



The forcible protection of nationals and non-combatant evacuation operations

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ABSTRACT

India possesses the world's largest overseas population (31.2 million). This geographically dispersed overseas population contributes more to India financially every year than Foreign Direct Investment and Foreign Aid put together. India has come a long way from the Nehruvian era policy of active disassociation between the Indian State and overseas Indians. The need to protect or rescue 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 it is possible for India to engage in the forcible protection/rescue of its nationals. It also examines the issue of whether India must limit itself to only protecting/rescuing its citizens or whether it can also protect/rescue its nationals.

KEYWORDS

Use of force; citizenship; nationality; protection of nationals; India; international law

Introduction

India's overseas population of 31.2 million individuals, dispersed over 206 countries and territories globally, is concentrated overwhelmingly in coastal States. The need for India to protect or rescue these individuals may arise due to any number of reasons. If India were to protect or rescue these individuals with the consent of the host State, then this would constitute an intervention by invitation. An intervention by invitation is a relatively straightforward action which presents little controversy.

Whenever India engages in the protection or rescue of overseas Indians however, the first question that presents itself is a definitional one. Who all will qualify as Indian citizens entitled to the protection of the Indian State? Can India protect or rescue only its citizens or can it rescue non-citizens as well? Furthermore, is it possible for India to engage in the forcible protection/rescue of these individuals in a situation where the host State's consent is unclear or unavailable? This paper seeks to answer these questions.

Disaggregating and understanding India's overseas population

Figure 1 provides a breakdown of India's overseas population. At 31.2 million, India has the largest overseas population in the world.¹ This figure of 31.2 million includes 13.3

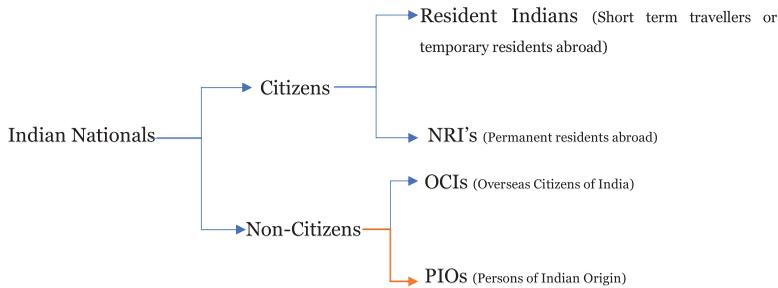


Figure 1. India's overseas population.

Source: Author.

million Non-Resident Indians (NRIs)² and 17.9 million Overseas Citizens of India (OCIs).³

The term “NRI” is merely indicative of an individual’s taxation-status and not his or her political status. The term “OCI”, on the other hand, is indicative of the individual’s political status. The term “PIO” is a term of colloquial usage and indicates neither taxation nor political status. Of these three categories of individuals, NRIs alone are citizens of India. OCIs and PIOs are not (presently) citizens of India. In international law, however “nationality” is the only term of any consequence. For purposes of international law, it is quite irrelevant that a State’s internal laws might 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).⁴ Legally, an individual may be a national of a State without possessing its citizenship.⁵ The failure to understand this distinction lies at the root of much of the confusion that presently envelops this topic.

The Indian Supreme Court addressed the distinction between citizenship and nationality in *State Trading Corporation of India v The Commercial Tax Officer, Visakhapatnam* (1963), where Justice KC Das Gupta said that: “Nationality and citizenship are not identical; and it has been rightly said that while every citizen will be a national, every national is not necessarily a citizen.”⁶ Chief Justice BP Sinha stated:

all citizens are nationals of a particular State, but all nationals may not be citizens of the State. In other words, citizens are those persons who have full political rights as distinguished from nationals, who may not enjoy full political rights ...⁷

Justice M Hidayatullah held that:

... the words “national” and “citizen” are not interchangeable as has been sometimes supposed⁸ ... citizenship and nationality are not entirely similar concepts though the words are sometimes used interchangeably owing to the fact that most citizens are also nationals and vice versa.⁹

Justice J.C Shah agreed, saying that:

“Citizen” and “national” are frequently used as interchangeable terms, but the two terms are not synonymous. Citizenship, in most societies, is the highest political status in the State, it is employed to denote persons endowed with full political and civil rights ... Every citizen is a national, but every national is not always a citizen.¹⁰

The framers of India's Constitution never intended to enact a code of nationality law within the Constitution itself. During the Constituent Assembly debates on Part II of the Constitution (Citizenship), Alladi Krishnaswami Ayyar stated that,

The object of these articles is not to place before the House anything like a code of nationality law ... Parliament has absolutely a free hand in enacting any law as to nationality or citizenship suited to the conditions of our country.¹¹

Much of the reason for the creation of confusion on this topic lies in the fact that the Indian Parliament never enacted any nationality law subsequently.

Part II of the Constitution simply identified 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 was introduced simply as an "Act to provide for the acquisition and determination of Indian citizenship."¹² In its original form, this Act recognised only one category of Indians – citizens. The category of individuals recognised as PIOs and OCIs was only introduced many decades later. Following a government decision in 2015, the distinction between PIOs (Persons of Indian Origin) and OCIs (Overseas Citizens of India) was abolished. All PIO-cardholders became Overseas Citizens of India from 9 January 2015 onwards.¹³ 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. Section 7B of the Citizenship Act, 1955 also specifically denies OCIs a number of fundamental, constitutional and statutory rights that are available only to citizens and not OCIs.¹⁴

OCIs therefore, are clearly not Indian citizens. They are, however, Indian nationals. 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 naturalisation (including *jus domicili* or long residence)."¹⁵ The International Court of Justice further complicated the matter of determining nationality in the much criticised *Nottebohm* Case where it introduced the "genuine connection" test.¹⁶ However, given that the International Law Commission has chosen to reject this doctrine,¹⁷ this is of no pertinence herein.

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 in respect of the grant of nationality. 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 *j. soli* conception to a *j. sanguinis* one,¹⁹ India's determination of OCIs as Indian nationals is, indeed, not to be "lightly questioned".

Evolving perceptions about India's overseas population

Nehruvian India "denied institutional links between the Indian State and overseas Indians". This was exemplified in India's exhortation for its diaspora to "associate

themselves as closely as possible with the interest of the country they have adopted.”²⁰ Following India’s opening-up to the world on the back of its wide-ranging economic reforms in the 1990s, this attitude started visibly transforming. Under the National Democratic Alliance (NDA) government led by Shri Atal Bihari Vajpayee, the High-Level Committee on the Indian Diaspora, in its report in December, 2001, endorsed the need for India to grant dual citizenship (with appropriate safeguards) to certain members of the Indian Diaspora.²¹ The passage of the Citizenship (Amendment) Bill, 2003, resulted in the grant of Overseas Indian Citizenship to PIOs from select countries.²² The succeeding government – the Congress-led United Progressive Alliance, created a dedicated Ministry of Overseas Indian Affairs in 2004 (subsequently merged into the Ministry of External Affairs). The present Indian government, led by Shri Narendra Modi, reaffirmed the importance of India’s overseas population to the nation with its decision to abolish the PIO card scheme. From 2015 onwards, all PIO-card holders were deemed to be OCIs.²³

The remittances that India receives each year from this overseas population are well in excess of both the foreign direct investment (FDI) and foreign aid received by it annually. In 2016, India received some \$2.7 billion in the form of official development assistance.²⁴ In 2017, of the \$1.43 trillion worth of global FDI, India received \$39.9 billion,²⁵ ranking 11th globally.²⁶ In the same year (2017), there were \$613 billion²⁷ worth of global remittances. India was the world’s largest recipient, netting \$69 billion,²⁸ a figure that amounts to 2.8% of India’s GDP.²⁹ Such figures are very impressive considering that in 1990-91, the sum received by India through remittances was a mere \$2.1 billion.³⁰ This increase has been co-terminus with the dedicated and ever-increasing attention paid by the Indian State to its overseas population, beginning in the 1990s. India has a come long way from the past Nehruvian approach of active disassociation, to the present where Prime Minister Narendra Modi has stated that the Indian government does not look at the “colour of the passport but only the blood relationship.”³¹

The spectrum of state support

A government has three 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. What Consular Assistance cannot do is intervene in the host State’s internal affairs or judicial processes, nor does it entail giving formal legal advice or investigating a crime.³²

“Diplomatic Protection” is essentially remedial (to remedy an internationally wrongful act that has already been committed).³³ 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.³⁴ Diplomatic Protection comprises diplomatic action and other means of peaceful settlement. Diplomatic Action includes protest, request for an inquiry or negotiations, etc. Other means of peaceful settlement include negotiation, mediation and conciliation and arbitral and judicial settlement.³⁵

The use of force for the protection of nationals requires the existence of three cumulative conditions. First, there must exist an imminent threat of injury to the nationals.

Secondly, there must be a clear failure/inability of the territorial sovereign to protect them. Thirdly, the intervening State's actions must be strictly confined to protecting its nationals against injury.³⁶ Prior to the entry into force of the UN 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.³⁷ Subsequently, it has been settled that the use of force (something that is prohibited by Article 2 (4) of the UN Charter) in the exercise of the right of diplomatic protection, is no longer permissible.³⁸ 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 because International Law neither authorises nor definitively rules out protection of nationals.³⁹

A right or a request

In Consular Assistance, consular officers act as per the Vienna Convention on Consular Relations, under which it is the "individual" and not the State who is the *titulaire* of the right.⁴⁰ The right to seek consular assistance is not synonymous with the right to obtain that assistance.⁴¹ This means that a national cannot be denied access to his government officials by the host country,⁴² even as the host country is not obligated to accede to every request of the national. India's Ministry of External Affairs does acknowledge that consular assistance can be provided to Indian nationals and to Overseas Citizens of India (OCI). However, the MEA website qualifies this by stating that while efforts would be made to provide the listed consular assistance, "it should not be assumed that all kinds of assistance will be provided regardless of the circumstances".⁴³

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.⁴⁴ The exercise of diplomatic protection by a State is a purely discretionary power.⁴⁵ 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.⁴⁶ There exists no specific 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.⁴⁷

The most that a national could possibly demand of his protecting State is that the government consider his request rationally.⁴⁸ Municipal law, on the other hand, may well oblige a State to protect its nationals abroad.⁴⁹ The Ministry of External Affairs clearly stipulates that it cannot guarantee the safety and security of Overseas Indians outside the scope of local laws.⁵⁰ As stated by India in the Sixth Committee of the UN General Assembly (UNGA) (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."⁵¹

In the current legal disposition, therefore, an individual can only request for, diplomatic protection, but cannot claim it as a matter of right. 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 can only be in the negative.

The use of force to protect/rescue nationals

Should a nation consent to another nation extricating individuals from within its territory, this constitutes an “intervention by invitation”. This is a completely uncontroversial action that requires no further comment. A situation where the host nation does not accord its consent (or where the presence of consent is not clear) however, is a legal grey-area. As noted by one 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.”⁵² It has been noted by many scholars that in recent decades there has been a tendency to tolerate such interventions.⁵³

At the outset, a nation may either take the position of the “restrictionists” or the “counter-restrictionists”. Restrictionists consider the maintenance of international peace and security to be the foremost goal of the United Nations. To this end, the United Nations is understood to have a monopoly on the use of force. Consequently, self-defence in case of an armed attack upon a State’s territory is understood to be the only situation wherein a State may unilaterally use force.⁵⁴ Counter-restrictionists point out that the issue of the forcible protection of nationals has arisen before the United Nations Security Council and the International Court of Justice on numerous occasions.⁵⁵ However, not once, has either of these institutions averred the extinguishment of the right, or even condemned as being illegal, a specific invocation of the right.⁵⁶ There are four distinct positions in the counter-restrictionist approach, each affirming a State’s right to forcibly protect its nationals:⁵⁷

- The first position talks about the survival or revival of the pre-UN Charter customary rule, which allowed a State to undertake the forcible rescue of its nationals abroad. This approach believes that Article 51 of the UN Charter does not abridge the pre-existing customary right of self-defence, which includes the protection of nationals.⁵⁸ The second sub-stream of this theory says that the restrictions on the right to self-defence are reciprocal to the Charter’s promise of collective security. Therefore, if the UN’s collective security system fails to live-up to its promise, customary law would revive, enabling a State to protect its own nationals.⁵⁹
- The second position affirms the existence of a quantitative (the amount of force used) and a qualitative dimension (the end for which force is used) within Article 2(4) of the UN Charter. This position suggests that the use of force for protecting nationals does not run afoul of Article 2(4), as it is qualitatively different from the kinds of use of force that the UN Charter seeks to proscribe. Since the rescue of nationals from a danger that the territorial State cannot or will not prevent, does not impair the “territorial integrity or political independence” of that State, the forcible protection of nationals abroad is not held to breach the Article 2(4) prohibition on the use of force.⁶⁰ The decision of the International Court of Justice in the Corfu Channel case has been interpreted as a rejection of the position that Article 2(4) is subject to the “non-aggressive” use of force.⁶¹ However, it has been acknowledged by the very same author that there are a number of situations where the question of whether the legal threshold for the use of

force has been breached is open to argument. Whether the uninvited presence of military forces on foreign soil without actual fighting is tantamount to the use of force is one such question.⁶²

- The third position locates a State's right to protect its nationals under the right to self-defence in Article 51 of the UN Charter.⁶³ Insofar as a State's population is an essential/constitutive element of the State (in the same manner as a State's territory is), an armed attack against the population can be argued to be akin to an attack on the State's territory.⁶⁴ Whether an attack against some nationals abroad can be equated with an attack against "the population" is, however, a contested claim.⁶⁵ This notwithstanding, it is difficult to maintain that a State shall remain inactive even when the lives of its nationals are threatened abroad.⁶⁶ By linking a threat to a national abroad to the concept of an armed attack, this approach recognises a State's right to engage in a protective (though not a punitive) response when the lives of its nationals are threatened abroad. Any such actions under Article 51 must additionally comply with the customary international law requirements of military necessity and proportionality.⁶⁷

There exists an argument that the omission of a reference to "attacks against nationals abroad" from the UN General Assembly's definition of "Aggression" indicates that this is not a valid ground to exercise the right of self-defence. There are at least three reasons why this argument is not conclusive in and of itself.⁶⁸ First, Article 4 of the very same resolution indicates that the lists of acts enumerated in the resolution are not exhaustive.⁶⁹ Second, Article 3(d) dispels the view that the concept of an armed attack is confined to the territory of a State.⁷⁰ Third, and as acknowledged in Article 6, the definition in the resolution is only of "acts of aggression" as opposed to "armed attacks". Therefore, its utility in determining the scope of the right to self-defence is valid only up to a certain point.⁷¹ That said, thus far, self-defence has been the preferred legal ground relied upon by States that have sought to forcibly protect their nationals.⁷²

- The fourth approach contests the notion that the maintenance of peace and security is the predominant purpose of the UN Charter. It posits that the protection of human rights is an equally important goal of the UN Charter.⁷³ Should the United Nations Security Council fail to act and redress the violation of human rights, this approach proposes that the right to forcibly protect nationals can be located in the Preamble, Articles 1, 55, and 56 of the UN Charter along with an ever-increasing corpus of human rights law.⁷⁴

There is another possible position that a nation may subscribe to, one that is not advanced by the Restrictionists or the Counter-Restrictionists. This position denies that the use of force to rescue nationals conforms to international law or at least the right to self-defence contained within international law. Nonetheless, it suggests that the use of force to rescue nationals could be justified within the context of necessity, as a ground for precluding wrongfulness. The use of force could then become legitimate and be a mitigating circumstance, which at least prevents the labelling of the State exercising force as an aggressor.⁷⁵

It is important to note that there are two overlapping but different situations that must be considered when examining a nation's stated position on this issue of using force to protect nationals. The first one involves a situation where nationals are threatened by internal unrest or an armed conflict.⁷⁶ The legal position on this issue ranges from

being permissive to having its exact contours under debate, but it is certainly not prohibited. The second situation involves operations to rescue hostages. Presently, it is difficult to maintain that States have a right to rescue hostages abroad.⁷⁷

A consideration of the statements made by India on this particular issue reveals that India has expressed its disapproval vis-à-vis the use of force to rescue hostages abroad (at least insofar as such a right is traced from Article 51 of the UN Charter).⁷⁸ 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 that have refrained from taking a side or expressing their opinion on the issue.⁷⁹

Protection of nationals or non-combatant evacuation operations

Much of the concern with the concept of Protection of Nationals flows from the abuse of the doctrine over the years. Within the International Law Commission, only two delegates accepted the principle that the use of force in the exercise of diplomatic protection could constitute a form of self-defence. Many of the delegates who opposed the doctrine of protection of nationals, did so on the ground that it had often used as a pretext for intervening in the domestic affairs of other States.⁸⁰ It must be appreciated, however, that expressing discontent about the abuse of a doctrine is not the same as denouncing the doctrine itself. In both, the International Law Commission and the UNGA Sixth Committee (Legal), many States reserved their opinions, refrained from taking sides and/or claimed that the issue lay outside the scope of the matter under consideration.⁸¹

In the past few decades, a number of countries have begun adopting specific guidelines to address the conduct of “Non-Combatant Evacuation Operations” (NEO). Tom Ruys has suggested that a switch in language from “the protection of nationals” to one of “non-combatant evacuations” may help to overcome the present legal impasse. As Ruys observes, the linking of the use of force to evacuation reduces the scope for abuse to a far greater extent than the somewhat open-ended phrase “protection of nationals”.⁸² The use of force in this context should flow from a recognition that armed force can be employed only for the protection of nationals and not property. Further, there should be an understanding that such an effort cannot be used to justify a prolonged or a large-scale military presence.⁸³

Ruys has parsed Canadian, French, Australian, British and American doctrinal publications to ascertain their position vis-à-vis the same.⁸⁴ Common to these doctrines is the recognition that NEO may need to be conducted in three kinds of threat environments. This classification is one that is also found in NATO doctrinal publications.⁸⁵ The first environment is a “Permissive” one, where host-State consent is expected to be available. The second environment is an “Uncertain” one, while the third environment is a “Hostile” environment. State consent may range from being dubious, to being irrelevant or being absent. The Canadian doctrine recognises that such operations are defensive in nature and need to be limited to evacuating nationals, as opposed to intervening in the affairs of the host nation. The Australian doctrine recognises that there is presently no consensus as to the admissibility of such (forcible) operations, even while it itself recognises the right to engage in the forcible protection of its nationals. The UK, France and the USA take a similar view.⁸⁶

The issue of dual nationals

The question that arises in the case of dual nationals is whether or not a State can use force to protect/rescue its nationals, if these nationals simultaneously also hold the nationality of the State against whom force is being used to protect/rescue them. As previously mentioned, India's failure to enact legislation regulating the issue of nationality is at the root cause of much of the prevailing confusion. In the Constituent Assembly debates, Alladi Krishnaswami Ayyar had stated that,

The problem of double nationality is one of the most difficult questions which international jurists have to face. All that we can provide for is a kind of citizenship. We cannot try to remove all the complications that will arise out of the problem either of statelessness or double nationality.⁸⁷

Dual nationality is not prohibited by international law.⁸⁸ 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."⁸⁹ Article 4 of the 1930 Hague Convention on "Certain Questions relating to the Conflict of Nationality Laws" declares that, "A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses." In 1949, the ICJ noted that the ordinary State practice was to "not exercise protection on behalf of one of its nationals against a State which regards him as its own national."⁹⁰

In 2000, the Indian delegation in the UNGA Sixth Committee (Legal) stated that "the State's right to espouse the claims of its national should not be open to question, as long as the nationality granted had the proper basis, such as birth, descent or naturalization."⁹¹ The Indian delegation believed that

as long as the individual concerned had suffered injury within the territory of the State of which he or she was a national, there was no scope for the exercise of diplomatic protection by any State, including the State of dominant or effective nationality. Any problems suffered by individuals in that regard were the natural consequences of the benefits which they would otherwise enjoy from holding dual or multiple nationality.⁹²

In 2006, however, the International Law Commission took a more nuanced position when it 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 ..."⁹³ 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.⁹⁴ Clarity is certainly required as to what exactly constitutes these circumstances. However, given that the use of force is no longer held to be a part of a State's right to exercise diplomatic protection, this is not the most critical issue requiring clarity. The most important issue then becomes whether or not the rule of predominant nationality will also apply to the law governing the use of force, given that it entails executive action, as opposed to the law of diplomatic protection, which only entails a claim. This issue remains unsettled in international law.⁹⁵

The rights of citizens versus the rights of nationals

Would a citizen stand on a different footing from a national during the conduct of NEO? This is an important question as, given the limited space onboard a ship/aircraft, there may be a need to prioritise 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.”⁹⁶ The provisions governing OCIs have received a statutory status⁹⁷ 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 laws⁹⁸ made by the Ministry of Home Affairs⁹⁹ and the (then) Ministry of Overseas Indian Affairs (now subsumed under the Ministry of External Affairs)¹⁰⁰ 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 airfares, 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.¹⁰¹ 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’.”¹⁰²

In a case before the Delhi High Court in 2018, Justice Vibhu Bakhru held that:

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.¹⁰³

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 or rescue even its citizens, the question of prioritising between its citizens and its nationals is, presently, a moot question. Nevertheless, this question does require clarity, as an answer to the same is still germane for purposes of public policy, perception management, morality, ethics and, in the future (possibly), the law itself.

Recommendations

The use of force to protect nationals has historically been a part of the State’s right to exercise diplomatic protection in respect of its nationals. Over the course of the nineteenth and the early twentieth century, the doctrine of diplomatic protection itself acquired a poor name owing to its frequent abuse by powerful States against weaker States. This situation has completely changed today. Developing States make use of the law of Diplomatic

Protection against each other. Sometimes, even powerful States end-up being the defending States.¹⁰⁴ There is still little consensus amongst experts about whether or not the use of force to protect nationals furthers the purposes of the United Nations.¹⁰⁵ However, the contemporary international environment has been increasingly characterised by a tendency to accept or at least tolerate the forcible protection of nationals.¹⁰⁶

Given the sheer scale and dispersion of the overseas Indian population, there is little doubt that the need to protect or rescue Indians 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.

Indian policymakers need to decide whether India would be willing to forcibly protect its nationals/evacuate non-combatants should the relevant criterion as ascertained by India/international law be satisfied. If the answer is a “no”, then there is no further consideration required. If, however, the answer is a “yes”, then India needs to determine what the criteria for engaging in the forcible protection/evacuation of its nationals are. As demonstrated previously, there has been a clear and unambiguous shift in the language employed by India’s political leadership at the highest of levels. Modern India no longer endorses the Nehruvian approach of active disassociation.

The earlier examination, in this paper, of India’s legal views on this issue makes it clear that India has not clarified its stand on this issue. India would then need to determine which of the counter-restrictionist views it endorses, prior to commencing efforts aimed at shaping the international legal discourse. This would enable the generation of a meaningful consensus around norms that may eventually become future law (*lex ferenda*).

The terminology used as part of such an effort would also matter. The term “protection of nationals” comes with a historical baggage which may make the achievement of consensus much more nebulous. If the language of NEO were to provide a more stable point of departure for efforts to shape the international narrative, then it must be adopted.

Notes

1. Ministry of External Affairs, “Population of Overseas Indians.” Compiled in December, 2017; http://mea.gov.in/images/attach/NRIs-and-PIOs_1.pdf (accessed October 22, 2018). Short term travelers and temporary expatriates have not been included as part of these figures; *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).
2. The 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 endnote 1, this is not the understanding that the Ministry of External Affairs has.

3. MEA statistics use the term Persons of Indian Origin interchangeably with Overseas Citizens of India.
4. Oppenheim's International Law, ed. *Robert Jennings and Arthur Watts* (New Delhi: Oxford University Press, 2008; Printed in India by Replika Press), p. 856.
5. Report 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).
6. State Trading Corporation of India v The Commercial Tax Officer Visakhapatnam, MANU/SC/0038/1963, Para 107, Equivalent Citation: AIR1963SC1811, [1963]33CompCas1057(SC), [1964]4SCR99 (Supreme Court of India 1963).
7. State 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).
8. State 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).
9. State Trading Corporation of India v The Commercial Tax Officer Visakhapatnam, MANU/SC/0038/1963, Para 51, Equivalent Citation: AIR1963SC1811, [1963]33CompCas1057(SC), [1964]4SCR99 (Supreme Court of India 1963).
10. State 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).
11. Alladi 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).
12. The Citizenship Act [Act, No. 57 of 1955], Preamble, <http://www.refworld.org/docid/3ae6b57b8.html> (accessed October 23, 2018).
13. F. 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/notificationindividualfile/&file=PIO±Card±holder±deemed±to±be±OCI±card±holder.pdf (accessed October 23, 2018).
14. The 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).
15. Alice 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*, eds. Alice Edwards and Laura van Waas (Cambridge University Press, 2014), 16.
16. Nottebohm Case (Liechtenstein v. Guatemala) Second Phase, Judgment of April 6th 1955, I.C. J. Reports 1955, p. 23; <https://www.icj-cij.org/files/case-related/18/018-19550406-JUD-01-00-EN.pdf> (accessed November 2, 2018).
17. Report 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 4, pp. 32_33, 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).
18. Oppenheim's International Law, ed. *Robert Jennings and Arthur Watts* (New Delhi: Oxford University Press, 2008; Printed in India by Replika Press), 856.
19. Niraja Gopal Jayal, “Citizenship,” in *The Oxford Handbook of the Indian Constitution*, eds. Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta (Oxford University Press, First Edition: 2016), 179.
20. Latha Vardarajan, *The Domestic Abroad: Diasporas in International Relations* (Oxford University Press, 2010), 19.

21. *Report of the High Level Committee on Indian Diaspora* (Government of India, 2001), Executive Summary, <https://www.mea.gov.in/images/pdf/1-executive-summary.pdf> (accessed October 17, 2018).
22. The Citizenship (Amendment) Bill, 2003 (Bill No. XXXIX of 2003). http://164.100.47.4/billtexts/rsbilltexts/AsIntroduced/XXXIX_2003.pdf (accessed October 17, 2018).
23. Shreya Kedia, "The Day of the Indian Diaspora," *The Pioneer*, 12th January, 2017, <https://www.dailypioneer.com/columnists/oped/the-day-of-the-indian-diaspora.html>.
24. "Net official development assistance received (current US\$)." The World Bank. <https://data.worldbank.org/indicator/DT.ODA.ODAT.CD?locations=IN> (accessed October 22, 2018).
25. *World Investment Report 2018 – Country Fact Sheet: India* (United Nations Conference on Trade and Development). 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. 44, http://unctad.org/en/PublicationsLibrary/wir2018_en.pdf (accessed October 17, 2018).
26. *World Investment Report 2018 – Country Fact Sheet: India* (United Nations Conference on Trade and Development). 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), 4, http://unctad.org/en/PublicationsLibrary/wir2018_en.pdf (accessed October 17, 2018).
27. *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).
28. *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).
29. *Migration and Remittances: Recent Developments and Outlook* (KNOMAD, World Bank Group, April 2018), 32, <http://www.knomad.org/sites/default/files/2018-04/Migration%20and%20Development%20Brief%2029.pdf> (accessed October 17, 2018).
30. Gabi G Afram, *The Remittance Market in India: Opportunities, Challenges and Policy Options* (The World Bank, International Bank for Reconstruction and Development: 2012), xiii, <http://documents.worldbank.org/curated/en/785341468269661757/pdf/662350PUB0EPI000India09780821389720.pdf> (accessed October 17, 2018).
31. "Blood Ties Matter, Not Colour of Passport, Modi Tells Global Indians," *The Hindu*, January 9, 2017, <https://www.thehindu.com/news/national/Blood-ties-matter-not-colour-of-passport-Modi-tells-global-Indians/article17009798.ece>.
32. Seventh 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).
33. Report 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).
34. Report 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).
35. Report 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).

36. Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press, 2010), 213. He quotes C.H.M Waldock's definition.
37. Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press, 2010), 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*, eds. Terry D Gill and Paul AL Ducheine (2nd ed, Oxford University Press, 2015), 240.
38. Report 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), 959.
39. Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press, 2010), 216.
40. Vienna 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).
41. Draft 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).
42. Alice 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*, eds. Alice Edwards and Laura van Waas (Cambridge University Press, 2014), 35.
43. See Passport Consular 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).
44. 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 21, p. 7; <https://www.icj-cij.org/files/case-related/103/16262.pdf> (accessed October 31, 2018).
45. John 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.
46. Case 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), 849.
47. Case 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).
48. Malcolm N Shaw, *International Law* (6th ed, Cambridge University Press, 2008), 809–10.
49. Case 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).

50. Consular, 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).
51. United 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).
52. Mathias Forteau, "Rescuing Nationals Abroad," in *The Oxford Handbook on the Use of Force in International Law*, ed. Marc Weller (Oxford University Press, 2015), 960.
53. Tom Ruys, "The Protection of Nationals Doctrine Revisited," *Journal of Conflict and Security Studies* 13, no. 2 (2008): 264.
54. Richard Bonnot Lillich, *Lillich on the Forcible Protection of Nationals Abroad* (U.S Naval War College, Volume 77 – International Law Studies; 2002), 244; <https://digital-commons.usnwc.edu/ils/vol77/iss1/1/> (accessed 2 November, 2018).
55. Claus Krieb, "Principle of Non-Use of Force," in *The Oxford Handbook on the Use of Force in International Law*, ed. Marc Weller (Oxford University Press, 2015), 594:

The Tehran Hostages case ... has been the only encounter the ICJ has had with the controversial question whether there is a right of states to use (limited) force to protect their nationals abroad. While it is clear that the ICJ's critical observation in the Tehran Hostages case is very far from indicating a willingness to favourably consider the possibility of such a right, it would go too far to treat ... (its) ... cursory remark as the rejection of such right. This is because the ICJ recognized explicitly that it did not have jurisdiction to rule upon the "legality of the operation ... under the Charter of the United Nations and under general international law".

56. Terry D Gill and Paul AL Ducheine, "Rescue of Nationals," in *The Handbook of the International Law of Military Operations*, eds. Terry D Gill and Paul AL Ducheine (2nd ed, Oxford University Press, 2015), 242.
57. Richard Bonnot Lillich, *Lillich on the Forcible Protection of Nationals Abroad* (U.S Naval War College, Volume 77 – International Law Studies, 2002), 244_247; <https://digital-commons.usnwc.edu/ils/vol77/iss1/1/> (accessed 2 November, 2018).
58. Richard Bonnot Lillich, *Lillich on the Forcible Protection of Nationals Abroad* (U.S Naval War College, Volume 77 – International Law Studies, 2002), 245; <https://digital-commons.usnwc.edu/ils/vol77/iss1/1/> (accessed 2 November, 2018).
59. Robert J Delahunty, "Paper Charter: Self Defence and the Failure of the United Nations Collective Security System," 56 *Cath. U. L. Rev.* 871 (2007): 940_941; Himanil Raina, "Articles 2 (4) and 51 of UN Charter: Force Gaps and the Unilateral Exercise of the Right of Self Defence against Non State Actors," *NILJ* 1, no. 1 (2015): 42_43; <https://nilj.nalsar.ac.in/Nalsar2.pdf>; Richard Bonnot Lillich, *Lillich on the Forcible Protection of Nationals Abroad* (U.S Naval War College, Volume 77 – International Law Studies, 2002), 246; <https://digital-commons.usnwc.edu/ils/vol77/iss1/1/> (accessed 2 November, 2018).
60. Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press, 2010), 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), 950.
61. Claus Krieb, "The International Court of Justice and the 'Principle of Non-Use of Force,'" in *The Oxford Handbook on the Use of Force in International Law*, ed. Marc Weller (Oxford University Press, 2015), 573.
62. Claus Krieb, "The International Court of Justice and the 'Principle of Non-Use of Force,'" in *The Oxford Handbook on the Use of Force in International Law*, ed. Marc Weller (Oxford University Press, 2015), 574_575.
63. Terry D Gill and Paul AL Ducheine, "Rescue of Nationals," in *The Handbook of the International Law of Military Operations*, eds. Terry D Gill and Paul AL Ducheine (2nd ed, Oxford University Press, 2015), 241.

64. Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press, 2010), 214.
65. Annemarieke Vermeer Kunzli, "As If: The Legal Fiction in Diplomatic Protection," *The European Journal of International Law* 18, no. 1 (2017): 40; <http://www.ejil.org/pdfs/18/1/220.pdf> (accessed November 2, 2018).
66. Mathias Forteau, "Rescuing Nationals Abroad," in *The Oxford Handbook on the Use of Force in International Law*, ed. Marc Weller (Oxford University Press, 2015), 955.
67. Richard Bonnot Lillich, *Lillich on the Forcible Protection of Nationals Abroad* (U.S Naval War College, Volume 77 – International Law Studies, 2002), 247; <https://digital-commons.usnwc.edu/ils/vol77/iss1/1/> (accessed 2 November, 2018).
68. Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press, 2010), 215–6.
69. United Nations General Assembly Resolution 3314 (XXIX) (Definition of Aggression), Article 4: *The acts enumerated above are not exhaustive and the Security Council may determine that other acts constitute aggression under the provisions of the Charter*, (14 December, 1974), <http://www.un-documents.net/a29r3314.htm> (accessed November 2, 2018).
70. United Nations General Assembly Resolution 3314 (XXIX) (Definition of Aggression), Article 3: *Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of article 2, qualify as an act of aggression*. Sub clause (d): *An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State*, (14 December, 1974), <http://www.un-documents.net/a29r3314.htm> (accessed November 2, 2018).
71. United Nations General Assembly Resolution 3314 (XXIX) (Definition of Aggression), Article 6: *Nothing in this Definition shall be construed as in any way enlarging or diminishing the scope of the Charter, including its provisions concerning cases in which the use of force is lawful*, (14 December, 1974), <http://www.un-documents.net/a29r3314.htm> (accessed November 2, 2018).
72. Christine Gray, *International Law and the Use of Force* (3rd ed, Oxford University Press, 2008), 157; Mathias Forteau, "Rescuing Nationals Abroad," in *The Oxford Handbook on the Use of Force in International Law*, ed. Marc Weller (Oxford University Press, 2015), 952; Terry D Gill and Paul AL Ducheine, "Rescue of Nationals," in *The Handbook of the International Law of Military Operations*, eds. Terry D Gill and Paul AL Ducheine (2nd ed, Oxford University Press, 2015), 242.
73. Anthony Clark Arend, "International Law and the Recourse to Force: A Shift in Paradigms," *Stan. J. Int'l L.* 27, no. 1 (1990–1991): 40.
74. Richard Bonnot Lillich, *Lillich on the Forcible Protection of Nationals Abroad* (U.S Naval War College, Volume 77 – International Law Studies, 2002), 247; <https://digital-commons.usnwc.edu/ils/vol77/iss1/1/> (accessed November 2, 2018).
75. Terry D Gill and Paul AL Ducheine, "Rescue of Nationals," in *The Handbook of the International Law of Military Operations*, eds. Terry D Gill and Paul AL Ducheine (2nd ed, Oxford University Press, 2015), 241; Mathias Forteau, "Rescuing Nationals Abroad," in *The Oxford Handbook on the Use of Force in International Law*, ed. Marc Weller (Oxford University Press, 2015), 950.
76. Tom Ruys, "The Protection of Nationals Doctrine Revisited," *Journal of Conflict and Security Studies* 13, no. 2 (2008): 264.
77. Tom Ruys, "The Protection of Nationals Doctrine Revisited," *Journal of Conflict and Security Studies* 13, no. 2 (2008): 269.
78. United 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).
79. United 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).
80. Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press, 2010), 236_237.
 81. Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press, 2010), 237_238.
 82. Tom Ruys, "The Protection of Nationals Doctrine Revisited," *Journal of Conflict and Security Studies* 13, no. 2 (2008): 267.
 83. Tom Ruys, "The Protection of Nationals Doctrine Revisited," *Journal of Conflict and Security Studies* 13, no. 2 (2008): 264.
 84. Tom Ruys, "The Protection of Nationals Doctrine Revisited," *Journal of Conflict and Security Studies* 13, no. 2 (2008):, 265_267.
 85. Allied Joint Doctrine for Non Combatant Evacuation Operations, NATO Standard AJP-3.4.2, 0103 – Operating Environment, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/625781/doctrine_nato_noncombatant_evacuation_ajp_3_4_2.pdf (accessed November 1, 2018).
 86. Tom Ruys, "The Protection of Nationals Doctrine Revisited," *Journal of Conflict and Security Studies* 13, no. 2 (2008): 265_268.
 87. 18.160, Constituent Assembly Of India Debates (Proceedings) – Volume III (29th April, 1947) (Alladi Krishnaswami Ayyar); http://cadindia.clpr.org.in/constitution_assembly_debates/volume/3/1947-04-29 (accessed November 2, 2018).
 88. Convention on Certain Questions Relating to the Conflict of Nationality Law, 1930, Article 3; <http://www.refworld.org/docid/3ae6b3b00.html> (accessed November 1, 2018).
 89. Report 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).
 90. Reparation for injuries suffered in the service of the United Nations, Advisory Opinion, April 11th, 1949, I.C. J. Reports 1949, p. 186; <https://www.icj-cij.org/files/case-related/4/004-19490411-ADV-01-00-EN.pdf> (accessed November 1, 2018).
 91. United 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 41 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).
 92. United 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 42 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).
 93. Report 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).
 94. Report 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.

95. Tom Ruys, *Armed Attack' and Article 51 of the UN Charter* (Cambridge University Press, 2010), 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), 950.
96. Karm Kumar v the Union of India, 172(2010)DLT521, 2010(4)RCR(Civil)461, Para 23, (Delhi High Court 03.08.2010).
97. The Citizenship Act [Act, No. 57 of 1955], Section 7A, <http://www.refworld.org/docid/3ae6b57b8.html> (accessed October 23, 2018).
98. Rebecca Ann Malstead and Ors. vs. Union of India and Ors (Madras High Court 15.02.2017).
99. F.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.
100. Noti. 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; Noti. 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.
101. Karm Kumar v the Union of India, 172(2010)DLT521, 2010(4)RCR(Civil)461, Para 23, (Delhi High Court 03.08.2010).
102. Karm Kumar v the Union of India, 172(2010)DLT521, 2010(4)RCR(Civil)461, Para 54, (Delhi High Court 03.08.2010).
103. Dr 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).
104. John Dugard, "Diplomatic Protection," *U.N Audiovisual Library of International Law Lecture Series* 10: 39–12:14, http://legal.un.org/avl/ls/Dugard_DP_video_1.html.
105. Christine Gray, *International Law and the Use of Force* (3rd ed., Oxford University Press, 2008), 158_159.
106. Andrew W.R Thomson, "Doctrine of the Protection of Nationals Abroad: Rise of the Non-Combatant Evacuation Operation," *Washington University Global Studies Law Review* 11, no. 3 (2012): 666_667.

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