



# MUNAAL 2024

Ankara Atatürk Lisesi Model United Nations

# ICJ

International Court of Justice

**AGENDA ITEM**

Case of Jadhav  
Pakistan v. India

Under Secretary General  
Ipeksu Kaya

Academic Assistant  
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# STUDY GUIDE

Overarching Diplomacy

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## **LETTER FROM SECRETARY GENERAL**

Esteemed Participants,

I proudly welcome you all to the third edition of MUNAAL as the Secretary General of the conference. I am Taha Ersoy and I am an 11th-grader at the Ankara Atatürk High School. It is a great honor for me to serve as the Secretary General of such a conference with an amazing organization and academic team. It has been a period of relentless efforts and sleepless nights for our team to finalize the preparations of MUNAAL'24 and make THE conference of the year possible.

The amount of trouble I personally have been through during the preparation phases of MUNAAL is unutterable and I would not be able to overcome the tough challenges we faced if not for our executive team and specifically our Director General, Eylül Koçak. She has been my greatest supporter through my best and worst, yet I can't imagine ever making MUNAAL'24 possible without her. She has been the backbone of the MUNAAL organization and with the joint efforts of our Directory General, Eylül, and her Deputy, Ecem, we managed to arrange a conference free of charge for applications. I want to also thank my Deputy-Secretary General, Abrek, for being the best Deputy I could ever wish for.

We have selected a capable academic team and prepared eye-catching committees in order to exceed the conference to its limit. I would like thank our academic team; Dervişan Mehmet Savaş, Nur Mürsel, Ceylin Musalı, İpeksu Kaya, Ahmet Ozan Yılmaz, Mirata Deva, Atakan Duman, Çınar Mehmet Erduran and our Head of Crisis Görkem Can Coşkun. We have worked relentlessly to give you the best experience possible.

Sincerely,

Taha Ersoy

Secretary General of MUNAAL'24

## **LETTER FROM UNDER-SECRETARY GENERAL**

Honorable Judges and Advocates of MUNAAL'24,

My name is Ipeksu Kaya, and I will be serving as your Under-Secretary General for ICJ in this year's MUNAAL'24. I would love to welcome you all to this amazing conference and committee first. I am a sophomore student at Hacettepe University in English Language Teaching. However, I always have the desire for international law. As you may see from the committees I have been doing. Therefore, I would love to thank my beloved Secretary General, Deputy-Secretary General and their Academic Team for this great opportunity to create my own Court experience.

I would also love to give my gratitude towards the honorable Director General and Deputy-Director General and their Organization Team for this once-in-a-lifetime experience. I hope you enjoy your three days like me, and my best friend Ozan did while writing this document for you. Please do not hesitate to contact me or my best friend Ozan if you need any help or questions. Looking forward to meet all of you.

This Court, and justice depends on you.

Ipeksu Kaya

[Ipeksuky4545@gmail.com](mailto:Ipeksuky4545@gmail.com)

## LETTER FROM ACADEMIC ASSISTANT

Esteemed Judges and Advocates of the Court

My name is Ahmet Ozan YILMAZ and I am a sophomore studying French Translation and Interpretation at Hacettepe University and will serve this committee as the academic assistant. I would like to thank our Secretary General and Deputy Secretary General for his beautiful opportunity and, of course, I thank my honourable Under Secretary General İpeksu Kaya.

If this is your first time at court, do not worry at all you will have a very interesting experience which you are going to love a lot. When I had my first court experience, I was afraid that I would fail, but the events turned out the other way around. I'm rather happy to see new judges and advocates executing their duties to the court.

I wish you luck and a great conference!

Ahmet Ozan Yılmaz

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## 1. Introduction to International Court of Justice

### 1.1. Brief History of International Court of Justice

Officially known as International Court of Justice, or vernacularly known as the World Court, is the only court around the globe that may arbitrate disputes between nations and give consultative opinions on issues that involve international law. It is one of the six main branches of the United Nations (UN), and is located in The Hague, Netherlands.<sup>1</sup>

International Court of Justice is the descendant of the Permanent Court of International Justice (PCIJ), which was founded in 1920 by the League of Nations. After the end of World War II, the International Court of Justice and the United Nations inherited the positions of the Permanent Court of International Justice and League of Nations. After the establishment of the World Court, the Statute of International Court of Justice was instituted, drawing the frame of the Court and setting its purpose, extracting heavily from its predecessor. All the member states of the United Nations are party to the Statute of International Court of Justice and may initiate legal cases.

The International Court of Justice is made up of 15 judges selected by the United Nations General Assembly and the Security Council for about nine-year terms. Each nationality could only be represented by one judge on the Court. Selected judges have to mirror the principals of civilizations, legal systems of the world, and the decided international law. Seated in the Peace Palace in The Hague, Netherlands, the ICJ is the only principal UN organ not located in New York City. Its official working languages are English and French.<sup>2</sup>

Since its establishment, the International Court of Justice has entertained 191 cases through 13 November 2023<sup>3</sup>. In alliance with Article 59 of the Statute of International Court of Justice, the parties of a case that the Court rules on, are bound by the Court's decisions and opinions.

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<sup>1</sup>Koh, Steven Arrigg (27 August 2014). "4 Things You Should Know About The Hague". *HuffPost*. Archived from the original on 18 March 2017. Retrieved 17 March 2017

<sup>2</sup>"The Court", *International Court of Justice*. Archived from the original on 10 January 2018. Retrieved 10 January 2018

<sup>3</sup>"Cases". *International Court of Justice*. Archived from the original on 24 November 2020. Retrieved 6 December 2022.

## **1.2. Statute of International Court of Justice**

The Statute of the International Court of Justice is an integral part of the United Nations Charter as an explanation for the structure and the purpose of the World Court and was specified by the Chapter XIV of the United Nations Charter, particularly Article 92 which states:

*Article 92:*

“The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.”<sup>4</sup>

### **1.2.1. Structure of the Statute of the International Court of Justice**

The Statute of the ICJ is divided into 5 chapters and consists of 70 articles. The Statute starts with the Article 1 which states:

*Article 1:*

"The international Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute."<sup>5</sup>

The other 69 Article are grouped in 5 Chapters which goes on:

- Chapter I: Organization of the Court (Article 2-33)
- Chapter II: Competence of the Court (Article 34-38)
- Chapter III: Procedure (Article 39-64)
- Chapter VI: Advisory Opinions (Article 65-68)
- Chapter V: Amendment (Article 69-70)

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<sup>4</sup>Article 92, Chapter XIV, the Charter of the United Nations, and Statute of the International Court of Justice: Charter of the United Nations, 1945

<sup>5</sup>Article 1, the Statute of the International Court of Justice, 26 June 1945



As stated by the list of Article 38.1, the Court is authorized to use an array of sources to reach a conclusion in a matter, such as disputes between countries, treaties, international legal principles, customary international law, and -as a secondary means- judicial rulings and scholarly work.

*Article 38.1:*

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

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.<sup>6</sup>

Article 59, which stipulates that ICJ rulings are only enforceable against the parties involved in the case, and Article 38.2 which allows the Court to decide a case *ex aequo et bono*<sup>7</sup> in the event that the parties consent, place restrictions on these sources.

## **2. Purpose, Importance and Structure of International Court of Justice**

The primary judicial organ of the United Nations is the International Court of Justice, which was established as an entity to serve as a resolver between nations when there is

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<sup>6</sup>Article 38.1, The Statute of the International Court of Justice, 26 June 1945

<sup>7</sup>Ex aequo et bono: (Latin) According to the right and good or from equity and conscience

legal disputes, and also to present advisory opinions on constitutional issues referred to it by the Security Council, General Assembly, and other United Nations bodies and specialized agencies.

With the objective of fostering peaceful resolution and adherence to legal principles in lieu of utilizing action or war, the International Court of Justice's vital intention is to render decisions on cases based on international law and treaties<sup>8</sup>. The International Court of Justice aspires to maintain international law and contribute to stability through providing an administrative structure for handling the disputes.

## **2.1. Structure of the Court**

The International Court of Justice's operations are governed by the Statute of the International Court of Justice, which forms the core component of the UN Charter, and all Member States automatically become parties to it. The International Court of Justice has a layout within this Statute for its actions in resolving the disputes between the countries. The Court also plays a crucial role in upholding global peace and security in international law by providing a platform for peaceful resolution of conflicts.

After the re-establishment of the International Court of Justice, when its predecessor Permanent Court of International Justice came to an end, the United Kingdom got together a selected group of experts in London to configure a framework for managing the international disputes between nations. The Committee's report laid out key principles for the new Court's function, continuing as:

- That the Statute of any new international court should be based on that of the Permanent Court of International Justice;
- That the new court should retain an advisory jurisdiction;
- That acceptance of the jurisdiction of the new court should not be compulsory;

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<sup>8</sup>“About the Court”, International Court of Justice.

That the court should have no jurisdiction to deal with essentially political matters.<sup>9</sup>

The fundamental objective of the International Court of Justice, that of attempting to preserve stability and peace among United Nations members, has been determined in part by this study. The Committee that consisted of the United Kingdom's experts notably aided in defining the Court's initial institutional layout and the procedure for choosing judges.

Even if they are not United Nations member states, nations that have signed and acquired the Statute of the International Court of Justice are granted the right to engage in the electoral process of the judges. The standard veto authority that applies to the Security Council naturally does not apply within the Court and voting of a candidate requires an aggregate of at least eight votes. A candidate needs to get an overwhelming majority of votes within both the Security Council and the General Assembly for him or her to be named to the International Court of Justice.

### **2.1.1. Jurisdiction and Functions of the International Court of Justice**

The International Court of Justice can examine cases associated with human rights, treaty breaches, infringements on diplomatic courtesy, and numerous additional issues that are brought before it by United Nations member states. Both of the opposing parties must be United Nations members in order for the International Court of Justice to hear the pertinent matter and consider jurisdiction. The International Court of Justice must also get consent from the disputing governments in order to grant jurisdiction. A national may also be entitled to an International Court of Justice hearing if a State chooses to take up the cause of one of its citizens and file an appeal against another State.

Notwithstanding the submission of proofs and evidence during the Court procedures, the Court is free to refuse to accept any further proofs or evidence, whether written or oral, that one Party might want to deliver, unless the other Party approves.<sup>10</sup>

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<sup>9</sup>Handbook of the International Court of Justice. Available at: [https://legal.un.org/avl/pdf/rs/other\\_resources/manuel\\_en.pdf](https://legal.un.org/avl/pdf/rs/other_resources/manuel_en.pdf)

<sup>10</sup>Article 52, Statute of the International Court of Justice

A clear majority of the judges will determine each question to present<sup>11</sup>. During the judgment's voting process, the votes of the Court's President and Vice-President are also taken into consideration.

The International Court of Justice can arbitrate cases between governments and, upon request, provide advisory opinions. Public international organizations have no right to intervene directly in cases before the Court, whereas only juridical persons are permitted to do so. These organizations may nevertheless make use of an exclusive process that is solely accessible by them, dubbed the advisory procedure. Five United Nations bodies and fifteen specialty agencies are able to employ this advisory procedure, letting them to ask the Court for legal advice.<sup>12</sup> As the related Article 34.2 of the Statute of the International Court of Justice Chapter II goes on as:

*Article 34.2*

“The Court, subject to and in conformity with its Rules, may request from public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.”<sup>13</sup>

The International Court of Justice is only available to hear cases featuring member states or the states that have agreed upon the Statute of the International Court of Justice. Moreover, a state can bring up an application to be evaluated by the Court provided that it has ratified the Statute of the International Court of Justice, though only within constraints established by the General Assembly in response to Security Council submissions.<sup>14</sup>

### **2.1.2. Applicable Sources of Law for International Court of Justice**

Since the member states must willfully adhere for the International Court of Justice's outcomes to be implemented, there have been difficulties in ensuring the application of its verdicts. Despite the International Court of Justice's statistical significance, the condition that

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<sup>11</sup> Article 55, Statute of the International Court of Justice

<sup>12</sup> Advisory jurisdiction (no date) Advisory Jurisdiction | INTERNATIONAL COURT OF JUSTICE. Available at: <https://www.icj-cij.org/advisory-jurisdiction>

<sup>13</sup> Statute of the International Court of Justice, Chapter II, Article 34.2

<sup>14</sup> UN Charter, art. 93, para. 2

governments voluntarily follow its decisions makes it difficult for the Court to implement its rulings. Furthermore, the Statute of International Court of Justice's Article 38 gives the Court an extensive scope of jurisdiction, which supports its operation but fails to fully address compliance-related obstacles.

### **3. Defining Terrorism and Terrorist Activities in Countries**

#### **3.1. Defining Terrorism in International Law**

Since the 1920s, the world's governments have not been able to put out an irreplaceable definition to the meanings of "terrorism". Although, it is quite challenging to translate that literal understanding into a legally recognized meaning terrorism is often aligned with tremendous horror.

The matter is actually political rather than technical, since some acts may be seen as terrorist intended acts in some countries but not in others. In certain regimes, the priority should be on denouncing government-run viciousness while eliminating acts of violence perpetrated in the name of achieving national independence from foreign occupation or self-determination. Considering a range of motives including the facts that state violence is already under the law of governments in the countries (such as the ban on the use of force and intervention, International Humanitarian Law, and Human Rights Law)<sup>15</sup> Most states tend to concentrate on non-state violence and terrorism. Therefore, there are still technical problems that need to be resolved, such as how to make sure a definition doesn't violate human rights or be too inclusive.

International definition of terrorism is important for international law to put a frame around it so that it can make obligatory rules and punishments over the matters of terrorism in over-state situations. Additionally, it is also principally important in delineating criminal offences, as well as closely related areas of law (including law enforcement power, criminal procedure, and extradition and mutual legal assistance). Nevertheless, using tactics that were initially for military personnel, traditional assassination, bombings of civic space and

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<sup>15</sup>Nations, Ashley Deeks. "Defining Terrorism in International Law." *GlobaLex*, New York University Law School, 2018, [www.nyulawglobal.org/globalex/defining\\_terrorism\\_international\\_law.html](http://www.nyulawglobal.org/globalex/defining_terrorism_international_law.html)

government buildings, arson, hostage-taking, hijacking, kidnapping, sabotage, the perpetration of hoaxes, and suicide bombings are predominantly decided as terrorist acts by most countries<sup>16</sup>.

### **3.2. United Nations and Terrorism**

The query of violence by liberation fighters, who claim that they alter their power to exercise their right to self-determination as mentioned in the United Nations Charter (Treaty Series, vol. 1, no. XVI), Articles 1(2) and 55 has been repeatedly brought up in conversations, deliberations, and political considerations surrounding terrorism in the post-1945 United Nations era.

Nevertheless, the actions that may have seen as terrorism related acts have been widely decided upon during the early years of United Nations: Strategies that were initially for military personnel of any government, traditional assassination, bombings, arson, hostage-takings, hijacking, kidnapping, sabotage, the perpetration of hoaxes, suicide bombings, fabricating dirty bombs, attacking a nuclear reactor, cyberattacks, ecological terrorism, attacks on cultural heritage.<sup>17</sup>

### **3.3. Definitions of International Terrorism**

One of the many problems emphasizing the issue of international terrorism is that even after all the plethora of scholarly work and more than thirty years of inter-governmental discourse there is still no commonly accepted definition of international terrorism. On the other hand, one may say that existing definitions tend to fall into two broad categories: academic and political. Contemporary academic definitions of international terrorism are

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<sup>16</sup>Global Terrorism Index, 2017

<sup>17</sup>Executive Committee of the Commonwealth of Independent States, 1999, Article 1

designed to make the cases fit into various statistical models in order to create legal frameworks and treaties around the issue of international terrorism. Nevertheless, the academic definition of international terrorism helps us to give a ground to define whether the acts are terrorism or not:

- If the act or threat is intended to advance a political, ideological, or religious cause;  
and
- Coerce or intimidate the state country or a foreign government or the public (or section of the public), including foreign public,
- The conduct falls within the definition if it:
- Causes death or endangers a person's life;
- Creates a serious risk to health and safety to the public (or section of the public) or;
- Seriously interferes, disrupts or destroys:
- An electronic information, telecommunications, or financial system; or
- An electronic system used for the delivery of essential government services, used for or by an essential public utility, or transport system

If the act or the threat falls into even one of the categories listed above, it is stated as terrorism in the respective country. Nevertheless, one shall bear in mind that the national law of the respective country affects the process of deciding whether the act is terrorism or not.

### **3.4. Different Terms to Further Describe Terrorism**

#### **3.4.1. Espionage**

Espionage, spying, or intelligence gathering is the act of obtaining secret or confidential information (intelligence). A person who commits espionage is called an *espionage agent* or spy. Any individual or spy ring (a cooperating group of spies) in the service of a government, company, criminal organization, or independent operation, can commit espionage. Additionally, espionage is seen as an act of international terrorism with the collaboration of the national law of the country.

Espionage is often part of an institutional effort by a government or commercial concern. However, the term tends to be associated with state spying on potential or actual enemies for military purposes. Spying involving corporations is known as industrial espionage. Espionage agents are not always aiming for the documents of the governments they are targeting. Natural resources, domestic and foreign policies, strategic economic strengths, military capabilities, and counterintelligence are some of the things that espionage agents may target.

#### **3.4.2. Infiltration**

The term infiltration is used to address “insiders” in the government official buildings, different political parties in the country, and different companies in the country. In times, terrorists may act as “insiders” *infiltrators* to get into the targeted country’s effective companies, political parties and even government buildings in order to provide information and use it even for blackmailing when needed.

Even though we cannot say for sure that every person as an infiltrator is a terrorist, we may for definite say:



- Terrorists will often try to recruit accomplices to assist them in the planning and execution of their schemes,
- The number of hostile states who use terrorist groups as proxies is not to underestimate.

### **3.4.3. Reconnaissance**

In military operations, military reconnaissance or scouting is used to explain the exploration of an area by military forces to obtain information about enemy forces, the terrain, and civil activities in the area of operations. In military jargon, reconnaissance includes patrolling the local area of operations and long-range reconnaissance patrols, which are tasks usually realized in the United States of America by US Army Rangers, cavalry scouts, and military intelligence specialists.

Although this term is highly incorporated in the military actions of the countries, terrorist acts may also use this to get a surveillance of the targeted country's military actions in the targeted acquisition.

### **3.5. Causes of both International and National Terrorism**

The causes for the act of terrorism does not need to be complexified for someone to act or do so. Those who engage in terrorism may do so for purely personal reasons, based on their own psychological state of mind. Their motivation may be nothing more than hate or the desire for power.

On the other hand, there may be a list of reasons why someone may act in such a violent or relentless way. Ideological beliefs may be one of the biggest reasons for the occurrence of terrorism around the globe. Ideology may be defined as the beliefs, values, and/or principles by which a group identifies its particular aims and goals. These groups and persons act in an alliance with what their ideology may have wanted them to act.

Terrorism is sometimes seen as a logical extension of the failure of politics. When people seek redress of their grievances through the government, but fail to win the government's attention to their plight, they may resort to violence. From this point of view, terrorism is the result of a logical analysis of the goals and objectives of a group, and their estimate of the likelihood of gaining victory. If victory seems unlikely using more traditional means of opposition, then one might calculate that terrorism is a better option.

### **3.6. Responses to International and National Terrorism**

Historically, there have been lots of different responses to the considered terrorist acts by the countries. Some of these included the use of violence to oppose terrorists, the use of negotiation, and finally the use of international conventions to create international norms in opposing terrorism. While these are not, by any means, the only ways in which governments have sought to address terrorism, they certainly have been among the most popular.

Usage of violence against terrorism is one of the most used methods while fighting such acts. Nevertheless, after the involvement of international law, international courts, the usage of violence started to decline rapidly as it is not advised to use violence by the member states of treaties that it can result in even more irreversible results.

Negotiation is one of the other methods that is used widely by the countries who have a problem with international or national terrorism. While nations refuse publicly to negotiate with terrorist groups, they may follow a different strategy in secret. Negotiation often serves as a means to manage, resolve, or mitigate crises, particularly in hostage situations, conflict de-escalation, or peace talks with terrorist groups. To exemplify, hostage negotiations are one of the widely known usage of negotiation. In cases of kidnappings or hostage situations, law enforcement agencies deploy specialized negotiators to establish communication with the terrorists.

## 4. Introduction to Diplomatic and Consular Relations

### 4.1. Diplomacy

Diplomacy is the art, the science, and the means by which nations, groups, or individuals conduct their affairs, in ways to safeguard their interests and promote their political, economic, cultural or scientific relations, while maintaining peaceful relationships.<sup>18</sup> Diplomacy comprises spoken or written communication by representatives of state, intergovernmental or non-governmental institutions intended to influence events in the international system.

Diplomacy is the main instrument of foreign policy which represents the broader goals and strategies that guide a state's interactions with the rest of the world. International treaties, agreements, alliances, and other manifestations of international relations are usually the result of diplomatic negotiations and processes. Diplomats may also help shape a state by advising government officials.

Diplomatic theory can be divided into two categories:

- Diplomacy in the narrow sense,
- Diplomacy in the broader sense.<sup>19</sup>

Diplomacy in a narrow sense means that the definition of diplomacy is usually formed through active diplomatic consultations and agreements made by a country's foreign policy makers (foreign ministry) through their embassies. In broad sense, according to diplomacy, diplomacy is used in international relations and in international organizations like UN, WHO, EU organizations.

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<sup>18</sup>*Cyber Diplomacy Toolbox*. [www.cyber-diplomacy-toolbox.com/Diplomacy.html](http://www.cyber-diplomacy-toolbox.com/Diplomacy.html).

<sup>19</sup>*Definition of Diplomacy and Types of Diplomacy used Between States*, Elvin Abdurahmanli, pg. 581

## 4.2. Diplomats

Diplomats are the representation and protection of the interests and nationals of the sending state; initiation and facilitation of strategic agreements, treaties and conventions; and promotion of information, trade and commerce, technology, and friendly relations. A diplomatic services officer specializes in the practical side of diplomatic work and deals with foreign policy and service delivery overseas. A diplomat is a person who can be in charge of the international affairs of their home country and can also influence its policy on overseas. Most countries' diplomatic responsibilities are divided into three main categories: political, trade and consular services.

- A political officer usually reports on local developments and advocates for support for the country's interests.
- In contrast, a consular officer deals with day-to-day travel problems like lost passports and provides essential services to citizens in need.
- A trade officer promotes the interests of the country's companies by introducing them to helpful connections, informing them of business opportunities, providing guidance for visits, and necessary information they can use.<sup>20</sup>

Diplomats are also the members of foreign services and diplomatic corps of various nations of the world. They excel in the management and negotiating skills.

## 4.3. Consular Staff

A consul is an official representative of a government who resides in a foreign country to assist and protect citizens of the consul's country, and to promote and facilitate commercial and diplomatic relations between the two countries.<sup>21</sup> A consul is generally part of a government's diplomatic corps or foreign service, and thus enjoys certain privileges and protections in the host state.

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<sup>20</sup>*What is a Diplomat and What Do They Really Do*, Bay Atlantic University

<sup>21</sup>Chisholm, Hugh, editor. "Consul." *Encyclopædia Britannica*, vol. 7, 11th ed., Cambridge University Press, 1911, pp. 20–22.

## **4.4. Diplomatic and Consular Immunity**

### **4.4.1. Diplomatic Immunity**

Diplomatic immunity is one of the main aspects of the international law that protects diplomats from legal actions and sometimes getting arrested while on duty in another country, allowing them to fulfill their duties without fear of deprivation of liberty. Established mainly by the Vienna Convention on Diplomatic Relations of 1961, diplomatic immunity provides a wide range of protections, including immunity from civil and criminal prosecution, personal inviolability, and exemption from certain taxes.

### **4.4.2. Consular Immunity**

Consular immunity is one of the rights of the consular staff to protect their privileges and protections granted to them under the Vienna Convention on Consular Rights (1963), enabling them to perform their duties without the fear of the host country. Unlike diplomats, consular officers have limited immunity, covering only acts performed in the exercise of their consular functions. They are protected from arrest or detention only if the targeted acts endanger the sending country's well-being. Additionally, consular premises are inviolable, ensuring their operation without interference. However, consular officers must respect the laws of the host state, as their immunity is not absolute.

## **5. Related Treaties and Conventions to the Case**

### **5.1. Vienna Convention on Diplomatic Relations**

The Vienna Convention on Diplomatic Relations of 1961 is an international treaty that defines a framework for diplomatic relations between independent countries. Its aim is to

establish “friendly relations and a framework for the countries to create bounds for diplomatic relations” among governments through a uniform set of practices and principles.<sup>22</sup>

It codifies the longstanding custom of diplomatic immunity, also touching the topics like consular immunity, in which diplomatic missions are granted privileges that enable diplomats to perform their duties without the fear of coercion or harassment by the host country. This Convention is the backbone of the diplomatic relations between every country that has signed this Convention, and also has a bounding nature; this means every signatory has to obey its framework. It is considered one of the most successful legal instruments drafted under the United Nations.

The Vienna Convention is an extensive document containing 53 articles. Following you may find its very basic overview of its key provisions:<sup>23</sup>

- The host nation at any time and for any reason can declare a particular member of the diplomatic staff to be *persona non grata*. The sending state must recall this person within a reasonable period, otherwise, this person may lose their diplomatic immunity (Article 9).
- The premises of a diplomatic mission are inviolable and must not be entered by the host country except by permission of the head of the mission; likewise, the host country must never search the premises, may not seize its documents or property, and must protect the mission from intrusion or damage (Article 22). Article 30 extends this provision to the private residence of diplomatic agents.
- The archives and documents of a diplomatic mission are inviolable and shall not be seized or opened by the host government (Article 24).
- The host country must permit and protect free communication between the diplomatic agents of the mission and their home country. A diplomatic bag must never be opened, even on suspicion of abuse, and a diplomatic courier must never be arrested or detained (Article 27).
- Diplomatic agents must not be liable to any form of arrest or detention, and the receiving state must make all efforts to protect their person and dignity (Article 29).

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<sup>22</sup>Canada, Global Affairs (31 October 2007). "[Vienna Convention on Diplomatic Relations](#)". [international.gc.ca](#).

<sup>23</sup> "[Vienna Convention on Diplomatic Relations](#)". [Audiovisual Library of International Law](#). United Nations.

- Diplomatic agents are immune from the civil and criminal jurisdiction of the host state, with exceptions for professional activities outside the diplomat's official functions (Article 31). Article 32 permits sending states to waive this immunity.
- Diplomatic missions are exempt from taxes (Article 34) and customs duties (Article 36).
- Family members of diplomats living in the host country have many of the same protections as the diplomatic agents themselves (Article 37).

## 5.2. Vienna Convention on Consular Relations (1963)

The Vienna Convention on Consular Relations is an international treaty with 48 signatories that defines a framework for consular relations between sovereign countries. It codifies many consular practices that originated from state custom and various bilateral agreements between states.<sup>24</sup> Consuls have traditionally been employed to represent the interests of states or their nationals at an embassy or consulate in another country. The Convention defines and articulates the functions, rights, and immunities accorded to consular officers and their offices, as well as the rights and duties of “receiving States” and “sending States”. Adopted in 1963, and in force since 1967, the treaty has been ratified by 182 states.

The treaty contains 79 articles. You may find a very basic overview of its key provisions:

- Article 5 lists thirteen functions of a consul, including "protecting in the receiving State the interests of the sending State and of its nationals ... within the limits permitted by international law", "helping and assisting nationals ... of the sending State", and "furthering the development of commercial, economic, cultural and scientific relations between the sending State and the receiving State."

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<sup>24</sup>Michael John Garcia, "Vienna Convention on Consular Relations: Overview of U.S. Implementation and International Court of Justice (ICJ) Interpretation of Consular Notification Requirements", *CRS Report for Congress* (May 17, 2004), <https://fas.org/sgp/crs/row/RL32390.pdf>

- Article 23 provides that the host nation may at any time and for any reason declare a particular member of the consular staff to be *persona non grata*, and that the sending state must recall this person within a reasonable period of time, or the person may lose their consular immunity.
- Article 31 provides that the consular premises are inviolable (i.e., the host nation may not enter the consular premises, and must protect the premises from intrusion or damage).
- Article 35 provides that freedom of communication between the consul and their home country must be preserved, that consular bags "shall be neither opened nor detained"; and that a consular courier must never be detained.
- Article 36 addresses communications between consular officers and nationals of the sending state. The Convention provides that "consular officers shall be free to communicate with nationals of the sending State and to have access to them." Foreign nationals who are arrested or detained be given notice "without delay" of their right to have their embassy or consulate notified of that arrest, and "consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation."
- Article 37 provides that the host country must "without delay" notify consular officers of the sending state if one of the sending state's nationals dies or has a guardian or trustee appointed over him. The article also provides that consular officers must be informed "without delay" if a vessel with the sending state's nationality is wrecked or runs ground "in the territorial sea or internal waters of the receiving State, or if an aircraft registered in the sending State suffers an accident on the territory of the receiving State."
- Article 40 provides that "The receiving State shall treat consular officers with due respect and shall take all appropriate steps to prevent any attack on their person, freedom or dignity."
- Articles 58-68 deal with honorary consular officers and their powers and functions.



### 5.3. International Covenant on Civil and Political Rights (ICCPR) (1966)

The International Covenant on Civil and Political Rights is a multilateral treaty that commits nations to respect the civil and political rights of individuals, including the rights to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial.<sup>25</sup> The ICCPR is considered as a cornerstone document in the history of international law and human rights, forming part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR).

The treat consists of 53 articles divided into 6 parts. You may find a very basic overview of the articles of the covenant:

**Part 1** (Article 1) recognizes the right of all peoples to self-determination, including the right to "freely determine their political status", pursue their economic, social and cultural goals, and manage and dispose of their own resources. It recognises a negative right of a people not to be deprived of its means of subsistence, and imposes an obligation on those parties still responsible for non-self governing and trust territories (colonies) to encourage and respect their self-determination.

**Part 2** (Articles 2 – 5) obliges parties to legislate where necessary to give effect to the rights recognised in the Covenant, and to provide an effective legal remedy for any violation of those rights. It also requires the rights be recognised "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," and to ensure that they are enjoyed equally by women. The rights can only be limited "in time of public emergency which threatens the life of the nation," and even then no derogation is permitted from the rights to life, freedom from torture and slavery, the freedom from retrospective law, the right to personhood, and freedom of thought, conscience, science and freedom from medical or scientific experimentation without consent.

**Part 3** (Articles 6 – 27) lists the rights themselves. These include rights to:

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<sup>25</sup>*International Covenant on Civil and Political Rights* Office of the United Nations High Commissioner of Human Rights

- physical integrity, in the form of the right to life and freedom from torture and slavery (Articles 6, 7, and 8);
- liberty and security of the person, in the form of freedom arbitrary arrest and detention and the right to *habeas corpus* (Articles 9 – 11);
- procedural fairness in law, in the form of rights to due process, a fair and impartial trial the presumption of innocence, and recognition as a person before the law (Articles 14, 15, and 16);
- individual liberty, in the form of the freedoms of movement, thought, conscience and religion, speech, association and assembly, family rights, the right to a nationality, and the right to privacy (Articles 12, 13, 17 – 24);
- prohibition by law of any propaganda for war as well as any advocacy of national or religious hatred that constitutes incitement to discrimination, hostility or violence (Article 20);
- political participation, including the right to the right to vote (Article 25);
- Non-discrimination, minority rights and equality before the law (Articles 26 and 27).

Many of these rights include specific actions which must be undertaken to realize them.

**Part 4** (Articles 28 – 45) governs the establishment and operation of the Human Rights Committee and the reporting and monitoring of the Covenant. It also allows parties to recognize the competence of the committee to resolve disputes between parties on the implementation of the Covenant (Articles 41 and 42).

**Part 5** (Articles 46 – 47) clarifies that the Covenant shall not be interpreted as interfering with the operation of the United Nations or "the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources".

**Part 6** (Articles 48–53) governs ratification, entry into force, and amendment of the Covenant.

#### **5.4. Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes (1963)**

Optional Protocol to the Vienna Convention on Consular Relations concerning the Compulsory Settlement of Disputes is a legal document attached to the Vienna Convention on Diplomatic Relations further explaining and implementing additional boundaries for the member states' diplomatic relations. Its primary purpose is to provide a mechanism for resolving disputes that arise between states regarding the interpretation or application of the Convention.

This protocol's main importance is that after the adaptation of the protocol, the International Court of Justice was granted jurisdiction to adjudicate such disputes, ensuring a formal and peaceful resolution process under the international law. By agreeing to the protocol, states also agree that they will in every circumstance take the ICJ's authority as the final arbiter.

The protocol plays a critical role in reinforcing the principles of consular protection especially in cases involving detained foreign nationals.

### **6. Introduction to the Case of Jadhav**

The case of Jadhav is a case with the main person being Kulbhushan Sudhir Jadhav, who is an Indian national that has been incarcerated in Pakistan since 2016. The Pakistani Government alleges that he is a spy for the Research and Analysis Wing, India's intelligence agency, and was arrested in the Pakistani province of Balochistan. The Indian foreign ministry says that he was kidnapped from Iran and illegally rendered to Pakistan.

The Pakistani Government stated that he was a commander in the Indian Navy who was involved in subversive activities inside Pakistan and was arrested on 3 March 2016 during a counter-intelligence operation in Balochistan. The Indian Government recognized him as a former naval officer but denied any links with him.

On 10 April 2017, Jadhav was sentenced to death by a Field General Court Martial in Pakistan.<sup>26</sup>

### **6.1. Arrest of Kulbhushan Sudhir Jadhav**

Kulbhushan Sudhir Jadhav was arrested inside Balochistan in Mashkel near the border region of Chaman. He was arrested during a counterintelligence raid conducted by security forces. India denied the claim and said he was abducted from Iran.

Pakistani security forces reported Jadhav as a serving officer in the Indian Navy and stated that he was commissioned to the Research and Analysis Wing, India's external intelligence agency. They believed him to be involved in subversive activities in Balochistan and Karachi.

India immediately denied the allegations made by the Pakistani Government, asserting that Jadhav being a retired government officer who had been kidnapped from Iran and denied the right of free trial. India also states that the Pakistani Government has violated the Vienna Convention on Consular Relations by failing to inform them of Jadhav's arrest promptly and denying him consular access. This case became a firing topic between the two countries with India taking the matter to the International Court of Justice in May 2017.

### **6.2. Illegal Activities stated by the Pakistani Government**

Pakistan also claims that Jadhav entered Chabahar in 2003 on a visa issued on a false passport bearing the No L-9630722 in the name of one Hussain Mubarak Patel, born on

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<sup>26</sup>“Pakistan sentences Indian spy Kulbhushan Jadhav to death.” . Dawn, 11 April 2017. [Archived](#) from the original on 11 April 2017.

August 30, 1968, at Maharashtra, India. According to the Pakistan officials, his objective, which officially started in the year 2013, was to destabilize Pakistan through support to separatist movements at Karachi and Balochistan.

The home minister of Balochistan, Sarfraz Bugti, pointed out that Jadhav was obviously working for RAW, in contact with militants and Baloch separatists to cause sectarian unrest in the province and country. Continuing, he said that Jadhav had confessed to his involvement in the Karachi carnage and that he had funded the extremists. According to sources, interrogation reportedly revealed that Baloch separatists were being trained for naval battle in an attempt to attack the ports of Gwadar and Karachi. Jadhav, according to Pakistani officials, during interrogation, revealed details regarding his financing and plans to create instability in the country. The officials further added that he also disclosed the presence of other Indian intelligence officers in the southern city.

Under interrogation, Jadhav also reportedly admitted that he had contacted Haji Baloch at Wadh and that he used to send supplies and money not only to the IS network in Karachi but to the Baloch separatists as well. He has also claimed that Haji Baloch was in contact with the people behind the Safoora bus massacre, in which 45 Ismaili passengers were killed by gunmen. "I have met Baloch on multiple occasions, sometimes to plan sectarian violence in Karachi and the rest of Sindh," Jadhav said. Based on Jadhav's findings, Pakistan said it had arrested hundreds of undercover spies.

### **6.3. Indian Government's Reaction to the Arrest**

The Indian Ministry of External Affairs claimed that Jadhav was an Indian Navy officer, but he had retired prematurely, and he had no current link with the government since his retirement. The Indian High Commission also sought Consular access to Jadhav, which was rejected by Pakistan. Pakistan's envoy to India said that consular access wasn't automatic during cases related to security, explaining Jadhav had been travelling "under a fake name with an original Indian passport" since 2003.

The family of Kulbhushan Jadhav and those who knew him stated that they never knew that Jadhav had left the Indian Navy, along with starting his own business.

#### **6.4. Confession Video**

The video confession was made by Jadhav, which was released during the government-army joint conference. The video described Jadhav claiming that RAW-an Indian intelligence organization-is complicit in Pakistan's destabilization. He added, "The RAW had ordered him to serve in Pakistan as a serving officer in the Indian Navy."

"There can be no clearer evidence of Indian interference in Pakistan," Bajwa said, while pointing at the film, and he went further to say that Jadhav's actions mounted to state-sponsored terrorism. In the film, Jadhav admitted to having used the Iranian port of Chabahar to start a clandestine operation against Pakistan at the behest of Anil Gupta, Joint Secretary of the Research and Analysis Wing. He added that the Baloch separatists in the Balochistan insurgency have been receiving financial support from the RAW. According to Jadhav:

*"I am still a serving officer in the Indian Navy and will be due for retirement in 2022. By 2002, I commenced intelligence operations. In 2003, I established a small business in Chabahar in Iran. As I was able to achieve undetected existence and visits to Karachi in 2003 and 2004 and having done some basic assignments within India for RAW, I was picked up by RAW in 2013."*

Jadhav went on to reveal in the film that since 2013, on RAW's instruction, he had been supervising a number of operations in Karachi and Balochistan, which were creating unrest in the law-and-order situation in Karachi. Detailing those operations, Jadhav said:

*“These activities have been of anti-national or terrorist nature which resulted in the killing and wounding of Pakistani citizens.”*

## **7. Facts of the Case of Jadhav**

An Indian national, Mr. Kulbhushan Sudhir Jadhav (Jadhav) was “arrested” on 3 March 2016.

On 25 March 2016, India was informed of this “arrest”, when the Foreign Secretary, Pakistan raised the matter with the Indian High Commissioner in Islamabad.

On that very day, 25 March 2016, India sought consular access to Jadhav.

Although Pakistan was bound to grant consular access, without delay, India’s request did not evoke any response.

On 30 March 2016, India sent a reminder reiterating its request for consular access to Jadhav, at the earliest. Thirteen reminders were sent by India on 6 May 2016, 10 June 2016, 11 July 2016, 26 July 2016, 22 August 2016, 3 November 2016, 19 December 2016, 3 February 2017, 3 March 2017, 31 March 2017, 10 April 2017, 14 April 2017 and 19 April 2017

Almost ten months after India’s first request for consular access, on 23 January 2017, India received a request from Pakistan claiming to seek assistance in the investigation of what it described as “FIR No. 6 of 2016”. Under the Pakistan Code of Criminal Procedure, the expression “FIR” is an acronym for

the expression “First Information Report”, which is a report registered when the police are first informed of the commission of a crime. The request pertained to a criminal complaint registered against an Indian National, apparently on 8 April 2016. It is significant that this letter acknowledged an “FIR” had been registered against “an Indian national”. The nationality of Jadhav has not ever been in question.

On 3 February 2017 (Annex 1.10), India protested in a demarche against the continued denial of consular access, despite Jadhav’s Indian nationality affirmed by Pakistan. The letter from Pakistan seeking assistance portrayed a purported “confession” by Jadhav, which was the basis of, or at least a significant part of the case against him. India, therefore, raised the concern of Jadhav’s safety, pointing out that:

“questions about his treatment in Pakistan’s custody continue to mount, given especially his coerced purported confession, and the circumstances of his presence in Pakistan remains unexplained.”

On 3 March 2017, India reminded Pakistan of its various requests, including its demarche of 3 February 2017, and again requested consular access.

Jadhav was kidnapped from Iran, where he was residing and carrying on business after retiring from the Indian Navy. The circumstances surrounding his presence in Pakistan are not clear, and there has been a stoic, almost deafening, silence of the Pakistan authorities on these issues. Beyond asserting that Jadhav has been “arrested”, there is no further clarification of the circumstances of his arrest. These matters require verification, the first step towards which would have been to interview Jadhav, upon obtaining consular access.

On 3 March 2016, a man illegally and clandestinely entered Pakistan from across the Saravan border with Iran and was arrested by the Pakistani authorities in the course of a Counter Intelligence Operation from Mashkel in Balochistan Province. A map showing the region is provided.



He was in possession of an Indian passport (number L9630722, issued on 12 May 2015, valid until 11 May 2024) bearing the Muslim name 'Hussein Mubarak Patel'. However, he subsequently admitted and/or claimed to be Officer 415582, Commander Kulbhushan Sudhir Jadhav ("Commander Jadhav"), a serving officer of the Indian Navy. He is apparently 49 years of age at the date of his Counter-Memorial- his date of birth is 30 August 1968. India has asserted he has "retired" from the Armed Forces. Commander Jadhav has stated he is due for retirement in 2022 (as set out in his first confession, reproduced in full below). From public source materials on the internet, the retirement age for an officer of his rank is understood to be not less than 52. No doubt India can confirm whether this is correct. Curiously therefore, whilst India has asserted (conveniently) that Commander Jadhav retired at some point in his career before being caught spying in Pakistan, Commander Jadhav himself appears to have referred to his future eligibility for retirement- perhaps a small but significant indication of the overall veracity of his confession - repeated for the benefit of the authorities, the Magistrate, the Court, and the world at large over a period of more than 1 year.

On 25 March 2016, the Foreign Secretary of Pakistan gave express notification of the arrest of Commander Jadhav to the Indian High Commissioner in Islamabad. On the same day, Pakistan's Ministry of Foreign Affairs issued a de marche to the Indian High Commissioner in Islamabad conveying Pakistan's protest and deep concern on the illegal entry into Pakistan by a RAW officer and his involvement in subversive activities in Balochistan and Karachi.

In addition, he collected/obtained sensitive information about the Pakistani Armed Forces and their installations with a view to targeting the same, and planted several local residents, collaborators, co-conspirators, non-state actors and individuals from the proscribed organisations to carry out acts of terrorism and kidnapping for ransom in order to create unrest, insurgency, target killings, suicide bombings and targeted operations to achieve his objectives.

Commander Jadhav stated that on instructions of RAW (and under the direct

instruction of Anil Kumar Gupta (Joint Secretary, RAW)), he commenced intelligence operations against Pakistan, and planned and executed terrorist attacks and waged war against Pakistan "with a view to disintegrate by fomenting separatists movements in Balochistan, Pakistan". For the said purpose, he established a small scale business in Chahbahar, Iran, during 2003-2004. In addition, he had been organizing, planning, conspiring and abetting waging of war in Pakistan through Baloch Insurgents/Baloch Liberation Organization/Baloch Students Organization and MQM.

## **8. Applicable Law**

Vienna Convention Article 36:

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

*(a) Articles for the official use of the mission;*

*(b) Articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.*

*2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorized representative.”*

Vienna Convention Article 38:

*“1. Except insofar as additional privileges and immunities may be granted by the receiving State, a diplomatic agent who is a national of or permanently resident in that State shall enjoy*

*only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.*

*2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.”*

Vienna Convention Article 40:

*“1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or travelling separately to join him or to return to their country.*

*2. In circumstances similar to those specified in paragraph 1 of this article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.*

*3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit, the same inviolability and protection as the receiving State is bound to accord.*

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

## Optional Protocol Article 1:

*“1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

*2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*

*3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”*

## Right to Fair Trial:

*“You have the right to a fair and public hearing that:*

- *is held within a reasonable time*
- *is heard by an independent and impartial decision-maker*
- *gives you all the relevant information*
- *is open to the public (although the press and public can be excluded for highly sensitive cases)*
- *allows you representation and an interpreter where appropriate, and*
- *is followed by a public decision.*

*You also have the right to an explanation of how the court or decision-making authority reached its decision.”*

Vienna Convention on Consular Relations Article 38:

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

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

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

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