

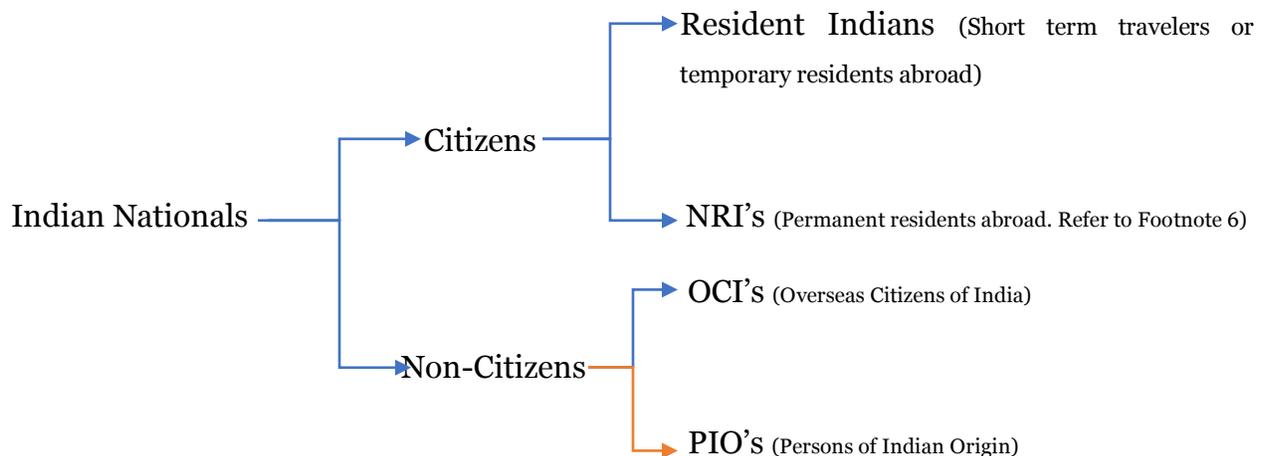
India and the Protection of its overseas Nationals

Author: Himanil Raina*

Date: 03 December 2018

India's overseas population contributes more to the nation financially every year by way of remittances, than foreign direct investment (FDI) and foreign aid put together. In 2017, the FDI and foreign aid received by India amounted to roughly \$43 billion.¹ In the same year, remittances amounted to \$69 billion.² India has come a long way from the Nehruvian era policy of 'active disassociation' between the Indian State and overseas Indians.³ Prime Minister Narendra Modi has stated that the Indian government does not look at the "*colour of the passport but only the blood relationship.*"⁴ The need to protect Indians residing abroad may arise due to any number of scenarios ranging from natural disasters to civil disorder to terrorist action to full scale combat. This article examines whether or not overseas Indians can demand State aid or protection as a matter of right. This article also examines the issue of dual nationals and whether or not citizens would stand on a different footing vis a vis nationals when it comes to demanding or receiving State protection.

Disaggregating India's Overseas Population



At 31.2 million, India possesses the world's largest overseas population.⁵ This figure does not include short-term travelers or temporary expatriates. This figure does include 13.3 million NRIs⁶ and 17.9 million OCIs and PIOs.⁷ The term NRI is indicative merely of taxation and not political status. The term OCI is indicative of political status. The term PIO is a term of colloquial usage and indicates neither taxation or political status. Of these three categories of individuals, NRIs alone are citizens of India. OCIs and PIOs are not citizens of India.

For purposes of international law, it is quite irrelevant that a State's internal laws distinguish between different kinds of nationals- those who enjoy full political rights (citizens), and those who do not enjoy full political rights (some category other than citizens, like OCIs or PIOs).⁸ Nationality is the only term of any consequence. Legally, an individual may be the national of a State without having its citizenship.⁹

The Supreme Court of India has addressed this distinction saying that, "*...the words 'national' and 'citizen' are not interchangeable as has been sometimes supposed.*"¹⁰ "*Citizen and 'national'...are not synonymous... Every citizen is a national, but every national is not always a citizen.*"¹¹ "*...citizens are those persons who have full political rights as distinguished from nationals, who may not enjoy full political rights.*"¹²

Consequently, NRIs and OCIs are nationals of India, while PIOs may or may not be Indian nationals depending on the particular facts and circumstances.¹³ Amongst the major reasons for the failure to distinguish between the concept of a citizen and a national is the Parliament's failure to enact a law governing the recognition, acquisition and termination of nationality. The framers of the Constitution never intended to enact a code of nationality law into the Constitution itself. Rather, this was a task left to the Parliament.¹⁴ Indeed, Part II (Citizenship) of the Constitution does not even provide for a comprehensive law governing citizenship. It simply identifies the people who became citizens of India at the commencement of the Constitution. Article 11 empowered the parliament to enact a law to provide for the acquisition and termination of citizenship.

The Citizenship Act, 1955 in its original form recognized only one category of Indians – citizens. The category of individuals recognized as PIOs and OCIs was only

introduced many decades later. Following a government decision in 2015, there is no longer a distinction between PIOs (Persons of Indian Origin) and OCIs (Overseas Citizens of India). All Persons of Indian origin cardholders became Overseas Citizens of India from January 9, 2015 onwards.¹⁵ The term ‘Overseas Citizen’ however, is misleading in the extreme as India does not have a dual citizenship regime. Article 9 of the Constitution expressly prohibits an Indian citizen from acquiring the citizenship of another State. Further, Section 7B of the Citizenship Act, 1955 specifically denies OCIs a number of fundamental, constitutional and statutory rights that are available only to citizens and not OCIs.¹⁶

OCIs therefore, are clearly not Indian citizens. They are, however, Indian nationals. A perusal of Section 7A of the Citizenship Act, 1955 shows that the provisions governing the grant of OCI status are in consonance with the relevant international laws governing the grant of nationality. There are 3 ways by which nationality is acquired/conferred by States: “*descent/parentage (jus sanguinis – law of the blood), birth on the territory (jus soli – law of the soil) or by way of naturalization (including jus domicilior long residence).*”¹⁷ The grant of an OCI status largely veers towards citizenship by jus sanguinis (descent/parentage). A State’s “*own determination that an individual possesses its nationality is not lightly to be questioned. It creates a very strong presumption both that the individual possesses the state’s nationality as a matter of its internal law and that that nationality is to be acknowledged for international purposes.*”¹⁸ Given how even the foundational laws governing Indian citizenship itself have been shifting from a jus soli conception to a jus sanguinis conception,¹⁹ the Indian determination of OCIs as Indian nationals is indeed not to be lightly questioned.

The Spectrum of State Support

A government has 3 available choices to extend support to a distressed national abroad: Consular Assistance, Diplomatic Protection and the Use of Force.

Consular Assistance is exercised by the State in a preventive manner (to prevent a national from being subjected to internationally wrongful acts). Consular action is concerned with visiting persons, finding lawyers and contacting the local authorities.

Consular action does not encompass intervention in the host state's internal affairs or judicial processes, nor does it entail the grant of legal advice or the investigation of a crime.²⁰

Diplomatic Protection is essentially remedial (to remedy an internationally wrongful act that has already been committed).²¹ It has nothing to do with the protection of diplomats. Rather, it is mainly concerned with protecting nationals who are not engaged in official international business on behalf of the State.²² Diplomatic Protection comprises diplomatic action and other means of peaceful settlement. Diplomatic Action includes protest, request for an inquiry or negotiations. Other means of peaceful settlement includes negotiation, mediation and conciliation and arbitral and judicial settlement.²³

The use of force for the protection of nationals requires the existence of three cumulative conditions. One, there must exist an imminent threat of injury to the nationals. Two, the failure/inability of the territorial sovereign to protect them. Three, the intervening State's actions must be strictly confined to protecting its nationals against injury.²⁴ Prior to the entry into force of the U.N Charter in 1945, the use of force to protect its nationals was an accepted part of a State's right to exercise diplomatic protection under customary international law.²⁵ Subsequently, it has been settled that the use of force prohibited by Article 2(4) of the UN Charter in exercise of the right of diplomatic protection is no longer permissible.²⁶ However, whether or not a State's right to use force to protect its nationals still exists outside the field of diplomatic protection is not clear. This is so as International Law neither authorizes nor definitively rules out protection of nationals.²⁷

If a State consents to another State extricating individuals from within its territory, then this constitutes an intervention by invitation. This is a completely uncontroversial action that requires no further comment. However, a situation where the host nation does not provide its consent or where the presence of consent is unclear, there exists a legal grey area. As noted by a scholar, "*the question of the legality of forcible rescue operations remain disputed today, while the possibility of evacuation of nationals without active combat engagement remains unchallenged.*"²⁸ On this

issue, a State may subscribe either to the restrictionist or to the counter-restrictionist position. Restrictionists do not believe that the use of force to protect its nationals is a right that accrues to nations in the post-Charter era. Counter-restrictionists believe that it does. On the issue of using force to rescue hostages abroad, India has expressed its disapproval (at least in so far as such a right is traced from Article 51 of the U.N Charter).²⁹ However, on the issue of using force to rescue its nationals due to internal unrest/armed conflict, India can be located in the grouping of nations who have refrained from taking a side/expressing their opinion on the issue.³⁰

A Right or a Request

In Consular Assistance, consular officers act as per the Vienna Convention on Consular Relations as per which it is the individual and not the State who is the titulaire of the right.³¹ The right to seek consular assistance is not synonymous with the right to obtain that assistance.³² This means that the national cannot be denied access to his government officials by the host country,³³ even as the host country is not obligated to accede to every request of the national. The Ministry of External Affairs does acknowledge that consular assistance can be provided to Indian nationals and to Overseas Citizens of India (OCI). However, it qualifies this by stating that this assistance will not be provided regardless of the circumstances.³⁴

As opposed to consular assistance, which can be claimed as a matter of individual right, diplomatic protection is a State prerogative and not an individual right.³⁵ The exercise of diplomatic protection by a State is a purely discretionary power.³⁶ Should an individual feel that his rights are not adequately protected (by the host State exercising diplomatic protection), he will have no remedy in international law.³⁷ There exists no obligation for a State to extend diplomatic protection to its nationals abroad. As stated by the International Court of Justice, "*The State must be viewed as the sole judge to decide whether its protection will be granted, to what extent it is granted, and when it will cease. It retains in this respect a discretionary power the exercise of which may be determined by considerations of a political or other nature, unrelated to the particular case.*"³⁸ The most that a national could possibly demand of his protecting State is that the government consider his request rationally.³⁹ Municipal law may oblige a State to

protect its nationals abroad.⁴⁰ The Ministry of External Affairs however, clearly stipulates that it cannot guarantee the safety and security of Overseas Indians outside the scope of local laws.⁴¹ As stated by India in the U.N.G.A Sixth Committee (Legal): *“Concern for the rights of the individual should not, however, be stretched to the point where it was obligatory for the State of nationality to espouse the claim in question despite political or other sensitivities.”*⁴²

In the current legal disposition, an individual can only request for and not claim as a matter of right diplomatic protection. Given this fact, an enquiry into whether an individual can as a matter of right, call upon the State of his nationality to use force to protect him is a redundant line of enquiry. In the absence of any municipal law obligations, the answer shall be a negative.

Dual Nationals

Dual nationality is not prohibited by international law.⁴³ It may arise *“as a result of the parallel operation of the principles of jus soli and jus sanguinis or of the conferment of nationality by naturalization or any other manner...which does not result in the renunciation of a prior nationality.”*⁴⁴

Can a State protect its nationals, if these nationals simultaneously also hold the nationality of the State against whom the right to protect nationals is being exercised? The International Law Commission has held that, *“A State of nationality may not exercise diplomatic protection in respect of a person against a State of which that person is also a national unless the nationality of the former State is predominant...”*⁴⁵ This principle of ‘predominant nationality’ defines the circumstances in which a State may extend diplomatic protection to its nationals when they also possess the nationality of the state against whom the right of diplomatic protection is being invoked.⁴⁶ Clarity is certainly required as to what exactly constitutes these circumstances. Clarity is also needed on whether or not the rule of predominant nationality will also apply to the law governing the use of force. This is so the use of force entails executive action as opposed to the law of diplomatic protection which only entails a claim.⁴⁷

The Rights of Citizens versus the Rights of Nationals

Should a State conduct Noncombatant Evacuation Operations as part of the protection of nationals, would a citizen stand on a different footing from a national? This is an important question, as given the limited space onboard ships and aircrafts, there may be a need to prioritize in between the two in the course of evacuation operations.

The Delhi High Court has held that: *“the gaining of the status of an OCI...does not guarantee parity of treatment with Indian passport holders.”*⁴⁸ The provisions governing OCIs have received a statutory status⁴⁹ and this provision itself can be traced to Article 11 of the Constitution. However, the rights that are conferred on OCIs depend entirely upon the policy of the Government of India. Section 7B of the Citizenship Act, 1955 states clearly that an overseas citizen is entitled to only such rights as the central government may specify {other than the rights specifically not made available to them by Section 7B(2)}.

A perusal of the relevant central laws⁵⁰ by the Ministry of Home Affairs⁵¹ and the (then) Ministry of Overseas Indian Affairs (now subsumed under the Ministry of External Affairs)⁵²⁵³ makes clear that OCIs have parity with NRIs in respect of all facilities available to them in the economic, financial and educational fields except in matters relating to the acquisition of agricultural or plantation properties. OCIs also have rights at par with Indian citizens with respect to pursuing certain professions, adoptions, domestic air fares, entry to national monuments, historical sites, museums, national parks, wildlife sanctuaries etc. Government policy, as it stands today, treats OCIs differently from Indian citizens based upon an intelligible differentia.⁵⁴ Indian courts have clearly ruled that *“it is not enough to show that the person is an Indian 'national'. Absent an explicit recognition of such status in law, a 'national' may not per se be entitled to the same treatment as a 'citizen'.”*⁵⁵

In a case before the Delhi High Court this year itself (2018), Justice VibhuBakhrū held: *“In terms of Section 7B (1) of the Citizenship Act, 1955, all rights other than those specified in sub-section (2) of the said Section are available to an OCI card holder. Although Article 16 of the Constitution of India is specified in Section 7B(2) of the Act, Articles 14 and 19 are not included. Thus, prima facie, the rights under Articles 14 and*

19 of the Constitution of India which is guaranteed to the Citizen of India also appear to be extended to an OCI card holder.”⁵⁶

What must not be forgotten however, is that given the absence of any obligations placed on the Indian State by domestic law to use force to protect/evacuate even its citizens, the question of prioritizing between its citizens and nationals is presently a moot question. Nonetheless, this question does require clarity, as an answer to the same is still germane for purposes of public policy, perception management, morality and possibly in the future, the law itself.

Conclusions

The contemporary international environment has been increasingly characterized by a tendency to accept or at least tolerate the forcible protection of nationals.⁵⁷ Given the sheer number and dispersion of the overseas Indian population, there is little doubt that the need to protect Indian nationals will arise in the future.

There is a pressing need for legal clarity in relation to the acquisition, determination and termination of Indian nationality, particularly in cases of dual nationality. The use of a variety of terms (citizens, nationals, OCI, PIO, NRI, passport holders) has generated immense confusion about who exactly is entitled to the protection of the Indian State. There is a lack of uniformity across different ministries of the Government of India with respect to the usage of these terms. This requires correction.

**Himanil Raina is a Research Associate at the National Maritime Foundation (NMF), New Delhi. The views expressed are his own and do not reflect the official policy or the position of the NMF. He can be reached at himanilraina@gmail.com and researchassociate2.nmf@gmail.com*

Notes and References

¹“Net official development assistance received (current US\$).” The World Bank. <https://data.worldbank.org/indicator/DI.ODA.ODAT.CD?locations=IN>(accessed October 22, 2018); *World Investment Report 2018 – Country Fact Sheet: India* (United Nations Conference on Trade and Development) Retrievable at: http://unctad.org/sections/dite_dir/docs/wir2018/wir18_fs_in_en.pdf(accessed October 17, 2018); *World Investment Report 2018* (United Nations Conference on Trade and Development), p.p 4 and 44, http://unctad.org/en/PublicationsLibrary/wir2018_en.pdf (accessed October 17, 2018); *Migration and Remittances: Recent Developments and Outlook* (KNOMAD, World Bank Group, April 2018), v, <http://www.knomad.org/sites/default/files/2018-04/Migration%20and%20Development%20Brief%2029.pdf> (accessed October 17, 2018).

²*Migration and Remittances: Recent Developments and Outlook* (KNOMAD, World Bank Group, April 2018), 5, <http://www.knomad.org/sites/default/files/2018-04/Migration%20and%20Development%20Brief%2029.pdf> (accessed October 17, 2018).

³Latha Vardarajan, *The Domestic Abroad: Diasporas in International Relations* (Oxford University Press: 2010), p.19.

⁴“Blood ties matter, not colour of passport, Modi tells global Indians,” *The Hindu*, January 9, 2017, at: <https://www.thehindu.com/news/national/Blood-ties-matter-not-colour-of-passport-Modi-tells-global-Indians/article17009798.ece>.

⁵Ministry of External Affairs. “Population of Overseas Indians.” Compiled in December, 2017; Retrievable at: http://mea.gov.in/images/attach/NRIs-and-PIOs_1.pdf (accessed October 22, 2018); *International Migration Report 2017* (United Nations Department of Economic and Social Affairs, 18 December 2017), http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf (accessed October 22, 2018).

⁶The term NRI is of relevance only for purposes of income tax and exchange control laws. Section 115(C)(e) of the Income Tax Act 1961 describes a NRI as “*an individual, being a citizen of India or a person of Indian origin who is not a "resident"*.” The Foreign Exchange Management (Deposit) Regulations, 2016 (Notification No. FEMA 5(R)/2016-RB) in Clause 2(vi) defines a NRI “*as a person resident outside India who is a citizen of India.*” As is evident from a perusal of the Ministry of External Affairs document mentioned in the previous footnote, this is not the understanding that they have.

⁷These MEA statistics use the term Persons of Indian Origin interchangeably with Overseas Citizens of India. The exact proportion of OCIs and PIOs in the figure of 17.9 million is unclear.

⁸Oppenheim’s *International Law*, ed. Robert Jennings and Arthur Watts (New Delhi: Oxford University Press, 2008; Printed in India by Replika Press), p. 856.

⁹Report on Nationality, Including Statelessness, by Manley O Hudson, Special Rapporteur, Annex 1, Section II (1) – Concept of Nationality in International Law, p. 6 - DOCUMENT A/GN.4/50, Extract from the Yearbook of the International Law Commission:- 1952 ,vol. II, http://legal.un.org/ilc/documentation/english/a_cn4_50.pdf (accessed October 23, 2018)

¹⁰State Trading Corporation of India v The Commercial Tax Officer
Visakhapatnam, MANU/SC/0038/1963, Para 48, Equivalent Citation: AIR1963SC1811,
[1963]33CompCas1057(SC), [1964]4SCR99 (Supreme Court of India 1963).

¹¹State Trading Corporation of India v The Commercial Tax Officer
Visakhapatnam, MANU/SC/0038/1963, Para 129, Equivalent Citation: AIR1963SC1811,
[1963]33CompCas1057(SC), [1964]4SCR99 (Supreme Court of India 1963).

¹²State Trading Corporation of India v The Commercial Tax Officer
Visakhapatnam, MANU/SC/0038/1963, Para 18, Equivalent Citation: AIR1963SC1811,
[1963]33CompCas1057(SC), [1964]4SCR99 (Supreme Court of India 1963).

¹³Refer to Footnote 45

¹⁴Alladi Krishnaswami Ayyar, speaking in the Constituent Assembly Of India Debates (Proceedings),
Volume IX, 117.36 (12th August, 1949),
http://cadindia.clpr.org.in/constitution_assembly_debates/volume/9/1949-08-12 (accessed October 25,
2018).

¹⁵F. No. 25024/9/2014-F.I., and F. No. 26011/01/2014-IC.I., GK Dwivedi, Joint Secretary, Ministry of
Home Affairs – The Gazette of India Extraordinary Part 1 – Section 1, 9th January 2015,
[https://indiacode.nic.in/ViewFileUploaded?path=AC_CEN_5_40_00001_195557_1517807319455/notif
icationindividualfile/andfile=PIO+Card+holder+deemed+to+be+OCI+card+holder.pdf](https://indiacode.nic.in/ViewFileUploaded?path=AC_CEN_5_40_00001_195557_1517807319455/notificationindividualfile/andfile=PIO+Card+holder+deemed+to+be+OCI+card+holder.pdf) (accessed October
23, 2018).

¹⁶The Citizenship Act [Act, No. 57 of 1955], Section 7B;
<https://indiacode.nic.in/bitstream/123456789/1522/3/A1955-57.pdf#search=citizenship> (accessed
November 1, 2018).

¹⁷Alice Edwards, “The meaning of Nationality in International Law in an era of human rights: procedural
and substantive aspects” in Nationality and Statelessness under International Law, ed. Alice Edwards and
Laura van Waas (Cambridge University Press, 2014), p. 16.

¹⁸Oppenheim’s International Law, ed. Robert Jennings and Arthur Watts (New Delhi: Oxford University
Press, 2008; Printed in India by Replika Press), p. 856.

¹⁹Niraja Gopal Jayal, “Citizenship,” in The Oxford Handbook of the Indian Constitution ed. Sujit
Choudhry, Madhav Khosla, Pratap Bhanu Mehta (Oxford University Press, First Edition: 2016), p.179.

²⁰Seventh Report on Diplomatic Protection by Mr John Dugard, Special Rapporteur, Para 17 to Article 1,
p. 8, International Law Commission 58th session, A/CN.4/567 (7 March, 2006);
http://legal.un.org/ilc/documentation/english/a_cn4_567.pdf (accessed October 31, 2018).

²¹Report of the International Law Commission, 58th Session (1 May-9 June and 3 July-11 August 2006),
Text of the draft articles with commentaries thereto, Para 9 to Article 1, p. 27, General Assembly Official
Records, 61st Session, Supplement No 10 (A/61/10) <http://legal.un.org/docs/?symbol=A/61/10> (accessed
October 31, 2018); Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo),
Summary of the Judgment of 30 November 2010, Separate Opinion of Judge Cancado Trindade, Para 37,
p. 10; <https://www.icj-cij.org/files/case-related/103/16262.pdf> (accessed October 31, 2018).

²²Report of the International Law Commission, 58th Session (1 May-9 June and 3 July-11 August 2006), Text of the draft articles with commentaries thereto, Para 13 to Article 1, p. 28, General Assembly Official Records, 61st Session, Supplement No 10 (A/61/10) <http://legal.un.org/docs/?symbol=A/61/10> (accessed October 31, 2018).

²³Report of the International Law Commission, 58th Session (1 May-9 June and 3 July-11 August 2006), Text of the draft articles with commentaries thereto, Para 8 to Article 1, pp. 26_27, General Assembly Official Records, 61st Session, Supplement No 10 (A/61/10) <http://legal.un.org/docs/?symbol=A/61/10> (accessed October 31, 2018).

²⁴Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press: 2010), p. 213. He quotes C.H.M Waldock's definition.

²⁵Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press: 2010), p. 213; First Report on Diplomatic Protection by Mr John Dugard, Special Rapporteur, Para 47-60, pp. 218-220, International Law Commission 52nd session, A/CN.4/506 (7 March and 20th April 2000); http://legal.un.org/ilc/documentation/english/a_cn4_506.pdf (accessed October 31, 2018); Terry D Gill and Paul AL Ducheine, "Rescue of Nationals," in *The Handbook of the International Law of Military Operations* ed. Terry D Gill and Paul AL Ducheine (Oxford University Press, Second Edition: 2015), p. 240.

²⁶Report of the International Law Commission, 58th Session (1 May-9 June and 3 July-11 August 2006), Text of the draft articles with commentaries thereto, Para 8 to Article 1, p. 27, General Assembly Official Records, 61st Session, Supplement No 10 (A/61/10) <http://legal.un.org/docs/?symbol=A/61/10> (accessed October 31, 2018); John Dugard, "Articles on Diplomatic Protection," 3, United Nations Audiovisual Library of International Law, http://legal.un.org/avl/pdf/ha/adp/adp_e.pdf (accessed October 31, 2018); Mathias Forteau "Rescuing Nationals Abroad," in *The Oxford Handbook on the Use of Force in International Law* ed. Marc Weller; (Oxford University Press: 2015), p. 959.

²⁷Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press: 2010), p. 216.

²⁸Mathias Forteau "Rescuing Nationals Abroad," in *The Oxford Handbook on the Use of Force in International Law* ed. Marc Weller; (Oxford University Press: 2015), p. 960.

²⁹United Nations Security Council 1942nd Meeting, Official Records, 13th July 1976 (New York), Para 145 at p.16 and Para 146 at p.17; https://digitallibrary.un.org/record/86950/files/S_PV-1942-EN.pdf (accessed November 1, 2018).

³⁰United Nations General Assembly 55th Session, Summary record of the 19th meeting of the Sixth Committee, 'Agenda item 159: Report of the International Law Commission on the work of its fifty-second session,' Para 38 at p.p 7-8, Para 39 at p.8; A/C.6/55/SR.19 (13 Nov, 2000), <https://undocs.org/en/A/C.6/55/SR.19> (accessed November 1, 2018); United Nations General Assembly 738th Plenary Meeting, 3rd Emergency Special Session (New York), Para 116 at p. 66 (August 1958), http://repository.un.org/bitstream/handle/11176/301181/A_PV.738-EN.pdf?sequence=1&isAllowed=y (accessed November 1, 2018)

³¹Vienna Convention on Consular Relations, 1963, Article 5(a), (g), (h), (i), Article 36 and Article 37 generally. http://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf(accessed October 17, 2018); Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo),

Summary of the Judgment of 30 November 2010, Separate Opinion of Judge Cancado Trindade, Para 24 p. 8; <https://www.icj-cij.org/files/case-related/103/16262.pdf> (accessed October 31, 2018).

³²Draft Articles on the Expulsion of Aliens, with commentaries, 2014, Para 9 to Article 26, p. 44, http://legal.un.org/ilc/texts/instruments/english/commentaries/9_12_2014.pdf (accessed October 31, 2018).

³³Alice Edwards, “The meaning of Nationality in International Law in an era of human rights: procedural and substantive aspects,” in *Nationality and Statelessness under International Law* ed. Alice Edwards and Laura van Waas (Cambridge University Press, 2014), p.35.

³⁴Consular, Passport and Visa Division, “Guide to Consular Services,” Ministry of External Affairs, Government of India. <https://www.mea.gov.in/guide-to-consular-services.htm> (accessed November 1, 2018).

³⁵Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Summary of the Judgment of 30 November 2010, Separate Opinion of Judge Cancado Trindade, Para 21, p. 7; <https://www.icj-cij.org/files/case-related/103/16262.pdf> (accessed October 31, 2018).

³⁶John Dugard, “Diplomatic Protection,” U.N Audiovisual Library of International Law Lecture Series, 35:22, http://legal.un.org/avl/ls/Dugard_DP_video_1.html.

³⁷Case Concerning the Barcelona Traction, Light and Power Company Limited, Judgment of 5 February, 1970, para 78, p.45; <https://www.icj-cij.org/files/case-related/50/050-19700205-JUD-01-00-EN.pdf> (accessed November 1, 2018); Oppenheim’s International Law, ed. Robert Jennings and Arthur Watts (New Delhi: Oxford University Press, 2008; Printed in India by Replika Press), p. 849.

³⁸Case Concerning the Barcelona Traction, Light and Power Company Limited, Judgment of 5 February, 1970, para 79, p.45; <https://www.icj-cij.org/files/case-related/50/050-19700205-JUD-01-00-EN.pdf> (accessed November 1, 2018).

³⁹Malcolm N Shaw, *International Law* (Cambridge University Press, 6th Edition: 2008), p. 809-810.

⁴⁰Case Concerning the Barcelona Traction, Light and Power Company Limited, Judgment of 5 February, 1970, para 78, p.45; <https://www.icj-cij.org/files/case-related/50/050-19700205-JUD-01-00-EN.pdf> (accessed November 1, 2018).

⁴¹Consular, Passport and Visa Division, “Guide to Consular Services,” Ministry of External Affairs, Government of India. <https://www.mea.gov.in/guide-to-consular-services.htm> (accessed November 1, 2018).

⁴²United Nations General Assembly 55th Session, Summary record of the 19th meeting of the Sixth Committee, ‘Agenda item 159: Report of the International Law Commission on the work of its fifty-second session,’ Para 40, Page 8; A/C.6/55/SR.19 (13 Nov, 2000); <https://undocs.org/en/A/C.6/55/SR.19> (accessed November 1, 2018).

⁴³Convention on Certain Questions Relating to the Conflict of Nationality Law, 1930, Article 3; <http://www.refworld.org/docid/3ae6b3boo.html> (accessed November 1, 2018).

⁴⁴Report of the International Law Commission, 58th Session (1 May-9 June and 3 July-11 August 2006), Text of the draft articles with commentaries thereto, Para 1 to Article 6, p. 41, General Assembly Official Records, 61st Session, Supplement No 10 (A/61/10) <http://legal.un.org/docs/?symbol=A/61/10> (accessed October 31, 2018).

⁴⁵Report of the International Law Commission, 58th Session (1 May-9 June and 3 July-11 August 2006), Text of the draft articles on diplomatic protection, Article 7 on p. 18, General Assembly Official Records, 61st Session, Supplement No 10 (A/61/10) <http://legal.un.org/docs/?symbol=A/61/10> (accessed October 31, 2018).

⁴⁶Report of the International Law Commission, 58th Session (1 May-9 June and 3 July-11 August 2006), Text of the draft articles with commentaries thereto, Para 5 to Article 7, p. 46, General Assembly Official Records, 61st Session, Supplement No 10 (A/61/10) <http://legal.un.org/docs/?symbol=A/61/10> (accessed October 31, 2018): *“The authorities indicate that such factors include habitual residence, the amount of time spent in each country of nationality, date of naturalization (i.e., the length of the period spent as a national of the protecting State before the claim arose); place, curricula and language of education; employment and financial interests; place of family life; family ties in each country; participation in social and public life; use of language; taxation, bank account, social security insurance; visits to the other State of nationality; possession and use of passport of the other State; and military service. None of these factors is decisive and the weight attributed to each factor will vary according to the circumstances of each case.”*

⁴⁷Tom Ruys, *Armed Attack* and Article 51 of the UN Charter (Cambridge University Press: 2010), p. 214; Mathias Forteau *“Rescuing Nationals Abroad,”* in *The Oxford Handbook on the Use of Force in International Law* ed. Marc Weller; (Oxford University Press: 2015), p. 950.

⁴⁸*Karm Kumar v the Union of India*, 172(2010)DLT521, 2010(4)RCR(Civil)461, Para 23, (Delhi High Court 03.08.2010)

⁴⁹The Citizenship Act [Act, No. 57 of 1955], Section 7A, <http://www.refworld.org/docid/3ae6b57b8.html> (accessed October 23, 2018).

⁵⁰*Rebecca Ann Malstead and Ors. vs. Union of India and Ors* (Madras High Court 15.02.2017)

⁵¹F.No.26011/2/2005-IC.I, Ministry of Home Affairs- The Gazette of India Extraordinary Part II- Section 3(ii), p.2, No.373, 11th April, 2005

⁵²Noti. No. S.O. 12(E), Ministry of Overseas Indian Affairs, The Gazette of India Extraordinary Part II- Section 3(i), p.1, No. 7, 6th January 2007.

⁵³Noti. No. S.O. 36(E), Ministry of Overseas Indian Affairs, The Gazette of India Extraordinary Part II- Section 3(ii), p.1, No. 33, 6th January 2009.

⁵⁴*Karm Kumar v the Union of India*, 172(2010)DLT521, 2010(4)RCR(Civil)461, Para 23, (Delhi High Court 03.08.2010)

⁵⁵*Karm Kumar v the Union of India*, 172(2010)DLT521, 2010(4)RCR(Civil)461, Para 54, (Delhi High Court 03.08.2010)

⁵⁶Dr Christo Thomas Philip vs Union of India, W.P. (C) 1775/2018 and CM No. 27041/2018, Para 3, (Delhi High Court 30.07.2018)

⁵⁷Andrew W.R Thomson, "Doctrine of the Protection of Nationals Abroad: Rise of the Non-Combatant Evacuation Operation," Washington University Global Studies Law Review, Vol 11(3) (2012), p.p 666_667.