charges against a Mexican national in Texas were dismissed. Affidavit of Arturo A. Dager Gomez, ¶ 10, Exhibit A, Appendix.
[30] Affidavit of Arturo A. Dager Gomez, ¶ 7, Exhibit A, Appendix.

other specialized testimony where appropriate.[31] Mexico obtains and provides official documents from institutions in Mexico such as schools and hospitals, searches for criminal records, and assists attorneys traveling in Mexico with logistical support, translators, and witness identification and preparation.[32] In addition to aiding retained or appointed counsel, the consulate also helps capital defendants obtain qualified capital counsel.[33] Taken as a whole, this material overwhelmingly indicates the ability of the Mexican government to assist Torres at the time of his arrest and trials,[34] and the intention of the Mexican government to assist Mexican nationals charged with capital crimes in the United States at the time of Torres's arrest and trials.[35]

These services were all available to Torres. This assistance would have been offered at the time of his arrest, had the Mexican consulate been informed of Torres's detention under the Vienna Convention.[36] After the Mexican government was told of Torres's case, consular staff interviewed appellate counsel, Torres, and his family, and determined Torres had no criminal record in Mexico.[37] Mexico retained counsel to review Torres's case and assist his court-appointed attorney, and retained two investigators, a social worker, a mitigation specialist, two gang experts, and a bilingual neuropsychologist to

[31] *Id.* at ¶¶ 8, 9.
[32] *Id.* at ¶ 12; Declaration of Michael Iaria, ¶¶ 6-8, Exhibit H, Appendix.
[33] Affidavit of Arturo A. Dager Gomez, ¶¶ 17, 18, Exhibit A, Appendix; Declaration of Michael Iaria, ¶¶ 4-5, Exhibit H, Appendix.
[34] Torres's first trial ended in a mistrial on the issue of guilt or innocence.
[35] As this Court found in *Valdez*, the Mexican government was prepared to assist a Mexican national facing a capital Oklahoma charge in 1989. *Valdez*, 46 P.3d at 710.
[36] *Id.* at ¶¶ 32-41; Affidavit of Ramon Xilotl Ramirez, ¶¶ 6-8 Exhibit B, Appendix.
[37] Affidavit of Arturo A. Dager Gomez, ¶ 30, Exhibit A, Appendix.

develop evidence in Torres's case.[38] Torres provides this Court with information generated by these investigations. Torres has raised enough significant questions to warrant an evidentiary hearing on these issues.

In accordance with the *Avena* decision, I have thoroughly reviewed and reconsidered Torres's conviction and sentence in light of the consequences of the violation of his rights under the Vienna Convention. I have concluded that there is a possibility a significant miscarriage of justice occurred, as shown by Torres's claims, specifically: that the violation of his Vienna Convention rights contributed to trial counsel's ineffectiveness, that the jury did not hear significant evidence, and that the result of the trial is unreliable. This Court has decided to remand the case for an evidentiary hearing on the Vienna Convention and ineffective assistance of counsel issues. This decision comports with the *Avena* requirement of review and reconsideration.

[38] *Id.* at ¶ 32.

ภาคผนวก. ซ

คำกล่าวของนายวิลเลี่ยม ทาฟท์ เกี่ยวกับสิทธิทางกงสุลและศาลโลก ที่มีต่อพนักงานอัยการสหรัฐอเมริกา

Remarks by William H. Taft, IV, Legal Adviser of the Department of State before the National Association of Attorneys General, including the issue of consular notification (March 20, 2003)

Remarks of the Honorable William Howard Taft, IV, Legal Adviser, U.S. Department of State before the National Association of Attorneys General Thursday, March 20, 2003

Thank you, and good morning to all of you. It is a pleasure to be here and I very much appreciate that kind introduction.

I understand that this is the first time in a long time -- and perhaps the first time ever -- that the Legal Adviser of the Department of State has addressed this particular gathering. I think it is fair to say that my presence here today reflects one of the fundamental changes we are seeing in the American legal landscape. That is, of course, the fact that our legal work at every level of government is being influenced by international law and activities.

Many of your offices already work closely with my office, either directly or through the U.S. Justice Department, on a variety of civil and criminal law enforcement matters that have international dimensions. By way of example, my office has the lead in negotiating extradition treaties, and the State Department generally takes the lead in working out bilateral issues relating to enforcement of those treaties. We are deeply involved in efforts to extradite persons who fled abroad and who are wanted here in United States for state crimes. I'm very much aware of the frustration many of you are feeling that some countries today will not extradite their nationals or fugitives in their countries to the United States who, if returned to the United States, would face the death penalty or even life sentences.

The death penalty is a major point of difference today between the United States and many of its closest allies, and this affects international law enforcement cooperation in a variety of ways. It also provides a point of departure for my intended topic for today, "consular notification." Some of you probably have encountered the issue of consular notification in your criminal litigation -- specifically, in efforts to suppress evidence or to obtain new criminal trials or new sentencing hearings in cases in which the consular notification obligations have not been observed. Some of you may have also seen efforts to obtain remedies under the federal civil rights law for violations of consular notification requirements by state or local officials. Others of you may not yet have run into the consular notification issue, but I assure you that it is coming your way, because it is an issue that travels with almost every foreign national that enters the United States to every state they may be found in.

This morning, I want first to talk briefly about our essential consular notification obligations in criminal cases, and then turn to the question of remedies for violations of consular notification obligations in the criminal context.

When we talk about "consular notification" we usually are referring to the range of legal obligations the United States assumed to notify a foreign consular official when a national of his country is arrested or detained in the United States, for any reason. These legal obligations arise primarily from treaties, including most significantly the Vienna Convention on Consular Relations. Under that Convention, the obligation to notify a consular officer of an arrest or detention arises only if the individual who has been arrested or detained asks that his officials be notified. If the request is made, then consular officials must be notified "without delay." In addition, however -- and here is the aspect of the obligation that has given us the most trouble -- we also have a legal obligation to advise the individual who has been arrested or detained that he has a right to have his consular officials notified of his arrest or detention. And we have to advise the foreign national of this right of his, again "without delay."

These consular notification obligations are related to another basic principle of international law, which is that consular officials have the right to communicate with their nationals and to assist them in various ways. In the case of a foreign national in detention, this includes a right to visit in prison and to do things like helping the detainee find a lawyer or providing information about the U.S. legal system.

I would like to make three brief observations about the Vienna Consular Convention before turning to the subject of remedies for violations of the obligations established by it.

First, because these treaty obligations are the law of the land, we need to comply with them. Compliance generally requires nothing more than making a phone call or putting a message on a fax machine or sending a letter. This is well worth the effort. These obligations were all entered into as part of a very aggressive effort of the United States Government to protect American citizens abroad. To get protection for Americans abroad in our treaties, it was necessary to provide reciprocal protections to foreign nationals in the United States. We obviously can't insist that other countries comply and then not comply ourselves. So it is both right and fair that we comply.

Second, we are very much aware that, in most cases, the actual job of complying with these obligations falls to state and local officials. While it is not difficult to comply with the requirement if you know about it, it is difficult to make sure that all of the relevant officials -- police officers, sheriffs, prosecutors, prison wardens, police training officers, and the like -- know of the obligations and know how to comply. After the State Department learned that foreign nationals on death row had not received consular notification, it began an intensive effort to remedy the fundamental problem, which was that our consular notification obligations had not been sufficiently well publicized. The Department now runs an on-going program to improve understanding of these obligations, and compliance with them, at all levels of government, federal, state, and local. It is an enormous task now run by our Bureau of Consular Affairs. I am accompanied today by Eloise Shouse, who is deputy director of the office that coordinates the Consular Bureau's outreach and training program. I would like to

introduce her to you -- she is over there - and encourage you to be in touch with her if we are not already working actively with your state on a training program. I should also mention that our Intergovernmental Affairs Office has made available to you copies of our training materials, which include this booklet -- which we are now updating, this pocket card for law enforcement officials, and a video designed to be shown in training sessions.

And the last observation I will offer is that we are not negotiating any more treaty obligations of this nature. We think that the current legal framework is adequate and appreciate that it can be at times daunting to ensure that these obligations are understood and observed by all concerned. We are not going to add to them or make them more complicated.

Let me turn now to the question of remedies where there is a failure of notification. We are required under international law to advise a foreign national who is arrested or detained, without delay, that he has a right to have his consular officials notified of his arrest or detention. What is the remedy under international law if we fail to do that? This is a question of immediate importance to many of you as well as to my office. We are preparing now to defend the United States in the International Court of Justice -- sometimes known as the World Court -- in a case called Avena and Other Mexican Nationals with the subtitle of Mexico v. United States of America. Mexico brought this case in January of this year, seeking remedies for alleged consular notification violations in 54 cases involving Mexican nationals who were sentenced to death in ten states -- Arizona, Arkansas, California, Florida, Illinois, Nevada, Ohio, Oklahoma, Oregon, and Texas. Those of you who are Attorneys General of these states should have received a letter from me advising you of this case, and of the fact that we will need your help in defending the United States.

This is the third case we have had in the World Court over remedies for violations of the Vienna Consular Convention's consular notification obligations in death penalty cases. Paraguay brought the first of the three cases, which involved a Paraguayan national named Angel Breard, who was sentenced to death by Virginia. Paraguay withdrew that case after Breard's execution, so the Court never decided it. The second case was

brought by Germany and involved two German nationals, Karl and Walter LaGrand, who were sentenced to death and executed by Arizona. That case was not withdrawn and decided by the World Court in June of 2001.

I would like to take this opportunity to thank Arizona publicly for its help in the LaGrand case. We had invaluable help from the former Arizona Attorney General, Janet Napolitano, who was the first state official ever to appear on behalf of the United States in the World Court. We were very grateful for that, and look forward to similar support in the Avena case. We have already started working with Texas and Oklahoma on the Avena case, and will be calling upon all of the states affected for help. One of the things we will need to do initially is to make sure we have all of the factual information we will need about these cases. If I may, I would like to introduce to you Peter Mason from my office, who will be heading up our efforts to work with the states to get this information. He is over there.

Traditionally, and in the LaGrand case, the United States took the position that the remedies for violations of the Vienna Convention's consular notification obligations were diplomatic and political. When we learned of alleged violations, we followed a practice of contacting the relevant authorities and determining whether a violation in fact occurred. If we confirmed a violation, we worked to ensure that the relevant authorities understood the obligations and how to comply with them. We then extended apologies on behalf of the United States to the other government concerned, and assured it that we had taken steps to prevent a recurrence. Other states took this same approach when they failed to comply with their obligations.

This approach worked fine until foreign governments began learning that they had nationals on death row who had been through the entire criminal justice process without ever being informed that they could request that their consular officials be notified of their detention. Governments like Paraguay, Mexico, and Germany all pointed out that they had been deprived of the opportunity to provide consular assistance to their nationals at the most critical early stages of the criminal process, where they might have assisted their nationals in understanding the judicial system or in obtaining legal representation. Before withdrawing its case, Paraguay took the position in its World Court case that it was entitled to a new trial for its national, this time with the benefit of

consular assistance.

Germany took a different tack in the LaGrand case, and argued that our rules of procedural default, regulating when issues may be raised in criminal cases, cannot be used to prevent a court from hearing a claim of consular notification when there was a failure to tell the defendant of his right to request consular assistance. We vigorously opposed this approach, and went to some length to make sure that the Court understood our criminal justice process, with all its safeguards, and the relationship between the federal and state governments in criminal matters. In the end, the Court ruled that, if "severe penalties" are imposed in cases involving a failure to provide consular notification as required, the United States "by means of its own choosing, shall allow the review and reconsideration of the conviction and sentence by taking account of the violation." While the term "severe penalties" is ambiguous, it certainly includes death sentences.

We expect that in the long run consular notification issues will be raised and addressed by the courts prior to trial. This is already beginning to happen because individuals are more aware of the possibility of consular assistance; defense counsel are increasingly aware of consular notification claims; consular officers are working harder to establish contacts with arresting officials; and we are doing a better job of complying thanks to the work of our Consular Bureau and the help of state and local as well as federal officials throughout the country. As we continue to improve compliance and as cases involving older violations run their course, we should not have significant difficulty with the LaGrand decision. But we do still have some difficult cases in which a violation has already occurred and the claim was procedurally defaulted before consular officials became aware of the case.

In death penalty cases where the consular notification claims are procedurally defaulted from judicial review, we have taken the position that review and reconsideration of the conviction and sentence can occur in the clemency process - by which we mean any procedure that a state has to consider granting leniency in light of all relevant information. We have worked to provide this remedy in death penalty cases as they have

been brought to our attention. We have been made aware of just two cases since LaGrand: the Valdez case in Oklahoma, and the Suarez Medina case in Texas. We worked closely with Governor Keating of Oklahoma and with the pardon board in Texas to ensure that review and reconsideration of the conviction and sentence occurred in each case. In the end, Governor Keating decided to deny clemency, but made very clear in a letter to the President of Mexico that he had in fact reviewed and reconsidered the conviction and sentence in light of the consular notification violation. He also granted a 30-day stay to permit Mr. Valdez to pursue other diplomatic and legal options. As it turned out, the Oklahoma courts then granted Mr. Valdez a new sentencing hearing for reasons clearly related to -- although not directly premised on - the consular notification issue. The Texas parole board does not issue written decisions, but the Chairman of the board provided a written description of the nature and extent of the board's review before it decided not to recommend clemency for Suarez Medina. Mr. Suarez was executed last August. We have made clear to the World Court that we consider both of these processes to have fully complied with its LaGrand decision, which did not impose an obligation of result, but rather one of process.

In the Avena case, Mexico is challenging the use of clemency review and insisting that there must be judicial review of consular notification violations. It also appears to be seeking a remedy similar to that originally requested by Paraguay - that is, restoration of the status quo ante through the provision of new trials or sentencing hearings. And, we expect that it will argue -- as it has argued unsuccessfully in our domestic courts -- for an automatic rule that statements taken from foreign defendants before they are informed of their right of consular notification should be suppressed. We will of course vigorously oppose these remedies and ask the Court not to go beyond its decision in LaGrand, leaving the means of review and reconsideration to our choice. As part of our case, it will be particularly important to show the court why Mexico's proposed remedies would lead to untenable and often absurd results. This is one reason why we will want your help in gathering the critical facts in the 54 cases Mexico has brought to the Court's attention.

We expect Mexico to file its case in chief -- a written argument accompanied by documentary exhibits and declarations -- on June 6. We in turn will file our response on

October 6. We will press the Court for a hearing as soon thereafter as possible, and for a quick decision.

Some of you may be aware that on February 5 the Court issued what is called a provisional measures order, in which it directed that the United States shall not execute three specific Mexican nationals among the 54 identified by Mexico while the Avena case is pending before it on the merits. These are the three cases that Mexico identified as being closest to having actual execution dates set.

Two of the three Mexicans covered by the February 5 order are on death row in Texas, and the third is in Oklahoma. We have had a number of conversations with government lawyers in both states about these cases. There is no execution date set in any of them, and to date there has been no litigation over the domestic effect of the Court's order. We are trying to understand the course any domestic litigation would take if execution dates were set and the federal or state courts were called upon to decide whether the Court's order is binding for purposes of domestic law.

In closing, I would like to ask again for your support in helping ensure that the United States complies with its consular notification obligations, and to thank those of you who are already actively engaged in this important effort. For those of you who are from the states whose cases are now before the World Court, I would again like to thank you, in advance, for the assistance we will require from you to ensure that we put on the best possible defense for the United States. These are difficult cases, and we are in a difficult position because the United States has not done as well as it should in complying with these obligations, which we insist upon so strenuously for our own nationals. We need to keep doing better, and I am confident that with your assistance we can show the Court and the world that the United States does indeed take its international law responsibilities seriously.

Finally, let me say a few words about the legal basis for our actions in Iraq. First, it goes without saying that the President's authority to use force under U.S. law is clear. Under the Constitution he has not simply the authority but the responsibility to use force to protect our national security. Congress has confirmed in two separate resolutions in 1991 and again last fall that the President has authority to use our armed forces in the specific case of Iraq.

Under international law, the basis for use of force is equally strong. There is clear authorization from the Security Council to use force to disarm Iraq. The President referred to this authority in his speech to the American people on Monday night. The source of this authority is UNSCR 678, which was the authorization to use force for the Gulf War in January 1991. In April of that year, the Council imposed a series of conditions on Iraq, including most importantly extensive disarmament obligations, as a condition of the ceasefire declared under UNSCR 687. Iraq has "materially breached" these disarmament obligations, and force may again be used under UNSCR 678 to compel Iraqi compliance.

Historical practice is also clear that a material breach by Iraq of the conditions for the cease-fire provides a basis for use of force. This was established as early as 1992. The United States, the UK and France have all used force against Iraq on a number of occasions over the past twelve years. Just last November, in Resolution 1441, the Council unanimously decided that Iraq has been and remains in material breach of its obligation. 1441 then gave Iraq a "final opportunity" to comply, but stated specifically that violations of the obligations, including the obligation to cooperate fully, under 1441 would constitute a further material breach. Iraq has clearly committed such violations and, accordingly, the authority to use force to address Iraq's material breaches is clear.

This basis in international law for the use of force in Iraq today is clear. The Attorney General of the United Kingdom has considered the issue and reached the same conclusion we have. The President may also, of course, always use force under international law in self-defense.

These are points that I thought you would want to know about.

Doc. #110105

ภาคผนวก. ฌ

หนังสือจากองค์กรระหว่างประเทศและรัฐบาลต่างประเทศถึงสหรัฐอเมริกา

Ireland 2004 Presidency of the European Union

EU Presidency

Ms Susan B Loving, Chairwoman
Oklahoma Pardon and Parole Board
4040 North Lincoln Blvd – Suite 219
Oklahoma City, OK 73105 – 5221

2234 Massachusetts Ave NW
Washington, DC 20008

April 30, 2004

Dear Chairwoman Loving

The European Union has learned that Osvaldo Torres, a Mexican national, is to be executed in the State of Oklahoma on 18 May, 2004. On behalf of the European Union, Ireland, as current Presidency, together with the Netherlands, the subsequent Presidency, and the European Commission would like to make an urgent humanitarian appeal to spare the life of Mr Torres.

The EU considers that the abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights. The European Union finds this form of punishment cruel and inhuman and the abolition of the death penalty is one of the key policy aims of the European Union in the field of human rights. The EU considers that in States, including federal States, where the death penalty is maintained, it should not be carried out in contravention to the State's international commitments.

A related matter of concern is the compliance with the Vienna Convention on Consular Relations of 1963. The right to consular notification and assistance according to article 36 of the Convention is intended to redress the inherent disadvantages facing detained foreign nationals in any country. This provision gives US nationals abroad the right to contact an American Consulate, in the event of their arrest. The EU is convinced that the observance of the safeguards provided by this Convention is essential and may be decisive, not least in capital cases. The obligations of the United States under the Vienna Convention were confirmed by the judgment of 27 June 2001 by the International Court of Justice (ICJ) in the LaGrand case.

It has come to the attention of the EU that the Oklahoma authorities failed to notify Mr Torres of his right to contact the Mexican Consulate for assistance. The authorities likewise never informed Mexican consular officials of his detention.

Furthermore, the ICJ recently issued a binding judgement in the case of Avena and Other Mexican Nationals (Mex v US), which bears directly on the case of Mr Torres. The ICJ found that the United States had violated Mr Torres's right to consular notification and access, failed to notify Mexican consular authorities of his detention, and deprived Mexican consular officials of the opportunity to provide legal assistance prior to his capital murder trial. The ICJ judgement noted the commitment undertaken by the United States to ensure implementation of the specific measure adopted to ensure performance of its obligations under Article 36 of the Convention. The ICJ recommended that the convictions and sentences in this, and other cases under consideration, be reviewed and reconsidered in a manner which would take into account the violation of rights under the Vienna Convention. The European Union requests that, in accordance with the ICJ judgement, such a review and reconsideration of the conviction and sentence be undertaken. We are deeply concerned that current date of execution would not permit sufficient time for such action to be taken. The EU could not remain silent in the event of an execution being carried out in contravention to the ICJ judgement.

We therefore respectfully urge you, Madame Chair, as we have also urged Governor Henry, to take these factors into account and to exercise all the power vested in your office to grant Mr Torres relief from the death penalty and to ensure that the required review and reconsideration of this case is undertaken.

We thank you in advance for your consideration.

Sincerely,

Noel Fahey	Boudewijn Van Eenennaam	Dr Guenter Burghardt
Ambassador of Ireland	Ambassador of the Netherlands	Ambassador, Head of Delegation of the European Commission

No. 04-5928

IN THE

Supreme Court of the United States

JOSE ERNESTO MEDELLIN,
Petitioner,

v.

DOUG DRETKE, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF FOREIGN SOVEREIGNS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER JOSE ERNESTO MEDELLIN

ASIM M. BHANSALI
Counsel of Record
STEVEN A. HIRSCH
YASMIN KOK
KEKER & VAN NEST LLP
710 Sansome Street
San Francisco, CA 94111-1704
(415) 391-5400

Counsel for Amici Curiae
Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Paraguay, Peru, Uruguay, Venezuela

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CONCLUSION

Medellin's case presents questions of urgent national and international importance. The United States relies on Vienna Convention Article 36 to protect its nationals in foreign countries, but the continued viability of Article 36 depends on reciprocal adherence to its mandates. A pattern of denying consular notification has emerged in local U.S. jurisdictions, and only a judicial remedy for those violations can ensure continuing compliance with Article 36 around the world. Moreover, the ICJ, which had compulsory jurisdiction over Mexico's claim against the United States for violating Article 36, issued an order requiring U.S. courts to review the violation in Medellin's case to determine the effect it had on his defense. Compliance with the ICJ's judgment will reinforce the rule of law, which the United States so forcefully advocates around the world.

For all the reasons stated in this Brief, this Court should reverse the Court of Appeals' judgment and remand the case with instructions to apply *Avena* as the rule of decision.

Respectfully submitted,

ASIM M. BHANSALI
Counsel of Record
STEVEN A. HIRSCH
YASMIN KOK
KEKER & VAN NEST LLP
710 Sansome Street
San Francisco, CA 94111-1704
(415) 391-5400

Counsel for Amici Curiae
Argentina, Bolivia, Brazil, Chile, Colombia,
Ecuador, El Salvador, Guatemala, Honduras, Paraguay,
Peru, Uruguay, Venezuela

No. 04-5928

In The Supreme Court of the United States

JOSE ERNESTO MEDELLIN,

Petitioner,

v.

DOUG DRETKE, DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF AMICI CURIAE THE EUROPEAN UNION AND MEMBERS OF THE INTERNATIONAL COMMUNITY IN SUPPORT OF PETITIONER

S. Adele Shank
3380 Tremont Road
Columbus, Ohio 43221
614-326-1217
Counsel of Record

John B. Quigley
55 West 12th Avenue
Columbus, Ohio 43210
614-292-1764

Counsel for Amici Curiae The European Union and Members of the International Community

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"that not informing the defendant of the right to contact his/her consulate for assistance may curtail the right to an adequate defence, as provided for by the ICCPR".[38]

VII. CONCLUSION

The EU considers the implementation of the right of consular access to be of utmost importance to members of the international community. Article 36, as construed by the ICJ, requires the review and reconsideration of the conviction and sentence in the present case. When notification is omitted and a criminal conviction ensues, courts must provide a remedy. As the ICJ stated in *Avena*, "the remedy to make good these violations should consist in an obligation on the United States to permit review and reconsideration of these nationals' cases by the United States courts."[39]

In light of the international law norms articulated above, the EU, Council of Europe, Iceland, Liechtenstein, Norway and Switzerland respectfully support the position of Petitioner that *certiorari* be granted.

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[38] U.N. Commission on Human Rights, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, E/CN.4/1998/68/Add.3 (1998), para. 121.

[39] *Avena*, para. 121.

Respectfully Submitted,

S. Adele Shank
3380 Tremont Road
Columbus, Ohio 43221
614-326-1217
Counsel of Record

John B. Quigley
55 West 12th Avenue
Columbus, Ohio 43210
614-292-1764

Counsel to the European Union and Members of the International Community

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Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE AMERICAN BAR ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

Of Counsel:
JEFFREY L. FISHER
ANNE M. VOIGTS
MICHELLE T. FRIEDLAND

ROBERT J. GREY, JR.*
President, American Bar Association
321 N. Clark Street
Chicago, IL 60610
(312) 988-5000

* *Counsel of Record*

Counsel for Amicus Curiae

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The fact that American courts' handling of Vienna Convention claims could affect the United States' ability to protect its citizens overseas is yet another factor distinguishing Vienna Convention rights from other rights subject to procedural default rules. If an American defendant is held to have procedurally defaulted a claim that his Sixth Amendment right to counsel was denied, only that defendant is affected. But if the United States violates foreign nationals' consular notification rights, and American courts compound that violation by refusing to hear the foreign national defendants' Vienna Convention claims, it could seriously prejudice how American citizens are treated when they are arrested overseas. This would be particularly true if the courts did so after the ICJ issued a binding decision to the contrary.

B. If United States courts now denied that they were bound by the ICJ's *Avena* Judgment, it would frustrate the United States' adoption of the Vienna Convention and Optional Protocol.

If United States courts were now to refuse to give effect to the ICJ's *Avena* decision, it would make the President's signing and the Senate's ratification of the Optional Protocol hollow. Article I of the Optional Protocol states that "[d]isputes arising out of the interpretation or application of the Convention shall lie within the compulsory jurisdiction of the International Court of Justice." Optional Protocol, art. I. Under the plain and unambiguous language of the Article, countries signing the Optional Protocol agree to submit to the jurisdiction of the ICJ in cases involving disputes over the interpretation or application of the Convention. Submitting to the ICJ's jurisdiction necessarily entails agreeing to be bound by its judgments. *See* United Nations Charter, art. 94 ("Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party"). A decision

by this Court refusing to give effect to the ICJ's *Avena* Judgment would entirely undermine the President's and Senate's actions signing and ratifying the Optional Protocol. It would infringe upon the treaty powers granted to the President and the Senate by the Constitution, and it would make the United States' treaty promises unreliable in the eyes of the rest of the world.

CONCLUSION

For the reasons set forth above, and consistent with its commitment to promoting the rule of law, the ABA respectively submits that the Court should reverse the decision of the Fifth Circuit.

Respectfully submitted,

ROBERT J. GREY, JR.*
President, American Bar Association
321 N. Clark Street
Chicago, IL 60610
(312) 988-5000

* *Counsel of Record*

Of Counsel:

Jeffrey L. Bleich
Anne M. Voigts
Michelle T. Friedland

Counsel for Amicus Curiae

ประวัติผู้เขียนวิทยานิพนธ์

ร้อยตำรวจโท เจษฎา บุรินทร์สุชาติ เกิดเมื่อวันที่ 17 มกราคม พุทธศักราช 2523 ที่จังหวัด นครราชสีมา สำเร็จการศึกษารัฐประศาสนศาสตร์บัณฑิต (ตำรวจ) จากโรงเรียนนายร้อยตำรวจ เมื่อปีการศึกษา 2545 สำเร็จการศึกษานิติศาสตร์บัณฑิตจากมหาวิทยาลัยสุโขทัยธรรมาธิราชเมื่อปีการศึกษา 2547 ปัจจุบันรับราชการตำรวจ ตำแหน่ง พนักงานสอบสวน (สัญญาบัตร 1) ประจำ สถานีตำรวจนครบาลลุมพินี